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**CODE OF FEDERAL REGULATIONS**

# Title 48

## Federal Acquisition Regulations System

Chapter 29 to End

Revised as of October 1, 2012

Containing a codification of documents
of general applicability and future effect

As of October 1, 2012

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*Cite this Code:* CFR

*To cite the regulations in this volume use title, part and section number. Thus,* 48 CFR 2901.001 *refers to title 48, part 2901, section 001.*

# Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

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The Paperwork Reduction Act of 1980 (Pub. L. 96–511) requires Federal agencies to display an OMB control number with their information collection request.

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An index to the text of ''Title 3—The President'' is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the ''Contents'' entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

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The Office of the Federal Register also offers a free service on the National Archives and Records Administration's (NARA) World Wide Web site for public law numbers, Federal Register finding aids, and related information. Connect to NARA's web site at *www.archives.gov/federal-register*.

CHARLES A. BARTH,
*Director*,
*Office of the Federal Register*.
*October 1, 2012*.

## THIS TITLE

Title 48—FEDERAL ACQUISITION REGULATIONS SYSTEM is composed of seven volumes. The chapters in these volumes are arranged as follows: Chapter 1 (parts 1 to 51), chapter 1 (parts 52 to 99), chapter 2 (parts 201 to 299), chapters 3 to 6, chapters 7 to 14, chapters 15 to 28 and chapter 29 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 2008.

The Federal acquisition regulations in chapter 1 are those government-wide acquisition regulations jointly issued by the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration. Chapters 2 through 99 are acquisition regulations issued by individual government agencies. Parts 1 to 69 in each of chapters 2 through 99 are reserved for agency regulations *implementing* the Federal acquisition regulations in chapter 1 and are numerically keyed to them. Parts 70 to 99 in chapters 2 through 99 contain agency regulations *supplementing* the Federal acquisition regulations.

The OMB control numbers for the Federal Acquisition Regulations System appear in section 1.106 of chapter 1. For the convenience of the user section 1.106 is reprinted in the Finding Aids section of the second volume containing chapter 1 (parts 52 to 99).

The first volume, containing chapter 1 (parts 1 to 51), includes an index to the Federal acquisition regulations.

For this volume, Robert J. Sheehan was Chief Editor. The Code of Federal Regulations publication program is under the direction of Michael L. White, assisted by Ann Worley.

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# SUBCHAPTER A—GENERAL

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2901.707 Signatory authority.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2901.0—Scope of Subpart

### 2901.001 Scope of part.

This chapter may be referred to as the Department of Labor Acquisition Regulation or the DOLAR. This subpart sets forth introductory information about the Department of Labor Acquisition Regulation. This subpart explains the relationship of the DOLAR to the Federal Acquisition Regulation (FAR) and explains the DOLAR's purpose, authority, applicability, exclusions, and issuance.

## Subpart 2901.1—Purpose, Authority, Issuance

### 2901.101 Purpose.

(a) Chapter 29, Department of Labor Acquisition Regulation, is established within Title 48 of the Federal Acquisition Regulation System of the Code of Federal Regulations.

(b) The purpose of the DOLAR is to implement the FAR, and to supplement the FAR when coverage is needed for subject matter not covered in the FAR. The DOLAR is not by itself a complete document, as it must be used in conjunction with the FAR.

### 2901.103 Authority.

The DOLAR is issued pursuant to the authority of the Secretary of Labor under 5 U.S.C. 301 and 40 U.S.C. 486(c). This authority has been delegated to the Assistant Secretary for Administration and Management under Secretary's Order 4–76 in accordance with FAR 1.301(d)(3).

### 2901.105–2 Arrangement of regulations.

(a) *Numbering.* Where DOLAR implements the FAR, the implementing part, subpart, section or subsection of the DOLAR is numbered and captioned, to the extent feasible, the same as the FAR part, subpart, section or subsection being implemented, except that

the section or subsection being implemented is preceded with a 29 or a 290 such that there will always be four numbers to the left of the first decimal. For example, the DOLAR implementation of FAR 1.105–1 is shown as 2901.105–1 and the DOLAR implementation of FAR subpart 24.1 is shown as DOLAR subpart 2924.1. Material which supplements the FAR is assigned the subsection numbers 70 and up. For example, the DOL regulation governing appointment and termination of contracting officers' technical representatives is identified as 2901.603–71.

(b) References to FAR materials within the DOLAR will include the acronym FAR and the identifying number, for example, FAR 1.104–2(c)(2). References to DOLAR materials within the DOLAR simply cite the identifying number, for example, 2901.104–2(c)(2).

### 2901.105–3 Copies.

Copies of the DOLAR published in the FEDERAL REGISTER, CD-ROM, or Code of Federal Regulations may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, or from the Government Printing Office Web Page, *http://www.gpo.gov/*. Requests should reference the DOLAR as chapter 29 of title 48. The Code of Federal Regulations is printed in paperback edition with updates as needed. Additional information on DOL may be obtained on the Internet at *www.dol.gov*. Other DOL procurement policy documents referenced within the DOLAR may be available when appropriate by mail from the Division of Acquisition Management Services.

## Subpart 2901.2—Administration

### 2901.201–1 Maintenance of the FAR.

A member of the Division of Acquisition Management Services (DAMS), an organization within the Office of Acquisition and Management Support Services, the Business Operations Center, Office of the Assistant Secretary for Administration and Management (OASAM), represents the Department of Labor on the Civilian Agency Acquisition Council (CAAC). DAMS will be responsible for coordination with all interested DOL elements regarding proposed FAR revisions and advocating revisions sought by DOL.

## Subpart 2901.3—Agency Acquisition Regulations

### 2901.302 Limitations.

DOLAR System issuances are limited to published, codified, Department-wide regulations, which implement or supplement FAR policies and procedures and which affect organizations or individuals seeking to contract with the Department.

### 2901.304 Agency control and compliance procedures.

(a) The DOLAR is under the direct oversight and control of the Department's Senior Procurement Executive. Procedures for review and approval of issuances under the DOLAR System comply with FAR subparts 1.3 and 1.4. These procedures are contained in subpart 2901.6.

(b) DOLAR issuances shall comply with the restrictions in FAR 1.304(b).

(c) Heads of Contracting Activity (HCAs) must submit all proposed instructions and materials that implement or supplement the DOLAR to the Director, DAMS. In conjunction with the Office of the Solicitor, DAMS will review all issuances whether or not they will be published in the FEDERAL REGISTER as a part of the DOLAR System. In the case of internal procurement policy instructions, the purpose of the review is to ascertain that such instructions are consistent with the FAR and the DOLAR and that they do not contain information which should be issued under the DOLAR.

## Subpart 2901.4—Deviations From the FAR and DOLAR

### 2901.403 Individual deviations from the FAR.

(a) The Senior Procurement Executive is authorized to approve deviations from FAR provisions (see FAR 1.403) or DOLAR provisions, which affect only one contracting action, unless FAR 1.405(e) is applicable. Requests for deviations shall be submitted through the Director, DAMS.

(b) Requests for deviations under paragraph (a) of this section must be submitted by the HCA and include justification as to why the deviation is required.

(c) A copy of the approved deviation must be included in the contract file.

### 2901.404 Class deviations.

(a) The Senior Procurement Executive is authorized to approve class deviations from FAR or DOLAR provisions which affect more than one contracting action, unless FAR 1.405(e) is applicable. The request for deviation is submitted through the Director, DAMS.

(b) Requests for deviations under paragraph (a) of this section must be submitted by the HCA and include justification as to why the deviation is required and the number of contracting actions which will be affected.

(c) For a FAR class deviation the Director, DAMS will consult with the Chair of the CAAC, as required in FAR 1.404(a)(1), before authorizing the deviation.

(d) A copy of the approved class deviation must be included in each contract file.

(e) Recommended revisions to the FAR and a copy of each approved class FAR deviation will be transmitted to the FAR Secretariat by the Director, DAMS as required in FAR 1.404.

### 2901.405 Deviations pertaining to treaties and executive agreements.

(a) The Director, DAMS is responsible for transmitting to the FAR Secretariat the information required in FAR 1.405(d).

(b) For deviations not authorized by FAR 1.405(b) or (c), the Director, DAMS, will process the request for deviation through the FAR Secretariat.

## Subpart 2901.6—Career Development, Contracting Authority, and Responsibilities

### 2901.601 General.

(a) This section deals with contracting authority and responsibilities of the head of the agency as described in 2902.1, FAR subpart 1.6 and this subpart.

(1) The authority and responsibility vested in the Secretary to contract for authorized supplies and services is delegated to the Assistant Secretary for Administration and Management.

(2) The Assistant Secretary for Administration and Management may delegate contracting authority to a bureau or agency within the Department of Labor as he/she delineates in writing.

(b) The Assistant Secretary for Administration and Management, acting through the Senior Procurement Executive, may delegate additional procurement authority subject to the issuance of warrants by the Senior Procurement Executive, and reserves the right to rescind any acquisition authority, if it is determined that such action is in the best interest of the Government.

### 2901.602 Contracting officers.

### 2901.602–1 Authority.

Contracting warrants, at all levels above the micro-purchase threshold, must be requested by the HCA in writing and signed by the Senior Procurement Executive. Warrants may be accompanied by letters of appointment that may provide requirements for maintaining the warrant (e.g., maintaining current documentation for the FAR, DOLAR, and other guidance, and recurrent training). Copies of the appointment shall be maintained in the Division of Acquisition Management Services. Contracting officers must display the original warrant (and its limitations) in their workspace. A listing of current contracting officers may be available for review on the Internet at *http://www.dol.gov/oasam/grants/prgms.htm*. To modify a contracting officer's authority, the present appointment must be revoked and a new certificate issued.

### 2901.602–3 Ratification of unauthorized commitments.

(a) If the HCA agrees that the commitment appears to be without valid authorization, the Division of Acquisition Management Services must be notified by the HCA in accordance with the procedures outlined in this section.

(b) *Ratifications—Thresholds.* The Department of Labor may only ratify acquisitions that were intended to fulfill a bona fide need and otherwise could

have been authorized when made. If the action to be ratified is not approved, then the employee who authorized the work may be liable for the entire cost of the action. Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority must be processed as follows:

| Dollar threshold | Must be approved by (Ratifying official) | Steps to be followed |
|---|---|---|
| Below the micro-purchase threshold | Head of the Contracting Office | 1 through 5 & 7. |
| Between the micropurchase threshold and the Simplified Acquisition Threshold. | Head of Contracting Activity | 1 through 5 & 7. |
| Above the Simplified Acquisition Threshold | Assistant Secretary for Administration and Management, after review by the Procurement Review Board. | 1 through 7. |

NOTE: DOL procurement policies require review by the Procurement Review Board of advisory and assistance services acquisitions above $50,000 for competitive acquisitions and at any dollar amount for noncompetitive acquisitions, and waivers for contracts with employees and recently separated employees. Therefore, review by the PRB is required for unauthorized obligations at these lower thresholds.

*Step—Instruction*

(1) The individual is placed on notice by the contracting officer, in writing, that the purchase may be inappropriate because he did not have a purchasing request, funding, or authority to obligate the Government to make an expenditure of funds.

(i) The individual who made the unauthorized contractual commitment shall furnish the contracting officer all records and documents concerning the commitment and a complete written statement of the facts, including, but not limited to a statement as to why the acquisition office was not used, a description of work to be performed or products to be furnished, an estimated or agreed-upon contract price, citation of appropriation available, and a statement as to whether the contractor has commenced performance.

(ii) In the absence of such an individual, the head of the applicable office will be responsible for providing such information, including an explanation of why the individual who made the unauthorized commitment is unavailable to provide this information.

(2) The individual who made the unauthorized commitment or the head of the applicable office, as appropriate, shall provide a determination and finding (See FAR 1.704) to the contracting officer indicating that:

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

(ii) A procurement request and/or accompanying documentation including a statement signed by the individual that explains why normal acquisition procedures were not followed, explains why the source was selected, lists other sources considered, describes the work, and estimates or states the agreed upon price. (If the DOL employee who made the unauthorized commitment is no longer available, appropriate program personnel must provide the information described in this paragraph); and

(iii) Funds are available and were available at the time of the unauthorized commitment.

(3) The contracting officer reviewing the unauthorized commitment shall determine whether the price is fair and reasonable and if payment is recommended to the ratifying official. (The contracting officer may rely upon written documentation submitted by managing staff above the individual who made the unauthorized commitment, in making his/her determination.)

(4) Legal review is required before ratification by the ratifying official.

(5) The ratifying official shall make an affirmative determination and finding that:

(i) The resulting purchase order or contract would otherwise have been proper if made by an appropriate contracting officer.

(ii) The contracting officer reviewing the unauthorized commitment has determined that the price is fair and reasonable and payment is recommended.

(6) For cases over the simplified acquisition threshold, all documentation for steps (1) through (5) must be forwarded to the Director, Division of Acquisition Management Services, for submission to the Procurement Review Board. However, the ratifying official is responsible for directing the receipt and acceptance for all products and deliverables received by the Government as a result of an unauthorized commitment.

(7) The supervisor of the individual who made the unauthorized commitment shall prepare a corrective action plan to preclude further unauthorized commitments (e.g., ethics, purchase card, or administrative procedures training, or other appropriate action). The ratifying official may approve the corrective action plan. The individual shall report to the ratifying official in writing when the corrective action has been initiated and again after it has been fully implemented.

### 2901.603 Selection, appointment, and termination of appointment.

### 2901.603–1 General.

(a) The Senior Procurement Executive will develop and manage an acquisition career management program for contracting personnel. Training requirements must conform to Office of Federal Procurement Policy Letters 92–3, 97–01, and the Federal Acquisition Institute's curriculum. These references are available at:

*http://www.arnet.gov/Library/OFPP/PolicyLetters/Letters/PL97–01.html*, *http://www.arnet.gov/Library/OFPP/PolicyLetters/Letters/PL92–3.html*, and through the Federal Acquisition Institute (FAI) at:

*http://www.faionline.com/fai/campus/index4.htm*.

(b) The program must cover all contracting personnel in the following categories:

(1) *General Schedule (GS–1102) Contracting Series* (See also FAR 1.603);

(2) Contracting officers, regardless of General Schedule Series, with contracting authority above the simplified acquisition threshold;

(3) Purchasing Series (GS–1105), other individuals performing purchasing duties and individuals with contracting authority between the micro-purchase and simplified acquisition thresholds.

(4) All Contracting Officer Technical Representatives as identified in 2901.603–71.

### 2901.603–3 Appointment.

*General*. In accordance with FAR 1.603–3, appointments will be made in writing on an SF 1402 for all warrants above the micro-purchase threshold. In addition, appointments may be made for specific functions unrelated to dollar threshold, such as indirect cost negotiation, debt management, and closeout functions.

(a) *Purchase Cards (micro-purchase threshold)*. Purchase cardholders will be appointed in accordance with the DOL Guidelines for Purchase Card Use and the Agency/Office procedures approved by the HCA. Agency/Organization Purchase Card Coordinators requesting issuance of a purchase card must be responsible for ensuring that the purchase cardholder has taken an orientation course before issuance and/or use of the purchase card. A list of purchase cardholders is available at: *http://www.dol.gov/oasam/foia/hotfoia/citibanklist.htm*.

(b) *Simplified Acquisition Threshold (currently $100,000)*. The HCA may request a delegation of procurement authority not to exceed the simplified acquisition threshold based on education, training, and experience in the acquisition field. Effective July 26, 2004, all new appointments must comply with training requirements listed in ''OFPP Policy Letter No. 92–3, Procurement Professionalism Program Policy-Training for Contracting Personnel'', dated June 24, 1992.

(c) *$500,000*. The HCA may request a delegation of procurement authority not to exceed $500,000 based on the individual's education, training and experience in contracting. Although primarily reserved for those in the GS–1102 series, the HCA may consider business acumen, education, training, and experience. Effective May 27, 2004, all new appointments must comply with training requirements listed in ''OFPP Policy Letter No. 92–3, Procurement Professionalism Program Policy-Training for Contracting Personnel'', dated June 24, 1992.

(d) *Unlimited.* The HCA may request a delegation of procurement authority on an unlimited basis for individuals whose education, training, and experience in contracting warrant such authority. Although primarily reserved for those in the GS–1102 series, the HCA may consider length of service, training, and experience. Effective May 27, 2004, all new appointments must comply with training requirements listed in ''OFPP Policy Letter No. 92–3, Procurement Professionalism Program Policy-Training for Contracting Personnel'', dated June 24, 1992.

### 2901.603–4 Terminations.

Termination of a contracting officer's appointment will be made in writing unless the warrant contains the basis for the termination (i.e., retirement, reassignment). Terminations may be immediate, but must not operate retroactively.

### 2901.603–70 Responsibility of other government personnel.

(a) Only DOL personnel with contracting authority shall obligate DOL to any type of contractual obligation and only to the extent of their delegated authority. Responsibility for determining how to buy, the conduct of the buying process, and execution of the contract rests with the contracting officer.

(b) Personnel responsible for determining agency needs should maintain a close and continuous relationship with their contracting officer to ensure that acquisition personnel are made aware of contemplated acquisition actions. This will be mutually beneficial in terms of better planning for acquisition action and more timely, efficient and economical acquisition.

(c) Personnel not delegated contracting authority or insufficient contracting authority may not commit the Government, formally or informally, to any type of contractual obligation. However, DOL personnel who must use the contracting process to accomplish their programs must support the contracting officer to ensure that:

(1) Requirements are clearly defined and specified without being overly restrictive in accordance with FAR 11.002;

(2) Competitive sources are solicited, evaluated, and selected as appropriate;

(3) The FAR and the Competition in Contracting Act requirements for full and open competition are satisfied to the maximum extent practicable. Sole source purchases may only be permitted in accordance with FAR Subpart 6.3 or other applicable provisions of the FAR (e.g. FAR part 8) or federal law;

(4) Quality standards are prescribed, and met;

(5) Performance or delivery is timely;

(6) Files are documented to substantiate the judgments, decisions, and actions taken, including compliance with paragraphs (c)(2) and (3) of this section;

(7) Requirements are written so as to encourage competition and to comply with regulations and federal policy for meeting acquisition goals such as performance-based contracting, HUBZone contractors, etc. The contracting officer will identify these programs to the program office.

### 2901.603–71 Contracting Officer's Technical Representatives (COTR).

(a) At the time a COTR is to become responsible for a contract, task order, or delivery order, the contracting officer must issue a written letter of delegation informing the individual by name of his or her authority, including a delineation of applicable limitations and responsibilities. This applies to contracts awarded by the Department of Labor and those awarded by other agencies, such as Federal Supply Schedule Contracts or Economy Act transactions. Only the contracting officer cognizant of the contract action may make a COTR delegation. However, a contracting officer at any level above the cognizant contracting officer may sign the delegation letter, following his or her determination of its accuracy, completeness, and sufficiency.

(b) The functions of a COTR typically may include such actions as inspecting, testing, and accepting contract line items, monitoring the contractor's performance, controlling Government-furnished property, reviewing and approving and/or recommending to the contracting officer approval/disapproval of vouchers/invoices, etc. An individual

COTR may have only the duties specifically identified in a written delegation to him or her by name (i.e., COTR duties may not be delegated to a position) and has no authority to exceed them.

(c) Contracting officers may not delegate to the COTR the following authorities:

(1) The authority to issue task or delivery orders against a contract or any of the agreements defined under FAR 16.7;

(2) The authority to change any of the terms and conditions of a contract or any of the agreements defined under FAR 16.7;

(3) The authority to sign contracts or contract modifications;

(4) The authority to write letters to the contractor that will affect the cost or schedule of the contract. The authority to otherwise write letters to a contractor must require the COTR to send a copy of the letters to the contracting officer for the contract file;

(5) The authority to approve contractors' final invoices under cost-reimbursement contracts. However, the COTR must make a final payment recommendation to the contracting officer; or

(6) The authority to commit the Government to any adjustments to the price or cost of the contract or order (e.g., the contracting officer must sign all pre-negotiation and price negotiation memoranda including those which may be combined into one document for those adjustments valued at $100,000 or less).

(d) The contracting officer's delegation must include the admonition that the COTR may be personally liable for unauthorized commitments. Contracting officer authority to sign or authorize contractual instruments must not be delegated through a COTR designation or by any means other than a contracting officer warrant.

(e) The contractor must be notified of the COTR designation in writing and a copy of the COTR letter of appointment also must be provided to the contractor. The contracting officer must provide the COTR with a copy of the COTR designation notification that was sent to the contractor.

(f) The letter delegating COTR authority must include the contract number, and must include the following information, at a minimum:

(1) Contracting officer's and contract specialist's/administrator's name and telephone number;

(2) COTR's specific authority and responsibilities;

(3) COTR's specific limitations, including the admonition that the COTR may be personally liable for unauthorized commitments;

(4) Detailed description of the types of files and the content of the files to be maintained by the COTR;

(5) Reference to meeting applicable requirements for ethics, procurement integrity, no conflict of interest, and proper standards of conduct, including a copy of FAR part 3, and other regulations, statutes, or directives governing these topics (e.g., 5 CFR part 2635 Standards of Conduct);

(6) A requirement that the COTR acknowledge receipt and acceptance of the letter and return it to the contracting officer;

(7) A description of the training required and information on obtaining such training.

(g) *Applicability.* The eligibility requirements of this subpart must apply to all individuals who are designated by the contracting officer as COTRs.

(h) *Eligibility standards.* To be determined eligible for an appointment as a DOL COTR, the following standards must be met:

(1) The candidate must attend and successfully complete a minimum of a 16-hour basic COTR course; and

(2) The candidate must attend a minimum of 1 hour of training specifically in procurement ethics, either through courses offered periodically by the Department of Labor, another federal agency's program, or a commercial vendor.

(i) *Limitations.* Effective May 27, 2004, each COTR appointment made by the contracting officer must clearly state that the representative is not an authorized contracting officer and does not have the authority under any circumstances to:

(1) Award, agree to award, or execute any contract, contract modification, notice of intent, or other form of binding agreement;

(2) Obligate, in any manner, the payment of money by the Government;

(3) Make a final decision on any contract matter which is subject to the clause at FAR 52.233–1, Disputes; or

(4) Terminate, suspend, or otherwise interfere with the contractor's right to proceed, or direct any changes in the contractor's performance that are inconsistent with or materially change the contract specifications.

(j) *Termination.* (1) Termination of the COTR's appointment must be made in writing by a contracting officer and must give the effective date of the termination. The contracting officer must promptly modify the contract once a COTR termination notice has been issued. A termination notice is not required when the COTR's appointment terminates upon expiration of the contract.

(2) COTRs may be terminated for reasons (not an exhaustive listing) such as exceeding their authorities and limitations, conflicts of interest, unethical conduct, failure to perform, reassignment/resignation/retirement, and upon completion of the contract to which assigned.

(k) *Waivers.* No individual may serve as a COTR on any contract without the requisite training and signed COTR certificate for the file. In the rare event that there is an urgent requirement for a specific individual to serve as a COTR and the individual has not successfully completed the required training, the HCA may waive the training requirements and authorize the individual to perform the COTR duties.

### 2901.603–72 Administrative procurement management reviews.

(a) The Senior Procurement Executive is responsible for performing administrative procurement reviews for each procurement office in the Department of Labor, except the Office of the Inspector General (OIG). The purpose of these reviews is to audit internal controls to ensure compliance with established procurement law, regulations, policies, procedures and applicable directives. The reviews are to emphasize the development and improvement of managerial controls and best practices.

(b) The administrative procurement review system is a three-pronged approach that includes self-assessment, statistical data for validation, and flexible quality reviews and assessment techniques. This system is required to:

(1) Evaluate the effectiveness and efficiency of office acquisition systems;

(2) Assess the adequacy of policies, procedures and regulations governing the acquisition process; and

(3) Identify and implement changes necessary to improve the systems.

(c) The Senior Procurement Executive shall establish procurement review procedures, which will focus on:

(1) Conformance with policies of the FAR, DOLAR and the Department of Labor Manual Series 2–800 and 2–900.

(2) Conformance with federal reporting requirements for the Department of Labor.

(3) Understanding of new department-wide or government-wide initiatives (e.g., E-Procurement).

(4) Government-wide procedures established by the Office of Management and Budget.

(d) HCAs are responsible for ensuring contracting activity compliance with law and regulations through the review and oversight process.

## Subpart 2901.7—Determinations and Findings

### 2901.707 Signatory authority.

A class justification for other than full and open competition must be approved in writing by the same approval authority as for individual justifications in accordance with FAR 6.304(a). The approval level must be determined by the estimated total value of the class.

# PART 2902—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

## Subpart 2.1—Definitions

### 2902.101 Definitions.

(a) Commonly used words and terms are defined in FAR subpart 2.1. This part 2902 gives DOL-specific meanings for some of these words and terms and

defines other words and terms commonly used in the DOL acquisition process.

(b) The following words and terms are used as defined in this subpart unless the context in which they are used clearly requires a different meaning, or a different definition is prescribed for a particular part or portion of a part:

*Competition Advocate* The Competition Advocate for the Department of Labor is appointed by the Assistant Secretary for Administration and Management and is defined in FAR 6.5 and 2906.5. If the appointee is recused from a procurement action, the Assistant Secretary for Administration and Management may designate another official to act in that capacity.

*Contracting Activity* means an agency or component office within the Department of Labor with specific responsibility for managing contract functions pursuant to one or more warrants signed by the Senior Procurement Executive (or the Office of the Inspector General for its contracting activity).

*Contracting Officer's Technical Representative* means the individual appointed by the contracting officer to represent the Department of Labor's programmatic interests on a Department of Labor contract, task order, or delivery order. This individual is responsible to the contracting officer for overseeing receipt and acceptance of goods/services by the Government, reporting on the contractor's performance, and approving/disapproving payment to the contractor. Authority is otherwise limited to giving technical direction to the contractor within the framework of the contract (see 2901.603–71). This position may go by other titles, such as: a technical point of contact (TPOC) or Contacting Officer's Representative (COR).

*Head of Agency* (also called agency head), for the FAR and DOLAR only, means the Assistant Secretary for Administration and Management; except that the Secretary of Labor is the Head of Agency for acquisition actions, which by the terms of a statute or delegation must be performed specifically by the Secretary of Labor; the Inspector General is the Head of Agency in all cases for the Office of the Inspector General. Authority to act as the Head of Agency has been delegated to the Assistant Secretary for Employment and Training and the Assistant Secretary for Mine Safety and Health for their respective agencies. For purposes of the Economy Act (determinations and interagency agreements under FAR 17.5) only, the Employee Benefits Security Administration, Employment Standards Administration, Women's Bureau, Office of the Solicitor, Bureau of Labor Statistics, Office of Disability Employment Policy, and the Occupational Safety and Health Administration are delegated contracting authority.

*Head of Contracting Activity* (HCA) means the official who has overall responsibility for managing the contracting activity, when the contracting activity has more than one person with a warrant issued by the Senior Procurement Executive. In the Department of Labor the following officials are the HCA for their respective organization:

(i) For the Mine Safety and Health Administration, the Director, Administration and Management, MSHA.

(ii) For the Employment and Training Administration, the Director, Office of Grants and Contract Management, ETA.

(iii) For the Office of the Inspector General, the Director, Division of Finance and Administration, OIG.

(iv) For the Bureau of Labor Statistics, the Director, Division of Administrative Services, BLS.

(v) For the Office of the Assistant Secretary for Administration and Management and all other agencies not listed in this definition, the Director, Business Operations Center, OASAM.

*Senior Procurement Executive* means the Deputy Assistant Secretary for Administration and Management as defined at FAR 2.101.

[69 FR 22991, Apr. 27, 2004]

# PART 2903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

## Subpart 2903.1—Safeguards

Sec.

2903.101 Standards of conduct.
2903.101–1 General.

2903.104 Procurement integrity.
2903.104–3 Definitions.
2903.104–5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.
2903.104–7 Violations or possible violations of standards of conduct.

### Subpart 2903.2—Contractor Gratuities to Government Personnel

2903.203 Reporting suspected violations of the Gratuities clause.
2903.204 Treatment of violations.

### Subpart 2903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2903.601 Policy.
2903.602 Exceptions.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2903.1—Safeguards

### 2903.101 Standards of conduct.

#### 2903.101–1 General.

The statutory prohibitions and their application to DOL personnel are discussed in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635 and the supplemental DOL standards of conduct, 5 CFR part 5201. All DOL personnel involved in acquisitions must become familiar with these statutory prohibitions. Any questions concerning them must be referred to an Agency Ethics Official in the Office of the Solicitor. In addition to criminal penalties, the statutes provide that transactions entered into in violation of these prohibitions are voidable (18 U.S.C. 218). Any suspected violations must be reported promptly to the Office of the Inspector General.

### 2903.104 Procurement integrity.

#### 2903.104–3 Definitions.

*Agency ethics official* means the Solicitor or the Associate Solicitor for Legislation and Legal Counsel.

#### 2903.104–5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) Government employees serving in the following positions are authorized access to proprietary or source selection information, but only to the extent necessary to perform their official duties:

(1) Personnel participating in technical evaluation panels (i.e., source selection board) or personnel evaluating an offeror's or bidder's technical or cost proposal under other competitive procedures, and personnel evaluating protests.

(2) Personnel assigned to the contracting office.

(3) The initiator of the procurement request (to include the official having principal technical cognizance over the requirement).

(4) Small business specialists.

(5) Personnel assigned to the Office of the Solicitor.

(6) Personnel assigned to the Department of Labor's Division of Cost Determination and the Defense Contract Audit Agency.

(7) Personnel assigned to the Division of Acquisition Management Services.

(8) Members of the Procurement Review Board.

(9) The Office of the Inspector General.

(10) Other Government employees authorized by the contracting officer.

(11) Supervisors, at any level, of the personnel listed in this paragraph (a).

(b) The originator of information that may be source selection information must consult with the contracting officer or the procurement officer, who must determine whether the information is source selection information. DOL personnel responsible for preparing source selection information as defined in FAR 2.101 must assure that the material is marked with the legend in FAR 3.104–4 at the time the material is prepared.

(c) Unless marked with the legend ''SOURCE SELECTION INFORMATION—SEE FAR 3.104–4,'' draft specifications, purchase descriptions, and statements of work could erroneously be released during a market survey in order to determine the capabilities of

potential competitive sources (see FAR 7.1 and FAR 10).

**2903.104–7 Violations or possible violations of standards of conduct.**

(a) The Senior Procurement Executive is the individual designated to receive the contracting officer's report of violations.

(b) The HCA or designee must refer all information describing an actual or possible violation to the Associate Solicitor for Legislation and Legal Counsel, the Senior Procurement Executive, and Inspector General staff.

## Subpart 2903.2—Contractor Gratuities to Government Personnel

**2903.203 Reporting suspected violations of the Gratuities clause.**

Contractor gratuities offered to Government personnel are subject to the restriction under the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635.

**2903.204 Treatment of violations.**

Any suspected violations of FAR subpart 3.2 and the clause at FAR 52.203–3, Gratuities, must be reported to the Office of the Inspector General. The authority to determine whether a violation of the Gratuities clause by the contractor, its agent, or another representative, has occurred and the appropriate remedies are delegated to the HCA.

## Subpart 2903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

**2903.601 Policy.**

In addition to restrictions placed on current Federal government employees, 18 U.S.C. 207 places some restrictions on contracting with former officers, employees, and elected officials of the executive and legislative branches. Under these prohibitions, contracts with former employees are prohibited for a period of one year from the date of severance of duties, unless an exception is granted as set forth in 2903.602.

**2903.602 Exceptions.**

(a) In accordance with FAR 3.602, only when there is a most compelling reason to do so, is the Assistant Secretary for Administration and Management authorized to except a contract from the policy in FAR 3.601, after the Procurement Review Board and the agency ethics official have reviewed and recommended approval of the exception. However, when time does not permit, the Assistant Secretary for Administration and Management may unilaterally approve an exception. The exception and information supporting the exception must be provided to the contracting officer for their official records.

(b) When an exception under this subpart is requested, it is submitted through the director of the cognizant program office to the HCA. In the procurement request, the director must describe the basis for the exception from the restrictions of FAR 3.601.

(c) Except as allowed in paragraph (a) of this section, the Department of Labor may enter into a negotiated contract or an amendment to an existing contract with former employees of DOL within one year of separation (or with firms in which former employees are known to have a substantial interest) only after review and recommendation for approval by the agency ethics official, the Procurement Review Board, and written approval by the Assistant Secretary for Administration and Management.

(d) Approval of a decision to grant an exception as provided in this section must be documented by a written findings and determination prepared by the requesting official for signature by the Assistant Secretary for Administration and Management. The determination and findings must document compliance with FAR 3.603, FAR 9.5 and DOLAR 2909.5; specify the compelling reason(s) for award; and be placed in the contract files and the files of the Policy Review Board.

# PART 2904—ADMINISTRATIVE MATTERS

## Subpart 2904.8—Government Contract Files

Sec.
2904.800–70 Contents of contract files.
APPENDIX A TO PART 2904.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

## Subpart 2904.8—Government Contract Files

### 2904.800–70 Contents of contract files.

(a) The reports listed in appendix A to this part are applicable to the Department of Labor.

(b) HCAs must be responsible for establishing standard contract files for their contracting activities. The HCA must provide one or more representative contract files to the Director, Division of Acquisition Management Services, as requested for comment.

APPENDIX A TO PART 2904

| Title of report | Reference | Date due | Submitted to |
|---|---|---|---|
| Report of Proposed Federal Construction*. | 29 CFR 1.4 | Annually; 20–Aug | ESA Davis Bacon. |
| Contractor Report of Government Property*. | FAR Chapter 45; | Annually; 31–Oct | Business Operations Center. |
| Major Preference Program Goals and Achievements Report*. | DLMS 2 1000 | By the 20th of each month | Office of Small Business Programs. |
| A–76 & FAIR Act Inventory | FAIR ACT & OMB MEMO | June 30th of each year | Office of Competitive Sourcing. |
| SF 294, Subcontracting Report for Individual Contracts. | FAR Subpart 19.7; | Semi-annually; | Contracting Officer. |
| | SF 294 | April 30; 30–Oct | Office of Small Business Programs. |
| SF 295, Summary Subcontract Report. | FAR Subpart 19.7; | Semi-annually March 30; September 30. | Contracting Officer. |
| Value Engineering Report* | OMB Circular A–131 | Annually; 7–Dec | Office of Acquisition and Management Support Services. |
| Report on Federal Support to Universities, Colleges, and Nonprofit Institutions. | Section 3(a)(7) of the National Science Foundation (NSF) Act. | Annually; O/A 15–May | Upon request From National Science Foundation. |
| Procurement Forecast Initial and Update. | Pub. L. 100–656; | Sept 15 (Init.) and Apr 15 (Update). | Division of Acquisition Management Services. |

For those reports with an (*), if there was no activity for the period being reported, a negative response for the period must be submitted to the requisitioning office.

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# SUBCHAPTER B—ACQUISITION PLANNING

## PART 2905—PUBLICIZING CONTRACT ACTIONS

### Subpart 2905.1—Dissemination of Information

Sec.
2905.101 Methods of disseminating information.

### Subpart 2905.2—Synopsis of Proposed Contract Actions

2905.202 Exceptions.

### Subpart 2905.4—Release of Information

2905.402 General public.
2905.403 Requests from Members of Congress.
2905.404 Release procedures.

### Subpart 2905.5—Paid Advertisements

2905.501 Scope.
2905.502 Authority.
2905.503 Procedures.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2905.1—Dissemination of Information

### 2905.101 Methods of disseminating information.

Contracting officers may only use the Government Point of Entry (GPE) for synopsis and dissemination of information concerning procurement actions. The Division of Acquisition Management Services manages the DOL account.

## Subpart 2905.2—Synopsis of Proposed Contract Actions

### 2905.202 Exceptions.

The Assistant Secretary for Administration and Management is authorized to make the determination prescribed in FAR 5.202(b). A written determination documenting the reasons why advance notice is not appropriate or reasonable must be submitted by the HCA for appropriate action including communication with the officials listed in FAR 5.202(b).

## Subpart 2905.4—Release Of Information

### 2905.402 General public.

(a) Unless the HCA determines that disclosure would be prejudicial to the interests of DOL, if a list of interested parties is collected in reference to a solicitation, it may be released upon request.

(b) Any request for release of information is subject to the Freedom of Information Act and FAR 24.2.

### 2905.403 Requests from Members of Congress.

All proposed responses to Congressional inquiries must be prepared and forwarded for coordination with the Office of the Solicitor and the Office of Congressional and Intergovernmental Affairs to determine whether circumstances exist that will allow the release of additional information. In such instances, the Congressional requestor must be furnished an interim reply providing the information that is releasable. The interim reply must describe the problem that precludes release of any requested materials and describe generally what steps, if any, are being taken to make such information available.

### 2905.404 Release procedures.

HCAs are authorized to release long-range acquisition estimates under the conditions in FAR 5.404–1.

## Subpart 2905.5—Paid Advertisements

### 2905.501 Scope.

This subpart provides policies and procedures for the procurement of paid advertising as covered by 5 U.S.C. 302, and 44 U.S.C. 3701, 3702, and 3703.

### 2905.502 Authority.

When it is deemed necessary to use paid advertisements in newspapers and trade journals, written authority for

such publication may be obtained from the HCA or designee.

**2905.503 Procedures.**

(a) Prior to obtaining HCA approval, an agency should seek legal review to determine whether it has appropriate legal authority for advertising. The HCA exercising the authority delegated by 2905.502 must do so in accordance with the procedures set forth in FAR 5.503 and those in this section.

(b) Requests for procurement of advertising must be accompanied by written authority to advertise or publish which sets forth justification and includes the names of newspapers or journals concerned, frequency and dates of proposed advertisements, estimated cost, and other pertinent information.

# PART 2906—COMPETITION REQUIREMENTS

## Subpart 2906.3—Other Than Full and Open Competition

Sec.
2906.301 Policy.
2906.303 Justifications.

## Subpart 2906.5—Competition Advocates

2906.501 Requirement.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2906.3—Other Than Full and Open Competition

**2906.301 Policy.**

(a) Department of Labor acquisitions must comply with the Department of Labor Manual Series (DLMS) 2, Chapter 830 (available by mail from the Director, Division of Acquisition Management Services, 200 Constitution Ave., NW., Washington, DC 20210–0001), or electronically from *http://www.dol.gov/oasam/programs/boc/prb.htm*. Any proposed noncompetitive acquisition in excess of the simplified acquisition threshold must be fully justified and, if required by the DLMS, submitted to the DOL Procurement Review Board and approved by the Assistant Secretary for Administration and Management and, in the case of research and development contracts, also by the Assistant Secretary for Policy.

(b) With the exception of contracts for advisory and assistance services or for research and development, the contracting officer has the authority below the simplified acquisition threshold to approve sole source contracts. The contracting officer is responsible for assuring that proposed acquisitions below the simplified acquisition threshold are in compliance with FAR and DOLAR requirements regarding competition.

**2906.303 Justifications.**

The authority of the agency head to determine that only specified make and models of technical equipment will satisfy the agency's need under FAR 6.302–1 is delegated to the HCA.

## Subpart 2906.5—Competition Advocate

**2906.501 Requirement.**

The Assistant Secretary for Administration and Management must appoint a Competition Advocate for the Department of Labor. The appointment will be predicated on an understanding of the competition requirements in the FAR, and particularly small business programs.

# PART 2907—ACQUISITION PLANNING

## Subpart 2907.1—Acquisition Plans

Sec.
2907.105 Contents of written acquisition plans.
2907.107 Additional requirements for acquisitions involving bundling.

## Subpart 2907.3—Contractor Versus Government Performance

02907.300 Availability of inventory.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2907.1—Acquisition Plans

### 2907.105 Contents of written acquisition plans.

The Department of Labor has implemented its acquisition planning system in compliance with FAR 7.1 and internal procedures provided in DLMS 2 section 834. The annual forecast is available for review from: *http://www.apps.dol.gov/contract_grant/index.htm*.

### 2907.107 Additional requirements for acquisitions involving bundling.

The FAR requirements for justification, review, and approval of bundling of contract requirements also apply to an order from a Federal Supply Schedule contract, Governmentwide acquisition contracts, or other indefinite-delivery contracts if the requirements consolidated under the order meet the definition of ''bundling'' at FAR 2.101.

## Subpart 2907.3—Contractor Versus Government Performance

### 2907.300 Availability of inventory.

The Department of Labor's FAIR Act inventory of commercial activities performed by federal employees and inherently governmental functions may be accessed on the Internet at: *www.dol.gov* under ''Doing Business with DOL''.

# PART 2908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

### Subpart 2908.4—Federal Supply Schedules

Sec.
2908.404 Using schedules.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

## Subpart 2908.4—Federal Supply Schedules

### 2908.404 Using schedules.

Small business considerations, procedures regarding both prime and subcontracting, and clearances specified in DOLAR 2919 apply to GSA Federal Supply Schedule Orders above the simplified acquisition threshold. Procedures to be followed may be modified by the Office of Small Business Program as appropriate in order to comply with GSA Federal Supply Schedule procedures (e.g., first tier contracts may be required to report their commercial subcontracting goals to the DOL Office of Small Business Programs).

[69 FR 22991, Apr. 27, 2004]

# PART 2909—CONTRACTOR QUALIFICATIONS

### Subpart 2909.1—Responsible Prospective Contractors

Sec.
2909.105 Procedures.

### Subpart 2909.4—Debarment, Suspension, And Ineligibility

2909.402 Policy.
2909.405 Effect of listing.
2909.405–1 Continuation of current contracts.
2909.406 Debarment.
2909.406–1 General.
2909.406–3 Procedures.
2906.407 Suspension.
2909.407–1 General.

### Subpart 2909.5—Organizational and Consultant Conflicts of Interest

2909.503 Waiver.
2909.506 Procedures.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2909.1—Responsible Prospective Contractors

### 2909.105 Procedures.

Before awarding a contract, the contracting officer must make a written determination of the otherwise successful bidder's/offeror's responsibility in accordance with FAR 9.105. In addition to past performance information, the contracting officer must insure that the proposed contractor, and any subcontractor representing more than $25,000 in goods or services, does not appear in the ''List of Parties Excluded from Federal Procurement'' (available on the Internet at *www.epls.gov*). In addition, contracting officers should base

their determination of contractor responsibility on a review of the company's ''Summary or Financial Report'' from Dun & Bradstreet (available on the Internet for a fee at *http://www.dnb.com/*).

## Subpart 2909.4—Debarment, Suspension, and Ineligibility

### 2909.402 Policy.

(a) This subpart prescribes DOL policies and procedures governing the debarment and suspension of contractors, the listing of debarred and suspended contractors, contractors declared ineligible (see FAR 9.403) and distribution of the list. This subpart does not apply to Department of Labor debarments or suspensions issued for Davis-Bacon Act and Davis-Bacon Related Act violations, Service Contract Act violations, Affirmative Action/Equal Employment Opportunity violations, or violations under other statutes administered by the Department of Labor.

(b) *Contracting activity officials shall have the following responsibilities.* (1) Heads of contracting activity (HCA) shall:

(i) Provide an effective system to ensure that contracting staffs consult the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs'' at *http://epls.arnet.gov/* before soliciting offers, awarding or extending contracts, or consenting to subcontract.

(ii) Consider debarment or suspension of a contractor when cause, as defined under FAR 9.406–2 for debarment and FAR 9.407–2 for suspension, is shown. Contracting officers should consult with their appropriate legal counsel before making a decision to initiate debarment or suspension proceedings. If a determination is made that available facts do not justify beginning debarment or suspension proceedings, the file should be documented accordingly. This determination is subject to reconsideration if warranted by new information.

(iii) When the decision is made to initiate debarment and/or suspension of a contractor, the Senior Procurement Executive must prepare a notice in accordance with FAR 9.406–3(c) or FAR 9.407–3(c). The draft notice, along with the administrative file containing all relevant facts and analysis, must be forwarded to the Senior Procurement Executive, as the debarring and suspending official, following review by the activity's legal counsel.

(2) The Senior Procurement Executive shall:

(i) Review the notice and administrative file for sufficiency and provide for review by other DOL officials as considered appropriate;

(ii) In accordance with FAR 9.406–3(c) or FAR 9.407–3(c), if it is determined that action is warranted, give the contractor prompt notice of the proposed debarment or suspension;

(iii) Direct additional fact-finding as necessary when material facts are in dispute;

(iv) Notify the contractor and any affiliates involved of the final decision to debar or suspend, including a decision not to debar or suspend, in accordance with FAR 9.406–3(c) and FAR 9.407–3(c);

(v) Be responsible for accomplishing the actions required in FAR 9.404(c) within five working days after debarring or suspending a contractor or modifying or rescinding such an action;

(vi) Maintain Department-wide records of debarred or suspended contractors in accordance with FAR 9.404.

### 2909.405 Effect of listing.

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies must not solicit offers from, award contracts to, or consent to subcontract with these organizations, unless the HCA determines in writing that there is a compelling reason for such action and the Assistant Secretary for Administration and Management approves such determinations.

(b) Bids received from any listed contractor in response to an invitation for bids must be entered on the abstract of bids, and rejected unless the HCA determines in writing that there is a compelling reason to consider the bid and the Assistant Secretary for Administration and Management approves such action.

(c) Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, nor

shall discussions be conducted with a listed offeror during a period of ineligibility, unless the HCA determines in writing that there is a compelling reason to do so and the Assistant Secretary for Administration and Management approves such action.

**2909.405–1 Continuation of current contracts.**

(a) At the time an option is being exercised, contracting officers must review the List of Parties Excluded from Federal Procurement and Nonprocurement Programs. If a contractor or significant subcontractor is identified in the listing, the contracting officer must make a written determination either to proceed or to terminate the contract, and must explain the rationale for the decision. In accordance with FAR 9.405–1, contracting officers may continue contracts or subcontracts in existence at the time a contractor is suspended or debarred, unless it is determined that termination of the contract is in the best interest of the Government. The contracting officer must make such determination in writing, after consulting with the contracting officer's technical representative and legal counsel. The determination must be approved by the HCA.

(b) Contracting activities must not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment, unless the HCA states, in writing, the compelling reasons for renewal or extension and the Assistant Secretary for Administration and Management approves such action.

**2909.406 Debarment.**

**2909.406–1 General.**

(a) The Senior Procurement Executive is the debarring official for DOL and is authorized to debar a contractor for any of the causes in FAR 9.406–2, using the procedures in 2909.406–3.

(b) The Senior Procurement Executive is authorized to make an exception regarding debarment by another agency debarring official in accordance with the conditions in FAR 9.406–1(c).

**2909.406–3 Procedures.**

(a) *Investigation and referral.* Whenever a DOL employee knows a cause for debarment, as listed in FAR 9.406–2, the appropriate HCA affected must be notified. The contracting officer must consult with the Office of the Solicitor and the Office of the Inspector General, as appropriate, and submit a formal recommendation documenting the cause for debarment to the Senior Procurement Executive.

(b) *Notice of proposal to debar.* Based upon review of the recommendation to debar and consultation with the Office of the Solicitor and Office of the Inspector General, as appropriate, the Senior Procurement Executive must initiate proposed debarment by taking the actions listed in FAR 9.406–3(c) and advising the contractor of DOL's rules under 2909.4.

(c) *Fact-finding proceedings.* For actions listed under FAR 9.406–3(b)(2), the Senior Procurement Executive must afford the contractor the opportunity to appear at an informal fact-finding proceeding as required by FAR 9.406–3(b)(2)(i). The proceeding must be conducted by the Office of Administrative Law Judges and must be held at a date and location reasonably convenient to the parties concerned. Subject to the provisions of 29 CFR part 18, entitled ''Rules Of Practice And Procedure For Administrative Hearings Before The Office Of Administrative Law Judges'', the contractor and any specifically named affiliates, may be represented by counsel or any duly authorized representative. Either party may call witnesses. The proceedings must be conducted expeditiously and in such a manner that each party will have a full opportunity to present all information considered pertinent to the proposed debarment. A transcript of the proceedings must be made available to the contractor under the conditions in FAR 9.406–3(b)(2)(ii).

(d) *Decision and notice.* The Senior Procurement Executive shall make a decision on imposing debarment in accordance with the procedures in FAR 9.406–3(d), findings of fact of the Administrative Law Judge, and the conditions in FAR 9.406–4 and 9.406–5. Notice of the decision must be provided to the contractor and any affiliates involved

in accordance with the procedures in FAR 9.406–3(e).

**2909.407 Suspension.**

(a) The Senior Procurement Executive is the suspending official for DOL and is authorized to suspend a contractor for any of the causes in FAR 9.407–2, using the procedures in 2909.406–3.

(b) The Senior Procurement Executive is authorized to make an exception, regarding suspension by another agency suspending official under the conditions in FAR 9.407–1(d).

**2909.407–1 General.**

(a) *Investigation and referral.* Whenever a DOL employee knows of a cause for suspension, as listed in FAR 9.407–2, the appropriate HCA affected must be notified. The HCA must consult with the Office of the Solicitor and the Office of the Inspector General, as appropriate, and submit a formal recommendation documenting the cause for suspension, to the Senior Procurement Executive.

(b) *Notice of suspension.* Based upon review of the recommendation to suspend and consultation with the Office of the Solicitor and the Office of the Inspector General, as required, the Senior Procurement Executive will initiate suspension by taking the actions listed in FAR 9.407–3(c) and advising the contractor of DOL's rules under this subpart.

(c) *Fact-finding proceedings.* For actions listed under FAR 9.407–3(b)(2), the Senior Procurement Executive must afford the contractor the opportunity to appear at informal proceedings, as required by FAR 9.407–3(b)(2)(i). Either party may call witnesses. The proceedings must be conducted expeditiously and in such a manner that each party will have a full opportunity to present all information considered pertinent to the proposed suspension.

(d) *Suspension decisions.* The Senior Procurement Executive must make a final decision on suspension as prescribed in FAR 9.407–3(d). Notice of the decision must be provided to the contractor and any affiliates involved, in accordance with the provisions in FAR 9.407–3(d)(4).

## Subpart 2909.5—Organizational and Consultant Conflicts of Interest

**2909.503 Waiver.**

(a) The Senior Procurement Executive is delegated authority by the Assistant Secretary for Administration and Management to waive any general rule or procedure in FAR 9.5 when its application in a particular situation would not be in the Government's best interest.

(b) Requests for waivers must be made by the HCA to the PE. Each request must include:

(1) An analysis of the facts involving the potential or actual conflict including benefits and detriments to the Government and prospective contractors;

(2) A discussion of the factors which preclude avoiding, neutralizing, or mitigating the conflict; and

(3) Identification of the provision(s) in FAR 9.5 to be waived.

(c) In making determinations under this subpart the Senior Procurement Executive must request the opinion of the Office of the Solicitor, Division of Legislation and Legal Counsel.

**2909.506 Procedures.**

(a) If a prospective contractor disagrees with the decision of a contracting officer regarding an organizational conflict of interest and requests higher level review as referred to in FAR 9.506, the matter must be referred to the Office of the Solicitor, Associate Solicitor for Legislation and Legal Counsel, and the Director, Division of Acquisition Management Services.

(b) Referrals must be made by the HCA concerned and include the contracting officer's decision and the position of the prospective contractor.

# PART 2910—MARKET RESEARCH

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

**2910.002 Procedures.**

(a) In accordance with FAR 6.302–1(c), purchase descriptions must not specify a product, or specific feature of a product, peculiar to a manufacturer unless they are justified to the contracting officer in writing by the office initiating

the purchase request. The justification must state that the product, or specific product feature, is essential to the Government's requirements and other similar products or features will not meet these requirements. This determination must be signed by a representative of the office originating the request and must accompany the purchase requisition submitted to the appropriate contracting office. If such a justification is not made, the contracting officer may assume that another make and model or a generic product could equally meet the DOL requirement.

(b) In accordance with FAR 10.002(b), the requisitioning office must submit to the contracting officer information demonstrating that a variety of products from various commercial sources have been considered. This requirement is not necessary for required sources (See FAR 8.001). Orders to be placed against non-mandatory sources, such as the Federal Supply Schedules, or other Governmentwide Acquisition Contracts, should include product information concerning multiple sources based on research from *www.contractdirectory.gov* site or other sources. When documented in this manner, the contracting officer may rely on this information in developing a procurement strategy, or for documenting the comparison of catalogs or pricelists.

[69 FR 22991, Apr. 27, 2004]

# PART 2911—DESCRIBING AGENCY NEEDS

## Subpart 2911.1—Selecting And Developing Requirements Documents

Sec.
2911.103 Market acceptance.

## Subpart 2911.5—Liquidated Damages

2911.501 Policy.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2911.1—Selecting And Developing Requirements Documents

### 2911.103 Market acceptance.

The authority of the Head of an Agency under FAR 11.103(a), to require offerors to demonstrate that the items offered have either achieved commercial market acceptance or been satisfactorily supplied to an agency under current or recent contracts for the same or similar requirements, and otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation, is delegated to the HCA.

## Subpart 2911.5—Liquidated Damages

### 2911.501 Policy.

In accordance with FAR 11.501(d), the authority of the Head of Agency to recommend to the Department of Treasury, Commissioner, Financial Management Services, that the amount of a contractor's liquidated damages be waived or reduced in whole or in part, is delegated to the HCA.

# PART 2912—ACQUISITION OF COMMERCIAL ITEMS

## Subpart 2912.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

Sec.
2912.302 Tailoring of provisions and clauses for the acquisition of commercial items.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2912.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

### 2912.302 Tailoring of provisions and clauses for the acquisition of commercial items.

In accordance with FAR 12.302(c), a request for waiver to tailor terms inconsistent with customary commercial

practice must be documented in a written justification by the contracting officer, and may be approved by the HCA on an individual or class basis.

# PART 2913—SIMPLIFIED ACQUISITION PROCEDURES

## Subpart 2913.1—Procedures

Sec.

2913.106–3 Soliciting competition, evaluation of quotations or offers, award and documentation.

## Subpart 2913.2—Actions At Or Below The Micro-Purchase Threshold

2913.201 General.

## Subpart 2913.3—Simplified Acquisition Methods

2913.301 Governmentwide commercial purchase card.
2913.307 Forms.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2913.1—Procedures

### 2913.106–3 Soliciting competition, evaluation of quotations or offers, award and documentation.

In accordance with FAR 13.106–3(b), simplified acquisition files must contain documentation of the factors considered in making an award in excess of the micro-purchase threshold. When other than the lowest responsive quotation from a responsible supplier is used as the basis for a purchase, the contracting officer must identify the basis (i.e., best value) of the award and include in the purchase file documentation of the reasons for rejecting any lower quotation and the name of the individual responsible for making the determination to award to other than the lowest priced quotation. The contracting officer has broad discretion in determining the award of a purchase order, which may be based on the factors listed in FAR 13.106–3. This requirement does not necessitate a separate determination if the procurement file contains preprinted standardized classifications for award.

## Subpart 2913.2—Actions at or Below the Micro-Purchase Threshold

### 2913.201 General.

The Government commercial purchase card must be used in preference to other methods of procurement for purchases up to the micro-purchase threshold. Other small purchase methods (blanket purchase agreements, third party drafts, and purchase orders) may be used in lieu of the Government purchase card when it is more cost-effective or practicable.

## Subpart 2913.3—Simplified Acquisition Methods

### 2913.301 Governmentwide commercial purchase card.

(a) The Government purchase card has far fewer requirements for documentation than other methods of purchasing. However, the same legal restrictions apply to credit card purchases that apply to other purchases using appropriated funds. If a purchase cardholder has questions about the lawfulness of a particular purchase, he or she must initially consult his or her appropriate office purchase card administrator, who will consult the Office of the Solicitor as necessary.

(b) GAO decisions surrounding the concept of the ''availability of appropriations'' are often stated in terms of whether appropriated funds are or are not ''legally available'' for a given expenditure. Restrictions on the purposes for which appropriated funds may be used come from a variety of sources, including the DOL Appropriations Acts, and decisions of the Comptroller General and his predecessor, the Comptroller of the Treasury.

(c) HCAs, administrative officers, and contracting officers are encouraged to review the GAO publication entitled Principles of Federal Appropriations Law. This document must be consulted when developing Office/Agency Purchase/Credit Card Program procedures. A number of the more common restrictions which ''accounting officers of the Government'' have had frequent occasion to consider and apply include, for example:

(1) Payment of attorney's fees;
(2) Purchase of food, entertainment or recreation;
(3) Payment of personal membership fees; and
(4) Payment of personal expense items such as gifts for employees, and entry fees for contests.

**2913.307 Forms.**

(a) In accordance with FAR 13.307, contracting officers are encouraged to use the Standard Form (SF) SF–1449, when executing commercial acquisitions. Agencies may use forms other than the SF–1449 and may print on those forms the clauses considered to be suitable for these purchases. In these instances, alternate forms should conform with the Standard Form to the maximum extent practicable.

(b) The SF–30 is to be used to modify a purchase order.

# SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

## PART 2914—SEALED BIDDING

### Subpart 2914.4—Opening of Bids and Award of Contract

Sec.
2914.404–1 Cancellation of invitations after opening.
2914.407–3 Other mistakes disclosed before award.
2914.408 Award.
2914.408–1 General.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2914.4—Opening of Bids and Award of Contract

### 2914.404–1 Cancellation of invitations after opening.

The authority of the agency head in FAR 14.404–1(c) and (f) to make a *written* determination to cancel an invitation for bids and reject all bids after opening and to authorize completion of the acquisition through negotiation is delegated to the HCA.

### 2914.407–3 Other mistakes disclosed before award.

(a) The authority to make determinations, as conferred by FAR 14.407–3(e) is delegated to the HCA, without power of redelegation, but only after consultation with the Office of the Solicitor. All such determinations shall be documented in the contract file.

(b) The following procedures must be followed when submitting doubtful cases of mistakes in bids to the Comptroller General for an advance decision, as provided by FAR 14.407–3(i).

(1) Requests must be made by the HCA after consultation with the Office of the Solicitor.

(2) Requests must be in writing, dated, signed by the requestor, addressed to the Comptroller General of the United States, General Accounting Office, Washington, DC 20548, and contain the following:

(i) The name and address of the party requesting the decision; and

(ii) A statement of the question to be decided, a presentation of all relevant facts, a statement of the requesting party's position with respect to the question, and copies of all pertinent records and supporting documentation.

### 2914.408 Award.

### 2914.408–1 General.

(a) When only one bid is received in response to an invitation for bids, such bid may be considered and accepted if the contracting officer makes a written determination that:

(1) The specifications used in the invitation were not unduly restrictive;

(2) Adequate competition was solicited and it could have been reasonably assumed that more than one bid would have been submitted;

(3) The price is reasonable; and

(4) The bid is otherwise in accordance with the invitation for bids.

(b) Such a determination must be placed in the contract file.

## PART 2915—CONTRACTING BY NEGOTIATION

### Subpart 2915.4—Contract Pricing

Sec.
2915.405–70 Determining fair and reasonable price.

### Subpart 2915.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

2915.508 Discovery of mistakes.

### Subpart 2915.6—Unsolicited Proposals

2915.604 Agency points of contact.
2915.605 Content of unsolicited proposals.
2915.606 Agency procedures.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2915.4—Contract Pricing

### 2915.405–70 Determining fair and reasonable price.

(a) Where the contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable and the contracting officer has taken all authorized actions to resolve the matter (see FAR 15.402), the contract action must be referred to the HCA for final resolution.

(b) Resolution under paragraph (a) of this section must be documented and signed by the HCA and included in the contract file.

## Subpart 2915.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

### 2915.508 Discovery of mistakes.

(a) The HCA is authorized to make the administrative determinations in FAR 15.508 after consultation with the Office of the Solicitor as required by FAR 14.407–4. This authority may not be redelegated.

(b) The contracting officer must process a mistake and prepare a case file in accordance with the requirements of FAR 14.407–4(e)(2). The file must be submitted to the HCA for final determination.

## Subpart 2915.6—Unsolicited Proposals

### 2915.604 Agency points of contact.

(a) HCAs shall be the preliminary contacts for unsolicited proposals. This responsibility may be delegated.

(b) HCAs must establish within their agencies procedures for handling unsolicited proposals to ensure that unsolicited proposals are controlled, evaluated, safeguarded and disposed of in accordance with FAR 15.6.

(c) The HCA must not forward for consideration an unsolicited proposal, if the proposal resembles an upcoming solicitation or a procurement identified in the current annual acquisition plan.

### 2915.605 Content of unsolicited proposals.

In addition to the contents required by FAR 15.605, unsolicited proposals for research should contain a commitment by the offeror to include cost-sharing or should represent a significant cost savings to the Department of Labor.

### 2915.606 Agency procedures.

When an unsolicited proposal is received by an official of the Department of Labor, the recipient of the proposal must forward it to the HCA. The HCA must address the requirements of FAR 15.604. The HCA must determine if there is an office(s) within the Department of Labor whose mission could be impacted by the proposal. If there is, the HCA must designate a recipient within that office as an ''assignee'', and take the following action:

(a) Within seven (7) working days of receipt, the HCA must forward the proposal to the assignee along with instructions concerning the security, review and disposition of the document.

(1) Inform the offeror of this transfer in writing (preferably by facsimile or other electronic means).

(2) Within one (1) month of receipt of the unsolicited proposal by the assignee, the office receiving the proposal must determine the merit of the unsolicited proposal.

(i) If the office finds insufficient merit to consider the unsolicited proposal further, then a letter will be sent to inform the offeror that their proposal will not be considered further, and is not being retained.

(ii) If, after a comprehensive evaluation as defined by FAR 15.606–2, the office finds merit in the proposal, it must consult with a Department of Labor contracting officer for direction in complying with FAR 15.607. If not excluded by a condition of FAR 15.607(a), a requisition may be prepared in accordance with FAR 15.607(b). If the requirement exceeds the simplified acquisition threshold inclusive of options then a request must be prepared for the Procurement Review Board in accordance with Department of Labor procedures stated in Department of Labor Manual Series 2–830 (available by mail from the Division of Acquisition Management Services).

(b) If within one (1) month of receipt (by the HCA) no assignee can be identified, the HCA must notify the offeror that the proposal is not being considered further.

# PART 2916—CONTRACT TYPES

Sec.
2916.000 Scope of part.

Subpart 2916.5—Indefinite-Delivery Contracts

2916.505 Ordering.

Subpart 2916.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2916.603–2 Application.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

### 2916.000 Scope of part.

This part describes types of contracts that may be used in acquisitions. It further prescribes policies and procedures for implementing contracts.

## Subpart 2916.5—Indefinite-Delivery Contracts

### 2916.505 Ordering.

In accordance with FAR 16.505(b)(5), the Department of Labor Task Order and Delivery Order Ombudsman is the DOL Competition Advocate (see DOLAR part 2902).

## Subpart 2916.6—Time-and-Materials, Labor-Hour, and Letter Contracts

Task orders against DOL contracts and orders against multi-agency or Governmentwide contracts for services above the micropurchase threshold must comply with the provisions of FAR 16.505.

### 2916.603–2 Application.

The HCA is authorized to extend the period for definitization of a letter contract required by FAR 16.603–2(c) in extreme cases where it is determined in writing that such action is in the best interest of the Government.

# PART 2917—SPECIAL CONTRACTING METHODS

Sec.
2917.000 Scope of part.

Subpart 2917.2—Options

2917.202 Use of options.
2917.207 Exercising options.

Subpart 2917.5—Interagency Acquisitions Under The Economy Act

2917.500 Scope of subpart.
2917.501 Definitions.
2917.502 General.
2917.503 Determinations and findings requirements.
2917.504 Ordering procedures.
2917.504–70 Signature authority and internal procedures.

AUTHORITY: 5 U.S.C. 301; 31 U.S.C. 1535; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

### 2917.000 Scope of part.

This part implements polices and procedures stated in FAR part 17.

## Subpart 2917.2—Options

### 2917.202 Use of options.

The HCA may, in unusual circumstances, approve option quantities in excess of the 50 percent limit prescribed in FAR 17.203(g)(2). The documentation required by FAR 17.205(a) must include a written justification to fully support the need for such action.

### 2917.207 Exercising options.

The contracting officer must use a standardized determination and finding before exercising an option in accordance with FAR 17.207(f).

## Subpart 2917.5—Interagency Acquisitions Under The Economy Act

### 2917.500 Scope of subpart.

This subpart establishes DOL policy and procedures to assure the appropriate and consistent use of interagency acquisitions under the Economy Act (31 U.S.C. 1535) as prescribed by FAR 17.5.

### 2917.501 Definitions.

*Interagency Acquisition* means a procedure by which a DOL agency obtains needed supplies or services from, or through, another DOL agency or Federal agency, and appropriated funds are obligated.

*Interagency Agreement* means the legal instrument used for an interagency acquisition to exchange funds or property between two DOL organizations or between a DOL agency and another Federal agency. This instrument is used when the DOL organization meets the definition of either the Requesting Agency or the Servicing Agency. ''Interagency Agreement'' and ''Interagency Acquisition'' does not include:

(1) Agreements involving supplies and services acquired from or through mandatory sources, as described in FAR part 8;

(2) Contracts with the Small Business Administration based upon Section 8(a) of the Small Business Act or a HUBZone small business under the Historically Underutilized Business Zone (HUBZone) Act of 1997;

(3) Cooperative agreements and grants; or

(4) Any agreement or acquisition where a statute authorizes exception.

*Military Interdepartmental Procurement Request (MIPR)* means a type of interagency agreement used to place orders for supplies and non-personal services with a military department.

*Requesting Agency* means the Federal agency that needs the supplies or services, and is obligating the funds to provide for the costs of performance.

*Servicing Agency* means the Federal agency which is providing the supplies or performing the services, directly or indirectly, and will be receiving the funds to provide for the costs of performance.

### 2917.502 General.

(a) *Policy*. It is the policy of DOL to require that interagency agreements are written to assure that the obligation of fiscal year funds is valid, that statutory authority exists to obtain or perform the stated requirements, that the stated requirements are consistent with DOL's mission responsibilities, and that each agreement complies with applicable laws and regulations.

(b) *Applicability*. The provisions of this subpart apply to interagency acquisitions and agreements under the Economy Act.

(c) *Appropriations principles*. The appropriate use of interagency acquisitions embodies several principles of Federal appropriations law.

(1) In order to record a valid obligation of appropriations, 31 U.S.C. 1501 imposes the requirements that interagency agreements be:

(i) A binding written agreement for specific goods or services to meet an existing *bona fide* need;

(ii) For a purpose authorized by law; and

(iii) Executed and obligated by the receiving agency before the expiration of available funds.

(2) The Economy Act authorizes interagency acquisitions and provides for payment in advance, as well as reimbursement to the appropriation account to which the performance costs have been charged. The Economy Act further authorizes the servicing agency, as an alternative to fulfilling the requirement through internal resources, to obtain the needed supplies or services by contract.

(3) An agreement entered into under the Economy Act is recorded as an obligation by the requesting agency the same as a contract. However, under the Economy Act, the obligated appropriations must be deobligated upon the date of ''expiration'' of the appropriation account to the extent that the servicing agency has not incurred obligations through charged costs or under a contract.

(4) Within DOL, the DOL agencies have a number of statutory authorities available for entering into interagency agreements. Each DOL agency, in consultation with the Office of the Solicitor, must be responsible for determining those authorities, as well as constraints applicable to the use of advance payments and contractors, and set-up procedures.

### 2917.503 Determinations and findings requirements.

*Applicability*. Before the execution of an interagency agreement under the

Economy Act, the contracting officer, or other authorized official, must sign the determination required in FAR 17.503 and 31 U.S.C. 1535.

**2917.504 Ordering procedures.**

(a) Requests for the processing of interagency agreements must be submitted to the procurement office serving the requisitioning office.

(b) The procurement request must state whether the work is to be performed by a DOL organization, a Federal agency other than DOL, or through one of these entities by a contractor.

(c) Where the Economy Act is to be used as the authority for an interagency acquisition, the requisitioning office must include the facts which support the conclusion that it is more economical to obtain the required supplies or services through the proposed interagency agreement, rather than by direct contract with a commercial concern. Current market prices or recent procurement prices may be used in this process.

(d) Orders placed under interagency agreements may take any form that is legally sufficient and reflects the agreement of the parties.

(e) The contracting officer, or authorized official, must assure compliance with the ordering procedures and payment provisions prescribed in FAR 17.504 and FAR 17.505, and require inclusion of the following provisions in all interagency agreements and/or orders placed against them:

(1) Legislative authority;

(2) Period of performance;

(3) Dollar amount of agreement;

(4) Billing provisions, including the name and address of the following offices:

(i) Designated office to receive the required deliverables; and

(ii) Designated office to receive billings and process payments;

(5) Modification and termination provisions; and

(6) Other provisions, as appropriate.

(f) The contracting officer must assure that each interagency agreement or order placed against it includes a reference number assigned by each of the parties. Such numbers must be assigned in accordance with the existing procedures established by the respective organizations.

(g) Modifications to existing interagency agreements may be accomplished through the use of an SF 30, Amendment of Solicitation/Modification of Contract, or through any other format acceptable to the parties.

**2917.504–70 Signature authority and internal procedures.**

(a) A DOL contracting officer, HCA, Agency Head, or another official designated by the Assistant Secretary for Administration and Management in accordance with FAR 17.503(c), must sign interagency agreements and/or orders placed against them which will result in a procurement action by the requesting or servicing agency.

(b) Internal procedures (DLMS 3–1700) require DOL Agency Heads to provide notice to the Director, Executive Secretariat of the signing of all new Federal Interagency Agreements and deleting expired agreements.

(c) Agencies should be aware that, in addition to the requirements of this subpart, there are various other internal Departmental procedures that apply to various types of agreements. Agencies should consult with the Office of the Solicitor and the Office of the Assistant Secretary for Administration and Management, as appropriate.

# SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

## PART 2918 [RESERVED]

## PART 2919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Sec.
2919.000 Scope of part.

### Subpart 2919.2—Policies

2919.201 General policy.
2919.202 Specific policies.
2919.202–1 Encouraging small business participation in acquisitions.
2919.202–2 Locating small business sources.

### Subpart 2919.5—Set-Asides for Small Business

2919.502 Setting aside acquisitions.
2919.505 Rejecting Small Business Administration recommendations.

### Subpart 2919.7—The Small Business Subcontracting Program

2919.704 Subcontracting plan requirements.
2919.705–1 General support for the program.
2919.705–5 Awards involving subcontracting plans.
2919.705–6 Post-award responsibilities of the contracting officer.
2919.706 Responsibilities of the cognizant administrative contracting officer.

### Subpart 2919.8—Contracting with the Small Business Administration (The 8(a) Program)

2919.812 Contract administration.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

#### 2919.000 Scope of part.

This part implements FAR part 19 and small business programs at the Department of Labor.

## Subpart 2919.2—Policies

#### 2919.201 General policy.

(a) It is the policy of the Department of Labor to provide maximum practicable opportunities to small businesses in acquisitions.

(b) Management responsibilities for small and disadvantaged business utilization are the responsibility of the Director, Office of Small Business Programs. This individual is responsible for performing all functions and duties prescribed in FAR 19.2 including appointing, as prescribed in FAR 19.201(d)(8), a small business specialist (SBS) for each contract office. The Department of Labor Manual Series (DLMS), Chapter 2 1000, addresses the implementation of the preference programs in procurement including HUBZone, Subcontracting Plans, Standard Form 294 (Subcontracting Report for Individual Contracts), and the report, Standard Form 295 (Summary Subcontracting Report) submission, *et al*.

(c) All DOL procurements over the simplified acquisition threshold, whether being conducted via open market or by ordering from a pre-existing contract vehicle such as GSA Schedule, must be reviewed and receive a recommendation by the Office of Small Business Programs, the Department of Labor's Office of Small Disadvantaged Business Utilization, prior to being advertised. The Acquisition Screening and Review Form DL–1–2004 shall be used for this purpose and the statement of work and market survey documentation shall be submitted to Office of Small Business Programs with the request for review.

#### 2919.202 Specific policies.

Contracting officers, administrative officers and program management shall ensure that procurements are structured and conducted to afford small businesses the maximum practicable opportunity to participate in DOL's prime and subcontracts. Administrative officers will review requisitions that will result in an award of $2 million or more using available information to certify whether the acquisition would constitute a ''bundled contract'' under the definition provided in FAR 2.101 in accordance with procedures established by the Office of Small Business Programs. Each certification will be submitted to the Division of Acquisition Management Services, and included with the requisition

to the contracting officer. Reports will be provided to the Office of Small Business Programs.

### 2919.202–1 Encouraging small business participation in acquisitions.

During the performance of a contract, the contracting officer will consider performance against subcontracting plan goals, objectives and planned efforts before exercising an optional period of performance. The contracting officer will document the evaluation of the contractor's actual performance using SF–294 data compared to their approved subcontracting plan goals.

### 2919.202–2 Locating small business sources.

Any procurement conducted on an unrestricted basis will include solicitations to small businesses of each category with legislatively established government-wide procurement goals (e.g., small, small disadvantaged, women-owned small, HUBZone and service disabled veteran-owned small businesses) to the extent practicable.

## Subpart 2919.5—Set-Asides for Small Business

### 2919.502 Setting aside acquisitions.

Contracting officers will conduct market surveys specifically to determine whether procurements should be conducted via 8(a) procedures, HUBZone procedures or as small business set-asides. If a reasonable expectation exists that at least two responsible small businesses may submit offers at fair market prices (three responsible small businesses in procurements via GSA Federal Supply Schedule), then the procurement will be set aside for small business. Market surveys will be documented in all procurement actions not reserved for small businesses.

### 2919.505 Rejecting Small Business Administration recommendations.

When the SBA Procurement Center Representative appeals a ''rejection of an SBA recommendation'' as referenced in FAR 19.505(b) and (c), the appeal must be referred to the Assistant Secretary for Administration and Management who is authorized to make a final decision.

## Subpart 2919.7—The Small Business Subcontracting Program

### 2919.704 Subcontracting plan requirements.

Contracting Officers will refer subcontracting plans to the Office of Small Business Programs for review and recommendation before awarding contracts that require subcontracting plans. Contracting officers will document the substance of any agreement with the contractor that permits performance at less than the stated goals recommended by the Office of the Small Business Programs.

### 2919.705–1 General support for the program.

Contracting officers will make available a significant number of award points for quality of the subcontracting plan. High-rated subcontract plans will incorporate the highest yield of subcontracting to all categories of small businesses when compared to DOL or separately negotiated agency subcontracting goals on a dollar and percentage basis. Conversely, prime small businesses will be compared favorably to large businesses with subcontract goals, but may also be given the maximum score for qualifying under multiple small business categories. Contracting officers may also make available a significant number of award points for performance against previous subcontracting plan goals and efforts to achieve those goals.

### 2919.705–5 Awards involving subcontracting plans.

The Office of Small Business Programs will review subcontracting plans and SF 295 submissions for performance against business goals negotiated between the Department of Labor and the Small Business Administration.

### 2919.705–6 Post-award responsibilities of the contracting officer.

(a) Even when a subcontracting plan was submitted to and approved by the Office of Small Business Programs before award, the contracting officer upon award, amendment, or significant

modification of a contract, must forward to the Director, Office of Small Business Programs, a copy of the subcontracting plan that was incorporated into a contract or contract modification.

(b) Each contracting activity must maintain a list of active prime contracts containing subcontracting plans.

### 2919.706 Responsibilities of the cognizant administrative contracting officer.

Contracting officers must collect annual and semiannual subcontracting reports from contractors with established subcontracting plans. Copies of the report, Standard Form 294 (Subcontracting Report for Individual Contracts), and the report, Standard Form 295 (Summary Subcontracting Report), must be forwarded to the Director, Office of Small Business Programs, not later than the 30th day of the month following the close of the reporting period. If the contractor has not met the goals for the reporting period, the contracting officer will provide an acknowledgement to the contractor and request corrective action to be taken. If goals are not met in subsequent periods, the contracting officer must consider factors that would demonstrate a good faith effort, and take appropriate action including assessing liquidated damages in accordance with FAR 52.219–16, and/or not exercising subsequent option periods.

## Subpart 2919.8—Contracting with the Small Business Administration (The 8(a) Program)

### 2919.812 Contract administration.

(a) Contracting officers, or designees, must conduct periodic evaluations of the performance of an 8(a) contract at various stages of the contract period of performance. Any problems encountered during the performance evaluation, which cannot be resolved, must be referred to the Office of Small Business Programs for subsequent review and discussion with the appropriate SBA official.

(b) The Office of Small Business Programs and the SBA should be notified at least 45 days before initiating final action to terminate an 8(a) contract.

# PARTS 2920–2921 [RESERVED]

# PART 2922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

### Subpart 2922.1—Basic Labor Policies

Sec.
2922.101–3 Reporting labor disputes.
2922.101–4 Removal of items from contractor's facilities affected by work stoppages.
2922.103–4 Approvals.

### Subpart 2922.8—Equal Employment Opportunity

2922.802 General.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2922.1—Basic Labor Policies

### 2922.101–3 Reporting labor disputes.

Potential or actual labor disputes that may interfere with contract performance must be reported by the contracting activity to the Office of the Solicitor for legal advice or assistance. It may also become necessary to seek advice or assistance from the National Office of the Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20006, or other mediation agencies.

### 2922.101–4 Removal of items from contractor facilities affected by work stoppages.

Before initiating any action under FAR 22.101–4 for removal of items from contractors' facilities, the contracting officer must obtain legal advice from the Office of the Solicitor.

### 2922.103–4 Approvals.

The ''agency approving official'' as identified in FAR 22.103–4(a) and (b) is a manager, supervisor, or executive responsible for the contracting officer's technical representative (see 2901.603–71).

## Subpart 2922.8—Equal Employment Opportunity

### 2922.802 General.

Executive Order 11246, as amended, sets forth the Equal Opportunity clause and requires that the Secretary of Labor promote full realization of equal opportunity for all persons regardless of race, color, religion, sex, or national origin. No DOL contracting officer may contract for supplies or services in a manner to avoid applicability of the requirements of E.O. 11246.

# PART 2923—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c); 42 U.S.C. 8262(g).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2923.2—Energy And Water Efficiency and Renewable Energy

### 2923.271 Purchase and use of environmentally sound and energy efficient products and services.

The Department will implement policies and procedures that comply with the intent and specific goals mandated by the following statutes and executive orders and any other issuances as may be mandated to maximize cost efficient energy management:

(a) The GSA Federal Supply Schedule Products Guide identifies the recycled and recycled-content items available in the GSA FSS supply system. Copies of the guide may be obtained, without cost, from the GSA, Centralized Mailing List Service, P.O. Box 6477, Fort Worth, Texas, 76115, or by calling (817) 334–5215. *See also* GSA Advantage! at: *www.gsaadvantage.gov*.

(b) Executive Order 13123, *Greening the Government Through Efficient Energy Management*, dated June 8, 1999, requires agencies to select for procurement those energy consuming goods or products which are the most life cycle cost-effective (*see* FAR 7.101). Green purchasing includes the acquisition of recycled content products, environmentally preferable products and services, biobased products, energy- and water-efficient products, alternate fuel vehicles, and products using renewable energy.

(1) To the extent practicable, each program official must require vendors of goods or products to provide appropriate data that can be used to assess the life cycle cost of each good or product, including building energy system components, lighting systems, office equipment and other energy using equipment.

(2) In preparing solicitations and evaluating and selecting offers for award, contracting personnel must consider the life cycle cost data along with other relevant evaluation criteria. If life cycle costing is not used, the contract file must be documented to reflect the rationale for not obtaining and evaluating the data.

(c) Executive Order 13101, *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition*, dated September 14, 1998, requires agencies to comply with executive branch policies for the acquisition and use of environmentally preferable products and services and implement cost-effective procurement preference programs favoring the purchase of these products and services.

(d) Executive Order 13148, *Greening the Government Through Leadership in Environmental Management Systems, dated April 21, 2000*. This Executive Order assists with developing an environmental management system. The following sources are provided as references for the subject matter indicated:

(1) The Office of the Federal Environmental Executive provides references to all greening the Government executive orders, web links to other relevant cites, and information on biobased and bioenergy products. *http://www.ofee.gov/gp/gp.htm*.

(2) The Comprehensive Procurement Guidelines program is part of the Environmental Protection Agency's continued effort to promote the use of materials recovered from solid waste. This

listing provides information on products made from recycled materials, such as the carpeting and insulation used in office buildings, or reams of office paper. *www.epa.gov/cpg*.

(3) ENERGY STAR is a government-backed program helping businesses and individuals protect the environment through superior energy efficiency. See also *http://www.eere.energy.gov/femp/procurement*. *www.energystar.gov*.

(4) The Alternative Fuels Data Center is a one-stop shop for agency alternative fuel and vehicle information needs. *http://www.afdc.nrel.gov*.

(5) The Defense Logistics Agency has created an electronic mall for buying environmentally preferable products. *www.emall.dla.mil*.

## PARTS 2924–2927 [RESERVED]

# SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

## PART 2928—BONDS AND INSURANCE

### Subpart 2928.2—Sureties and Other Security for Bonds

Sec.

2928.204 Alternatives in lieu of corporate or individual sureties.

### Subpart 2928.3—Insurance

2928.305 Overseas workers' compensation and war hazard insurance.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2928.2—Sureties and Other Security for Bonds

### 2928.204 Alternatives in lieu of corporate or individual sureties.

Upon receipt of any of the types of securities listed in FAR 28.201 or FAR 28.203, the contracting officer must verify the validity of the security and coordinate the retention of the security with the Chief Financial Officer. Contracting officers may obtain access to Department of Treasury Circular 570 through the Internet at *http://www.fms.treas.gov/c570/index.html*.

## Subpart 2928.3—Insurance

### 2928.305 Overseas workers' compensation and war hazard insurance.

The authority of the Agency Head to recommend to the Secretary of Labor waiver of the applicability of the Defense Base Act (42 U.S.C. 1651, et seq.) to any contract, subcontract, work location, or classification of employees, is delegated to the HCA.

## PART 2929—TAXES

### Subpart 2929.1—General

Sec.

2929.101 Resolving tax problems.

### Subpart 2929.3—State and Local Taxes

2929.303 Application of state and local taxes to Government contractors and subcontractors.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2929.1—General

### 2929.101 Resolving tax problems.

Contract tax problems or questions must be referred by the contracting officer to the Office of the Solicitor for resolution.

## Subpart 2929.3—State and Local Taxes

### 2929.303 Applications of state and local taxes to Government contractors and subcontractors.

(a) Contractors may only be treated as agents of the Government for the purposes set forth in FAR 29.303(a) upon the written review and approval of the Assistant Secretary for Administration and Management.

(b) Requests for approval under paragraph (a) of this section must be submitted by the HCA through the Office of the Solicitor, to the Division of Acquisition Management Services, for further action.

## PART 2930—COST ACCOUNTING STANDARDS ADMINISTRATION

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2930.2—CAS Program Requirements

### 2930.201–5 Waiver.

(a) The HCA is authorized to waive CAS requirements as provided in FAR 30.201–5.

(b) Requests for waivers under paragraph (a) of this subsection must be prepared by the contracting officer as

prescribed in FAR 30.201–5(e) and submitted to the HCA.

# PART 2931—CONTRACT COST PRINCIPLES AND PROCEDURES

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2931.1—Applicability

### 2931.101 Objectives.

Individual and class deviations from cost principles in FAR part 31 must be processed as prescribed in DOLAR subpart 2901.4.

[69 FR 22991, Apr. 27, 2004]

# PART 2932—CONTRACT FINANCING

### Subpart 2932.4—Advance Payments for Non-Commercial Items

Sec.
2932.402 General.
2932.407 Interest.

### Subpart 2932.7—Contract Funding

2932.703 Contract funding requirements.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2932.4—Advance Payments for Non-Commercial Items

### 2932.402 General.

The HCA is authorized to approve determinations and findings as well as contract terms for advance payments. The contracting officer must submit a recommendation for approval or disapproval of the contractor's request to the HCA.

### 2932.407 Interest.

The HCA may authorize advance payments without interest pursuant to FAR 32.407.

## Subpart 2932.7—Contract Funding

### 2932.703 Contract funding requirements.

(a) Except in unusual circumstances, the contracting office may not issue solicitations until an approved procurement request (PR), containing a certification that funds are available, has been received. However, the contracting office may take all necessary actions up to the point of contract obligation before receipt of the PR certifying that funds are available when:

(1) The Assistant Secretaries, Inspector General, Bureau Chief, Deputy Under Secretary, Solicitor of Labor, Commissioner, or Director of the Women's Bureau certifies that such action is necessary to meet critical program schedules for their program area;

(2) The Budget Officer certifies that program authority has been issued and funds to cover the acquisition will be available before the date set for receipt of proposals;

(3) The solicitation includes the clause at FAR 52.232–18, Availability of Funds.

(b) The contracting office may not open bids/close solicitations until a PR, either planning or final, has been received that contains a certification of fund availability. Only the project or program official with the authority to commit funds from the agency that initiated the PR may make that written certification.

(c) The project or program office that initiated the PR is responsible for obtaining required certifications.

# PART 2933—PROTESTS, DISPUTES, AND APPEALS

### Subpart 2933.1—Protests

Sec.
2933.102 General.
2933.103 Protests to the agency.
2933.104 Protests to GAO.

### Subpart 2933.2—Disputes And Appeals

2933.203 Applicability.
2933.209 Suspected fraudulent claims.
2933.211 Contracting officer's decision.
2933.212 Contracting officer's duties upon appeal.
2933.213 Obligation to continue performance.

2933.270 Department of Labor Board of Contract Appeals.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c); E.O. 12979, 60 FR 55171, 3 CFR, 1995 Comp., p. 417.

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2933.1—Protests

### 2933.102 General.

(a) The Division of Acquisition Management Services, 200 Constitution Ave., NW., S–1513 B, Washington, DC 20210–0001, telephone (202) 693–7285, facsimile (202) 693–7290 (or the Office acting in that capacity), is responsible for coordinating procurement protests filed with the General Accounting Office.

(b) The authority of the Assistant Secretary for Administration and Management under FAR 33.102(b) to determine that a solicitation, proposed award, or award does not comply with the requirements of law or regulation may be delegated to the HCA.

### 2933.103 Protests to the agency.

(a) In accordance with Executive Order 12979, the following procedures apply to agency protests:

(1) The filing time frames in FAR 33.103(e) apply to agency protests. An agency protest is filed when the protest complaint is received at the location the solicitation designates for serving protests; or if none is designated, when filed with a contracting officer or HCA.

(2) An interested party filing an agency protest may request either that the contracting officer or the Agency Protest Official decide the protest. The ''Agency Protest Official'' is an individual above the level of the contracting officer and designated by the Assistant Secretary for Administration and Management, such as the Competition Advocate. The deciding official, whether a contracting officer or Agency Protest Official, must work in consultation with the Office of the Solicitor to resolve the protest.

(3) In addition to the information required by FAR 33.103(d)(2), the protest must:

(i) Indicate that it is a protest to the agency;

(ii) Be contemporaneously filed with the contracting officer;

(iii) State whether the protestor chooses to have the contracting officer or the Agency Protest Official decide the protest. If the protest is silent on this matter, the contracting officer will decide the protest.

(b) ''Interested Party'' means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

(c) If the Agency Protest Official is chosen by the protestor to decide the protest, this is an alternative to a decision by the contracting officer, not an appeal. The Agency Protest Official will not consider appeals from a contracting officer's decision on an agency protest.

(d) The deciding official should consider conducting a scheduling conference with the protestor within five (5) days after the protest is filed. The scheduling conference will establish deadlines for written arguments in support of the agency protest and for agency officials to present information in response to the protest issues. Alternative Dispute Resolution techniques will be considered if determined appropriate by the deciding official.

(e) Oral conferences may take place either by telephone or in person. Other parties may attend at the discretion of the deciding official.

(f) Apart from its protest document, the protestor will be given only one opportunity to support or explain in writing the substance of its protest. Department of Labor procedures do not provide for any discovery. The deciding official has discretion to request additional information from either the agency or the protestor. However, the deciding official will normally decide protests on the basis of information provided by the protestor and the agency.

(g) The preferred practice is to resolve protests through informal oral discussion.

(h) An interested party may represent itself or be represented by legal counsel. The Department of Labor will not reimburse the protester for any legal fees or costs related to the agency protest.

(i) If an agency protest is received before contract award, the contracting officer may only make award if the HCA makes a determination to proceed under FAR 33.103(f)(1). Similarly, if an agency protest is filed within ten (10) days after award, or within five (5) days of the offer of a debriefing required by FAR 15.505 or 15.506, whichever is later, the contracting officer must suspend performance of the contract unless the HCA makes a determination to proceed under FAR 33.103(f)(3). Any stay of award or suspension of performance remains in effect until the protest is decided, dismissed, or withdrawn.

(j) The deciding official must make a best effort to issue a decision on the protest within twenty (20) days after the filing date. The decision may be oral or written, dependent upon advice of legal counsel.

(k) The deciding official must send a confirming letter within three (3) days after the decision using a means that provides evidence of receipt. The confirming letter must include the following information:

(1) State whether the protest was denied, sustained or dismissed.

(2) Indicate the date the decision was provided.

(3) If the deciding official sustains the protest, relief may consist of any of the following:

(i) Recommendation that the contract be terminated for convenience or cause, or that the solicitation be canceled.

(ii) Recompeting the requirement from the beginning of the solicitation or from the last round of negotiations.

(iii) Amending the solicitation.

(iv) Refraining from exercising contract options.

(v) Awarding a contract consistent with statute, regulation, and the terms of the solicitation.

(vi) Other action that the deciding official determines is appropriate.

(l) If the deciding official sustains a protest, then within 30 days after receiving the official's recommendations for relief, the contracting officer must either:

(1) Fully implement the recommended relief; or

(2) Notify the deciding official, if the contracting officer was not the deciding official, in writing, if any recommendations have not been implemented and explain why.

(m) If the protest is denied, and contract performance has been suspended under paragraph (i) of this section, the contracting officer will not lift such suspension until five (5) days after the protest decision has been issued, to allow the protester to file a protest with the General Accounting Office, unless the HCA makes a new finding under FAR 33.103(f)(3). The contracting officer shall consider allowing such suspension to remain in effect pending the resolution of any GAO proceeding.

(n) Proceedings on an agency protest may be dismissed or stayed if a protest on the same or similar basis is filed with a protest forum outside of the Department of Labor.

**2933.104 Protests to GAO.**

(a) *General procedures.* The HCA has the responsibility to prepare and provide to the General Accounting Office (GAO) the agency report with the information required by FAR 33.104(a). The agency report must be coordinated with the Office of the Solicitor before the report is signed and sent to the GAO.

(b) *Protests before award.* The authority of the HCA under FAR 33.104(b) to authorize a contract award when the agency has received notice from the GAO of a protest filed directly with the GAO is nondelegable. The HCA has the responsibility to prepare and provide to the GAO the written finding with the information required by FAR 33.104(b)(1). The written finding must be coordinated with Office of the Solicitor before the HCA affirms its approval by signing the written finding and sending it to the GAO. Copies of the signed written finding and the signed written notice to the GAO must be provided to the Senior Procurement Executive within two (2) working days after they are sent to the GAO.

(c) *Protests after award.* The authority of the HCA under FAR 33.104(c) to authorize contract performance when the agency has received notice from the GAO of a protest filed directly with the GAO is nondelegable. The HCA has the

responsibility to prepare and provide to the GAO the written finding with the information required by FAR 33.104(c)(2). The written finding must be coordinated with the Office of the Solicitor before the notice is signed by the HCA and sent to the GAO.

(d) *Notice to the GAO.* The authority of the HCA under FAR 33.104(g), to report to the GAO the failure to fully implement the GAO recommendations with respect to a solicitation for a contract or an award or a proposed award of a contract within 60 days of receiving the GAO recommendations, is nondelegable. The written notice must be coordinated with the Office of the Solicitor before the notice is signed by the HCA and sent to the GAO. A copy of all notices to the GAO submitted in accordance with FAR 33.104(g) must be provided to the Senior Procurement Executive within (two) working days after they are sent to the GAO.

## Subpart 2933.2—Disputes and Appeals

### 2933.203 Applicability.

The authority of the Agency Head to determine that the application of the Contract Disputes Act of 1978 to any contract with a foreign government or agency of that government, or an international organization or a subsidiary body of that organization, would not be in the public interest is delegated to the HCA.

### 2933.209 Suspected fraudulent claims.

The contracting officer must refer all matters relating to suspected fraudulent claims by a contractor under the conditions in FAR 33.209 to the Office of the Inspector General for further action or investigation.

### 2933.211 Contracting officer's decision.

The written decision required by FAR 33.211(a)(4) must include, in the paragraph listed under FAR 33.211(a)(4)(v), specific reference to the Department of Labor Board of Contract Appeals (LBCA), 800 K Street, NW, Suite 400 North, Washington, DC 20001–8002.

### 2933.212 Contracting officer's duties upon appeal.

(a) When a notice of appeal has been received, the contracting officer must endorse on the appeal the date of mailing (or the date of receipt if the notice was not mailed). The contracting officer must also notify the Solicitor of Labor of the appeal.

(b) The contracting officer should prepare and transmit the administrative file for the Office of the Solicitor and assist with the appeal.

### 2933.213 Obligation to continue performance.

The contracting officer must include the clause at FAR 52.233–1, Disputes (Alternate I), in contracts where continued performance is necessary pending resolution of any claim arising under or relating to the contract.

### 2933.270 Department of Labor Board of Contract Appeals.

(a) The Department of Labor Board of Contract Appeals (LBCA) is authorized by the Secretary to consider and determine appeals from decisions of contracting officers arising under a contract, or relating to a contract, made by the Department or any other executive agency when such agency or the Administrator of the Office of Federal Procurement Policy has designated the LBCA to decide the appeal.

(b) The LBCA rules of procedure are contained in 41 CFR part 29–60.104, appearing in the July 1, 1983, edition of 41 CFR, subtitle A, chapters 19–100.

## PARTS 2934–2935 [RESERVED]

## PART 2936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

### Subpart 2936.2—Special Aspects of Contracting for Construction

Sec.

2936.201 Evaluation of contractor performance.
2936.209 Construction contracts with architect-engineer firms.

### Subpart 2936.5—Contract Clauses

2936.516 Quality surveys.

Subpart 2936.6—Architect-Engineer Services

2936.602 Selection of firms for architect-engineer contracts.
2936.602–1 Selection criteria.
2936.602–2 Evaluation boards.
2936.602–3 Evaluation board functions.
2936.602–4 Selection Authority.
2936.602–5 Short selection processes for contracts not to exceed $100,000.
2936.603 Collecting data on and appraising firms' qualifications.
2936.604 Performance evaluation.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2936.2—Special Aspects of Contracting for Construction

### 2936.201 Evaluation of contractor performance.

The HCA must establish procedures to evaluate construction contractor performance and prepare performance reports as required by FAR 36.201.

### 2936.209 Construction contracts with architect-engineer firms.

As required by FAR 36.209, no contract for construction of a project may be awarded to the firm that designed the project, or to its subsidiaries or affiliates, without the written approval of the Assistant Secretary for Administration and Management. Any request for approval must include the reason(s) why award to the design firm is required; an analysis of the facts involving potential or actual organizational conflicts of interest including benefits and detriments to the Government and the prospective contractor; and the measures which are to be taken to avoid, neutralize, or mitigate conflicts of interest.

## Subpart 2936.5—Contract Clauses

### 2936.516 Quality surveys.

The HCA is authorized to make the determination regarding the impracticability of Government performance of original and final surveys as prescribed in FAR 36.516.

## Subpart 2936.6—Architect-Engineer Services

### 2936.602 Selection of firms for architect-engineer contracts.

### 2936.602–1 Selection criteria.

HCAs are authorized to approve the use of design competition under the conditions in FAR 36.602–1(b).

### 2936.602–2 Evaluation boards.

HCAs must establish procedures to provide permanent or ad hoc architect-engineer evaluation boards as prescribed in FAR 36.602–2. Procedures must provide for the appointment of private practitioners of architecture, engineering, or related professions when such action is determined in writing by the HCA to be essential to meeting the Government's minimum needs.

### 2936.602–3 Evaluation board functions.

The selection report required in FAR 36.602–3(d) must be prepared for the approval of the HCA.

### 2936.602–4 Selection Authority.

The HCA is authorized to serve as the designated Selection Authority in accordance with FAR 36.602–1.

### 2936.602–5 Short selection processes for contracts not to exceed $100,000.

The selection process prescribed in FAR 36.602–5(b) must be used for architect-engineer contracts not exceeding the simplified acquisition threshold.

### 2936.603 Collecting data on and appraising firms' qualifications.

(a) HCAs who acquire architect-engineer services must establish procedures to comply with the requirements of FAR 36.603.

(b) Copies of procedures established under paragraph (a) of this section must be submitted to the Division of Acquisition Management Services, for review and recommendation for approval to the HCA when updated. These procedures must include a list of names, addresses, and telephone numbers of offices or boards assigned to maintain architect-engineer qualification data files.

**2936.604 Performance evaluation.**

(a) The HCA must establish procedures to evaluate architect-engineer contractor performance as required in FAR 36.604. Normally, the performance report must be prepared by the contracting officer's authorized representative or other official who was responsible for monitoring contract performance and who is qualified to evaluate overall performance. DOL Agency/Office procedures must prescribe instructions for review of the report, before distribution, as prescribed in FAR 36.604(b).

(b) Performance reports must be made using Standard Form 1421, Performance Evaluation (Architect-Engineer) as prescribed in FAR 36.702(c). Details covering unsatisfactory performance, including Government notification to the contractor and written comments by the contractor, must also be attached to the report.

# PART 2937—SERVICE CONTRACTING

## Subpart 2937.1—Service Contracts-General

Sec.
2937.103 Contracting officer responsibility.
2937.103–70 Department of Labor checklist to aid analysis and review of requirements for service contracts.

## Subpart 2937.2—Advisory and Assistance Services

2937.203 Policy.

## Subpart 2937.6—Preference for Performance-Based Contracting (PBC)

2937.602 Elements of performance-based contracting.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2937.1—Service Contracts-General

**2937.103 Contracting officer responsibility.**

The HCA is responsible for establishing internal review and approval procedures for service contracts in accordance with OFPP Policy Letter 93–1 (Reissued), ''Management Oversight of Service Contracting''. As defined by FAR 37.101, contracts for personal services are permitted under the circumstances in 5 U.S.C. 3109.

**2937.103–70 Department of Labor checklist to aid analysis and review of requirements for service contracts.**

Contracting specialists and contracting officers must work in close collaboration with the beneficiaries of the services being purchased to ensure that contractor performance meets contract requirements and performance standards.

(a) *General.* Following is a checklist to aid analysis and review of requirements for service contracts.

(1) Is the statement of work complete, with a clear-cut division of responsibility between the contracting parties?

(2) Is the statement of work discussed in terms the market can satisfy?

(3) Does the statement of work encompass all commercially available services that can meet the actual functional need (eliminates any nonessential preferences that may thwart full and open competition)?

(4) Is the statement of work performance-based to the maximum extent possible (i.e., is the acquisition structured around the purpose of the work to be performed, as opposed to either the manner by which the work is to be performed or a broad and imprecise statement of work)?

(b) *Cost effectiveness.* If the response to any of the following questions is negative, the agency may not have a valid requirement or not be obtaining the requirement in the most cost effective manner.

(1) Is the statement of work written so that it supports the need for a specific service?

(2) Is the statement of work written so that it permits adequate evaluation of contractor versus in-house cost and performance?

(3) Are the choices of contract type, quality assurance plan, competition strategy, or other related acquisition strategies and procedures in the acquisition plan appropriate to ensure good

contractor performance to meet the user's needs?

(4) If a cost reimbursement contract is contemplated, is the acquisition plan adequate to ensure that the contractor will have the incentive to control costs under the contract?

(5) Is the acquisition plan adequate to address the cost effectiveness of using contractor support (either long-term or short-term) versus in-house performance?

(6) Is the cost estimate or other supporting cost information adequate to enable the contracting office to effectively determine whether costs are reasonable?

(7) Is the statement of work adequate to describe the requirement in terms of ''what'' is to be performed as opposed to ''how'' the work is to be accomplished?

(8) Is the acquisition plan adequate to ensure that there is proper consideration given to ''quality'' and ''best value?''

(c) *Control.* If the response to any of the following questions is negative, there may be a control problem.

(1) Are there sufficient resources to evaluate contractor performance when the statement of work requires the contractor to provide advice, analysis and evaluation, opinions, alternatives, or recommendations that could significantly influence agency policy development or decision-making?

(2) Does the quality assurance plan provide for adequate monitoring of contractor performance?

(3) Is the statement of work written so that it specifies a contract deliverable or requires progress reporting on contractor performance?

(4) Is agency expertise adequate to independently evaluate the contractor's approach, methodology, results, options, conclusions or recommendations?

(d) *Conflicts of interest.* If the response to any of the following questions is affirmative, there may be a conflict of interest.

(1) Can the potential offeror perform under the contract to devise solutions or make recommendations that would influence the award of future contracts to that contractor?

(2) If the requirement is for support services (such as system engineering or technical direction), were any of the potential offerors involved in developing the system design specifications or in the production of the system?

(3) Has a potential offeror participated in earlier work involving the same program or activity that is the subject of the present contract, wherein the offeror had access to source selection or proprietary information not available to other offerors competing for the contract?

(4) Will the contractor be evaluating a competitor's work?

(5) Does the contract allow the contractor to accept its own products or activities on behalf of the Government?

(6) Will the work under this contract put the contractor in a position to influence government decision-making, e.g., developing regulations that will affect the contractor's current or future business?

(7) Will the work under this contract affect the interests of the contractor's other clients?

(8) Are any of the potential offerors, or their personnel who will perform the contract, former agency officials who—while employed by the agency—personally and substantially participated in the development of the requirement for, or the procurement of, these services within the past two years?

(e) *Competition.* If the response to any of the following questions is negative, competition may be unnecessarily limited.

(1) Is the statement of work defined so as to avoid overly restrictive specifications or performance standards?

(2) Is the contract formulated in such a way as to avoid creating a continuous and dependent arrangement with the same contractor?

(3) Is the use of an indefinite quantity or term contract arrangement appropriate to obtain the required services?

(4) Will the requirement be obtained through the use of full and open competition?

## Subpart 2937.2—Advisory and Assistance Services

### 2937.203 Policy.

(a) HCAs having a requirement for certain advisory and assistance services are required by the Department of Labor Manual Series (*See* DLMS 2 836) to prepare a written justification for such services. Written justification must be submitted to the Assistant Secretary for Administration and Management for review by the Procurement Review Board, for Assistant Secretary for Administration and Management approval.

(b) Regardless of the type of action planned, the justification in paragraph (a) of this section must include the following:

(1) A statement of need, which certifies that the requested services do not unnecessarily duplicate any previously performed work.

(2) Nature and scope of the need, and the results expected.

(3) Extent to which in-house staff availability was assessed, and the reasons why procurement of outside services is necessary.

(4) Any additional information or data that support the requirement for a contract.

(5) Name(s) and title(s) of official(s) who will be assigned as project officer(s) to work with the contractor, and who can be contacted for additional Information.

(6) A statement that the Government policy on advisory and assistance services has been reviewed and complies with FAR 37.203.

## Subpart 2937.6—Preference for Performance-Based Contracting (PBC)

### 2937.602 Elements of performance-based contracting.

(a) Performance-based contracting is defined in FAR 37.101 and discussed in FAR 37.6. Although FAR Part 37 primarily addresses services contracts, PBC is not limited to these contracts. PBC is the preferred way of contracting for services. (*See* exceptions listed in FAR 37.102.) Generally, when contract performance risk under a PBC specification can be shifted to the contractor to allow for the operation of objective incentives, a contract type with objectively measurable incentives (e.g., Firm-Fixed-Price, Fixed-Price-Incentive-Fee, or Cost-Plus-Incentive-Fee) is appropriate. However, when contractor performance (e.g., cost control, schedule, or quality/technical) is best evaluated subjectively using qualitative measures, a Cost-Plus-Award-Fee contract may be used.

(b) A labor hour level-of-effort contract is not considered a PBC.

## PARTS 2938–2941 [RESERVED]

# SUBCHAPTER G—CONTRACT MANAGEMENT

## PART 2942—CONTRACT ADMINISTRATION AND AUDIT SERVICES

### Subpart 2942.1—Contract Audit Services

Sec.
2942.101 Policy.

### Subpart 2942.15—Contractor Performance Information

2942.1501 Scope.
2942.1502 Policy.
2942.1503 Procedures.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2942.1—Contract Audit Services

### 2942.101 Policy.

The OASAM Division of Cost Determination is responsible for establishing billing rates and indirect cost rates as prescribed in FAR 42.7 for the Department of Labor.

## Subpart 2942.15—Contractor Performance Information

### 2942.1501 Scope.

This subpart provides policies and procedures for evaluating, maintaining, and releasing contractor performance information under DOL contracts.

### 2942.1502 Policy.

DOL contracting officers are required to use or interface with the Past Performance Information Retrieval System (PPIRS), and specifically the National Institutes of Health's Contractor Performance System. The HCA is responsible for ensuring that a contractor performance evaluation system is generated to meet the requirements of FAR subpart 42.15, including compliance with subcontracting plans. Contracts, task orders, and delivery orders, exceeding the simplified acquisition threshold, should be formally evaluated in writing. Interim evaluations should be performed on contracts exceeding one year in duration. This will assist contractors with improving marginal performance and identifying any major deficiencies. It will also facilitate performance evaluations at contract completion, as well as determining whether to exercise contract options, if any.

### 2942.1503 Procedures.

(a) In accordance with FAR 42.1502, the contracting officer will prepare an interim evaluation of a contractor's performance at least annually for submission to the Past Performance Information Retrieval System (PPIRS), and specifically the Contractor Performance System maintained by the National Institutes of Health.

(b) The contracting officer, or designee, must determine who will evaluate a contractor's performance. The contracting officer's technical representative, program manager, contract specialists or administrators, and users are candidates likely to be selected to perform the evaluation.

(c) A contractor's performance evaluation should be obtained from a person who monitored contractor performance when that individual's assignment of duties or employment terminates before physical completion of the contract. The areas of performance to be selected for evaluation should be tailored to the type of supplies or services normally acquired by the contracting activities and the type of contract. HCAs must ensure uniformity of the evaluation criteria within their contracting activities.

(d) Release of contractor performance evaluation information.

(1) Requests for performance evaluation information from the public must be processed in accordance with FOIA, as implemented by DOL under 29 CFR part 70.

(2) Release of a contractor's performance evaluation information to other Federal agencies is subject to FAR 42.1502. When the performance evaluation information is released to other federal agencies, it should be provided with a written statement that it is nonpublic information that must be

processed under FOIA principles if a request for its disclosure is received.

(e) Even though the retention period for past performance evaluation information is three years (*see* FAR 42.1503), the contractor's performance evaluation, any contractor rebuttal, and final decision become a part of the contract file. Therefore, disposal of the contractor's evaluation information must be accomplished in accordance with FAR 4.804.

# PART 2943—CONTRACT MODIFICATIONS

## Subpart 2943.2—Change Orders

Sec.
2943.205 Contract clauses.

## Subpart 2943.3—Forms

2943.301 Use of forms.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2943.2—Change Orders

### 2943.205 Contract clauses.

HCAs may establish procedures, or office policies, when appropriate for authorizing the contracting officer to vary the 30-day period for submission of adjustment proposals to the clauses prescribed by FAR 43.205.

## Subpart 2943.3—Forms

### 2943.301 Use of forms.

(a) FAR 43.301(a)(1)(vi) requires the use of Standard Form 30 (SF–30) to execute any obligation or deobligation of contract funds after award. FAR 13.307(c)(3) allows, and the Department of Labor prefers, the use of the SF–30 for simplified acquisitions. The SF–30 also must be used to deobligate funds when effecting contract closeout when obligated funds exceed the final contract costs. In such an instance, the SF–30 may be issued as an administrative modification on a unilateral basis if the contractor's financial release has been separately obtained.

(b) The contracting officer must include, in any unilateral contract modification issued for contract closeout, a statement that the contractor has signed a release of claims and indicate the date the release of claims was signed by the contractor.

# PART 2944—SUBCONTRACTING POLICIES AND PROCEDURES

## Subpart 2944.1—General

Sec.
2944.101 Waiver.

## Subpart 2944.2—Consent To Subcontract

2944.201–1 Consent requirements.
2944.202 Contracting officer's evaluation.
2944.202–2 Considerations.
2944.203 Consent limitations.

## Subpart 2944.3—Contractors' Purchasing Systems Reviews

2944.302 Requirements.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2944.1—General

### 2944.101 Waiver.

The waiver of consent must be in writing, signed by the contracting officer, and included in the contract file. The waiver must include all supporting facts, including the rationale for waiving the consent to subcontract requirements.

## Subpart 2944.2—Consent To Subcontract

### 2944.201–1 Consent requirements.

In accordance with FAR 44.201–1(b) or FAR 44.201–2, advance notification and agreement are required for all cost-reimbursement, time-and-materials, or labor-hour subcontracts exceeding the simplified acquisition threshold.

### 2944.202 Contracting officer's evaluation.

### 2944.202–2 Considerations.

The review required by FAR 44.202–2(a) must be documented in writing (including supporting facts and rationale), signed by the contracting officer, and included in the contract file.

**2944.203 Consent limitations.**

Any limitations placed on the consent to subcontract must be documented in writing (including supporting facts and rationale), signed by the contracting officer, and included in the contract file.

## Subpart 2944.3—Contractors' Purchasing Systems Reviews

**2944.302 Requirements.**

The authority of the Assistant Secretary for Administration and Management under FAR 44.302(a), to raise or lower the $25 million review level for a contractor's purchasing system, may not be delegated. When a contractor's purchasing system review is required by the contracting officer, the effort must be coordinated with the OASAM Business Operations Center's Division of Acquisition Management Services and the Division of Cost Determination.

# PART 2945—GOVERNMENT PROPERTY

### Subpart 2945.1—General

Sec.

2945.104 Review and correction of contractors' property control systems.
2945.105 Records of Government property.

### Subpart 2945.3—Providing Government Property to Contractors

2945.302 Providing facilities.

### Subpart 2945.4—Contractor Use and Rental of Government Property

2945.403 Rental-use and charges clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

## Subpart 2945.1—General

**2945.104 Review and correction of contractors' property control systems.**

When the Government's property administrator determines that review and approval of the contractor's property control system rests with DOL, the Government's property administrator must review the system to determine whether the contractor will be able to meet the requirements of FAR 45.104. The review must be completed, signed by the appointed property administrator, and retained in the contract file.

**2945.105 Records of Government property.**

Contracting officers must maintain a file on any Government-furnished property (GFP) in the possession of contractors. As a minimum, the file must contain the following:

(a) A copy of the applicable portions of the contract that list the GFP;

(b) Contracting officer's letters assigning the GFP administrator to the contract;

(c) Written evidence that the contractor's property control system was reviewed and approved as required by FAR 45.104;

(d) If applicable, documentation of the request and approval or denial of the contractor's requests to acquire or fabricate special test equipment in accordance with FAR 45.307 or other property;

(e) The contractor's written notice of receipt of the GFP and any reported discrepancies thereto, as required by FAR 45.502–1 and 45.502–2, respectively;

(f) Any other documents pertaining to or affecting the status of the GFP in the possession of contractors or subcontractors under the contract;

(g) Documentation of the screening and disposal of all GFP as required by FAR 45.6.

## Subpart 2945.3—Providing Government Property to Contractors

**2945.302 Providing facilities.**

The HCA is authorized to make the determination to provide facilities to a contractor as prescribed in FAR 45.302–1(a)(4).

## Subpart 2945.4—Contractor Use and Rental of Government Property

### 2945.403 Rental-use and charges clause.

The HCA must make the determination to charge rent on the basis of use under the clause at FAR 52.245–9 when the contracting officer provides access to Government production and research property, as prescribed in FAR 45.403(a).

## PARTS 2946–2951 [RESERVED]

# SUBCHAPTER H—CLAUSE AND FORMS

## PART 2952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

### Subpart 52.2—Text of Provisions and Clauses

#### 2952.201–70 Contracting Officer's Technical Representative (COTR).

Insert the following clause into contracts requiring COTR representation under 2901.603.71:

*Contracting officer's technical representative (COTR)* May 2004

(a) Mr./Ms. (Name) of (Organization) (Room No.), (Building), (Address), (Area Code & Telephone No.), is hereby designated to act as contracting officer's technical representative (COTR) under this contract.

(b) The COTR is responsible, as applicable, for: receiving all deliverables; inspecting and accepting the supplies or services provided hereunder in accordance with the terms and conditions of this contract; providing direction to the contractor which clarifies the contract effort, fills in details or otherwise serves to accomplish the contractual scope of work; evaluating performance; and certifying all invoices/vouchers for acceptance of the supplies or services furnished for payment.

(c) The COTR does not have the authority to alter the contractor's obligations under the contract, and/or modify any of the expressed terms, conditions, specifications, or cost of the agreement. If, as a result of technical discussions, it is desirable to alter/change contractual obligations or the scope of work, the contracting officer must issue such changes.

## PART 2953—FORMS

### Subpart 2953.1—General

Sec.

2953.100 Request for Recommendation by Procurement Review Board DL 1–490.
2953.101 Simplified Acquisition Documentation Checklist DL 1–2216.
2953.102 Quotation for Simplified Acquisitions DL 1–2078.
2953.103 Acquisition Screening and Review—over $100,000 DL 1–2004.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

### Subpart 2953.1—General

#### 2953.100 Request for Recommendation by Procurement Review Board DL 1–490.

The following form must be used by the requisitioning office to submit a request for review by the Procurement Review Board as specified in DOLAR 2901 and 2943. This form must be submitted through the Assistant Secretary for the program office to the Director, Division of Acquisition Management Services, for scheduling before the Procurement Review Board.

Request for Recommendation by Procurement Review Board

**U.S. Department of Labor**

INITIATING AGENCY: _____ POINT OF CONTACT: _____

INITIATING OFFICE: _____ TELEPHONE NUMBER: _____

**1. Title, Purpose, Amount, Period of Performance**

A. Title and purpose of contract, grant, or cooperative agreement: _____

_____

B. Total dollar obligations attributable to this request: _____

C. Period of Performance requested for this action:

From: _____ To (including optional periods): _____

**2. Type of Request/Authority**

A. Type of Request (check all that apply)

☐ New Sole Source Contract or Contract Modification or Extension (FAR 6.302 and DLMS 2-836). Complete Item 5.
☐ New Sole Source Discretionary Grant or Cooperative Agreement (DLMS 2-836), or Modification or Extension of a Discretionary Grant or Cooperative Agreement (DLMS 2-836). Complete Item 5.
☐ Advisory and Assistance (A&A) Services (FAR 37.2). Complete Item 6.
☐ Ratification of an unauthorized commitment (FAR 1.602-3). Complete Item 7.
☐ Waiver to contract with a Current/Former Government Employee (individual or owner) (FAR 3.6 and DOLAR 2903.6). Attach Narrative.
☐ Application for use of Brand Name Specifications (FAR 6.302-1). Complete Item 5.
☐ Potential financial conflicts (DLMS 2-836(b)(2) and FAR 3.104-7(b)). Attach Narrative.

B. Authority. If this request involves a grant or cooperative agreement, provide the specific legal authority, including citation (e.g. Section # of the XXXX Act, # U.S.C. ####): _____

**3. Information about Proposed Recipient of Contract, Grant, or Cooperative Agreement**

A. Name: _____

B. Address: _____

_____

C. Type of Organization: (circle all that apply)
Large Business / Small Business
Profit/ Nonprofit or Not-for-Profit / Foreign
Government / Educational Institution / Faith-Based or Community-Based
Other (describe) _____

D. To ensure that this organization is not currently suspended or debarred from federal programs, attach the results of a word search of the organization's name at http:/www.epls.gov/servlet/EPLSSearchMain/1.

E. (Enter City/State or Circle applicable area) Nationwide Foreign Region: NE SE MW NW SW
Area of Performance/Benefit: City: _____ State: _____

**4. Other Contracts, Grants or Cooperative Agreements with Proposed Recipient**

Provide the following information to the extent possible for each other contract, grant and/or other agreement active within the last year between the proposed organization and the Department of Labor using the following format. Additional references may be provided by attachment.

Title of Project: _____
Agency Served: _____ Period of Performance: _____
Contract/Grant/Agreement Number: _____ Total Life Cycle Cost to date: _____

☐ Additional references attached.

DL 1-490
(Rev. 10/03)

**5. Sole Source Justification [Skip If Not Applicable]**

☐ If this is a request for sole source contract, grant, or cooperative agreement authority, review the instructions and identify below the bases for a sole source award. Please attach a succinct narrative supporting each of the bases chosen to support the sole source selection. If you are claiming that the proposed recipient is the only responsible source or has unique qualifications, you must provide supporting information such as market research or other available information indicating whether there are other potential recipients and, if so, explain why you do not consider them acceptable. In addition, outline any steps that will be taken in the future to eliminate the need for sole source authority.

**6. Advisory And Assistance Services (A&A) [Skip If Not Applicable]**

A. Check one of the following: ☐ Sole Source A&A ☐ Competitive A&A value over $50,000

B. Subject to FAR 37.203, agencies may contract for advisory and assistance services, when essential to the agency's mission, to:

☐ (1) Obtain outside points of view to avoid too limited judgement on critical issues;
☐ (2) Obtain advice regarding developments in industry, university, or foundation research;
☐ (3) Obtain the opinions, special knowledge, or skills of noted experts;
☐ (4) Enhance the understanding of, and develop alternative solutions to, complex issues;
☐ (5) Support and improve the operation of organizations; or
☐ (6) Ensure the more efficient or effective operation of managerial or hardware systems.

Check the applicable box(es) above and attach written explanation.

**7. Ratification Of Unauthorized Commitments [Skip If Not Applicable]**

Ratifications of unauthorized commitments are authorized only under FAR 1.602-3 (c) which identifies seven limitations on use of the authority, and DOLAR 1.602-3, which outlines the DOL ratification procedures. Please review those requirements and attach to this form the required documents, including findings and a determination by the Agency Head that the statements are accurate, the Contracting Officer's determination that the price is fair and reasonable with a recommendation for payment, and legal counsel's (SOL/ETLS) determination that the ratification is legally supportable.

**8. Conflict Of Interest Certification (Must Be Completed For Each Action):**

I certify to the best of my knowledge and belief that statements provided herein are accurate and true, and I have no organizational, personal, financial or other conflicts of interest which could call into questions my objectivity in this matter or present a prohibited relationship under either 18 U.S.C. 208 or 5 C.F.R. § 2635.502.

Program Official (Contracting or Grant Officer's Technical Representative)

___ Otherwise, I have attached documentation to explain a possible relationship.

_____ _____
Signature Date

Agency Head

___ Otherwise, I have attached documentation to explain a possible relationship.

_____ _____
Signature Date

Note: Conflict of Interest statements apply to individuals and may be signed only by the individuals to whom they apply.

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INSTRUCTIONS FOR COMPLETING THE DL 1-490

**General Instructions: Agencies should consult DLMS 2-836, as well as the cited provisions of the Federal Acquisition Regulation (FAR) and Department of Labor Acquisition Regulation (DOLAR), as they prepare submissions to the PRB. Agencies also should ensure that their submissions are concise, but complete.**

Item 1. Provide a one sentence title to describe the type of grant, contract, or cooperative agreement, and a short description of the purpose of the requested action. The total dollar threshold should include proposed optional periods of performance and additional services.

Item 2. FAR references may be found at http://www.arnet.gov/far/loadmainre.html; the Department of Labor Acquisition Regulation (DOLAR) may be found at http://www.dol.gov/dol/allcfr/Title_48/Chapter_29.htm; and all other references may be found at:http://www.labornet.dol.gov/DCS_FileSystem/DLMS2Administration/dlms2_0800.doc. If the proposed action is a grant or cooperative agreement, please provide the specific legal authority, including citation (e.g. Section ____ of the ___ Act, ___ U.S.C. ___ ), for the grant or cooperative agreement. You also may wish to consult the division of the Office of the Solicitor that serves your agency.

Item 3. The company or organization (including sub-organization) should be identified.

Item 4. The OASAM/Business Operations Center/Office of Acquisition and Management Services/Division of Acquisition Management Services may be able to assist you in this effort.

Item 5. Sole source justifications are summarized below. *Please note, however, that authorizing program statutes or appropriation laws sometimes include specific provisions restricting non-competitive actions. In those cases, the statutory authority supercedes the authority outlined below and the statutory authority should be cited in your response to item 5.*

Contract Authority:

- FAR 6.302-1 Sole Source and no other supplies or services will satisfy agency requirements
  (i) unsolicited proposal
  (ii) follow on to competed action for a major system.
  (iii) rights in data, patent rights, copyrights or secret processes make supplies available from only one source.
- FAR 6.302-2 Unusual and compelling urgency.
- FAR 6.302-3 Industrial mobilization; engineering, developmental, or research capability; or expert services for dispute resolution.
- FAR 6.302-4 International agreement.
- FAR 6.302-5 Authorized or required by statute.
- FAR 6.302-6 National security
- FAR 6.302-7 Public interest (requires Secretarial and Congressional approval)

Grant Authority: DLMS 2, Chapter 800, Section 836(g):

(1) A non-competitive award is authorized or required by the statute funding the program.
(2) The activity to be funded is essential to the satisfactory completion of an activity presently funded by DOL, wherein competition would result in significant or real: harm (further harm) to the public good; expenses in excess of any potential savings to the Government; disruption to program services; duplication of work at additional cost to the Government; or delay in the time of program completion.
(3) Services are available from only one responsible source and no substitute will suffice; or the recipient has unique qualifications to perform the type of activity to be funded.
(4) The recipient has submitted an unsolicited proposal that is unique or innovative and has outstanding merit.
(5) The activity will be conducted by an organization using it's own resources or those donated or provided by third parties, and DOL support of the activity would be highly cost effective.
(6) It is necessary to fund a recipient that has an established relationship with the agency in order to: (A) Maintain an existing facility or capability to furnish services or benefits of particular significance to the agency on a long term basis; or (B) Maintain a capability for investigative, scientific, technical, economic, or sociological research.
(7) The application for the activity was evaluated under the criteria of the competition for which the application was submitted, was rated high enough to have deserved selection under that competition, and was not selected for funding because the application was mishandled by the Department.
(8) The Secretary has determined that a noncompetitive award is in the public interest. This authority may not be delegated.

Item 6. Advisory and Assistance Services are defined in FAR 2.101 and the policy is detailed in FAR Part 37.2.

Item 7. Ratification, as used in this subsection, means the act of approving an unauthorized commitment, by an official who has the authority to do so. The attached document should include: a brief description of what was acquired without authority; any mitigating statements; and a findings and determination by the Agency head that the statements are accurate, including a Contracting Officer's determination that the price is fair and reasonable, with a recommendation for payment and the concurrence of legal counsel (SOL/ETLS) with that determination.

Item 8. Conflict of Interest Certifications are necessary with each DL 1-490 submitted to the PRB. Approval may not be granted without proper signature. Conflict of Interest certifications are personal to the individual signing and may not be signed or delegated by one person on behalf of another.

NOTE: The Procurement Review Board reviews these requests and makes a recommendation to approve/disapprove to the Assistant Secretary for Administration and Management based on the merits of the case provided in the request.



**2953.101 Simplified Acquisition Documentation Checklist DL 1–2216.**

The following checklist must be used to document all simplified acquisitions at or below the simplified acquisition threshold.

Simplified Acquisition Documentation Checklist

**U.S. Department of Labor**

**PART I: CHECKLIST - Complete Section A for purchases less than $2,500, or Sections A and B for purchases between $2,500 and $100,000**

**SECTION A. Micro-purchases - Less than $2,500 (not set aside for small business only; no competition required if price is determined reasonable)**

( ✓ or blank for N/A)

- ☐ Sufficient funds are available to cover this purchase, and the price reflected on this order is considered fair and reasonable.
- ☐ All Quotation information is properly documented, and applicable/required clearances and/or approvals have been obtained are included in this file
- ☐ See www.jwod.com and **www.unicor.gov**. Required sources of supplies/services, including excess supplies, were reviewed prior to the selection of this vendor (n/a for delivery orders against existing contracts)
- ☐ The vendor does not appear on the List of Parties Excluded from Federal Procurement Programs. Reference http://epls.arnet.gov/
- ☐ This order **does not** represent an unauthorized commitment of funds requiring ratification under FAR 1.602-3 (otherwise attach documentation)

**SECTION B. Purchase Between $2,501 and $100,000** (set aside for small business, competition is required for open market orders, schedule comparison is required for GSA/FSS orders)

( ✓ or blank for N/A)

- ☐ The order was best value among two or more solicited open market vendors. **Use Form DL 1-2078, if not, complete Parts II and III below.**
- ☐ The requirement was set aside for small business participation only. **If not, complete Part IV below.**
- ☐ The procurement is for Information Technology products or software and has been reviewed for compliance with Section 508 and SmartBuy licenses.
- ☐ The item complies with http://www.eere.energy.gov/femp/procurement/ policies on recycling, and Energy star compliance.
- ☐ If this is a Delivery Order against a GSA/Federal Supply Schedule, at least 3 vendors schedules were reviewed prior to issuing orders.
- ☐ Written Solicitation between $10,000 - $25,000 was displayed in a public place, open market requirements over $25,000 were synopsized.
- ☐ **Service Contract Act.** This is an Open Market Purchase: ☐ primarily a product, ☐ exempt per 29 CFR 541, ☐ Davis-Bacon applicable, or ☐ SCA WD included ☐ (SF98 & 98a issued)

**PART II: PRICING MEMORANDUM - Price reasonableness is based on ( ✓ all that apply)**

- ☐ Commercial Catalog Pricing/Published Advertisement (Source Date: _____ Page Number )
- ☐ Market Research or established market prices.
- ☐ Comparison to prior purchase of same or similar item Vendor: _____ Purchase Order No: _____ Date of Order _____ Unit Price:
- ☐ Best Value analysis recommended by Technical Personnel (Specify) _____ (continue on back)
- ☐ Other (i.e. contracting officer knowledge, comparison to independent government estimate) _____

**PART III: SOLE SOURCE DOCUMENTATION - Only one source was solicited for the following reason(s) ( ✓ all that apply)**

- ☐ The item is sole source in nature, i.e. copyright/patient, proprietary software/hardware, or original equipment manufacturer, and not available from any other source.
- ☐ Urgent and Compelling - state nature of emergency and reason no competition was obtained (lack of planning is not sufficient reason)

**PART IV: LARGE BUSINESS DOCUMENTATION -** The requirement is not awarded to a small business because ( ✓ all that apply)

- ☐ No small businesses were located that can provide the required goods/services
- ☐ No quotes were received from small businesses
- ☐ Quotes received from small businesses were not the lowest prices or the best value (considering quality, delivery, quantity, past performances, etc)

**DOCUMENTATION DISTRIBUTION DATE:** ☐ Vendor ☐ Finance ☐ Accounting ☐ Requestor ☐ File

**ORDER PROCESSED BY:** Contract Specialist: _____ (Signature Date)

**CONCUR:** Contracting Officer: _____ (Signature Date)

DL 1-2216
(10/03)

## 2953.102 Quotation for Simplified Acquisitions DL 1–2078.

The following form must be used to document all simplified acquisitions above the micro-purchase threshold and below the simplified acquisition threshold. This form may also be used to document commercial acquisitions on a fixed price basis up to $5 million.

Quotation for Simplified Acquisitions
($2,500-$100,000)

**U.S. Department of Labor**
Acquisition Management Services

| 1. Effective Date | 2. Order Number | 3. Quotes Oral ☐ Written ☐ |
|---|---|---|

**4. Vendor Solicited**

| | Telephone Number | Date of Quote | Delivery Offer | FOB Point |
|---|---|---|---|---|
| Vendor 1.<br>Company Name:<br>Point of Contact:<br>City, State, Telephone:<br>Business Type<br>Person Contacted: | | | | |
| Vendor 2.<br>Company Name:<br>Point of Contact:<br>City, State, Telephone:<br>Business Type<br>Person Contacted: | | | | |
| Vendor 3.<br>Company Name:<br>Point of Contact:<br>City, State, Telephone:<br>Business Type<br>Person Contacted: | | | | |

| Quantity | Description of Product or Service | Vendor 1. Unit Price | Vendor 1. Total Amount | Vendor 2. Unit Price | Vendor 2. Total Amount | Vendor 3. Unit Price | Vendor 3. Total Amount |
|---|---|---|---|---|---|---|---|
| | | | | | | | |
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| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | Total Amount | | Total Amount | | Total Amount | |

**5. Basis for Price Reasonableness**

Low Cost or Best Value Based on (Specify)

**6. Other Factors Affecting Source (FSS, Etc.)**

(Specify)

DL 1-2078
(10/03)

**2953.103 Acquisition Screening and Review—over $100,000 DL 1–2004.**

The requiring organization must complete the following form for all acquisitions above the *simplified acquisition threshold*. This form will then be submitted through the contracting officer to the Office of Small Business Programs for review.

Acquisition Screening and Review - over $100,000 **U.S. Department of Labor**

**A. Originating Agency**

1. Purchasing Office
Name:
Street Address:
City: State: Zip:
Phone Number:

2. Date of Purchase Request:

3. Estimated Dollar Value
This FY:_____
Total Contract Value:_____

4. Period of Performance (Include Option Years):

5. Description of Product or Service:

6. Recommended Method of Procurement (Select a method from block 11 below):

7. Signature of Small Business Specialist: Date:

**B. Contracting Office**

8. Solicitation Number:

9. Estimated Date of Release:

10. Estimated Date of Response/Opening:

11. Check all applicable boxes:

Proposed Method of Procurement
☐ GSA - Multiple Award Schedule order
☐ Multi-agency contract order
☐ Govt-wide acquisition contract order
☐ Open Market Buy - Select *one* of the following:
☐ 8(a)/HUBZone sole source (I.D. Proposed Contractor)
☐ HUBZone sole source
☐ 8(a) sole source
☐ HUBZone competition
☐ 8(a) competition
☐ 100% Small Business Set-Aside
☐ Partial Small Business Set-Aside
☐ Unrestricted - Insufficient Small Business (attach justification, proposed subcontracting amounts and evaluation preference for SDB's)

12. NAICS Code and Small Business Size Standard:

13. Proposed Synopsis:
☐ Yes
☐ No. Per FAR 5.202
☐ FEDBIZOPPS
☐ Other _____

14. Proposed Issuing Number of Solicitations to:
No.
____8(a)
____HUBZone
____Small Disadvantaged Business (SDB)
____Women-Owned Small Business (WOSB)
____Service Disabled Veterans-Owned Small Business (SDVOSD)
____Veteran-Owned Small Business (VOSB)
____Small Business (SB)
____Large Business (LB)

15. Is this a bundled procurement? ☐ Yes ☐ No
(If yes - attach supporting documentation/justification)

**Procurement History**

16. Has Exact Item/Service Been Previously Awarded?
☐ Yes (Complete the rest of the section)
☐ No

17. Period of Performance:

18. Contract Number:

19. SIC/NAICS Code and Small Business Size Standard:

20. Name, Address and business type of Contractor
_____ ☐ HUBZone
_____ ☐ 8(a)
_____ ☐ SDB
_____ ☐ WOSB
_____ ☐ SDVOSB
_____ ☐ VOSB
_____ ☐ SB
_____ ☐ LB

21. Total Value:

22. Method of Procurement:

23. No. of Responses Received
_____8(a)
_____HUBZone
_____Small Disadvantaged Business (SDB)
_____Woman-Owned Small Business (WOSB)
_____Service Disabled Veteans-Owned Small Business (SDVOSB)
_____Veteran-Owned Small Business (VOSB)
_____Small Business (SM)
_____Large Business (LB)

24. Signature of Contracting Officer: Date:

**C. Office of Small Business Programs - OSDBU/Small Business Administration Procurement Center Representative**

25.
☐ I concur with the recommendations.
☐ I recommend soliciting additional sources including those on the attached list.
☐ I do not concur with the recommendations and request suspension of the procurement action pending an appeal under FAR 19.505.S B A Form 70 is attached.

26. Signature of OSDBU/SBA Procurement Center Representative: Date:

DL-1-2004
Rev. 07-03

# CHAPTER 30—DEPARTMENT OF HOMELAND SECURITY, HOMELAND SECURITY ACQUISITION REGULATION (HSAR)

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# SUBCHAPTER A—GENERAL

## PART 3001—FEDERAL ACQUISITION REGULATIONS SYSTEM

### Subpart 3001.1—Purpose, Authority, Issuance


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### Subpart 3001.70—Other Determinations, Waivers, Exceptions, Approvals, Reviews, and Submittals


3001.7000 Coordination and approval.
3001.7001 Content.


AUTHORITY: 5 U.S.C. 301–302, 41 U.S.C. 1707, 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3001.1—Purpose, Authority, Issuance

### 3001.101 Purpose.

The Department of Homeland Security Acquisition Regulation (HSAR) establishes uniform acquisition policies and procedures, which implement and supplement the Federal Acquisition Regulation (FAR).

### 3001.102 Statement of Guiding Principles for the Federal Acquisition System.

(d) The FAR and this supplement are to be interpreted permissively, if consistent with statutory and regulatory requirements, policy, and sound professional judgment.

### 3001.103 Authority.

The HSAR is issued by DHS's Chief Procurement Officer, who is the Senior Procurement Executive (SPE), see 41 U.S.C. 1702 and DHS Delegation Number 0702, under authority of 5 U.S.C. 301–302, the Office of Federal Procurement Policy Act, Pub. L. No. 93–400, 88 Stat. 796 (1974), including sections 22 and 25, 41 U.S.C. 1707, 1302 and 1303, and (FAR) 48 CFR part 1, subpart 1.3.

[77 FR 50632, Aug. 22, 2012]

### 3001.104 Applicability.

(a) The following order of precedence applies to resolve any acquisition regulation or procedural inconsistency found within HSAR or the Homeland Security Acquisition Manual (HSAM):

(1) Statute;

(2) FAR or other applicable regulation or Executive Order;

(3) HSAR;

(4) Department of Homeland Security (DHS) Directives; and

(5) HSAM.

(b) The Transportation Security Administration (TSA) exception to this regulation is authorized by the Aviation and Transportation Security Act of 2001 (ATSA) (section 101(a) of Public Law 107–71, as implemented at section

114(o) of title 49) for contracts awarded by TSA pursuant to this ATSA authority. The Consolidated Appropriations Act of 2008, Public Law 110–161, Division E, Title V, section 568 eliminates ATSA section 114(o) effective June 23, 2008. Accordingly, TSA acquisitions initiated after June 22, 2008 are subject to 48 CFR Chapters 1 and 30.

(c) Contracts involving Non-Appropriated Fund Instrumentalities (NAFIs) must contain suitable dispute provisions and may provide for appellate dispute jurisdiction in the Civilian Board of Contract Appeals (CBCA). However, the contract must not attempt to confer court jurisdiction that does not otherwise exist.

(d) The FAR and HSAR may be followed, where feasible, for:

(1) No-cost contracts;

(2) Concession contracts; and

(3) Contracts on behalf of NAFIs entered into by appropriated fund contracting officers.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 25767, May 2, 2006; 72 FR 1297, Jan. 11, 2007; 73 FR 30318, May 27, 2008]

### 3001.105 Issuance.

### 3001.105–1 Publication and code arrangement.

(a) The HSAR is published in:

(1) The FEDERAL REGISTER and

(2) Cumulated form in the Code of Federal Regulations (CFR).

### 3001.105–2 Arrangement of regulations.

(a) General. The HSAR, which encompasses both Department-wide and Component-unique guidance, conforms to the arrangement and numbering system prescribed by (FAR) 48 CFR 1.105–2. Guidance that is unique to a Component contains the organization's acronym or abbreviation directly following the title. The following acronyms and abbreviations apply:

DHS Management (MGMT), including the Office of Procurement Operations (OPO) and the Office of Selective Acquisitions (OSA);

Federal Emergency Management Agency (FEMA);

Federal Law Enforcement Training Center (FLETC);

Transportation Security Administration (TSA);

U.S. Coast Guard (USCG);

U.S. Customs and Border Protection (CBP);

U.S. Immigration and Customs Enforcement (ICE); and

U.S. Secret Service (USSS).

[77 FR 50632, Aug. 22, 2012]

### 3001.105–3 Copies.

Official versions of the HSAR are available in the Code of Federal Regulations, as supplemented and revised from time to time by the FEDERAL REGISTER, both of which are available from the Government Printing Office in paper and electronic form. The HSAR is also available in electronic form at *http://www.dhs.gov*. A convenient but unofficial up-to-date version of the HSAR is also available from the Government Printing office at *http://www.gpoaccess.gov/ecfr/index.html*. The Homeland Security Acquisition Manual (HSAM), which complements the HSAR, can also be found at *http://www.dhs.gov*.

[77 FR 50632, Aug. 22, 2012]

### 3001.106 OMB Approval under the Paperwork Reduction Act.

(a) The Office of Management and Budget (OMB) has assigned the following control numbers that must appear on the upper right-hand corner of the face page of each solicitation, contract, modification, and order:

OMB Control No. 1600–002 (Contract related forms)
OMB Control No. 1600–005 (Offeror submissions)
OMB Control No. 1600–003 (Contractor submissions)
OMB Control No. 1600–004 (Protests)

(b) OMB regulations and OMB's approval and assignment of control numbers are conditioned upon not requiring more than three copies (including the original) of any document of information. OMB has granted a waiver to permit the Department to require up to eight copies of proposal packages, including proprietary data, for solicitations, provided that contractors who submit only an original and two copies will not be placed at a disadvantage.

## Subpart 3001.3—Agency Acquisition Regulations

### 3001.301 Policy.

(a)(1) The HSAR is issued for Departmental guidance according to the policy cited in (FAR) 48 CFR 1.301. The HSAR establishes uniform Department of Homeland Security policies and procedures for all acquisition activities within the Department of Homeland Security. Component supplemental acquisition regulations to be inserted in the HSAR as a HSAR supplement regulation must be reviewed and approved by the Chief Procurement Officer (CPO) before the CPO authorizes and submits the proposed content for publication in the FEDERAL REGISTER under (FAR) 48 CFR part 1, subparts 1.3 and 1.5.

(2)(i) The CPO is authorized to issue internal agency guidance at any organizational level. Department-wide procedures are contained in the HSAM. The HCA may implement internal procedures or supplement the FAR, HSAR, or HSAM as provided in HSAM 3001.3. The HCA may issue procedures or delegate this authority to any organizational level deemed appropriate. Component procedures may be more restrictive or require higher approval levels than those permitted by the HSAM, unless otherwise specified.

(ii) Individuals granted authority in the HSAR may delegate that authority, unless the FAR or HSAR specifically state that the authority is not delegable.

(b) The Under Secretary of Management established procedures through Management Directive (MD) 0490.1, entitled *Federal Register Notice and Rules*, to ensure that agency acquisition regulations are published for comment in the FEDERAL REGISTER in conformance with FAR procedures at (FAR) 48 CFR subpart 1.5.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 25767, May 2, 2006; 71 FR 48800, Aug. 22, 2006; 77 FR 50632, Aug. 22, 2012]

### 3001.301–70 Amendment of HSAR.

(a) Requests for changes to the regulation may be recommended by DHS personnel, other Government agencies, or the public. Change requests are to be submitted in the following format to the Department of Homeland Security, Attn: Office of the Under Secretary of Management, Chief Procurement Officer, Washington, DC 20528.

(1) *Problem:* Succinctly state the problem(s) created by current HSAR requirements or processes and describe the factual or legal reasons for requesting a regulatory change.

(2) *Recommendation:* Identify the recommended change by using the current language and lining through the words to be deleted and inserting proposed language in brackets. If the change is extensive, deleted language may be displayed by forming a box with diagonal lines connecting the corners.

(3) *Discussion:* Explain why the change is necessary and how the change will solve the problem. Address any cost or administrative impact on Government activities, offerors, and contractors. Provide any other helpful information and documents such as statutes, legal decisions, regulations, reports, etc.

(4) *Point of Contact:* Provide a point of contact for answering questions regarding the recommendation, along with a telephone number, e-mail or other method of reaching the contact.

(b) The HSAR is maintained by the CPO through the HSAR/HSAM change process (i.e., input from various Components including representatives specifically designated to formulate Departmental acquisition policies and procedures).

(1) Homeland Security Acquisition Circular (HSAC). HSAC (see (HSAR) 48 Chapter 3001.301–72) will be used to amend (HSAR) 48 Chapter 30.

(2) HSAR Notices will be issued (with a specified expiration date) when interim guidance is necessary under any of the following circumstances:

(i) To promulgate, as rapidly as possible, selected material in a general or narrative manner, in advance of a HSAC issuance;

(ii) To disseminate other acquisition related information; or

(iii) To issue guidance that is expected to be effective for a period of 1 year or less.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 25767, May 2, 2006; 71 FR 48800, Aug. 22, 2006; 77 FR 50632, Aug. 22, 2012]

### 3001.301–71 Effective date.

Unless otherwise stated:

(a) HSAR changes apply to solicitations issued on or after the effective date of the change;

(b) Contracting officers may, at their discretion, amend solicitations issued before the effective date to include HSAR changes, provided award of the resulting contract(s) will occur on or after the effective date of the change; and

(c) When required by law, contracting officers must modify existing contracts to include HSAR changes. Otherwise, and where feasible, contracting officers should consider using the Changes clause or other suitable authority, to modify existing contracts to include HSAR changes.

[71 FR 25767, May 2, 2006, as amended at 77 FR 50632, Aug. 22, 2012]

### 3001.301–72 HSAC or HSAR Notice numbering.

HSACs and HSAR Notices will be numbered consecutively on a fiscal year basis beginning with number ''01'' prefixed by the last two digits of the fiscal year (e.g., HSAR Notices 03–01 and 03–02 indicate the first two HSAR Notices issued in fiscal year 2003).

### 3001.303 Publication and codification.

(a) The HSAR is issued as chapter 30 of Title 48 of the CFR.

(1) The FAR numbering illustrations at (FAR) 48 CFR 1.105–2 apply to the HSAR.

(2) Coverage within HSAR 48 CFR chapter 30 is identified by the prefix ''30'' followed by the complete FAR cite which may extend downward to the subparagraph level (e.g., (HSAR) 48 CFR 3001.101).

(3) Coverage in HSAR chapter 30 that supplements the FAR will use part, subpart, section, and subsection numbers ending in ''70'' through ''89''. A series of numbers beginning with ''70'' is used for provisions and clauses (e.g., (HSAR) 48 CFR 3001.301–70).

(4) Coverage in HSAR 48 CFR chapter 30, other than that identified with a ''70'' or higher number, which implements the FAR uses the identical number sequence and caption of the FAR segment being implemented which may extend downward to the subparagraph level. Subparagraph numbers/letters may not be shown as sequential, but may be shown by the specific paragraph/subparagraph implemented from the FAR (e.g., (HSAR) 48 CFR 3003.301 contains subparagraphs (a) and (b) because only these subparagraphs, correlating to FAR, are being supplemented by (HSAR) 48 CFR chapter 30).

(5) *Component-unique guidance.* Supplementary material for which there is no counterpart in the FAR or HSAR shall be identified using chapter, part, subpart, section, or subsection numbers of ''90'' and up (e.g., the U.S. Coast Guard's acronym is ''USCG''; an USCG-unique clause pertaining to ''Inspection and/or Acceptance'' would be designated ''USCG 3052.246–90'').

(6) References and citations. Cross references to the FAR in the HSAR will be cited by ''FAR'' followed by the FAR numbered cite, and cross reference to the HSAM in the HSAR will be cited by ''HSAM'' followed by the HSAM numbered cite.

(7) Department/agency and Component supplements must parallel the FAR and HSAR numbering, except department/agency supplemental numbering uses subsection numbering of 90 and up, instead of 70 and up.

TABLE 1–1—HSAR NUMBERING

| FAR | Is implemented as | Is supplemented as |
|---|---|---|
| 19 | 3019 | 3019.70 |
| 19.5 | 3019.5 | 3019.570 |
| 19.501 | 3019.501 | 3019.501–70 |
| 19.501–1 | 3019.501–1 | 3019.501–170 |

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 48800, Aug. 22, 2006; 77 FR 50632, Aug. 22, 2012]

### 3001.304 Agency control and compliance procedures.

(a) The HSAR is under the direct oversight and control of the Department of Homeland Security, Office of the Chief Procurement Officer (OCPO), which is responsible for evaluation, review, and issuance of all Department-wide acquisition regulations and guidance. Each HCA may supplement the HSAR with Component guidance. Supplementation should be kept to a minimum. Components proposing to issue regulatory supplements or use solicitation or contract clauses on a repetitive basis must obtain legal review by the Component's legal counsel and forward supplements to the CPO for concurrence prior to publication in the FEDERAL REGISTER.

(c) The CPO is responsible for evaluating all regulatory coverage in agency acquisition regulations to determine if the substance could apply to other agencies and to make recommendation for inclusion in the FAR.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 48801, Aug. 22, 2006; 77 FR 50632]

## Subpart 3001.4—Deviations from the FAR and HSAR

### 3001.403 Individual deviations.

Unless precluded by law, executive order, or other regulation, the HCA is authorized to approve individual deviation (except with respect to (FAR) 48 CFR 30.201–3, 30.201–4; the requirements of the Cost Accounting Standards board rules and regulations at 48 CFR chapter 99 (FAR appendix); and part 50). Submit requests per (HSAR) 48 CFR 3001.7000, including complete documentation of the justification for the deviations (*See* HSAM 3001.403).

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 48801, Aug. 22, 2006; 77 FR 50632, Aug. 22, 2012]

### 3001.404 Class deviations.

(a) Unless precluded by law, executive order, or other regulation, the CPO is authorized to approve FAR class deviations, except (FAR) 48 CFR 30.201–3, and 30.201–4 (the requirements of the Cost Accounting Standards Board); 48 CFR Chapter 99 (FAR Appendix); and part 50. Prior to authorizing a FAR class deviation, the CPO shall consult with the chairperson of the Civilian Agency Acquisition Council (CAA Council), unless the CPO determines that urgency precludes such consultation. FAR class deviation requests shall be submitted to the CPO per (HSAR) 48 CFR subpart 3001.70 including complete documentation of the justification for the deviation, and the estimated number and type of contract actions affected. The CPO will transmit a copy of each approved FAR deviation to the FAR Secretariat.

[71 FR 25767, May 2, 2006]

## Subpart 3001.6—Career Development, Contracting Authority, and Responsibilities

### 3001.601 General.

DHS Delegation Number 0200.1, Delegation to the Directorate of Management, delegates authority from the Secretary to the Under Secretary of Management to manage the acquisition function. DHS Delegation 0700, Delegation to the Chief Procurement Officer for Acquisition and Financial Assistance Management, delegates this authority from the Under Secretary of Management to the Chief Procurement Officer.

### 3001.602 Contracting officers.

### 3001.602–3 Ratification of unauthorized commitments.

DHS policy requires that acquisitions be made only by Government officials having authority to enter into such acquisitions. Acquisitions made by other than authorized personnel are contrary to Departmental policy and may be considered matters of serious misconduct on the part of an employee making an unauthorized commitment, and may result in disciplinary action being taken against an employee who makes an unauthorized commitment.

[68 FR 67871, Dec. 4, 2003, as amended at 77 FR 50633, Aug. 22, 2012]

### 3001.603 Selection, appointment, and termination of appointment.

#### 3001.603–1 General.

Under DHS Delegations, the Heads of the Contracting Activity (HCA), with authority to redelegate no lower than the Chief of the Contracting Office (COCO), are authorized to select and appoint contracting officers and terminate their appointment.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 25767, May 2, 2006]

## Subpart 3001.7—Determinations and Findings

### 3001.704 Content.

The following format shall be used for all determinations and findings (D&Fs), unless otherwise specified in the FAR or the HSAR. The contracting officer is responsible for preparing D&Fs, and requirements and technical personnel are responsible for the accuracy and adequacy of the supporting factual information, which shall be furnished to the contracting officer.

Insert specific information indicated in brackets.

*Determination and Findings*

Under [*insert citation for appropriate statutory and/or regulatory basis for D&F*], the Department of Homeland Security, [*insert contracting activity*], is granted authority to [*insert nature and/or description of the action being approved*].

*Findings*

[*Findings that detail the particular circumstances, facts, or reasoning essential to support the determination.*]

*Determination*

[*A determination, based on the findings, that the proposed action is justified under the applicable statute or regulation.*] [*Expiration date of the D&F, if required.*]

[*Signature of authorized official*]

Name and Title

[month, day, and year]

Date

## Subpart 3001.70—Other Determinations, Waivers, Exceptions, Approvals, Reviews, and Submittals

### 3001.7000 Coordination and approval.

*Documents requiring CPO approval.* Requests shall be prepared in writing by the contracting officer and submitted through the HCA to the CPO for approval.

### 3001.7001 Content.

The general format at (HSAR) 48 CFR 3001.704 shall be used to provide a justification to support the requested determination, waiver, exception or approval.

# PART 3002—DEFINITIONS OF WORDS AND TERMS

### Subpart 3002.1—Definitions

Sec.
3002.101 Definitions.

### Subpart 3002.2—Abbreviations

3002.270 Abbreviations.

AUTHORITY: 5 U.S.C. 301–302, 41 U.S.C. 1707, 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3002.1—Definitions

### 3002.101 Definitions.

*Chief Information Officer (CIO)* means the Director of the Office of the CIO.

*Chief of the Contracting Office (COCO)* means the individual(s) responsible for managing the contracting office(s) within a Component.

*Chief Procurement Officer (CPO)* means the Senior Procurement Executive (SPE).

*Component* means the following entities for purposes of this chapter:

(1) DHS Management (MGMT), including the Office of Procurement Operations (OPO) and the Office of Selective Acquisitions (OSA);

(2) Federal Emergency Management Agency (FEMA);

(3) Federal Law Enforcement Training Center (FLETC);

(4) Transportation Security Administration (TSA);
(5) U.S. Coast Guard (USCG);
(6) U.S. Customs and Border Protection (CBP);
(7) U.S. Immigration and Customs Enforcement (ICE); and
(8) U.S. Secret Service (USSS).

*Contracting activity* includes all the contracting offices within a Component and is the same as the term ''procuring activity.''

*Contracting officer* means an individual authorized by virtue of position or by appointment to perform the functions assigned by the Federal Acquisition Regulation and the Homeland Security Acquisition Regulation.

*Head of the Agency* means the Secretary of the Department of Homeland Security, or, by delegation, the Under Secretary of Management.

*Head of the Contracting Activity (HCA)* means the official who has overall responsibility for managing the contracting activity. For DHS, the HCAs are:
(1) Director, Office of Procurement Operations (OPO);
(2) Director, Office of Selective Acquisitions (OSA);
(3) Director, Office of Acquisition Management (FEMA);
(4) Chief, Procurement Division (FLETC);
(5) Assistant Administrator for Acquisition (TSA);
(6) Director of Contracting and Procurement (USCG);
(7) Executive Director, Procurement (CBP);
(8) Director, Office of Acquisition Management (ICE); and
(9) Chief, Procurement Operations (USSS).

*Legal counsel* means the Department of Homeland Security Office of General Counsel or Component office providing legal services to the contracting organization.

*Legal review* means review by legal counsel.

*Major system* means, for DHS, that combination of elements that will function together to produce the capabilities required to fulfill a mission need, including hardware, equipment, software, or any combination thereof, but excluding construction or other improvements to real property. A DHS major system is one where the total lifecycle costs for the system are estimated to equal or exceed $300M (in constant 2009 dollars), or if the Deputy Secretary has designated a program or project as a major system. This corresponds to a DHS Level 1 or 2 capital investment acquisition.

*Micro-purchase threshold* is defined as in (FAR) 48 CFR 2.101, except when (HSAR) 48 CFR 3013.7003(a) applies.

*Senior Procurement Executive (SPE) for the Department of Homeland Security* means the DHS Chief Procurement Officer (CPO), who is the individual appointed pursuant to 41 U.S.C. 1702 to be responsible for management direction of the procurement system of DHS, including implementation of the unique procurement policies, regulations, and standards of DHS.

*Sensitive Information,* as used in this Chapter, means any information which if lost, misused, disclosed, or, without authorization, is accessed or modified, could adversely affect the national or homeland security interest, the conduct of Federal programs, or the privacy to which individuals are entitled under 5 U.S.C. 552a (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:

(1) Protected Critical Infrastructure Information (PCII) as set out in the Critical Infrastructure Information Act of 2002 (Title II, Subtitle B, of the Homeland Security Act, Pub. L. 107–296, 196 Stat. 2135), as amended, the implementing regulations thereto (6 CFR part 29) as amended, the applicable PCII Procedures Manual, as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the PCII Program Manager or his/her designee);

(2) Sensitive Security Information (SSI), as defined in 49 CFR part 1520, as amended, ''Policies and Procedures of Safeguarding and Control of SSI,'' as

amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the Assistant Secretary for the Transportation Security Administration or his/her designee);

(3) Information designated as ''For Official Use Only,'' which is unclassified information of a sensitive nature and the unauthorized disclosure of which could adversely impact a person's privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national or homeland security interest; and

(4) Any information that is designated ''sensitive'' or subject to other controls, safeguards or protections in accordance with subsequently adopted homeland security information handling procedures.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 25767, May 2, 2006; 71 FR 48801, Aug. 22, 2006; 72 FR 1297, Jan. 11, 2007; 73 FR 30318, May 27, 2008; 75 FR 41099, ≤July 15, 2010; 77 FR 50633, Aug. 22, 2012]

## Subpart 3002.2—Abbreviations

### 3002.270 Abbreviations.

CBCA Civilian Board of Contract Appeals
CFO Chief Financial Officer
CIO Chief Information Officer
COCO Chief of the Contracting Office
COR Contracting Officer's Representative
COTR Contracting Officer's Technical Representative
CPO Chief Procurement Officer
D&F Determination and Findings
FOIA Freedom of Information Act
HCA Head of the Contracting Activity
J&A Justification and Approval for Other than Full and Open Competition
KO Contracting Officer
MD Management Directive
OCPO Office of the Chief Procurement Officer
OIG Office of the Inspector General
OSDBU Office of Small and Disadvantaged Business Utilization
PCR SBA's Procurement Center Representative
RFP Request for Proposal
SBA Small Business Administration
SBS Small Business Specialist
SPE Senior Procurement Executive

[72 FR 1297, Jan. 11, 2007, as amended at 77 FR 50633, Aug. 22, 2012]

# PART 3003—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

### Subpart 3003.1—Safeguards

Sec.
3003.101 Standards of conduct.
3003.101–3 Agency regulations.

### Subpart 3003.2—Contractor Gratuities to Government Personnel

3003.203 Reporting suspected violations of the Gratuities clause.
3003.204 Treatment of violations.

### Subpart 3003.3—Reports Of Suspected Antitrust Violations

3003.301 General.

### Subpart 3003.4—Contingent Fees

3003.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

### Subpart 3003.5—Other Improper Business Practices

3003.502 Subcontractor kickbacks.
3003.502–2 Subcontractor kickbacks.

### Subpart 3003.9—Whistleblower Protections for Contractor Employees

3003.901 Definitions.

### Subpart 3003.10—Contractor Code of Business Ethics and Conduct

3003.1003 Requirements.
3003.1004 Contract clauses.

AUTHORITY: 5 U.S.C. 301–302, 41 U.S.C. 1707, 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3003.1—Safeguards

### 3003.101 Standards of conduct.

### 3003.101–3 Agency regulations.

The United States Office of Government Ethics has promulgated regulations applicable to the entire Executive Branch that address the conduct matters referenced in (FAR) 48 CFR

3.101–3. See 5 CFR vol. 3, ch. XVI, subch. B. The Department of Homeland Security has also issued Management Directive 0480.1, Ethics/Standards of Conduct.

[77 FR 50633, Aug. 22, 2012]

## Subpart 3003.2—Contractor Gratuities to Government Personnel

### 3003.203 Reporting suspected violations of the Gratuities clause.

(a) Suspected violations shall be reported to the contracting officer responsible for the acquisition (or the COCO if the contracting officer is suspected of the violation). The contracting officer (or the COCO) shall obtain from the person reporting the violation, and any witnesses to the violation, the following information:

(1) The date, time, and place of the suspected violation;

(2) The name and title (if known) of the individual(s) involved in the violation; and

(3) The details of the violation (e.g., the gratuity offered or intended) to obtain a contract or favorable treatment under a contract.

(4) The person reporting the violation and witnesses (if any) shall be requested to sign and date the information certifying that the information furnished is true and correct.

(b) The contracting officer shall submit the report to the COCO (unless the alleged violation was directly reported to the COCO) and the Head of the Contracting Activity (HCA) for further action. The COCO and HCA will determine, with the advice of the Component legal counsel, whether the case warrants submission to the OIG, or other investigatory organization.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 25768, May 2, 2006; 71 FR 48801, Aug. 22, 2006]

### 3003.204 Treatment of violations.

(a) The HCA is the official designated to make the determination under (FAR) 48 CFR 3.204(a) whether a gratuities violation has occurred. If the HCA has been personally and substantially involved in the specific procurement, the advice of legal counsel should be sought to determine whether the CPO should designate an alternate decision maker.

(b) The HCA shall ensure that the hearing procedures required by (FAR) 48 CFR 3.204(b) are afforded to the contractor. Legal counsel shall be consulted regarding the appropriateness of the hearing procedures that are established.

(c) If the HCA determines that the alleged gratuities violation occurred the HCA shall consult with legal counsel regarding appropriate action and notify the Office of Inspector General.

[77 FR 50633, Aug. 22, 2012]

## Subpart 3003.3—Reports Of Suspected Antitrust Violations

### 3003.301 General.

(b) The procedures at (HSAR) 48 CFR 3003.203 shall be followed for suspected antitrust violations, except reports of suspected antitrust violations shall be coordinated with legal counsel for referral to the Department of Justice, if deemed appropriate.

## Subpart 3003.4—Contingent Fees

### 3003.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) The procedures at (HSAR) 48 CFR 3003.203 shall be followed for misrepresentation or violations of the covenant against contingent fees.

(b)(4) The procedures at (HSAR) 48 CFR 3003.203 shall be followed for misrepresentation or violations of the covenant against contingent fees, except reports of misrepresentation or violations of the covenant against contingent fees shall be coordinated with legal counsel for referral to the Department of Justice, if deemed appropriate.

## Subpart 3003.5—Other Improper Business Practices

### 3003.502 Subcontractor kickbacks.

### 3003.502–2 Subcontractor kickbacks.

(g) The DHS OIG shall receive the prime contractor or subcontractors written report.

## Subpart 3003.9—Whistleblower Protections for Contractor Employees

### 3003.901 Definitions.

*Authorized official of an agency* means the Department of Homeland Security's CPO.

## Subpart 3003.10—Contractor Code of Business Ethics and Conduct

SOURCE: 77 FR 50633, Aug. 22, 2012, unless otherwise noted.

### 3003.1003 Requirements.

(a) Contractor requirements. Contractors making written disclosures under the clause at (FAR) 48 CFR 52.203–13 must use the electronic Contractor Disclosure Form at *http://www.oig.dhs.gov*. Contractors making disclosures under contracts which do not contain the clause at (FAR) 48 CFR 52.203–13 are encouraged to also use this electronic form.

### 3003.1004 Contract clauses.

(a) The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.203–70, Instructions for Contractor Disclosure of Violations, in solicitations and contracts containing the clause at (FAR) 48 CFR 52.203–13.

# PART 3004—ADMINISTRATIVE MATTERS

### Subpart 3004.1—Contract Execution

Sec.
3004.103 Contract clause.

### Subpart 3004.4—Safeguarding Classified and Sensitive Information Within Industry

3004.470 Security requirements for access to unclassified facilities, Information Technology resources, and sensitive information.
3004.470–1 Scope.
3004.470–2 Policy.
3004.470–3 Contract clauses.

### Subpart 3004.8—Government Contract Files

3004.804 Closeout of contract files.
3004.804–5 Procedures for closing out contract files.
3004.804–570 Supporting closeout documents.

AUTHORITY: 5 U.S.C. 301–302, 41 U.S.C. 1707, 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3004.1—Contract Execution

### 3004.103 Contract clause.

Insert the clause at (FAR) 48 CFR 52.204–1, Approval of Contract, in each solicitation where approval to award the resulting contract is required above the contracting officer level.

## Subpart 3004.4—Safeguarding Classified and Sensitive Information Within Industry

SOURCE: 71 FR 25768, May 2, 2006, unless otherwise noted.

### 3004.470 Security requirements for access to unclassified facilities, Information Technology resources, and sensitive information.

### 3004.470–1 Scope.

This section implements DHS's policies for assuring the security of unclassified facilities, Information Technology (IT) resources, and sensitive information during the acquisition process and contract performance.

### 3004.470–2 Policy.

(a) DHS's policies and procedures on contractor personnel security requirements are set forth in various management directives (MDs), Directives, and Instructions. MD 11042.1, Safeguarding Sensitive But Unclassified (For Official Use Only) Information describes how contractors must handle sensitive but unclassified information. The DHS Sensitive Systems Policy Directive 4300A and the DHS 4300A Sensitive Systems Handbook, provide the policies and procedures on security for Information Technology resources. Compliance with these policies and procedures, as amended, is required.

(b) The contractor must not use or redistribute any DHS information processed, stored, or transmitted by

the contractor except as specified in the contract.

[71 FR 25768, May 2, 2006, as amended at 77 FR 50634, Aug. 22, 2012]

### 3004.470–3 Contract clauses.

(a) Contracting officers shall insert a clause substantially the same as the clause at (HSAR) 48 CFR 3052.204–70, Security Requirements for Unclassified Information Technology Resources, in solicitations and contracts that require submission of an IT Security Plan.

(b) Contracting officers shall insert the basic clause at (HSAR) 48 CFR 3052.204–71, Contractor Employee Access, in solicitations and contracts when contractor employees require recurring access to Government facilities or access to sensitive information. Contracting officers shall insert the basic clause with its Alternate I for acquisitions requiring contractor access to IT resources. For acquisitions in which the contractor will not have access to IT resources, but the Department has determined contractor employee access to sensitive information or Government facilities must be limited to U.S. citizens and lawful permanent residents, the contracting officer shall insert the clause with its Alternate II. Neither the basic clause nor its alternates shall be used unless contractor employees will require recurring access to Government facilities or access to sensitive information. Neither the basic clause nor its alternates should ordinarily be used in contracts with educational institutions.

[71 FR 25768, May 2, 2006, as amended at 77 FR 50634, Aug. 22, 2012]

## Subpart 3004.8—Government Contract Files

### 3004.804 Closeout of contract files.

### 3004.804–5 Procedures for closing out contract files.

### 3004.804–570 Supporting closeout documents.

(a) When applicable and prior to contract closure, the contracting officer shall obtain the listed DHS and Department of Defense (DOD) forms from the contractor for closeout.

(1) DHS Form 700–3, Contractor's Release (e.g., see (FAR) 48 CFR 52.216–7);

(2) DHS Form 700–2, Contractor's Assignment of Refunds, Rebates, Credits and Other amounts (e.g., see (FAR) 48 CFR 52.216–7);

(3) DHS Form 700–1, Cumulative Claim and Reconciliation Statement (e.g., see (FAR) 48 CFR 4.804–5(a)(13)); and

(4) DD Form 882, Report of Inventions and Subcontracts (e.g., see (FAR) 48 CFR 52.227–14).

(b) The forms listed in this section (see (HSAR) 48 CFR part 3053) are used primarily for the closeout of cost-reimbursement, time-and-materials, and labor-hour contracts. The forms may also be used for closeout of other contract types to protect the Government's interest.

[71 FR 25768, May 2, 2006, as amended at 77 FR 50634, Aug. 22, 2012]

# SUBCHAPTER B—ACQUISITION PLANNING

## PART 3005—PUBLICIZING CONTRACT ACTIONS

### Subpart 3005.4—Release of Information

Sec.
3005.402 General public.
3005.470 Contractor award announcements, advertisements, and releases.
3005.470–1 Policy.
3005.470–2 Contract clauses.

### Subpart 3005.90—Publicizing Contract Actions for Personal Services Contracting

3005.9000 Applicability (USCG).

AUTHORITY: 5 U.S.C. 301–302, 41 U.S.C. 1707, 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3005.4—Release of Information

### 3005.402 General public.

Requests for other specific records information shall be processed according to the DHS Freedom of Information Act rules and regulations (HSAR) 48 CFR 3024.203.

### 3005.470 Contractor award announcements, advertisements, and releases.

### 3005.470–1 Policy.

(a) DHS policy requires its contracting officers to restrict DHS contractors from referring to its DHS contract(s) in commercial advertising in a manner that states or implies the Government approves or endorses the contractor's products or services or considers them superior to other products or services. The intent of this policy is to prevent the appearance of Government bias toward any product or service.

(b) The Department's contractors share the responsibility for protecting sensitive and classified information related to efforts under their contracts. For any contract that involves sensitive or classified information, prior to the release of any contract award announcement, advertisement, or other release of information pertaining to the contract, the contractor must obtain the approval of the responsible contracting officer.

[77 FR 50634, Aug. 22, 2012]

### 3005.470–2 Contract clauses.

(a) Insert the clause at (HSAR) 48 CFR 3052.205–70, Advertisements, Publicizing Awards, and Releases, in all solicitations and contracts that exceed the simplified acquisition threshold.

(b) Except for research contracts with educational institutions, if the contract involves sensitive or classified information, use the clause with its Alternate I. For research contracts with educational institutions, see (HSAR) 48 CFR 3035.70–2(b).

[77 FR 50634, Aug. 22, 2012]

## Subpart 3005.90—Publicizing Contract Actions for Personal Services Contracting

### 3005.9000 Applicability (USCG).

Contracts awarded by the U.S. Coast Guard using the procedures in (HSAR) 48 CFR 3037.104–91 are expressly authorized for the Coast Guard under 10 U.S.C. 1091, as amended by section 1512(d) of the Homeland Security Act, 6 U.S.C. 552(d), and are exempt from (FAR) 48 CFR part 5.

[71 FR 25768, May 2, 2006]

## PART 3006—COMPETITION REQUIREMENTS

### Subpart 3006.1—Full and Open Competition

Sec.
3006.101 Policy.
3006.101–70 Definitions.

### Subpart 3006.2—Full and Open Competition After Exclusion of Sources

3006.202 Establishing or maintaining alternative sources.

Subpart 3006.3—Other Than Full and Open Competition

3006.302 Circumstances permitting other than full and open competition.
3006.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.
3006.302–270 Unusual and compelling urgency.
3006.302–7 Public interest.
3006.303 Justifications.
3006.303–270 Content.
3006.304 Approval of justification.
3006.304–70 DHS Approval of justification.

Subpart 3006.5—Competition Advocates

3006.501 Requirement.

Subpart 3006.90—Competition Requirements for Personal Services Contracting

3006.9000 Applicability (USCG).

AUTHORITY: 5 U.S.C. 301–302, 41 U.S.C. 1707, 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3006.1—Full and Open Competition

### 3006.101 Policy.

### 3006.101–70 Definitions.

As used in this part:

*Agency competition advocate* means an individual designated by the Chief Procurement Officer (CPO) to perform, at a minimum, the functions under (FAR) 48 CFR 6.502(b) and is synonymous with ''Departmental Competition Advocate'' and ''Senior Competition Advocate (SCA).''

*Competition advocate for the procuring activity* means the individual who has been designated by the Component to approve Justifications and Approvals (J & A) for other than full and open competition as permitted by the (FAR) 48 CFR 6.304 and to perform the duties and responsibilities assigned under (FAR) 48 CFR 6.502. This term is synonymous with ''procuring activity competition advocate.''

[71 FR 25769, May 2, 2006, as amended at 71 FR 48801, Aug. 22, 2006]

## Subpart 3006.2—Full and Open Competition After Exclusion of Sources

### 3006.202 Establishing or maintaining alternative sources.

(b)(1) The HCA is delegated authority to approve a D&F in support of a contract action award under the authority of (FAR) 48 CFR 6.202(a). Submit D&F in the format per (HSAR) 48 CFR 3001.704.

## Subpart 3006.3—Other Than Full and Open Competition

### 3006.302 Circumstances permitting other than full and open competition.

### 3006.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(b)(4) The contracting officer may rely on this exception in the case where only one source is available to provide additional units or replacement items under a specific make and model requirement, but only where the CPO has determined in accordance with the agency's standardization program that only the specific make(s) and model(s) will satisfy the agency's needs.

[77 FR 50634, Aug. 22, 2012]

### 3006.302–270 Unusual and compelling urgency.

(d)(1)(iii) For contract awards to facilitate the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster, that relies on this exception, the period of performance shall be limited to the minimum period necessary to meet the urgent and compelling requirements of the work to be performed and to enter into another contract for the required goods or services through the use of competitive procedures, but in no event shall the period of performance exceed 150 days, unless the Head of the Contracting Activity (or higher approval authority if required by (FAR) 48 CFR 6.304 or DHS procedures) determines that exceptional circumstances apply, approving the justification as set forth in (HSAR) 48 CFR 3006.304.

The limitation on the period of performance applies to contracts awarded in response to, or to recovery from:

(A) A major disaster or emergency declared by the President under Title IV or Title V of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121–5207) (see *http://www.fema.gov/news/disasters.fema#sev2* for a list of declarations);

(B) An uncontrolled fire or fire complex, threatening such destruction as would constitute a major disaster, and for which the Federal Emergency Management Agency has approved a fire management assistance declaration in accordance with regulatory criteria at 44 CFR 204.21 (see *http://www.fema.gov/news/disasters.fema#sev2* for a list of declarations); or

(C) An incident for which the National Operations Center (NOC), through the National Response Coordination Center (NRCC), coordinates the activation of the appropriate Emergency Support Functions and the Secretary of Homeland Security has designated a Federal Resource Coordinator (FRC) to manage Federal resource support.

[77 FR 50634, Aug. 22, 2012]

### 3006.302–7 Public interest.

(c)(1)(ii) Requests shall be prepared in writing by the contracting officer, using the format found in (HSAR) 48 CFR 3001.704, and submitted through the HCA to the CPO for review and transmittal to the Secretary for approval.

### 3006.303 Justifications.

### 3006.303–270 Content.

(a)(9)(iv) For a proposed contract subject to the restrictions of (HSAR) 48 CFR 3006.302–270(d)(1)(iii) and where (FAR) 48 CFR 6.302–2 is cited as the authority, the exceptional circumstances allowing for an award for a period of performance in excess of 150 days.

[77 FR 50634, Aug. 22, 2012]

### 3006.304 Approval of justification.

### 3006.304–70 DHS Approval of justification.

A justification for other than full and open competition that cites (FAR) 48 CFR section 6.302–2 as its authority shall be approved in writing by the HCA (unless a higher approval authority is required in accordance with (FAR) 48 CFR section 6.304 or DHS procedures) for a proposed DHS contract to facilitate the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster with a period of performance in excess of 150 days. The justification should make plain the exceptional circumstances that justify the duration of the contract. This authority may not be redelegated by the HCA.

[77 FR 50634, Aug. 22, 2012]

## Subpart 3006.5—Competition Advocates

### 3006.501 Requirement.

The DHS Senior Competition Advocate (SCA) is located in the Office of the Chief Procurement Officer (OCPO).

## Subpart 3006.90—Competition Requirements For Personal Services Contracting

### 3006.9000 Applicability (USCG).

Contracts awarded by the U.S. Coast Guard using the procedures in (HSAR) 48 CFR 3037.104–91 are expressly authorized under Section 1091 of Title 10 U.S.C. as amended, for the Coast Guard and are exempt from the competition requirements of (FAR) 48 CFR part 6.

# PART 3007—ACQUISITION PLANNING

## Subpart 3007.1—Acquisition Plans

Sec.

3007.106 Additional Requirements for Major Systems.
3007.106–70 Limitations on Lead System Integrators.

AUTHORITY: 5 U.S.C. 301–302, 41 U.S.C. 418b(a) and (b), 41 U.S.C. 414, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0700.

SOURCE: 75 FR 41099, July 15, 2010, unless otherwise note.

## Subpart 3007.1—Acquisition Plans

### 3007.106 Additional Requirements for Major Systems.

### 3007.106–70 Limitations on Lead System Integrators.

See (HSAR) 48 CFR 3009.570 for policy applicable to acquisition strategies that consider the use of lead system integrators.

# PART 3008—REQUIRED SOURCES OF SUPPLIES AND SERVICES [RESERVED]

# PART 3009—CONTRACTOR QUALIFICATIONS

## Subpart 3009.1—Responsible Prospective Contractors

Sec.

3009.108–70 Prohibition on contracts with corporate expatriates.
3009.108–7001 General.
3009.108–7002 Definitions.
3009.108–7003 Special rules.
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AUTHORITY: 5 U.S.C. 301–302, 41 U.S.C. 1707(a) and (b), 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0700.

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3009.1—Responsible Prospective Contractors

### 3009.108–70 Prohibition on contracts with corporate expatriates.

### 3009.108–7001 General.

Except as provided in (HSAR) 48 CFR 3009.108–7004, DHS may not enter into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation under subsection (b) of section 835 of the Homeland Security Act, 6 U.S.C. 395(b), or any subsidiary of such an entity.

[76 FR 70661, Nov. 15, 2011]

### 3009.108–7002 Definitions.

As used in this subpart—

*Expanded Affiliated Group* means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504 of such Code shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

*Foreign Incorporated Entity* means any entity which is, or but for section 835(b) of the Homeland Security Act, 6 U.S.C. 395(b), would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

*Inverted Domestic Corporation.* A foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) The entity completes the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;

(2) After the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

(i) In the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic

corporation by reason of holding stock in the domestic corporation; or

(ii) In the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; and

(3) The expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

*Person, domestic, and foreign* have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701(a) of the Internal Revenue Code of 1986, respectively.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 25769, May 2, 2006. Redesignated at 74 FR 58856, Nov. 16, 2009, 74 FR 66584, Dec. 16, 2009]

### 3009.108–7003 Special rules.

The following special rules shall apply when determining whether a foreign incorporated entity should be treated as an inverted domestic corporation.

(a) *Certain stock disregarded.* For the purpose of treating a foreign incorporated entity as an inverted domestic corporation these shall not be taken into account in determining ownership:

(1) Stock held by members of the expanded affiliated group which includes the foreign incorporated entity; or

(2) Stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1) of section 835 of the Homeland Security Act, 6 U.S.C. 395(b)(1).

(b) *Plan deemed in certain cases.* If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of section 835(b)(2) of the Act are met, such actions shall be treated as pursuant to a plan.

(c) *Certain transfers disregarded.* The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(d) *Special rule for related partnerships.* For purposes of applying subsection (b) to the acquisition of a domestic partnership, except as provided in regulations, all domestic partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as a partnership.

(e) *Treatment of certain rights.* (1) Certain rights shall be treated as stocks to the extent necessary to reflect the present value of all equitable interests incident to the transaction, as follows:

(i) Warrants;

(ii) Options;

(iii) Contracts to acquire stock;

(iv) Convertible debt instruments;

(v) Others similar interests.

(2) Rights labeled as stocks shall not be treated as stocks whenever it is deemed appropriate to do so to reflect the present value of the transaction or to disregard transactions whose recognition would defeat the purpose of section 835 of the Act.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 25769, May 2, 2006. Redesignated at 74 FR 58856, Nov. 16, 2009, 74 FR 66584, Dec. 16, 2009]

### 3009.108–7004 Waivers.

(a) The Secretary shall waive the provisions of (HSAR) 48 CFR 3009.108–7001 with respect to any specific contract if the Secretary determines that the waiver is required in the interest of national security.

(b) Contractors shall submit waiver requests to the CPO. A copy of the waiver request or the approved waiver shall be attached with the bid or proposal.

[71 FR 25769, May 2, 2006. Redesignated at 74 FR 58856, Nov. 16, 2009, 74 FR 66584, Dec. 16, 2009; 76 FR 70661, Nov. 15, 2011]

### 3009.108–7005 Clause.

Insert the provision (HSAR) 48 CFR 3052.209–70, Prohibition on Contracts with Corporate Expatriates, in all solicitations and contracts.

[71 FR 25769, May 2, 2006. Redesignated at 74 FR 58856, Nov. 16, 2009, 74 FR 66584, Dec. 16, 2009]

### 3009.171 Prohibition on Federal Protective Service guard services contracts with business concerns owned, controlled, or operated by an individual convicted of a felony.

3009.171–1 General.
3009.171–2 Definitions.
3009.171–3 Determination of eligibility for award of FPS guard service contracts.
3009.171–4 Determination of ownership, control, or operation.
3009.171–5 Serious felonies prohibiting award.
3009.171–6 Guidelines for contracting officers.
3009.171–7 Contract award approval procedures for contractors with felony convictions.
3009.171–8 Ineligible contractors.
3009.171–9 Clause.

[74 FR 58856, Nov. 16, 2009]

### 3009.171 Prohibition on Federal Protective Service guard services contracts with business concerns owned, controlled, or operated by an individual convicted of a felony.

[74 FR 58856, Nov. 16, 2009]

### 3009.171–1 General.

Except as provided in (HSAR) 48 CFR 3009.171–6 and 3009.171–7, Department of Homeland Security (DHS) contracting officers shall not enter into a contract for guard services under the Federal Protective Service (FPS) guard services program with any business concern owned, controlled, or operated by an individual convicted of a serious felony.

[74 FR 58856, Nov. 16, 2009]

### 3009.171–2 Definitions.

As used in this subpart—

*Business concern* means a commercial enterprise and the people who constitute it.

*Felony* means an offense which, if committed by a natural person, is punishable by death or imprisonment for a term exceeding one year.

*Convicted of a felony* means any conviction of a felony in violation of state or federal criminal statutes, including the Uniform Code of Military Justice, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which a sentence has been imposed.

*Individual* means any person, corporation, partnership, or other entity with a legally independent status.

[74 FR 58856, Nov. 16, 2009]

### 3009.171–3 Determination of eligibility for award of FPS guard service contracts.

(a) Contracting officers shall make a determination of eligibility for award of FPS guard service contracts upon identification of the apparent successful offeror as a result of a solicitation for offers.

(b) Contractors shall be required to immediately notify the contracting officer in writing upon any felony conviction of personnel who own, control or operate a business concern as defined in (HSAR) 48 CFR 3009.171–4 at any time during the duration of an Indefinite Delivery/Indefinite Quantity Contract, Blanket Purchase Agreements, or other contractual instrument that may result in the issuance of task orders or calls, or exercise of an option or options to extend the term of a contract. Upon notification of a felony conviction, the contracting officer shall review and make a new determination of eligibility prior to the issuance of any task order, call or exercise of an option.

[74 FR 58856, Nov. 16, 2009]

### 3009.171–4 Determination of ownership, control, or operation.

(a) Whether an individual owns, controls, or operates a business concern is determined on the specific facts of the case, with reference to the factors identified in paragraphs (b) and (c) of this subsection. Prior to contract award, such individual must provide any additional documentation to the contracting officer upon the contracting officer's request for the agency's use in determining ownership, control, or operation. The refusal to provide or to timely provide such documentation may serve as grounds for the contracting officer to refuse making contract award to the business concern.

(b) Any financial, voting, operational, or employment interest in the business concern of a spouse, child, or other family member of, or person

sharing a household with, the individual will be imputed to the individual in determining whether and the extent to which the individual owns, controls, or operates the business concern.

(c) An individual owns, controls, or operates a business concern by fulfilling or holding the following types of roles or interests with respect to the business concern:

(1) Director or officer, including incumbents of boards and offices that perform duties ordinarily performed by a chairman or member of a board of directors, a secretary, treasurer, president, a vice president, or other chief official of a business concern, including Chief Financial Officer, Chief Operating Officer, or Chief contracting official.

(2) Officials of comparable function and status to those described in paragraph (c)(1) of this subsection as exist in partnerships of all kind and other business organizations, including sole proprietorships.

(3) A general partner in a general or limited partnership.

(4) An individual with a limited partnership interest of 25% or more.

(5) An individual that has the:

(i) Power to vote, directly or indirectly, 25% or more interest in any class of voting stock of the business concern;

(ii) Ability to direct in any manner the election of a majority of the business concern's directors or trustees; or

(iii) Ability to exercise a controlling influence over the business concern's management, policies, or decision making.

(d) Generally, the existence of one or more of the roles or interests set forth in paragraph (c) of this subsection, including roles or interests attributed to the individual, will be sufficient to determine that the individual owns, controls or operates the business concern. However, specific facts of the case may warrant a different determination by the contracting officer, where, for example, an indicator in paragraph (c) of this subsection, in light of all of the facts and circumstances, suggests that the individual lacks sufficient authority or autonomy to exert authority customarily associated with ownership or control or the assertion of operational prerogatives (e.g. the individual is one of twenty on a board of directors, plays no other role, and holds no other interest). Conversely, ownership, control, or the ability to operate the business concern, if it exists in fact, can be reflected by other roles or interests.

[74 FR 58856, Nov. 16, 2009]

### 3009.171–5 Serious felonies prohibiting award.

(a) Only serious felony convictions will prohibit a business concern from being awarded a contract for FPS guard services. Serious felonies that will prohibit contract award are any felonies that involve dishonesty, fraud, deceit, misrepresentation, or deliberate violence; that reflect adversely on the individual's honesty, trustworthiness, or fitness to own, control, or operate a business concern; that cast doubt on the integrity or business ethics of the business concern; or are of a nature that is inconsistent with the mission of FPS, including, without limitation, those felonies listed in paragraphs (b)(1) through (12) of this subsection.

(b) The following is a list of offenses determined by DHS to be serious felonies for purposes of the Federal Protective Service Guard Reform Act of 2008. Except as provided in (HSAR) 48 CFR 3009.171–7(f), award of a contract for FPS guard services will not be made to any business that is owned, controlled, or operated by an individual who has been convicted of a felony involving:

(1) Fraud of any type, including those arising out of a procurement contract, cooperative agreement, grant or other assistance relationship with the federal, state or local government, as well as, without limitation, embezzlement, fraudulent conversion, false claims or statements, kickbacks, misappropriations of property, unfair or deceptive trade practices, or restraint of trade;

(2) Bribery, graft, or a conflict of interest;

(3) Threatened or actual harm to a government official or family member;

(4) Threatened or actual harm to government property;

(5) A crime of violence;

(6) A threat to national security;

(7) Commercial bribery, counterfeiting, or forgery;

(8) Obstruction of justice, perjury or subornation of perjury, or bribery of a witness;

(9) An attempt to evade or defeat Federal tax;

(10) Willful failure to collect or pay over Federal tax;

(11) Trafficking in illegal drugs, alcohol, firearms, explosives, or other weapons;

(12) Immigration violations (e.g., 8 U.S.C. 1324, 1324c, 1326); and

(13) Any other felony that involves dishonesty, fraud, deceit, misrepresentation, or deliberate violence; that reflects adversely on the individual's honesty, trustworthiness, or fitness to own, control, or operate a business concern; that casts doubt on the integrity or business ethics of the business concern; or is of a nature that is inconsistent with the mission of FPS.

[74 FR 58856, Nov. 16, 2009]

### 3009.171–6 Guidelines for contracting officers.

(a) In accordance with FAR Subpart 9.4 (48 CFR subpart 9.4), a contracting officer may not award a contract for FPS guard services to any business concern that is suspended, debarred or proposed for debarment unless the agency head determines that there is a compelling reason for such action.

(b) The contracting officer shall not award a contract for FPS guard services to any business concern that is otherwise nonresponsible on the same contract.

(c) The contracting officer shall not award an FPS guard services contract to any business concern that is owned, controlled or operated by an individual convicted of a serious felony as defined in (HSAR) 48 CFR 3009.171–5 except as provided in under (HSAR) 48 CFR 3009.171–7.

(d) In considering an award request under (HSAR) 48 CFR 3009.171–7, the contracting officer may not review the fact of the conviction itself, but may consider any information provided by the individual or business concern, and any information known to the contracting officer. Factors that the contracting officer may consider include, but are not limited to:

(1) The age of the conviction.

(2) The nature and circumstances surrounding the conviction.

(3) Protective measures taken by the individual or business concern to reduce or eliminate the risk of further misconduct.

(4) Whether the individual has made full restitution for the felony.

(5) Whether the individual has accepted responsibility for past misconduct resulting in the felony conviction.

[74 FR 58856, Nov. 16, 2009]

### 3009.171–7 Contract award approval procedures for contractors with felony convictions.

(a) The HCA has sole discretion to approve a request to permit award of a contract for FPS guard services to a business concern owned, controlled, or operated by an individual convicted of a felony, for any reason permitted by this regulation. This authority is not delegable.

(b) A business concern owned, operated or controlled by an individual convicted of any felony (including a serious felony) may submit an award request to the contracting officer. The basis for such request shall be that the subject felony is not a serious felony as defined by this regulation; that such individual does not or no longer owns, controls or operates the business concern; or that the commission of a serious felony no longer poses the contract risk the Act and this regulation were designed to guard against. The business concern shall bear the burden of proof for award requests.

(c) A copy of the award approval request with supporting documentation or a previously approved award request shall be attached with the bid or proposal.

(d) An award approval request shall contain the basis for the request, including, at a minimum, the following information:

(1) Name and date of birth of individual convicted of a felony;

(2) A full description of which roles or interests indicate that the individual owns, controls, or operates, or may own control or operate the business concern;

(3) Date sentenced;

(4) Statute/Charge;
(5) Docket/Case Number;
(6) Court/Jurisdiction;
(7) The nature and circumstances surrounding the conviction;
(8) Protective measures taken by the individual or business concern to reduce or eliminate the risk of further misconduct;
(9) Whether the individual has made full restitution for the felony; and
(10) Whether the individual has accepted responsibility for past misconduct resulting in the felony conviction.

(e) If the contracting officer is unable to affirmatively determine that the subject felony is not a serious felony as defined in (HSAR) 48 CFR 3009.171–5; that such individual no longer owns, controls or operates the business concern; or that the commission of a serious felony no longer calls into question the individual or business concern's integrity or business ethics and would be consistent with the mission of FPS, then the contracting officer shall deny the award approval request and not forward such request to the HCA.

(f) For a felony that meets any of the following conditions, the contracting officer shall refer the award request, with a copy of the contracting officer's determination, to the HCA with a recommendation for approval:

(1) The subject felony is not a serious felony as defined by this regulation;
(2) The convicted individual does not or no longer owns, controls or operates the business concern; or
(3) The commission of a serious felony no longer calls into question the individual or business concern's integrity or business ethics and that an award would be consistent with the mission of the FPS.

(g) The HCA shall make a final written decision on the award approval request following referral and after any necessary additional inquiry.

[74 FR 58856, Nov. 16, 2009]

### 3009.171–8 Ineligible contractors.

Any business concern determined to be ineligible for award under (HSAR) 48 CFR 3009.171–5 to 3009.171–7 shall be ineligible to receive a contract for guard services under the FPS guard program until such time as:

(a) The concern demonstrates that it has addressed and resolved the issues that resulted in the determination of ineligibility, and

(b) The HCA approves an award request under (HSAR) 48 CFR 3009.171–7.

[74 FR 58856, Nov. 16, 2009]

### 3009.171–9 Clause.

Insert the clause (HSAR) 48 CFR 3052.209–76, Prohibition on Federal Protective Service guard services contracts with business concerns owned, controlled, or operated by an individual convicted of a felony, in all solicitations and contracts for FPS guard services.

[74 FR 58856, Nov. 16, 2009]

## Subpart 3009.4—Debarment, Suspension, and Ineligibility

### 3009.470 Reserve Officer Training Corps and military recruiting on campus.

### 3009.470–1 Definition.

*Institution of higher education* as used in this section, means an institution that meets the requirements of 20 U.S.C. 1001 and includes all subelements of such an institution.

### 3009.470–2 Policy.

(a) Except as provided in paragraph (b) of this subsection, 10 U.S.C. 983 prohibits the Department of Homeland Security from providing funds by contract or grant to an institution of higher education if the Secretary of Defense determines that the institution has a policy or practice that prohibits or in effect prevents—

(1) The Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (ROTC) at that institution;
(2) A student at that institution from enrolling in a unit of the Senior ROTC at another institution of higher education;
(3) The Secretary of a military department or the Secretary of Homeland Security from gaining entry to campuses, or access to students on campuses, for purposes of military recruiting; or

(4) Military recruiters from accessing certain information pertaining to students enrolled at that institution.

(b) The prohibition in paragraph (a) of this subsection does not apply to an institution of higher education if the Secretary of Defense determines that—

(1) The institution (and each subelement of that institution) has ceased the policy or practice described in paragraph (a) of this subsection; or

(2) The institution involved has a long-standing policy of pacifism based on historical religious affiliation.

### 3009.470–3 Procedures.

Whenever the Secretary of Defense determines that an institution of higher education (including any subelement of such institution) is ineligible and the provisions of 10 U.S.C. 983 apply:

(a) The Secretary of Defense will list the institution on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs published by the General Services Administration (also see (FAR) 48 CFR 9.404 and 32 CFR part 216); and

(b) The Department of Homeland Security—

(1) Shall not solicit offers from, award contracts to, or consent to subcontracts with the institution;

(2) Shall make no further payments under existing contracts with the institution; and

(3) Shall terminate existing contracts with the institution.

### 3009.470–4 Contract clause.

Insert the clause at (HSAR) 48 CFR 3052.209–71, Reserve Officer Training Corps and Military Recruiting on Campus, in all solicitations and contracts with institutions of higher education.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 25769, May 2, 2006]

## Subpart 3009.5—Organizational and Consultant Conflicts of Interest

### 3009.507 Solicitation provision and contract clause. [Reserved]

### 3009.507-1 Solicitation provision.

The contracting officer shall insert a provision substantially the same as (HSAR) 3052.209-72, Organizational Conflict of Interest, in solicitations and contracts where a potential organizational conflict of interest exists and mitigation may be possible. The contracting officer shall ensure the conditions enumerated in (FAR) 48 CFR subpart 9.5 warrant inclusion. The contracting officer shall include the information required by (FAR) 48 CFR 9.507-1 and (HSAR) 3052.209-72(a).

[71 FR 25769, May 2, 2006]

### 3009.507–2 Contract clause.

The contracting officer shall insert a clause substantially the same as the clause at (HSAR) 48 CFR 3052.209–73, Limitation of Future Contracting, in solicitations and contracts when a potential organizational conflict of interest exists and mitigation is not feasible.

[71 FR 25769, May 2, 2006]

### 3009.570 Limitations on contractors acting as lead system integrators.

### 3009.570–1 Definitions.

''Direct Financial Interest,'' as used in this section, is defined in the clause at HSAR 48 CFR 3052.209–75, Prohibited Financial Interests for Lead System Integrators.

''Lead system integrator,'' as used in this section, is defined in the clause at (HSAR) 48 CFR 3052.209–75, Prohibited Financial Interests for Lead System Integrators.

[75 FR 41099, July 15, 2010]

### 3009.570–2 Policy.

(a) Except as provided in paragraph (b) of this subsection, under 6 U.S.C. 396, no entity performing lead system integrator functions in the acquisition of a major system (See (HSAR) 48 CFR 3002.101) by DHS may have any direct financial interest in the development or construction of any individual system or element of any system of systems under the program in which the entity is performing lead system integrator functions.

(b) The prohibition in paragraph (a) of this subsection does not apply if—

(1) The Secretary of Homeland Security certifies to the Committees on Appropriations of the Senate and the

House of Representatives, the Committee on Homeland Security of the House of Representatives, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Commerce, Science and Transportation of the Senate that—

(i) The entity was selected by DHS as a contractor to develop or construct the system or element concerned through the use of competitive procedures, and

(ii) DHS took appropriate steps to prevent any organizational conflict of interest in the selection process; or

(2) The entity was selected by a subcontractor to serve as a lower-tier subcontractor, through a process over which the entity exercised no control.

(c) CONSTRUCTION—Nothing in this section 3009.570 shall be construed to preclude an entity described in paragraph (a) of this subsection from performing work necessary to integrate two or more individual systems or elements of a system of systems with each other.

[75 FR 41099, July 15, 2010]

### 3009.570–3 Procedures.

In making a responsibility determination before awarding a contract for the acquisition of a major system, the contracting officer shall—

(a) Determine whether the prospective contractor meets the definition of ''lead system integrator'';

(b) Consider all information regarding the prospective contractor's direct financial interests in view of the prohibition at (HSAR) 48 CFR 3009.570–2(a); and

(c) Apply the following procedures:

(1) After assessing the offeror's direct financial interests in the development or construction of any individual system or element of any system of systems, if the offeror—

(i) Has no direct financial interest in such systems, the contracting officer shall document the contract file to that effect and may then further consider the offeror for award of the contract;

(ii) Has a direct financial interest in such systems, but the exception in (HSAR) 3009.570–2(b)(2) applies, the contracting officer shall document the contract file to that effect and may then further consider the offeror for award of the contract;

(iii) Has a direct financial interest in such systems and the exception in (HSAR) 3009.570–2(b)(2) does not apply, but the conditions in (HSAR) 3009.570–2(b)(1)(i) and (ii) do apply, the contracting officer—

(A) Shall document the contract file to that effect;

(B) May, in coordination with program officials, request an exception for the offeror from the Secretary of Homeland Security, in accordance with Homeland Security Acquisition Manual section 3009.570; and

(C) Shall not award to the offeror unless the Secretary of Homeland Security grants the exception and provides the required certification to Congress; or

(iv) Has a direct financial interest in such systems and the exceptions in (HSAR) 3009.570–2(b)(1) and (2) do not apply, the contracting officer shall not award to the offeror.

[75 FR 41099, July 15, 2010]

### 3009.570–4 Solicitation provision and contract clause.

(a) Use the provision at (HSAR) 48 CFR 3052.209–74, Limitations on Contractors Acting as Lead System Integrators, in solicitations for the acquisition of a major system when the acquisition strategy envisions the use of a lead system integrator.

(b) Use the clause at (HSAR) 48 CFR 3052.209–75, Prohibited Financial Interests for Lead System Integrators—

(1) In solicitations that include the provision at (HSAR) 48 CFR 3052.209–74; and

(2) In contracts when the contractor will fill the role of a lead system integrator for the acquisition of a major system.

[75 FR 41099, July 15, 2010]

## PART 3010—MARKET RESEARCH [RESERVED]

# PART 3011—DESCRIBING AGENCY NEEDS

## Subpart 3011.1—Selecting and Developing Requirements Documents

Sec.
3011.103 Market acceptance.

## Subpart 3011.2—Using and Maintaining Requirements

3011.204–70 Solicitation provisions and contract clauses.

## Subpart 3011.5—Liquidated Damages

3011.501 Policy.

## Subpart 3011.6—Priorities and Allocations

3011.602 General.

AUTHORITY: 41 U.S.C. 418b (a) and (b).

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3011.1—Selecting and Developing Requirements Documents

### 3011.103 Market acceptance.

(a) Contracting officers may act on behalf of the head of the agency in this subpart only. Contracting officers may, under appropriate circumstances, require offerors to make the required demonstrations.

## Subpart 3011.2—Using and Maintaining Requirements Documents

### 3011.204–70 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.211–70, Index for Specifications, when an index or table of contents may be furnished with the specification.

## Subpart 3011.5—Liquidated Damages

### 3011.501 Policy.

(d) The HCA may reduce or waive the amount of liquidated damages assessed under a contract, if the Commissioner, Financial Management Service, or designee approves.

## Subpart 3011.6—Priorities and Allocations

### 3011.602 General.

(c) The following DHS Components may assign priority ratings on contracts and orders placed with contractors to acquire products, materials, and services under the Defense Priorities and Allocations System (DPAS) regulations (15 CFR part 700):

(1) The U.S. Coast Guard in support of certified national defense related programs; and

(2) The Federal Emergency Management Agency in support of emergency preparedness activities.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 48801, Aug. 22, 2006]

# PART 3012—ACQUISITION OF COMMERCIAL ITEMS

## Subpart 3012.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

Sec.
3012.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

AUTHORITY: 5 U.S.C. 301–302, 41 U.S.C. 1707, 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

SOURCE: 77 FR 50635, Aug. 22, 2012, unless otherwise noted.

### 3012.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) Solicitation provisions and contract clauses. Insert (HSAR) 48 CFR 3052.212–70, Contract Terms and Conditions Applicable to DHS Acquisition of Commercial Items, in any solicitation or contract for commercial items when any of the provisions or clauses listed therein applies and where incorporation by reference of each selected provision or clause is, to the maximum extent practicable, consistent with customary commercial practice. If necessary, tailor this clause.

# SUBCHAPTER C—CONTRACT METHODS AND CONTRACT TYPES

## PART 3013—SIMPLIFIED ACQUSITION PROCEDURES

AUTHORITY: 41 U.S.C. 418b (a) and (b).

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3013.70 [Reserved]

## PART 3014—SEALED BIDDING [RESERVED]

## PART 3015—CONTRACTING BY NEGOTIATION

### Subpart 3015.2—Solicitation and Receipt of Proposals and Information

Sec.
3015.204–3 Contract clauses.
3015.207–70 Handling proposals and information.

### Subpart 3015.6—Unsolicited Proposals

3015.602 Policy.
3015.603 [Reserved]
3015.604 Agency points of contact.
3015.606 Agency procedures.
3015.606–1 Receipt and initial review.
3015.606–2 Evaluation.

AUTHORITY: 41 U.S.C. 418b (a) and (b).

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3015.2—Solicitation and Receipt of Proposals and Information

### 3015.204–3 Contract clauses.

The contracting officer shall insert clause (HSAR) 48 CFR 3052.215–70, Key Personnel or Facilities, in solicitations and contracts when the selection for award is substantially based on the offeror's possession of special capabilities regarding personnel or facilities.

### 3015.207–70 Handling proposals and information.

(b) Proposals and information may be released outside the Government for evaluation and similar purposes if qualified personnel are not available to thoroughly evaluate or analyze proposals or information. The contracting officer shall document the file in such cases.

## Subpart 3015.6—Unsolicited Proposals

### 3015.602 Policy.

The Department of Homeland Security (DHS) encourages new and innovative proposals and ideas that will sustain or enhance the DHS mission.

[71 FR 25770, May 2, 2006]

### 3015.603 [Reserved]

### 3015.604 Agency points of contact.

(a) The DHS does not have a central clearinghouse for distributing information or assistance regarding unsolicited proposals. Each HCA is responsible for disseminating the information required at (FAR) 48 CFR 15.604(a). General information concerning DHS's scope of responsibilities and functions is available at *http://www.dhs.gov/dhspublic/*.

### 3015.606 Agency procedures.

(a) The agency authority to establish procedures for receiving, reviewing and evaluating, and timely disposing of unsolicited proposals, consistent with the requirements of (FAR) 48 CFR 15.6 and this subpart, is delegated to each HCA.

(b) The agency authority to establish points of contact (see (FAR) 48 CFR 15.604) to coordinate the receipt and handling of unsolicited proposals is delegated to each HCA. Contracting offices are designated as the receiving point for unsolicited proposals. Persons within DHS (e.g., technical personnel) who receive proposals shall forward them to their cognizant contracting office.

### 3015.606–1 Receipt and initial review.

(a) The agency contact point shall make an initial review determination within seven calendar days after receiving a proposal.

(b) If the proposal meets the requirements at (FAR) 48 CFR 15.606–1(a), the

agency contact point shall acknowledge receipt within three calendar days after making the initial review determination and advise the offeror of the general timeframe for completing the evaluation.

(c) If the proposal does not meet the requirements of (FAR) 48 CFR 15.606–1(a), the agency contact point shall return the proposal within three calendar days after making the determination. The offeror shall be informed, in writing, of the reasons for returning the proposal.

**3015.606–2 Evaluation.**

(a) Comprehensive evaluations should be completed within sixty calendar days after making the initial review determination. If additional time is needed, then the agency contact point shall advise the offeror accordingly and provide a new evaluation completion date. The evaluating office shall neither reproduce nor disseminate the proposal to other offices without the consent of the contracting office from which the proposal was received for evaluation. If the evaluating office requires additional information from the offeror, the evaluator shall convey this request to the responsible contracting office. The evaluator shall not directly contact the proposal originator.

(b) If the evaluators recommend accepting the proposal, the responsible contracting officer shall ensure compliance with all of the requirements of (FAR) 48 CFR 15.607.

# PART 3016—TYPES OF CONTRACTS

### Subpart 3016.1—Selecting Contract Types

3016.170 Contracts with Lead System Integrators.

### Subpart 3016.2—Fixed-Price Contracts

Sec.
3016.203 Fixed-price contracts with economic price adjustment.
3016.203–4 Contract clauses.
3016.203–470 Solicitation provision.

### Subpart 3016.4—Incentive Contracts

3016.406 Contract clauses.

### Subpart 3016.5—Indefinite-Delivery Contracts

3016.505 Ordering.

### Subpart 3016.6—Time-and-Materials, Labor-Hour, and Letter Contracts

3016.603 Letter contracts.
3016.603–4 Contract clauses.

AUTHORITY: 5 U.S.C. 301–302, 41 U.S.C. 418b(a) and (b), 41 U.S.C. 414, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0700.

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3016.1—Selecting Contract Types

SOURCE: 75 FR 41100, July 15, 2010, unless otherwise noted.

**3016.170 Contracts with Lead System Integrators.**

The contracting officer should negotiate the most appropriate contract type and fee structure based on risks inherent in the work to be performed, in accordance with (FAR) 48 CFR 16.103(a). Contract type and fee structure should be commensurate with the work to be performed and the risks assumed. Worthwhile existing guidance on contract type selection, pricing, and fee structures, such as exists in Vol. I, Ch. 4 of the Contract Reference Pricing Guides [*http://www.acq.osd.mil/dpap/cpf/docs/contract_pricing_finance_guide/vol4_ch1.pdf*] can be consulted to determine the appropriate contract type and fee structure for use in varied contracts with lead system integrators in the production, fielding and sustainment of complex systems.

## Subpart 3016.2—Fixed-Price Contracts

**3016.203 Fixed price contracts with economic price adjustments.**

**3016.203–4 Contract clauses.**

(d)(2) Any clause using this method shall be prepared and approved by the contracting officer.

**3016.203–470 Solicitation provision.**

The contracting officer shall insert a provision substantially the same as

(HSAR) 48 CFR 3052.216–70, Evaluation of Offers Subject to an Economic Price Adjustment Clause, in solicitations containing an economic price adjustment clause.

## Subpart 3016.4—Incentive Contracts

### 3016.406 Contract clauses.

(e)(1)(i) The contracting officer shall insert a clause substantially the same as (HSAR) 48 CFR 3052.216–71, Determination of Award Fee, in solicitations and contracts that include an award fee.

(ii) The contracting officer shall insert a clause substantially the same as (HSAR) 48 CFR 3052.216–72, Performance Evaluation Plan, in all solicitations and contracts that include an award fee.

(iii) The contracting officer shall insert a clause substantially the same as (HSAR) 48 CFR 3052.216–73, Distribution of Award Fee, in all solicitations and contracts that include an award fee.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 25770, May 2, 2006]

## Subpart 3016.5—Indefinite-Delivery Contracts

### 3016.505 Ordering.

(b)(5) The Component Competition Advocate is designated as the Component Task and Delivery Order Ombudsman, unless otherwise provided in Component procedures.

(i) If any corrective action is needed after reviewing complaints from contractors on task and delivery order contracts, the Component Ombudsman shall provide a written determination of such action to the contracting officer.

(ii) Issues that cannot be resolved within the Component shall be forwarded to the DHS Task and Delivery Order Ombudsman, who is also the DHS Senior Competition Advocate, for review and resolution.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 25770, May 2, 2006; 71 FR 48801, Aug. 22, 2006]

## Subpart 3016.6—Time-and-Materials, Labor-Hour, and Letter Contracts

### 3016.603 Letter contracts.

### 3016.603–4 Contract clauses.

The contracting officer shall insert a clause substantially the same as (HSAR) 48 CFR 3052.216–74, Settlement of Letter Contract, in all definitized letter contracts.

# PART 3017—SPECIAL CONTRACTING METHODS

### Subpart 3017.2—Options

Sec.
3017.202 Use of options.
3017.204 Contracts.
3017.204–90 Detention Facilities and Services (ICE).

### Subpart 3017.4—Leader Company Contracting

3017.402 Limitations.

### Subpart 3017.90—Fixed Price Contracts for Vessel Repair, Alteration or Conversion

3017.9000 Clauses (USCG).

AUTHORITY: 41 U.S.C. 418b (a) and (b).

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3017.2—Options

### 3017.202 Use of options.

(a) Contracting officers shall not use unpriced options.

### 3017.204 Contracts.

### 3017.204–90 Detention Facilities and Services (ICE).

The ICE Head of the Contracting Activity (HCA), without delegation, may enter into contracts of up to fifteen years' duration for detention or incarceration space or facilities, including related services.

[71 FR 25770, May 2, 2006]

## Subpart 3017.4—Leader Company Contracting

### 3017.402 Limitations.

(a)(4) Submit requests per (HSAR) 48 CFR 3001.7000.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 48801, Aug. 22, 2006]

## Subpart 3017.90—Fixed Price Contracts for Vessel Repair, Alteration or Conversion

### 3017.9000 Clauses (USCG).

For the U.S. Coast Guard, the following clauses are to be used in specific solicitations and contracts:

(a) The clauses in (HSAR) 48 CFR 3052.217–90 through (HSAR) 48 CFR 3052.217–93 and (HSAR) 48 CFR 3052.217–95 through (HSAR) 48 CFR 3052.217–99 shall be included and clause (HSAR) 48 CFR 3052.217–94 may be included in sealed bid fixed-price solicitations and contracts for vessel repair, alteration, or conversion which are to be performed within the United States, its possessions, or Puerto Rico. The contracting officer may, in whole or in part (such as after incidents), increase the dollar amounts in the clause at (HSAR) 48 CFR 3052.217–95(b)(6) and (c)(1) consistent with contract size, inflation, and other circumstances.

(b) Unless inappropriate, the clauses in (HSAR) 48 CFR 3052.217–90 through (HSAR) 48 CFR 3052.217–93 and (HSAR) 48 CFR 3052.217–95 through (HSAR) 48 CFR 3052.217–99 should be included and (HSAR) 48 CFR 3052.217–94 may be included in negotiated solicitations and contracts to be performed outside the United States. The contracting officer may, in whole or in part (such as after incidents), increase the dollar amounts in the clause at (HSAR) 48 CFR 3052.217–95(b)(6) and (c)(1) consistent with contract size, inflation, and other circumstances.

(c) The clause at (HSAR) 48 CFR 3052.217–100, Guarantee, shall be used where general guarantee provisions are deemed desirable by the contracting officer.

(1) When inspection and acceptance tests will afford full protection to the Government in ascertaining conformance to specifications and the absence of defects and deficiencies, no guarantee clause for that purpose shall be included in the contract.

(2) The customary guarantee period, to be inserted in the first sentence of the clause at (HSAR) 48 CFR 3052.217–100, Guarantee, is 60 days. However, in certain instances, the contracting officer may desire to include a clause in a contract for a guarantee period of more than 60 days. In such instances:

(i) Where, after full inquiry, it has been determined that such longer guarantee period will not involve increased costs, a longer guarantee period may be substituted by the contracting officer for the usual 60 days; or

(ii) Where the full inquiry discloses that such longer guarantee period will involve, or is reasonably expected to involve, increased costs, such facts and the reasons for the need for such longer period shall be set forth in letter form to the COCO, requesting approval for use of guarantee period in excess of 60 days. Upon approval, the longer period may be inserted by the contracting officer in the first sentence of the clause at (HSAR) 48 CFR 3052.217–100, Guarantee.

# PART 3018—EMERGENCY ACQUISITIONS

## Subpart 3018.1—Available Acquisition Flexibilities

Sec.

3018.109 Priorities and allocations.

AUTHORITY: 5 U.S.C. 301–302, 41 U.S.C. 1707, 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

SOURCE: 77 FR 50635, Sept. 21, 2012, unless otherwise noted.

### 3018.109 Priorities and allocations.

DHS Components may assign priority ratings on contracts and orders as authorized by the Defense Priorities and Allocation System (DPAS). (See (HSAR) 48 CFR 3011.602.)

# SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

## PART 3019—SMALL BUSINESS PROGRAMS

### Subpart 3019.2—Policies

Sec.
3019.201 General policy.

### Subpart 3019.7—The Small Business Subcontracting Program

3019.705 Responsibilities of the contracting officer under the subcontracting assistance program.
3019.705–1 General support for the program.
3019.708 Contract clauses.
3019.708–70 Solicitation provision and contract clauses.

AUTHORITY: 41 U.S.C. 418b (a) and (b).

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3019.2—Policies

### 3019.201 General policy.

(d) DHS is committed to a unified team approach involving senior management, small business specialists, acquisition personnel and program staff to support both critical homeland security missions and meet public policy objectives concerning small business participation in departmental procurements. The Director, Office of Small and Disadvantaged Business Utilization, is responsible for the implementation and execution of programs to assist small businesses, veteran owned small businesses, service-disabled veteran owned small businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small business concerns as required by the Small Business Act.

[71 FR 25770, May 2, 2006]

## Subpart 3019.7—The Small Business Subcontracting Program

### 3019.705 Responsibilities for the contracting officer under the subcontracting program.

### 3019.705–1 General support for the program.

In any solicitation where subcontracting plans will be required for one or more offerors, contracting officers may include evaluation factors that consider the quality of proposed subcontracting plans and past performance under previous subcontracting plans. Contracting officers must ensure that these factors do not penalize companies not required to submit subcontracting plans.

[71 FR 25770, May 2, 2006]

### 3019.708 Contract clauses.

### 3019.708–70 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.219–70, Small Business Subcontracting Plan Reporting, in solicitations and contracts containing the clause at (FAR) 48 CFR 52.219–9.

(b) The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.219–71, DHS Mentor-Protégé Program in all solicitations that anticipate the need for a subcontracting plan.

(c) The contracting officer shall insert the provision at (HSAR) 48 CFR 3052.219–72, Evaluation of Prime Contractor Participation in the DHS Mentor-Protégé Program, in all solicitations containing (HSAR) 48 CFR 3052.219–71, DHS Mentor-Protégé Program and (FAR) 48 CFR 52.219–9, Small Business Subcontracting Plan.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 25770, May 2, 2006]

## PART 3020–3021 [RESERVED]

# PART 3022—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

## Subpart 3022.1—Basic Labor Policies

Sec.
3022.101 Labor relations.
3022.101–70 Admittance of union representatives to DHS installations.
3022.101–71 Contract clauses.

## Subpart 3022.4—Labor Standards for Contracts Involving Construction

3022.406 Administration and enforcement.
3022.406–9 Withholding from or suspension of contract payments.

## Subpart 3022.90—Local Hire (USCG)

3022.9000 Policy (USCG).
3022.9001 Contract clause (USCG).

AUTHORITY: 5 U.S.C. 301–302, 41 U.S.C. 1707, 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3022.1—Basic Labor Policies

### 3022.101 Labor relations.

### 3022.101–70 Admittance of union representatives to DHS installations.

(a) Admittance of union representatives to Transportation Security Administration or United States Secret Service installations and work sites is not governed by this rule, but by laws, rules, regulations, Executive Orders and policies applicable to those Components. It is the policy of DHS to admit non-employee labor union representatives of contractor employees to DHS installations to visit work sites and transact labor union business with contractors, their employees, and union stewards pursuant to existing union collective bargaining agreements. Their presence must not interfere with the contractor's work under a DHS contract nor violate safety or security regulations that may be applicable to persons visiting the installation. However, if there have been incidents of vandalism, illegal work stoppages, or interference with work, the non-employee labor union representatives may be subject to access limitations. Non-employee labor union representatives will not be permitted to conduct meetings, collect union dues, or make speeches concerning union matters while visiting a work site during working hours.

(b) Whenever a non-employee labor union representative is denied entry to a work site, the person denying entry shall make a written report to the DHS labor coordinator and Component labor advisor, if any, within two working days after the request for entry is denied. The report shall include the reason(s) for the denial, the name of the representative denied entry, the union affiliation and number, and the name and title of the person that denied the entry.

[71 FR 25770, May 2, 2006, as amended at 71 FR 48801, Aug. 22, 2006]

### 3022.101–71 Contract clauses.

(a) The contracting officer, may, when applicable, insert the clause at (HSAR) 48 CFR 3052.222–70, Strikes or Picketing Affecting Timely Completion of the Contract Work, in solicitations and contracts.

(b) The contracting officer may, when applicable, insert the clause at (HSAR) 48 CFR 3052.222–71, Strikes or Picketing Affecting Access to a DHS Facility, in solicitations and contracts.

## Subpart 3022.4—Labor Standards for Contracts Involving Construction

### 3022.406 Administration and enforcement.

### 3022.406–9 Withholding from or suspension of contract payments.

(c) Disposition of contract payments withheld or suspended.

(1) Forwarding wage underpayments to the Comptroller General. The contracting officer shall ensure that a completed DHS Form 700–4, Employee Claim for Wage Restitution, is obtained from each employee claiming restitution under the contract. The Comptroller General (Claims Division) shall receive this form with a completed SF 1093, Schedule of Withholding Under the Davis-Bacon Act and/or the Contract Work Hours and

Safety Standards Act, before payment can be made to the employee.

[68 FR 67871, Dec. 4, 2003, as amended at 77 FR 50635, Aug. 22, 2012]

## Subpart 3022.90—Local Hire (USCG)

### 3022.9000 Policy (USCG).

As required by 14 U.S.C. 666, the U.S. Coast Guard shall include a provision for local hire in each contract for construction or services to be performed in whole or in part in a State that has an unemployment rate in excess of the national average rate of unemployment as determined by the Secretary of Labor.

### 3022.9001 Contract clause (USCG).

For the U.S. Coast Guard, the contracting officer shall insert the USCG clause at (HSAR) 48 CFR 3052.222–90, Local Hire (USCG), Local Hire Provision, in all solicitations and contracts as stated in (HSAR) 48 CFR 3022.9000.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 25770, May 2, 2006]

# PART 3023—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

### Subpart 3023.3—Hazardous Material Identification and Material Safety Data

Sec.
3023.303 Contract clause.

### Subpart 3023.5—Drug-Free Workplace

3023.501 Applicability.
3023.506 Suspension of payments, termination of contract, and debarment and suspension actions.

### Subpart 3023.10—Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements

3023.1004 Requirements.

### Subpart 3023.90—Safety Requirements for USCG Contracts

3023.9000 Contract Clause (USCG).

AUTHORITY: 5 U.S.C. 301–302, 41 U.S.C. 1707, 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3023.3—Hazardous Material Identification and Material Safety Data

### 3023.303 Contract clause.

The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.223–70, Removal or Disposal of Hazardous Substances—Applicable Licenses and Permits, in solicitations and contracts involving the removal or disposal of hazardous waste material.

## Subpart 3023.5—Drug-Free Workplace

### 3023.501 Applicability.

(d) The head of any Component may issue a determination under (FAR) 48 CFR 23.501(d) to exclude the Drug-Free Workplace requirements of FAR subpart 23.5 in contracts supporting undercover law enforcement operations.

[71 FR 25770, May 2, 2006, as amended at 71 FR 48801, Aug. 22, 2006]

### 3023.506 Suspension of payments, termination of contract, and debarment and suspension actions.

(e) Submit requests per (HSAR) 48 CFR 3001.7000.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 48801, Aug. 22, 2006]

## Subpart 3023.10—Federal Compliance With Right-to-Know Laws and Pollution Requirements

### 3023.1004 Requirements.

DHS Directive 023–02 Environmental Compliance Program provides guidance and direction for compliance with environmental laws, regulations and executive orders. DHS Directive 025–01, Sustainable Practices for Environmental, Energy and Transportation, provides guidance and direction for compliance with green purchasing and other sustainable practices contained in Executive Order 13423. Contracting officers

shall ensure that solicitations and contracts contain appropriate sustainable practices requirements, provisions and clauses. Contractors shall support the DHS Environmental Policy by taking appropriate actions to eliminate or reduce their impacts on the environment.

[77 FR 50635, Aug. 22, 2012]

## Subpart 3023.90—Safety Requirements for USCG Contracts

### 3023.9000 Contract clause (USCG).

For the U.S. Coast Guard, where all or part of a contract will be performed on Government-owned or leased property, the contracting officer shall insert the clause at (HSAR) 48 CFR 3052.223–90, Accident and Fire Reporting.

# PART 3024—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

## Subpart 3024.1—Protection of Individual Privacy

Sec.
3024.102–70 General.

## Subpart 3024.2—Freedom of Information Act

3024.203 Policy.

AUTHORITY: 41 U.S.C. 418b (a) and (b).

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3024.1—Protection of Individual Privacy

### 3024.102–70 General.

Procedures for implementing the Privacy Act of 1974 are contained in Departmental regulations under 6 CFR part 5, subpart B, Privacy Act.

## Subpart 3024.2—Freedom of Information Act

### 3024.203 Policy.

(a) The Department's implementation of the Freedom of Information Act is codified in regulations 6 CFR part 5, subpart B, FOIA. Information request concerning awards beyond those routinely handled by contracting officers (e.g., identification of successful offerors, public announcements, debriefings, surety notices under HSAR 3028.106–6) shall be submitted to the FOIA Office of the Component making the award. The FOIA office for the DHS Office of Operations only, is Departmental Disclosure Officer (DDO), DHS, Washington, DC 20528 or *foia@dhs.gov*.

(b) See (FAR) 48 CFR 15.207(b) on safeguarding proposals.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 48801, Aug. 22, 2006]

# PART 3025—FOREIGN ACQUISITION

## Subpart 3025.70—American Recovery and Reinvestment Act Restrictions on Foreign Acquisition

Sec.
3025.7000 Scope of subpart.
3025.7001 Definitions.
3025.7002 Restrictions on clothing, fabrics, and related items.
3025.7002–1 Restrictions.
3025.7002–2 Exceptions.
3025.7002–3 Specific application of trade agreements.
3025.7003 Contract clauses.

AUTHORITY: 41 U.S.C. 418b(a) and (b).

SOURCE: 74 FR 41349, Aug. 17, 2009, unless otherwise noted.

### 3025.7000 Scope of subpart.

This subpart contains restrictions on the acquisition of certain foreign textile products imposed by the American Recovery and Reinvestment Act of 2009 on contracts, exercising of an option and orders entered into on or after August 16, 2009 with funds appropriated or otherwise provided on or before February 17, 2009.

### 3025.7001 Definitions.

As used in this subpart—

(a) ''Commercial,'' as applied to an item described in (HSAR) 48 CFR 3025.7002–1, means an item of supply, whether an end product or component, that meets the definition of ''commercial item'' set forth in (FAR) 48 CFR 2.101.

(b) ''Component'' means any item supplied to the Government as part of an end product or of another component.

(c) ''End product'' means supplies delivered under a line item of a contract.

(d) ''Non-commercial,'' as applied to an item described in (HSAR) 48 CFR 3025.7002–1, means an item of supply, whether an end product or component, that does not meet the definition of ''commercial item'' set forth in (FAR) 48 CFR 2.101.

(e) ''Item directly related to national security interests'' means an item intended for use in a Department of Homeland Security action protecting the nation from internal or external threats, including protecting the nation's borders, transportation system, maritime domain or critical infrastructure, as determined by the contracting officer.

### 3025.7002 Restrictions on clothing, fabrics, and related items.

### 3025.7002–1 Restrictions.

The following restrictions implement section 604 of the American Recovery and Reinvestment Act of 2009 and they apply to all types of actions, orders, exercising of an option and contracts. Except as provided in subsection (HSAR) 48 CFR 3025.7002–2, do not acquire, either as end products or components, any item listed in paragraphs (a) or (b) of this section, if the item is directly related to the national security interests of the United States and the item has not been grown, reprocessed, reused, or produced in the United States:

(a) Commercial or non-commercial items—(1) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing (and the materials and components thereof); or

(2) Tents, tarpaulins, covers, textile belts, bags, protective equipment (such as body armor), sleep systems (sleeping bags), load carrying equipment (such as fieldpacks), textile marine equipment, parachutes or bandages.

(b) Non-commercial items—

(1) Cotton and other natural fiber products.

(2) Woven silk or woven silk blends.

(3) Spun silk yarn for cartridge cloth.

(4) Synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics).

(5) Canvas products.

(6) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).

(7) Any item of individual equipment manufactured from or containing any of the fibers, yarns, fabrics, or materials listed in this paragraph (b).

### 3025.7002–2 Exceptions.

Acquisitions in the following categories are not subject to the restrictions in (HSAR) 48 CFR 3025.7002–1:

(a) Acquisitions at or below the simplified acquisition threshold.

(b) Acquisition of items not directly related to national security interests of the United States.

(c) Acquisitions of any of the items otherwise covered by (HSAR) 48 CFR 3025.7002–1, if the Chief Procurement Officer determines that the item grown, reprocessed, reused, or produced in the United States cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at United States market prices. When this exception is used—

(1) Only the DHS Chief Procurement Officer is authorized to make the domestic nonavailability determination.

(2) The DHS Component, not later than 7 days after the award of the contract, must post a notification that the exception has been applied on the Government-wide point of entry, which may be combined with any synopsis of award.

(3) The supporting documentation for the CPO determination prepared by the DHS Component(s) shall include—

(i) An analysis of alternatives that would not require a domestic nonavailability determination; and

(ii) A written justification by the requiring activity, with specificity, why such alternatives are unacceptable.

(d) Acquisitions of items listed in FAR 48 CFR 25.104.

(e) Emergency acquisitions by activities located outside the United States.

(f) Acquisitions by vessels in foreign waters.

(g) Acquisitions of incidental amounts of cotton, other natural fibers, wool or other item covered by

(HSAR) 48 CFR 3025.7002–1(a)-(b) incorporated in an end product, for which the estimated value of the item so covered is not more than 10 percent of the total price of the end product.

(h) Acquisitions of items otherwise covered by (HSAR) 48 CFR 3025.7002–1(a) and (b) for which restricting a procurement of the items to those that have been grown, reprocessed, reused, or produced in the United States would be inconsistent with United States obligations under international agreements. Acquisitions of products that are eligible products per (FAR) 48 CFR Subpart 25.4 are not covered by these restrictions; see (HSAR) 48 CFR 3025.7003–2 for specific application of trade agreements.

**3025.7002–3 Specific application of trade agreements.**

(a) For covered items entitled to non-discriminatory treatment under the World Trade Organization Agreement on Government Procurement (WTO GPA), or any Free Trade Agreement (FTA) listed in (FAR) 48 CFR Subpart 25.4, this subpart is applied as follows—

(1) For solicitations, orders, exercising of an option and contracts issued by any component other than Transportation Security Administration (TSA), in which any covered items will be procured with a value that is both above the simplified acquisition threshold, and below the applicable trade agreement threshold in (FAR) 48 CFR 25.402, apply (HSAR) 48 CFR 3025.7002–1. Section 3025.7002–2(h) will exclude eligible products of designated countries with FTA thresholds beneath the simplified acquisition threshold from coverage of section 604.

(2) For solicitations, orders, exercising of an option and contracts issued by any component other than Transportation Security Administration (TSA), in which any covered items will be procured with a value exceeding $194,000 (or the superseding threshold upon updating of (FAR) 48 CFR 25.402), (HSAR) 48 CFR 3025.7002–1 does not apply if the items are eligible products per FAR 48 CFR Subpart 25.4; follow (FAR) 48 CFR part 25 instead.

(3) For solicitations, orders, exercising of an option and contracts issued by TSA in which any covered items will be procured with a value exceeding the simplified acquisition threshold, (HSAR) 48 CFR 3025.7002 applies to all covered items except those from Mexico, Canada or Chile because TSA is listed as a covered governmental entity in the North American Free Trade Agreement (NAFTA) and the U.S.-Chile Free Trade Agreement but TSA is excluded from all other trade agreements.

(b) For covered items from a country that is not entitled to non-discriminatory treatment under the WTO GPA, or any FTA listed in (FAR) 48 CFR subpart 25.4, apply the restrictions of (HSAR) 48 CFR 3025.7002 to all solicitations, orders, exercising of an option and contracts exceeding the simplified acquisition threshold in place of the Buy America Act policies at (FAR) 48 CFR Subpart 25.1.

**3025.7003 Contract clauses.**

Unless an exception under (HSAR) 48 CFR 3025.7002–2(a), (b), (e) or (f) applies, insert the clause at (HSAR) 48 CFR 3052.225–70, Requirement for Use of Certain Domestic Commodities, in solicitations, exercising of an option, contract modifications that add new items (or which make a cardinal change) and contracts with a value exceeding the simplified acquisition threshold when procuring any item covered under (HSAR) 48 CFR 3025.7002–1(a) or (b).

# PART 3026—OTHER SOCIO-ECONOMIC PROGRAMS [RESERVED]

# PART 3027—PATENTS, DATA, AND COPYRIGHTS

## Subpart 3027.2—Patents

Sec.

3027.205 Adjustment of royalties.
3027.208 Use of patented technology under the North American Free Trade Agreement.

## Subpart 3027.3—Patent Rights Under Government Contracts

3027.304–1 General.
3027.304–5 Appeals.
3027.305 Administration of Patent Rights Clauses.

3027.305–4 Administration of Patent Rights Clause.
3027.306 Licensing background patent rights to third parties.

### Subpart 3027.4—Rights in Data and Copyrights

3027.404 Basic Rights in Data clause.
3027.409 Solicitation provisions and contract clauses.

AUTHORITY: 41 U.S.C. 418b (a) and (b).

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3027.2—Patents

### 3027.205 Adjustment of royalties.

(a) Reports shall be made to Component legal counsel. Contracting Officers shall coordinate actions with the COCO and HCA.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 48801, Aug. 22, 2006]

### 3027.208 Use of patented technology under the North American Free Trade Agreements.

(f) Contracting officers shall ensure compliance.

## Subpart 3027.3—Patent Rights under Government Contracts

### 3027.304–1 General.

Interim and final invention reports and notification of all subcontracts for experimental, developmental, or research work (FAR) 48 CFR 27.304–1(e)(2)(ii) may be submitted on DD Form 882, Report of Inventions and Subcontracts.

### 3027.304–5 Appeals.

(a) Contracting officers are authorized to take the specified actions.

(b) Appeals shall be made to the CPO.

### 3027.305 Administration of Patent Rights Clauses.

### 3027.305–4 Conveyance of invention rights acquired by the Government.

The contracting officer shall ensure that solicitations and contracts which include a patent rights clause include a means for the contractor to report inventions made in the course of contract performance and at contract completion. This requirement may be fulfilled by requiring the contractor to submit a DD Form 882, Report of Inventions and Subcontract.

### 3027.306 Licensing background patent rights to third parties.

(b) The CPO shall make the required determinations and notifications under this subpart.

## Subpart 3027.4—Rights in Data and Copyrights

### 3027.404 Basic rights in data clause.

(f)(1)(iii) The DHS will use Alternate IV of the (FAR) 48 CFR clause 52.227–14 in all contracts containing the basic clause, unless the HCA approves an exclusion. Approval at a level above the contracting officer is required for the contract to exclude items or categories of data from Alternative IV.

### 3027.409 Solicitation provisions and contract clauses.

Alternate IV of the (FAR) 48 CFR clause 52.227–14 shall be included in solicitations and contracts containing the basic clause unless the HCA approves an exclusion. Additional nonconflicting alternates may be used.

# PART 3028—BONDS AND INSURANCE

### Subpart 3028.1—Bonds and Other Financial Protections

Sec.
3028.106 Administration.
3028.106–6 Furnishing information.
3028.106–70 Execution and administration of bonds.
3028.106–490 Contract clause (USCG).

### Subpart 3028.3—Insurance

3028.306 Insurance under fixed-price contracts.
3028.306–90 Contracts for lease of aircraft (USCG).
3028.307 Insurance under cost-reimbursement contracts.
3028.307–1 Group insurance plans.
3028.310 Contract clause for work on a Government installation.
3028.310–70 Contract clause.
3028.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
3028.311–1 Contract clause.

AUTHORITY: 41 U.S.C. 418b (a) and (b).

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3028.1—Bonds and Other Financial Protections

### 3028.106 Administration.

### 3028.106–6 Furnishing information.

(b) The contracting officer shall, upon request, furnish the name and address of the prime contractor's surety or sureties to employees, suppliers, and subcontractors having a contractual or employment relationship with prime contractors, subcontractors or suppliers. When furnishing surety information, the inquirer may also be informed that:

(1) Persons believing that they have legal remedies under the Miller Act are cautioned to consult their own legal advisor regarding the proper steps to take to obtain remedies.

(2) On construction contracts exceeding $2,000, if the contracting officer is informed (through routine compliance checking, a complaint, or a request for information) that a laborer, mechanic, apprentice, trainee, watchman, or guard employed by the contractor or subcontractor at any tier may have been paid wages less than those required by the applicable labor standards provisions of the contract, the contracting officer shall promptly initiate an investigation in accordance with (FAR) 48 CFR Subpart 22.4, irrespective of the employee's rights under the Miller Act. When an employee's request for information is involved, the contracting officer shall inform the inquirer that such investigation will be made. Such investigation is required pursuant to the provisions of the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, and Copeland (Anti-Kickback) Act for assuring proper payment to such employees.

(c) When furnishing a copy of a payment bond and contract in accordance with (FAR) 48 CFR 28.106–6(c), the requirement for a copy of the contract may be satisfied by furnishing a machine-duplicate copy of the contract's cover page, showing the contract number and date, the contractor's name and signature, the contracting officer's signature, and the description of the contract work. The contracting officer furnishing the copies shall place the statement ''Certified to be a true and correct copy'' followed by a signature, title and name of the Component. The fee for furnishing the requested certified copies shall be determined according to the DHS Freedom of Information Act regulation, 6 CFR part 5, subpart B.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 25771, May 2, 2006; 71 FR 48801, Aug. 22, 2006]

### 3028.106–70 Execution and administration of bonds.

(a) The contracting officer shall notify the surety within 30 days, of the contractor's failure to perform in accordance with the terms of the contract.

(b) When a partnership is a principal on a bond, the names of all the members of the firm shall be listed in the bond following the name of the firm, and the phrase ''a partnership composed of.'' If a principal is a corporation, the state of incorporation shall also appear on the bond.

(c) Performance or payment bond(s) other than an annual bond shall not predate the contract to which it pertains.

(d) Bonds may be filed with the original contract to which they apply, or all bonds can be separately maintained and reviewed quarterly for validity. If separately maintained, each contract file shall cross-reference the applicable bonds.

### 3028.106–490 Contract clause (USCG).

For the U.S. Coast Guard, the contracting officer shall insert the USCG clause at (HSAR) 48 CFR 3052.228–90, Notification of Miller Act Payment Bond Protection (USCG), in solicitations and contracts, and shall require its first-tier subcontractors to insert the clause in all of their subcontracts, when payment bonds are required.

[71 FR 25771, May 2, 2006]

## Subpart 3028.3—Insurance

### 3028.306 Insurance under fixed-price contracts.

#### 3028.306–90 Contracts for lease of aircraft (USCG).

(a) For the U.S. Coast Guard, the contracting officer shall insert the clauses at (HSAR) 48 CFR 3052.228–91 through 3052.228–93, unless otherwise indicated by the specific instructions for their use, in any contract for the lease of aircraft (including aircraft used in out-service flight training).

(b) For the U.S. Coast Guard, the contracting officer shall insert the clause at (HSAR) 48 CFR 3052.228–91, Loss of or Damage to Leased Aircraft, in any contract for the lease of aircraft, except in the following circumstances:

(1) When the hourly rental rate does not exceed $250 and the total rental cost for any single transaction is not in excess of $2,500:

(2) When the cost of hull insurance does not exceed 10 percent of the contract rate; or

(3) When the lessor's insurer does not grant a credit for uninsured hours, thereby preventing the lessor from granting the same to the Government.

(c) For the U.S. Coast Guard, the contracting officer shall insert the clause at (HSAR) 48 CFR 3052.228–92, Fair Market Value of Aircraft, when fair market value of the aircraft can be determined.

(d) 49 U.S.C. 44112, as amended, provides that no lessor of an aircraft under a *bona fide* lease of 30 days or more shall be liable by reason of his interest as lessor or title-holder of the aircraft for any injury to or death of persons, or damage to or loss of property, unless such aircraft is in the actual possession or control of such person at the time of such injury, death, damage or loss. On short-term or intermittent-use leases, however, the owner may be liable for damage caused by operation of the aircraft. It is usual for the aircraft owner to retain insurance covering this liability during the term of such lease. Such insurance can, often for little or no increase in premium, be made to cover the Government's exposure to liability as well. In order to take advantage of this coverage, the Risks and Indemnities clause at (HSAR) 48 CFR 3052.228–93 prescribed in paragraph (d)(1) of this section shall be used.

(1) For the U.S. Coast Guard, the contracting officer shall insert the clause at (HSAR) 48 CFR 3052.228–93, Risk and Indemnities, in any contract for out-service flight training or for the lease of aircraft when the Government will have exclusive use of the aircraft for a period of less than thirty days.

(2) For the U.S. Coast Guard, any contract for out-service flight training shall include a clause in the contract schedule stating substantially that the contractor's personnel shall at all times during the course of the training be in command of the aircraft and that at no time shall other personnel be permitted to take command of the aircraft.

### 3028.307 Insurance under cost-reimbursement contracts.

#### 3028.307–1 Group insurance plans.

Plans shall be submitted to the contracting officer, who must obtain the advice of legal counsel.

### 3028.310 Contract clause for work on a Government installation.

#### 3028.310–70 Contract clause.

Insert a clause substantially similar to (HSAR) 48 CFR 3052.228–70, ''Insurance,'' in all solicitations and contracts that contain the clause at (FAR) 47 CFR 52.228–5.

### 3028.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

#### 3028.311–1 Contract clause.

Insert a clause substantially similar to (HSAR) 48 CFR 3052.228–70, ''Insurance,'' in all solicitations and contracts that contain the clause at (FAR) 48 CFR 52.228–7, unless waived by an official one level above the contracting officer.

# SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

## PART 3029—TAXES [RESERVED]

## PART 3030—COST ACCOUNTING STANDARDS ADMINISTRATION

### Subpart 3030.2—CAS Program Requirements

Sec.
3030.201 Contract requirements.
3030.201–5 Waiver.

AUTHORITY: 41 U.S.C. 418b (a) and (b).

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

### Subpart 3030.2—CAS Program Requirements

**3030.201 Contract requirements.**

**3030.201–5 Waiver.**

(a) The CPO is authorized to waive the applicability of the Cost Accounting Standards (CAS) under (FAR) 48 CFR 30.201–5(b). This authority may not be redelegated.

(c) Waiver requests must conform to (HSAR) 48 CFR 3001.70.

[71 FR 25771, May 2, 2006]

## PART 3031—CONTRACT COST PRINCIPLES AND PROCEDURES

### Subpart 3031.2—Contracts with Commercial Organizations

Sec.
3031.205 Selected costs.
3031.205–32 Precontract costs.

AUTHORITY: 41 U.S.C. 418b (a) and (b).

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

### Subpart 3031.2—Contracts with Commercial Organizations

**3031.205 Selected costs.**

**3031.205–32 Precontract costs.**

(a) The decision to incur precontract costs is that of the contractor. DHS employees may not authorize, demand, or require a contractor to incur precontract costs. The contracting officer must advise the prospective contractor that any costs incurred before contract award are incurred at the contractor's sole risk and that if negotiations fail to result in a binding contract, payment of these costs will not be made by the Government. See (HSAR) 48 CFR 3031.205–32(b) regarding exception due to reconciliation of costs.

(b) When the contracting officer determines that incurring precontract costs was necessary to meet the proposed contract delivery schedule of a cost-reimbursement contract, the clause at (HSAR) 48 CFR 3052.231–70, Precontract Costs, may be inserted in the resultant contract.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 25771, May 2, 2006; 71 FR 48801, Aug. 22, 2006]

## PART 3032—CONTRACT FINANCING

### Subpart 3032.000—Scope of Part

Sec.
3032.003 Simplified acquisition procedures financing.
3032.006 Reduction or suspension of contract payments upon finding of fraud.
3032.006–2 Definition.
3032.006–3 Responsibilities.

### Subpart 3032.11—Electronic Funds Transfer

3032.1110 Solicitation provision and contract clauses.

AUTHORITY: 41 U.S.C. 418b (a) and (b).

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

### Subpart 3032.000—Scope of Part

**3032.003 Simplified acquisition procedures financing.**

Contract financing may be permitted for purchases made under the authority of (FAR) 48 CFR Part 13. This authority is delegated to COCO and may not be redelegated.

**3032.006 Reduction or suspension of contract payments upon finding of fraud.**

**3032.006–2 Definition.**

The CPO is the DHS remedy coordination official (RCO).

**3032.006–3 Responsibilities.**

(a) The CPO is authorized to establish specific procedures.

(b) Reports shall be made through the HCA to the CPO.

## Subpart 3032.11—Electronic Funds Transfer

**3032.1110 Solicitation provision and contract clauses.**

(a)(1) Contracting officer shall insert FAR 48 CFR 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration, in all proposed solicitations and contracts.

# PART 3033—PROTESTS, DISPUTES, AND APPEALS

### Subpart 3033.1—Protests

Sec.
3033.102 General.
3033.102–90 Protests on classified solicitations (OSA).

### Subpart 3033.2—Disputes and Appeals

3033.201 Definitions.
3033.211 Contracting officer's decision.
3033.214 Alternative disputes resolution (ADR).

AUTHORITY: 5 U.S.C. 301–302, 41 U.S.C. 1707, 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3033.1—Protests

SOURCE: 77 FR 50635, Aug. 22, 2012, unless otherwise noted.

**3033.102 General.**

**3033.102–90 Protests on classified solicitations (OSA).**

To ensure that classified information is protected and appropriate security measures are coordinated as required, protests involving classified solicitations issued by the Office of Selective Acquisitions (OSA) shall be submitted directly to the contracting officer for further transmission to the GAO, the United States Court of Federal Claims, or for internal resolution in the case of agency protests. Specific instructions will be provided in Section L of the solicitation.

## Subpart 3033.2—Disputes and Appeals

**3033.201 Definitions.**

*Agency Board of Contract Appeals* means the Civilian Board of Contract Appeals (CBCA).

[72 FR 1297, Jan. 11, 2007]

**3033.211 Contracting Officer's decision.**

For DHS contracts, the Board of Contract Appeals (BCA) noted in (FAR) 33.211 is the Civilian Board of Contract Appeals (CBCA) 1800 F Street, NW., Washington, DC 20405.

[72 FR 1297, Jan. 11, 2006]

**3033.214 Alternative dispute resolution (ADR).**

(c) The Administrative Dispute Resolution Act (ADRA) of 1996, as amended, 5 U.S.C. 571, et seq., authorizes and encourages agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes, and for other purposes. CBCA guidance on ADR may be obtained at *http://www.gsbca.gsa.gov/CBCA-17712-v1-CBCA_ADR_INFORMATION.pdf* or from the CBCA upon request. ADR procedures may be used—

(1) When there is mutual consent by the parties to participate in the ADR process (with consent being obtained either before or after an issue in controversy has arisen);

(2) Prior to the submission of a claim; and

(3) In resolution of a formal claim.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 25771, May 2, 2006; 72 FR 1297, Jan. 11, 2007]

# PART 3034—MAJOR SYSTEM ACQUISITION

## Subpart 3034.0—General

Sec.
3034.004 Acquisition strategy.

AUTHORITY: 5 U.S.C. 301–302, 41 U.S.C. 418b(a) and (b), 41 U.S.C. 414, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0700.

SOURCE: 75 FR 41100, July 15, 2010, unless otherwise noted.

### 3034.0 General

### 3034.004 Acquisition strategy.

*See* (HSAR) 48 CFR 3009.570 for policy applicable to acquisition strategies that consider the use of lead system integrators.

# SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

## PART 3035—RESEARCH AND DEVELOPMENT CONTRACTING

### Subpart 3035.000—Scope of Part

Sec.
3035.003 Policy.
3035.008 Evaluation for award.
3035.017 Federally Funded Research and Development Centers.

### Subpart 3035.70—Information Dissemination by Educational Institutions

3035.70–1 xxx
3035.70–1 xxx

AUTHORITY: 5 U.S.C. 301–302, 41 U.S.C. 1707, 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3035.000—Scope of Part

**3035.003 Policy.**

(b) Cost sharing shall be determined on a case by case basis. Components may establish procedures for cost sharing.

(c) Recoupment shall be determined on a case-by-case basis. Recoupment not otherwise required by law should be structured to address factors such as recovering the Department's fair share of its investment in nonrecurring costs related to the items acquired. Advice of legal counsel shall be obtained prior to establishing cost sharing policies and recoupment mechanisms under (FAR) 48 CFR 35.003(b) and (c).

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 48802, Aug. 22, 2006]

**3035.008 Evaluation for award.**

*See* (HSAR) 48 CFR 3009.570 for limitations on the award of contracts to contractors acting as lead system integrators.

[75 FR 41100, July 15, 2010]

**3035.017 Federally Funded Research and Development Centers.**

(a) In accordance with section 309(b) of the Homeland Security Act, 6 U.S.C. 189(b), DHS may be a joint sponsor under a multiple agency sponsorship arrangement with the Department of Energy (DOE) of one or more DOE national laboratories or sites. DOE shall be the primary sponsor under any multiple agency sponsorship arrangement with DOE laboratories or sites. Work performed by a DOE national laboratory or site under a joint sponsorship arrangement with DHS Components shall comply with policy on the use of Federally Funded Research and Development Centers (FFRDCs) in (FAR) 48 CFR 35.017.

[71 FR 25771, May 2, 2006, as amended at 71 FR 48802, Aug. 22, 2006]

## Subpart 3035.70—Information Dissemination by Educational Institutions

**3035.70–1 Policy.**

The Department of Homeland Security (DHS) desires widespread dissemination of the results of funded non-sensitive research. The Contractor, therefore, may publish (subject to the provisions of the ''Data Rights'' and ''Patent Rights'' clauses of the contract) research results in professional journals, books, trade publications, or other appropriate media.

[77 FR 50635, Aug. 22, 2012]

**3035.70–2 Contract clause.**

(a) The contracting officer shall use the clause at (HSAR) 48 CFR 3052.235–70, Dissemination of Information—Educational Institutions, in contracts with educational institutions for research that is not sensitive or classified.

(b) If the contract involves sensitive or classified research, the contracting officer shall prepare and insert a Special Contract Requirement that conditions dissemination upon the approval of a designated Government official.

[77 FR 50635, Aug. 22, 2012]

# PART 3036—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

## Subpart 3036.1—General

Sec.
3036.104 Policy.
3036.104–90 Authority for one-step turn-key design-build contracting for the United States Coast Guard (USCG).

## Subpart 3036.2—Special Aspects of Contracting for Construction

## Subpart 3036.5—Contract Clauses

3036.570 Special precautions for work at operating airports.

AUTHORITY: 5 U.S.C. 301–302, 41 U.S.C. 1707, 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3036.1—General

### 3036.104 Policy.

### 3036.104–90 Authority for one-step turn-key design-build contracting for the United States Coast Guard (USCG).

The Head of the Contracting Activity (HCA) of the U.S. Coast Guard may use one-step turn-key selection procedures to enter into fixed-price design-build contracts in accordance with 14 U.S.C. 677.

[73 FR 24883, May 6, 2008]

## Subpart 3036.2—Special Aspects of Contracting for Construction

## Subpart 3036.5—Contract Clauses

### 3036.570 Special precautions for work at operating airports.

Where any acquisition will require work at an operating airport, insert the clause at (HSAR) 48 CFR 3052.236–70, Special Precautions for Work at Operating Airports, in solicitations and contracts.

# PART 3037—SERVICE CONTRACTING

## Subpart 3037.1—Service Contracts—General

Sec.
3037.103 [Reserved]
3037.104 Personal services contracts.
3037.104–70 Personal services contracts.
3037.104–90 Personal services contracts (USCG).
3037.104–91 Personal services with individuals under the authority of 10 U.S.C. 1091 (USCG).

AUTHORITY: 41 U.S.C. 418b (a) and (b).

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3037.1—Service Contracts—General

### 3037.103 [Reserved]

### 3037.104 Personal services contracts.

### 3037.104–70 Personal service contracts.

(b) Authorization to acquire the personal services of experts and consultants is included in section 832 of the Homeland Security Act, 6 U.S.C. 392. This section includes authority to use personal service contracts, including authority to contract without regard to the pay limitation of 5 U.S.C. 3109 when the services are necessary due to an urgent homeland security need.

[71 FR 25771, May 2, 2006]

### 3037.104–90 Personal services contracts (USCG).

The U.S. Coast Guard HCA may enter into medical personal services contracts in accordance with 10 U.S.C. 1091.

[71 FR 25771, May 2, 2006]

### 3037.104–91 Personal services contracts with individuals under the authority of 10 U.S.C. 1091 (USCG).

(a) Health care personal services contracts awarded to individuals shall be selected through procedures established in this section. Selections made using the procedures in this section are exempt by statute from (HSAR) 48 CFR part 3006 competition requirements (see (HSAR) 48 CFR 3006.9000 (USCG))

and from (FAR) 48 CFR Part 6 competition requirements.

(b) The contracting officer shall provide adequate advance notice of contracting opportunities to individuals residing in the area of the facility. The notice should include the qualification criteria against which individuals responding shall be evaluated. Contracting officers shall solicit offerors through the most effective means of seeking competition, such as a local publication, which serves the area of the facility. Acquisitions of health care services using personal services contracts are exempt from posting and synopsis requirements of (FAR) 48 CFR Part 5.

(c) The contracting officer shall provide the qualifications of individuals responding to the notice to the representative(s) responsible for evaluation and ranking according to the evaluation procedures. Individuals shall be considered solely on the professional qualifications established for the particular health care services being acquired and the Government's estimate of reasonable rates, fees, or costs. The representative(s) responsible for the evaluation and ranking shall provide the contracting officer with rationale for the ranking of the individuals consistent with the required qualifications.

(d) Upon receipt of the ranked listing of offerors, the contracting officer shall either:

(1) Enter into negotiations with the highest ranked offeror. If a mutually satisfactory contract cannot be negotiated, the contracting officer shall terminate negotiations with the highest ranked offeror and enter into negotiations with the next highest, or;

(2) Enter into negotiations with all qualified offerors and select on the basis of qualifications and rates, fees, or other costs.

(e) In the event only one individual responds to an advertised requirement, the contracting officer is authorized to negotiate the contract award. In this case, the individual must still meet the minimum qualifications of the requirement and the contracting officer must be able to make a determination that the price is fair and reasonable.

(f) If a fair and reasonable price cannot be obtained from a qualified individual, the requirement should be canceled and acquired using procedures other than those set forth in this section.

(g) The total amount paid to an individual in any year for health care services under a personal services contract shall not exceed the paycap in COMDTINST M4200.19 (series), Coast Guard Acquisition Procedures.

(h) The contract may provide for the same per diem and travel expenses authorized for a Government employee, including actual transportation and per diem in lieu of subsistence for travel between home or place of business and official duty station and only for travel outside the local area in support of the statement of work.

(i) Coordinate benefits, taxes and maintenance of records with the appropriate office(s).

(j) The contracting officer shall insure that contract funds are sufficient to cover all contingency items that may be cited in the statement of work for health care services.

## PART 3038—FEDERAL SUPPLY SCHEDULE CONTRACTING [RESERVED]

## PART 3039—ACQUISITION OF INFORMATION TECHNOLOGY [RESERVED]

## PART 3040 [RESERVED]

## PART 3041—ACQUISITION OF UTILITY SERVICES [RESERVED]

# SUBCHAPTER G—CONTRACT MANAGEMENT

## PART 3042—CONTRACT ADMINISTRATION AND AUDIT SERVICES

### Subpart 3042.15—Contractor Performance Information

Sec.
3042.1502 Policy.

### Subpart 3042.70—Contracting Officer's Technical Representative

3042.7000 Contract clause.

AUTHORITY: 5 U.S.C. 301–302, 41 U.S.C. 1707, 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3042.15—Contractor Performance Information

### 3042.1502 Policy.

(a) Components shall use the Contractor Performance Assessment Reporting System (CPARS) or other performance reporting system as designated by the DHS Chief Procurement Officer for evaluating contractor performance in accordance with (FAR) 48 CFR sections 42.1502 and 42.1503.

(e) Components shall use the Construction Contractor Appraisal Support System (CCASS) module of CPARS, or other performance reporting system as designated by the DHS Chief Procurement Officer for evaluating construction contractor performance in accordance with (FAR) 48 CFR sections 42.1502 and 42.1503.

(f) Components shall use the Architect-Engineer Contract Administration Support System (ACASS) module of CPARS or other performance reporting system as designated by the DHS Chief Procurement Officer for evaluating architect-engineer contractor performance in accordance with (FAR) 48 CFR sections 42.1502 and 42.1503.

[77 FR 50635, Aug. 22, 2012]

## Subpart 3042.70—Contracting Officer's Technical Representative

### 3042.7000 Contract clause.

The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.242–72, Contracting Officer's Technical Representative, in solicitations and contracts when it is intended that a representative will be assigned to the contract to perform functions of a technical nature.

## PART 3043—CONTRACT MODIFICATIONS [RESERVED]

## PART 3044—SUBCONTRACTING POLICIES AND PROCEDURES [RESERVED]

## PART 3046—QUALITY ASSURANCE

### Subpart 3046.7—Warranties

Sec.
3046.702 [Reserved]
3046.790 Use of warranties in major systems acquisitions by the USCG (USCG).
3046.790–1 Scope (USCG).
3046.790–2 Definitions (USCG).
3046.790–3 Policy (USCG).
3046.790–4 Waiver (USCG).
3046.791–1 Policy (USCG).
3046.791–2 Tailoring warranty terms and conditions. (USCG).
3046.791–3 Warranties on Government-furnished property (USCG).
3046.792 Cost benefit analysis (USCG).
3046.793 Waiver and notification procedures (USCG).

AUTHORITY: 41 U.S.C. 418b (a) and (b).

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3046.7—Warranties

### 3046.702 [Reserved]

### 3046.790 Use of warranties in major systems acquisitions by the USCG (USCG).

### 3046.790–1 Scope (USCG).

This subpart provides the policy for the USCG to use in obtaining warranties from contractors when contracting for the acquisition of a major system.

[68 FR 67871, Dec. 4, 2003. Redesignated and amended at 71 FR 25772, May 2, 2006]

### 3046.790–2 Definitions (USCG).

As used in this part:

*At no additional cost to the Government* means without an increase in price for firm-fixed-price contracts, without an increase in target or ceiling price for fixed price incentive contracts (see (FAR) 48 CFR 46.707).

*Defect* means any condition or characteristic in any supplies or services furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

*Design and manufacturing requirement* means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the major system being produced.

*Performance requirements* means the operating capabilities, maintenance, and reliability characteristics of a system that are determined to be necessary for it to fulfill the requirement for which the system is designed.

[71 FR 25772, May 2, 2006]

### 3046.790–3 Policy (USCG).

(a) *Major Systems*. The use of warranties by the USCG in the procurement of major systems valued at $10,000,000 or higher is mandatory, unless waived (see (HSAR) 48 CFR 3046.790–4).

(b) Any warranty on major system acquisitions shall not apply in the case of any system or component thereof which has been furnished by the Government to a contractor except as indicated in paragraph (c)(4) of this section.

(c) When drafting warranty provisions/clauses for major systems acquisitions, the contracting officer shall ensure that the items listed at the Homeland Security Acquisition Manual (HSAM) Chapter 3046 have been considered. The warranty shall also meet the following requirements:

(1) For systems or components that are commercially available, such warranty as is normally provided by the manufacturer or supplier shall be obtained in accordance with (FAR) 48 CFR 46.703(d) and 46.710(b)(2).

(2) For systems or components provided in accordance with either design and manufacturing or performance requirements as specified in the contract or any modification to that contract, a warranty of compliance with the stated requirements shall be obtained.

(3) Any warranty obtained shall specifically exclude coverage for combat damage.

(4) A contractor for a major systems acquisition shall not be required to provide the warranties specified in this section on any property furnished to that contractor by the Government except for defects in installation.

[71 FR 25772, May 2, 2006]

### 3046.790–4 Waiver (USCG).

(a) The Secretary of Homeland Security may waive the requirement for a warranty for USCG major system acquisitions when the waiver is in the interest of national defense or if the warranty obtained would not be cost beneficial. A waiver may be granted provided that the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science and Transportation of the Senate, and the Committee on Merchant Marine and Fisheries of the House of Representatives are notified, in writing, of the Secretary's intention to waive the warranty requirements and the reasons supporting such a determination, prior to granting the waiver.

The request for Secretarial waiver shall include, as a minimum:

(1) A brief description of the major system and its stage of production (e.g., the number of units delivered and anticipated to be delivered during the life of the program);

(2) The specific waiver requested, the duration of the waiver if it is to involve more than one contract, and the rationale for the waiver; and

(3) All documentation supporting the request for waiver, such as a cost-benefit analysis.

(b) The waiver request shall be forwarded to the Secretary, via the CPO. The USCG shall maintain a written record of each waiver granted and the Congressional notification and report made, together with supporting documentation.

[71 FR 25772, May 2, 2006]

### 3046.791–1 Policy (USCG).

The USCG shall include a warranty in all contracts for major systems acquisitions. When drafting warranty provisions/clauses for major systems acquisitions, the contracting officer shall ensure that the items listed at (HSAR) 48 CFR 3046.706 have been considered. The warranty shall also meet the following requirements:

(a) For systems or components which are commercially available, such warranty as is normally provided by the manufacturer or supplier shall be obtained in accordance with (FAR) 48 CFR 46.703(d) and (FAR) 48 CFR 46.710(b)(2).

(b) For systems or components provided in accordance with either design and manufacturing or performance requirements as specified in the contract or any modification to that contract, a warranty of compliance with the stated requirements shall be obtained.

(c) The warranty provided under paragraph (b) of this section shall provide that in the event the major system or any component thereof fails to meet the terms of the warranty provided, the contracting officer may:

(1) Require the contractor to promptly take such corrective action as the contracting officer determines to be necessary at no additional cost to the Government, including repairing or replacing all parts necessary to achieve the requirements set forth in the contract;

(2) Require the contractor to pay costs reasonably incurred by the United States in taking necessary corrective action; or

(3) Equitably reduce the contract price.

(d) Any warranty shall specifically exclude coverage of combat damage.

### 3046.791–2 Tailoring warranty terms and conditions (USCG).

(a) As the objectives and circumstances vary considerably among major systems acquisition programs, contracting officers shall appropriately tailor the warranty on a case-by-case basis, including remedies, exclusions, limitations and durations, provided the tailoring is consistent with the specific requirements of this subpart and (FAR) 48 CFR 46.706.

(b) Contracting officers of major systems acquisitions may exclude from the terms of the warranty certain defects for specified supplies (exclusions) and may limit the contractor's liability under the terms of the warranty (limitations), as appropriate, if necessary to derive a cost-effective warranty in light of the technical risk, contractor financial risk, or other program uncertainties.

(c) Contracting officers are encouraged to structure a broader and more comprehensive warranty where such is advantageous. Likewise, the contracting officer may narrow the scope of a warranty when appropriate (e.g., where it would be inequitable to require a warranty of all performance requirements because a contractor had not designed the system).

(d) Contracting officers shall not include in a warranty clause any terms that require the contractor to incur liability for loss, damage, or injury to third parties.

### 3046.791–3 Warranties on Government-furnished property (USCG).

A contractor for a major systems acquisition shall not be required to provide the warranties specified in (HSAR) 48 CFR 3046.790–1 on any property furnished to that contractor by the Government except for:

(a) Defects in installation; and

(b) Installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property.

### 3046.792 Cost benefit analysis (USCG).

If a specific warranty is considered not to be cost beneficial by the contracting officer, a waiver request shall be initiated in accordance with guidance at (HSAR) 48 CFR 3046.793.

### 3046.793 Waiver and notification procedures (USCG).

(a) The Secretary of Homeland Security, without delegation, may waive the requirement for a warranty for USCG major system acquisitions when the waiver is in the interest of national defense or if the warranty obtained would not be cost beneficial. A waiver may be granted provided that the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science and Transportation of the Senate, and the Committee on Merchant Marine and Fisheries of the House of Representatives are notified, in writing, of the Secretary's intention to waive the warranty requirements and the reasons supporting such a determination prior to granting the waiver. The request for Secretarial waiver shall include, as a minimum:

(1) A brief description of the major system and its stage of production (e.g., the number of units delivered and anticipated to be delivered during the life of the program);

(2) The specific waiver requested, the duration of the waiver if it is to involve more than one contract, and the rationale for the waiver; and

(3) All documentation supporting the request for waiver, such as a cost-benefit analysis.

(b) The waiver request shall be forwarded to the Secretary, via the CPO. The USCG shall maintain a written record of each waiver granted and the Congressional notification and report made, together with supporting documentation.

# PART 3047—TRANSPORTATION

## Subpart 3047.3—Transportation in Supply Contracts

Sec.

3047.305 Solicitation provisions, contract clauses, and transportation factors.
3047.305–70 Solicitation provision.

AUTHORITY: 41 U.S.C. 418b (a) and (b).

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3047.3—Transportation in Supply Contracts

### 3047.305 Solicitation provisions, contract clauses, and transportation factors.

### 3047.305–70 Solicitation provisions.

The contracting officer shall insert the following provisions in solicitations, as applicable:

(a) (HSAR) 48 CFR 3052.247–70, F.o.b. Origin Information, with Alternates I or II, as applicable, shall be inserted in accordance with (FAR) 48 CFR 47.305–3(b);

(b) (HSAR) 48 CFR 3052.247–71, F.o.b. Origin Only, shall be inserted in accordance with (FAR) 48 CFR 47.305–3(e); and

(c) (HSAR) 48 CFR 3052.247–72, F.o.b. Destination Only, shall be inserted in accordance with (FAR) 48 CFR 47.305–4(b).

# PART 3048—VALUE ENGINEERING [RESERVED]

# PART 3049—TERMINATION OF CONTRACTS [RESERVED]

# PART 3050—EXTRAORDINARY CONTRACTUAL ACTIONS [RESERVED]

# PART 3051—USE OF GOVERNMENT SOURCES BY CONTRACTORS [RESERVED]

# SUBCHAPTER H—CLAUSES AND FORMS

## PART 3052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

### Subpart 3052.1—Instructions for Using Provisions and Clauses

Sec.

3052.101 Using part 3052.

### Subpart 3052.2—Texts of Provisions and Clauses

3052.203–70 Instructions for Contractor Disclosure of Violations.
3052.204–70 Security requirements for unclassified information technology resources.
3052.204–71 Contractor employee access.
3052.205–70 Advertisements, Publicizing Awards, and Releases.
3052.209–70 Prohibition on contracts with corporate expatriates.
3052.209–71 Reserve Officer Training Corps and military recruiting on campus.
3052.209–72 Organizational conflict of interest.
3052.209–73 Limitation of future contracting.
3052.209–74 Limitations on contractors acting as lead system integrators.
3052.209–75 Prohibited financial interests for lead system integrators.
3052.209–76 Prohibition on Federal Protective Service guard services contracts with business concerns owned, controlled, or operated by an individual convicted of a felony.
3052.211–70 Index for specifications.
3052.212–70 Contract Terms and Conditions Applicable to DHS Acquisition of Commercial Items.
3052.215–70 Key personnel or facilities.
3052.216–70 Evaluation of offers subject to an economic price adjustment clause.
3052.216–71 Determination of award fee.
3052.216–72 Performance evaluation plan.
3052.216–73 Distribution of award fee.
3052.216–74 Settlement of letter contract.
3052.217–90 Delivery and shifting of vessel (USCG).
3052.217–91 Performance (USCG).
3052.217–92 Inspection and manner of doing work (USCG).
3052.217–93 Subcontracts (USCG).
3052.217–94 Lay days (USCG).
3052.217–95 Liability and insurance (USCG).
3052.217–96 Title (USCG).
3052.217–97 Discharge of liens (USCG).
3052.217–98 Delays (USCG).
3052.217–99 Department of Labor safety and health regulations for ship repair (USCG).
3052.217–100 Guarantee (USCG).
3052.219–70 Small business subcontracting program reporting.
3052.219–71 DHS mentor-protégé program.
3052.219–72 Evaluation of prime contractor participation in the DHS mentor-protégé program.
3052.222–70 Strikes or picketing affecting timely completion of the contract work.
3052.222–71 Strikes or picketing affecting access to a DHS facility.
3052.222–90 Local hire (USCG).
3052.223–70 Removal or disposal of hazardous substances—applicable licenses and permits.
3052.223–90 Accident and fire reporting (USCG).
3052.225–70 Requirement for Use of Certain Domestic Commodities.
3052.228–70 Insurance.
3052.228–90 Notification of Miller Act payment bond protection (USCG).
3052.228–91 Loss of or damage to leased aircraft (USCG).
3052.228–92 Fair Market value of aircraft (USCG).
3052.228–93 Risk and indemnities (USCG).
3052.231–70 Precontract costs.
3052.235–70 Dissemination of information—educational institutions.
3052.236–70 Special provisions for work at operating airports.
3052.242.70 [Reserved]
3052.242–72 Contracting officer's technical representative.
3052.247–70 F.o.b. origin information.
3052.247–71 F.o.b. origin only.
3052.247–72 F.o.b. destination only.

AUTHORITY: 5 U.S.C. 301–302, 41 U.S.C. 1707(a) and (b), 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0700.

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3052.1—Instructions for Using Provisions and Clauses

### 3052.101 Using part 3052.

(b) Numbering.

(2)(i) Provisions or clauses that supplement the FAR.

(A) Agency-prescribed provisions and clauses permitted by HSAR and used on a standard basis (i.e., normally used in two or more solicitations or contracts regardless of contract type)

shall be prescribed and contained in the HSAR. Component desiring to use a provision or a clause on a standard basis shall submit a request containing a copy of the clause(s), justification for its use, and evidence of legal counsel review to the CPO in accordance with (HSAR) 48 CFR 3001.304 for possible inclusion in the HSAR.

(B) Provisions and clauses used on a one-time basis (i.e., non-standard provisions and clauses) may be approved by the contracting officer, unless a higher level is designated by the Component. This authority is subject to:

(*1*) Evidence of legal counsel review in the contract file;

(*2*) Inserting these clauses in the appropriate sections of the uniform contract format; and

(*3*) Ensuring the provisions and clauses do not deviate from the requirements of the FAR and HSAR.

NOTE TO 3052.101: The solicitation provisions and contract clauses matrix referencing all HSAR provisions and clauses is available at *http://www.dhs.gov/xopnbiz/* under Policy and Regulations, Homeland Security Acquisition Regulation (HSAR).

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 48802, Aug. 22, 2006; 77 FR 50636, Aug. 22, 2012]

## Subpart 3052.2—Text of Provisions and Clauses

### 3052.203–70 Instructions for Contractor Disclosure of Violations.

As prescribed in (HSAR) 48 CFR 3003.1004(a), insert the following clause:

INSTRUCTIONS FOR CONTRACTOR DISCLOSURE OF VIOLATIONS (SEP 2012)

When making a written disclosure under the clause at FAR 52.203–13, paragraph (b)(3), the Contractor shall use the Contractor Disclosure Form at *http://www.oig.dhs.gov* and submit the disclosure electronically to the Department of Homeland Security Office of Inspector General. The Contractor shall provide a copy of the disclosure to the Contracting Officer by email or facsimile on the same business day as the submission to the Office of Inspector General. The Contractor shall provide the Contracting Officer a concurrent copy of any supporting materials submitted to the Office of Inspector General.

[77 FR 54836, Sept. 6, 2012]

### 3052.204–70 Security requirements for unclassified information technology resources.

As prescribed in (HSAR) 48 CFR 3004.470–3, insert a clause substantially the same as follows:

SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES (JUN 2006)

(a) The Contractor shall be responsible for Information Technology (IT) security for all systems connected to a DHS network or operated by the Contractor for DHS, regardless of location. This clause applies to all or any part of the contract that includes information technology resources or services for which the Contractor must have physical or electronic access to sensitive information contained in DHS unclassified systems that directly support the agency's mission.

(b) The Contractor shall provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this contract.

(1) Within ____ [''insert number of days''] days after contract award, the contractor shall submit for approval its IT Security Plan, which shall be consistent with and further detail the approach contained in the offeror's proposal. The plan, as approved by the Contracting Officer, shall be incorporated into the contract as a compliance document.

(2) The Contractor's IT Security Plan shall comply with Federal laws that include, but are not limited to, the Computer Security Act of 1987 (40 U.S.C. 1441 et seq.); the Government Information Security Reform Act of 2000; and the Federal Information Security Management Act of 2002; and with Federal policies and procedures that include, but are not limited to, OMB Circular A–130.

(3) The securitplan shall specifically include instructions regarding handling and protecting sensitive information at the Contractor's site (including any information stored, processed, or transmitted using the Contractor's computer systems), and the secure management, operation, maintenance, programming, and system administration of computer systems, networks, and telecommunications systems.

(c) Examples of tasks that require security provisions include—

(1) Acquisition, transmission or analysis of data owned by DHS with significant replacement cost should the contractor's copy be corrupted; and

(2) Access to DHS networks or computers at a level beyond that granted the general public (e.g., such as bypassing a firewall).

(d) At the expiration of the contract, the contractor shall return all sensitive DHS information and IT resources provided to the contractor during the contract, and certify that all non-public DHS information has been purged from any contractor-owned system. Components shall conduct reviews to ensure that the security requirements in the contract are implemented and enforced.

(e) Within 6 months after contract award, the contractor shall submit written proof of IT Security accreditation to DHS for approval by the DHS Contracting Officer. Accreditation will proceed according to the criteria of the DHS Sensitive System Policy Publication, 4300A (Version 2.1, July 26, 2004) or any replacement publication, which the Contracting Officer will provide upon request. This accreditation will include a final security plan, risk assessment, security test and evaluation, and disaster recovery plan/continuity of operations plan. This accreditation, when accepted by the Contracting Officer, shall be incorporated into the contract as a compliance document. The contractor shall comply with the approved accreditation documentation.

(End of clause)

[71 FR 25772, May 2, 2006]

### 3052.204–71 Contractor employee access.

As prescribed in (HSAR) 48 CFR 3004.470–3(b), insert a clause substantially the same as follows with appropriate alternates:

CONTRACTOR EMPLOYEE ACCESS (SEP 2012)

(a) *Sensitive Information*, as used in this clause, means any information, which if lost, misused, disclosed, or, without authorization is accessed, or modified, could adversely affect the national or homeland security interest, the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:

(1) Protected Critical Infrastructure Information (PCII) as set out in the Critical Infrastructure Information Act of 2002 (Title II, Subtitle B, of the Homeland Security Act, Pub. L. 107–296, 196 Stat. 2135), as amended, the implementing regulations thereto (Title 6, Code of Federal Regulations, part 29) as amended, the applicable PCII Procedures Manual, as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the PCII Program Manager or his/her designee);

(2) Sensitive Security Information (SSI), as defined in Title 49, Code of Federal Regulations, part 1520, as amended, ''Policies and Procedures of Safeguarding and Control of SSI,'' as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the Assistant Secretary for the Transportation Security Administration or his/her designee);

(3) Information designated as ''For Official Use Only,'' which is unclassified information of a sensitive nature and the unauthorized disclosure of which could adversely impact a person's privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national or homeland security interest; and

(4) Any information that is designated ''sensitive'' or subject to other controls, safeguards or protections in accordance with subsequently adopted homeland security information handling procedures.

(b) ''Information Technology Resources'' include, but are not limited to, computer equipment, networking equipment, telecommunications equipment, cabling, network drives, computer drives, network software, computer software, software programs, intranet sites, and internet sites.

(c) Contractor employees working on this contract must complete such forms as may be necessary for security or other reasons, including the conduct of background investigations to determine suitability. Completed forms shall be submitted as directed by the Contracting Officer. Upon the Contracting Officer's request, the Contractor's employees shall be fingerprinted, or subject to other investigations as required. All Contractor employees requiring recurring access to Government facilities or access to sensitive information or IT resources are required to have a favorably adjudicated background investigation prior to commencing work on this contract unless this requirement is waived under Departmental procedures.

(d) The Contracting Officer may require the Contractor to prohibit individuals from working on the contract if the Government deems their initial or continued employment contrary to the public interest for any reason, including, but not limited to, carelessness, insubordination, incompetence, or security concerns.

(e) Work under this contract may involve access to sensitive information. Therefore, the Contractor shall not disclose, orally or in writing, any sensitive information to any person unless authorized in writing by the Contracting Officer. For those Contractor employees authorized access to sensitive information, the Contractor shall ensure that

these persons receive training concerning the protection and disclosure of sensitive information both during and after contract performance.

(f) The Contractor shall include the substance of this clause in all subcontracts at any tier where the subcontractor may have access to Government facilities, sensitive information, or resources.

(End of clause)

*Alternate I* (SEP 2012) When the contract will require Contractor employees to have access to Information Technology (IT) resources, add the following paragraphs:

(g) Before receiving access to IT resources under this contract the individual must receive a security briefing, which the Contracting Officer's Technical Representative (COTR) will arrange, and complete any nondisclosure agreement furnished by DHS.

(h) The Contractor shall have access only to those areas of DHS information technology resources explicitly stated in this contract or approved by the COTR in writing as necessary for performance of the work under this contract. Any attempts by Contractor personnel to gain access to any information technology resources not expressly authorized by the statement of work, other terms and conditions in this contract, or as approved in writing by the COTR, is strictly prohibited. In the event of violation of this provision, DHS will take appropriate actions with regard to the contract and the individual(s) involved.

(i) Contractor access to DHS networks from a remote location is a temporary privilege for mutual convenience while the Contractor performs business for the DHS Component. It is not a right, a guarantee of access, a condition of the contract, or Government Furnished Equipment (GFE).

(j) Contractor access will be terminated for unauthorized use. The Contractor agrees to hold and save DHS harmless from any unauthorized use and agrees not to request additional time or money under the contract for any delays resulting from unauthorized use or access.

(k) Non-U.S. citizens shall not be authorized to access or assist in the development, operation, management or maintenance of Department IT systems under the contract, unless a waiver has been granted by the Head of the Component or designee, with the concurrence of both the Department's Chief Security Officer (CSO) and the Chief Information Officer (CIO) or their designees. Within DHS Headquarters, the waiver may be granted only with the approval of both the CSO and the CIO or their designees. In order for a waiver to be granted:

(1) There must be a compelling reason for using this individual as opposed to a U.S. citizen; and

(2) The waiver must be in the best interest of the Government.

(l) Contractors shall identify in their proposals the names and citizenship of all non-U.S. citizens proposed to work under the contract. Any additions or deletions of non-U.S. citizens after contract award shall also be reported to the Contracting Officer.

(End of clause)

*Alternate II* (JUN 2006) When the Department has determined contract employee access to sensitive information or Government facilities must be limited to U.S. citizens and lawful permanent residents, but the contract will not require access to IT resources, add the following paragraphs:

(g) Each individual employed under the contract shall be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidenced by a Permanent Resident Card (USCIS I–551). Any exceptions must be approved by the Department's Chief Security Officer or designee.

(h) Contractors shall identify in their proposals, the names and citizenship of all non-U.S. citizens proposed to work under the contract. Any additions or deletions of non-U.S. citizens after contract award shall also be reported to the Contracting Officer.

(End of clause)

[71 FR 25773, May 2, 2006, as amended at 71 FR 48802, Aug. 22, 2006; 77 FR 50636, Aug. 22, 2012; 77 FR 54836, Sept. 6, 2012]

### 3052.205–70 Advertisements, Publicizing Awards, and Releases.

As prescribed in (HSAR) 48 CFR 3005.470–2, insert the following clause:

ADVERTISEMENTS, PUBLICIZING AWARDS, AND RELEASES (SEP 2012)

The Contractor shall not refer to this contract in commercial advertising or similar promotions in such a manner as to state or imply that the product or service provided is endorsed or preferred by the Federal Government or is considered by the Government to be superior to other products or services.

(End of clause)

Alternate I (SEP 2012). If a contract involves sensitive or classified information, designate the paragraph in the base clause as

(a) and add the following paragraph (b) to the clause:

(b) All advertisements, releases, announcements, or other publication regarding this contract or the agency programs and projects covered under it, or the results or conclusions made pursuant to performance, must be approved by the Contracting Officer. Under no circumstances shall the Contractor, or anyone acting on behalf of the Contractor, refer to the supplies, services, or equipment furnished pursuant to the provisions of this contract in any publicity, release, or commercial advertising without first obtaining explicit written consent to do so from the Contracting Officer.

(End of clause)

[77 FR 50636, Aug. 22, 2012]

### 3052.209–70 Prohibition on contracts with corporate expatriates.

As prescribed at (HSAR) 48 CFR 3009.108–7005, insert the following clause:

PROHIBITION ON CONTRACTS WITH CORPORATE EXPATRIATES (JUN 2006)

(a) *Prohibitions.* Section 835 of the Homeland Security Act, 6 U.S.C. 395, prohibits the Department of Homeland Security from entering into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation as defined in this clause, or with any subsidiary of such an entity. The Secretary shall waive the prohibition with respect to any specific contract if the Secretary determines that the waiver is required in the interest of national security.

(b) *Definitions.* As used in this clause:

*Expanded Affiliated Group* means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504 of such Code shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

*Foreign Incorporated Entity* means any entity which is, or but for subsection (b) of section 835 of the Homeland Security Act, 6 U.S.C. 395, would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

*Inverted Domestic Corporation.* A foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) The entity completes the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;

(2) After the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

(i) In the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation; or

(ii) In the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; and

(3) The expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

*Person, domestic, and foreign* have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701(a) of the Internal Revenue Code of 1986, respectively.

(c) *Special rules.* The following definitions and special rules shall apply when determining whether a foreign incorporated entity should be treated as an inverted domestic corporation.

(1) *Certain stock disregarded.* For the purpose of treating a foreign incorporated entity as an inverted domestic corporation these shall not be taken into account in determining ownership:

(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity; or

(ii) Stock of such entity which is sold in a public offering related to an acquisition described in section 835(b)(1) of the Homeland Security Act, 6 U.S.C. 395(b)(1).

(2) *Plan deemed in certain cases.* If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (b)(2) are met, such actions shall be treated as pursuant to a plan.

(3) *Certain transfers disregarded.* The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(d) *Special rule for related partnerships.* For purposes of applying section 835(b) of the Homeland Security Act, 6 U.S.C. 395(b) to the acquisition of a domestic partnership, except as provided in regulations, all domestic partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as a partnership.

(e) *Treatment of Certain Rights.*

(1) Certain rights shall be treated as stocks to the extent necessary to reflect the present value of all equitable interests incident to the transaction, as follows:

(i) Warrants;

(ii) Options;

(iii) Contracts to acquire stock;

(iv) Convertible debt instruments;

(v) Others similar interests.

(2) Rights labeled as stocks shall not be treated as stocks whenever it is deemed appropriate to do so to reflect the present value of the transaction or to disregard transactions whose recognition would defeat the purpose of section 835.

(f) *Disclosure.* The offeror under this solicitation represents that [Check one]:

__ it is not a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.108–7000 through 3009.108–7003;

__ it is a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.108–7000 through 3009.108–7003, but it has submitted a request for waiver pursuant to 3009.108–7004, which has not been denied; or

__ it is a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.108–7000 through 3009.108–7003, but it plans to submit a request for waiver pursuant to 3009.108–7004.

(g) A copy of the approved waiver, if a waiver has already been granted, or the waiver request, if a waiver has been applied for, shall be attached to the bid or proposal.

(End of provision)

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 25774, May 2, 2006; 76 FR 70661, Nov. 15, 2011]

### 3052.209–71 Reserve Officer Training Corps and military recruiting on campus.

As prescribed in (HSAR) 48 CFR 3009.470–4, use the following clause:

RESERVE OFFICER TRAINING CORPS AND MILITARY RECRUITING ON CAMPUS (DEC 2003)

(a) *Definitions. Institution of higher education,* as used in this clause, means an institution that meets the requirements of 20 U.S.C. 1001 and includes all subelements of such an institution.

(b) *Limitation on contract award.* Except as provided in paragraph (c) of this clause, an institution of higher education is ineligible for contract award if the Secretary of Defense determines that the institution has a policy or practice (regardless of when implemented) that prohibits or in effect prevents—

(1) The Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (ROTC) (in accordance with 10 U.S.C. 654 and other applicable Federal laws) at that institution;

(2) A student at that institution from enrolling in a unit of the Senior ROTC at another institution of higher education;

(3) The Secretary of a military department or the Secretary of Homeland Security from gaining entry to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting; or

(4) Military recruiters from accessing, for purposes of military recruiting, the following information pertaining to students (who are 17 years of age or older) enrolled at that institution:

(i) Name.

(ii) Address.

(iii) Telephone number.

(iv) Date and place of birth.

(v) Educational level.

(vi) Academic major.

(vii) Degrees received.

(viii) Most recent educational institution enrollment.

(c) *Exception.* The limitation in paragraph (b) of this clause does not apply to an institution of higher education if the Secretary of Defense determines that—

(1) The institution has ceased the policy or practice described in paragraph (b) of this clause; or

(2) The institution has a long-standing policy of pacifism based on historical religious affiliation.

(d) *Agreement.* The Contractor represents that it does not now have, and agrees that during performance of this contract it will not adopt, any policy or practice described in paragraph (b) of this clause, unless the Secretary of Defense has granted an exception in accordance with paragraph (c)(2) of this clause.

(e) Notwithstanding any other clause of this contract, if the Secretary of Defense determines that the Contractor misrepresented its policies and practices at the time of contract award or has violated the agreement in paragraph (d) of this clause—

(1) The Contractor will be ineligible for further payments under this and any other contracts with the Department of Homeland Security; and

(2) The Government will terminate this contract for default for the Contractor's material failure to comply with the terms and conditions of award.

(End of clause)

### 3052.209–72 Organizational conflict of interest.

As prescribed in (HSAR) 48 CFR 3009.507–1, insert the following provision:

ORGANIZATIONAL CONFLICT OF INTEREST (JUN 2006)

(a) Determination. The Government has determined that this effort may result in an actual or potential conflict of interest, or may provide one or more offerors with the potential to attain an unfair competitive advantage. The nature of the conflict of interest and the limitation on future contracting _____[''contracting officer shall insert description here''].

(b) If any such conflict of interest is found to exist, the Contracting Officer may (1) disqualify the offeror, or (2) determine that it is otherwise in the best interest of the United States to contract with the offeror and include the appropriate provisions to avoid, neutralize, mitigate, or waive such conflict in the contract awarded. After discussion with the offeror, the Contracting Officer may determine that the actual conflict cannot be avoided, neutralized, mitigated or otherwise resolved to the satisfaction of the Government, and the offeror may be found ineligible for award.

(c) Disclosure: The offeror hereby represents, to the best of its knowledge that:

__(1) It is not aware of any facts which create any actual or potential organizational conflicts of interest relating to the award of this contract, or

__(2) It has included information in its proposal, providing all current information bearing on the existence of any actual or potential organizational conflicts of interest, and has included a mitigation plan in accordance with paragraph (d) of this provision.

(d) Mitigation. If an offeror with a potential or actual conflict of interest or unfair competitive advantage believes the conflict can be avoided, neutralized, or mitigated, the offeror shall submit a mitigation plan to the Government for review. Award of a contract where an actual or potential conflict of interest exists shall not occur before Government approval of the mitigation plan. If a mitigation plan is approved, the restrictions of this provision do not apply to the extent defined in the mitigation plan.

(e) Other Relevant Information: In addition to the mitigation plan, the Contracting Officer may require further relevant information from the offeror. The Contracting Officer will use all information submitted by the offeror, and any other relevant information known to DHS, to determine whether an award to the offeror may take place, and whether the mitigation plan adequately neutralizes or mitigates the conflict.

(f) Corporation Change. The successful offeror shall inform the Contracting Officer within thirty (30) calendar days of the effective date of any corporate mergers, acquisitions, and/or divestures that may affect this provision.

(g) Flow-down. The contractor shall insert the substance of this clause in each first tier subcontract that exceeds the simplified acquisition threshold.

(End of provision)

[71 FR 25774, May 2, 2006]

### 3052.209–73 Limitation of future contracting.

As prescribed in (HSAR) 48 CFR 3009.507–2, the contracting officer may insert a clause substantially as follows in solicitations and contracts:

LIMITATION OF FUTURE CONTRACTING (JUN 2006)

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, the attention of prospective offerors is invited to FAR Subpart 9.5—Organizational Conflicts of Interest.

(b) The nature of this conflict is [describe the conflict].

(c) The restrictions upon future contracting are as follows:

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work that are to be incorporated into a solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime or first-tier subcontractor under an ensuing DHS contract. This restriction shall remain in effect for a reasonable time, as agreed to by the Contracting Officer and the Contractor, sufficient to avoid unfair competitive advantage or potential bias (this time shall in no case be less than the duration of the initial production contract). DHS shall not unilaterally require the Contractor to prepare such specifications or statements of work under this contract.

(2) To the extent that the work under this contract requires access to proprietary, business confidential, or financial data of other companies, and as long as these data remain proprietary or confidential, the Contractor shall protect these data from unauthorized use and disclosure and agrees not to use them to compete with those other companies.

(End of clause)

[71 FR 25774, May 2, 2006]

### 3052.209–74 Limitations on contractors acting as lead system integrators.

As prescribed in (HSAR) 48 CFR 3009.570–4(a), use the following provision:

LIMITATIONS ON CONTRACTORS ACTING AS LEAD SYSTEM INTEGRATORS (JUL 2010)

(a) *Definitions.* ''Direct financial interest,'' ''lead system integrator,'' ''lead system integrator with system responsibility,'' and ''lead system integrator without system responsibility,'' as used in this provision, have the meanings given in the clause of this solicitation entitled ''Prohibited Financial Interests for Lead System Integrators'' ((HSAR) 48 CFR 3052.209–75).

(b) *General.* Unless an exception is granted, no contractor performing lead system integrator functions in the acquisition of a major system by the Department of Homeland Security may have any direct financial interest in the development or construction of any individual system or element of any system of systems.

(c) *Representations.* (1) The offeror represents that it does [ ] does not [ ] propose to perform this contract as a lead system integrator with system responsibility.

(2) The offeror represents that it does [ ] does not [ ] propose to perform this contract as a lead system integrator without system responsibility.

(3) If the offeror answered in the affirmative in paragraph (c)(1) or (2) of this provision, the offeror represents that it does [ ] does not [ ] have any direct financial interest in the development or construction of any system(s), subsystem(s), system of systems, element of any system of systems, or services it proposes or intends to seek to satisfy this solicitation.

(d) If the offeror answered in the affirmative in paragraph (c)(3) of this provision, the offeror should contact the Contracting Officer for guidance on whether an exception may apply and what responsibilities the offeror may have in qualifying for an exception.

(e) If the offeror does have a direct financial interest, the offeror shall be prohibited from receiving an award under this solicitation, unless:

(1) The offeror submits to the Contracting Officer appropriate evidence that the offeror was selected by a subcontractor to serve as a lower-tier subcontractor through a process over which the offeror exercised no control; or

(2) the conditions described in (HSAR) 48 CFR 3009.570–2(b)(1)(i) and (ii) exist, after an opportunity is afforded to the offeror to provide information or commitments as may be necessary to meet (HSAR) 48 CFR 3009.570–2(b)(1)(ii), assuming any such information or commitment will allow DHS to meet that standard.

(f) This provision implements the requirements of 6 U.S.C. 396, as added by Section 6405 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, And Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28).

(End of provision)

[75 FR 41100, July 15, 2010]

### 3052.209–75 Prohibited financial interests for lead system integrators.

As prescribed in (HSAR) 48 CFR 3009.570–4(b), use the following clause:

PROHIBITED FINANCIAL INTERESTS FOR LEAD SYSTEM INTEGRATORS (JUL 2010)

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

(1) ''Direct financial interest,'' for the purpose of this clause and contract, and subject to exceptions set forth 6 U.S.C. 396(b) as implemented, means:

(i) Developing or constructing any individual system or element of any system of systems for which the Contractor is the lead system integrator;

(ii) Owning or being in a position to exert corporate control over a subcontractor at any level under the prime contract;

(iii) Owning, or being in a position to exert corporate control over an entity that either—

(A) Is a subcontractor at any level under the prime contract, or

(B) Owns or is in a position to control another entity that is a subcontractor at any level under the prime contract; and

(iv) Participating or sharing in the profits of another firm's development or construction of any individual system or element of any system of systems for which the Contractor is the lead system integrator or agreeing to participate in the profits of the firm from such development or construction.

(2) ''Lead system integrator'' includes ''lead system integrator with system responsibility'' and ''lead system integrator without system responsibility.''

(3) ''Lead system integrator with system responsibility'' means a prime contractor for the development or production of a major system, if the prime contractor is not expected at the time of award to perform a substantial portion of the work on the system and the major subsystems.

(4) ''Lead system integrator without system responsibility'' means a prime contractor under a contract for the procurement of services, the primary purpose of which is

to perform acquisition functions closely associated with inherently governmental functions (see section 7.503(d) of the Federal Acquisition Regulation) with regard to the development or production of a major system.

(5) The phrase ''substantial portion of the work,'' as used in the definition of ''lead system integrator with system responsibility,'' may relate to the dollar value of the effort or to the criticality of the effort performed.

(b) *Limitations.* The Contracting Officer has determined that the Contractor meets the definition of lead system integrator with [ ] without [ ] system responsibility. Unless an exception is granted, the Contractor shall not have any direct financial interest in the development or construction of any individual system or element of any system of systems while performing lead system integrator functions in the acquisition of a major system by the Department of Homeland Security under this contract.

(c) *Agreement.* The Contractor agrees that during performance of this contract it will not acquire any direct financial interest as described in paragraph (b) of this clause, or, if it does acquire or plan to acquire such interest, it will immediately notify the Contracting Officer. The Contractor further agrees to provide to the Contracting Officer all relevant information regarding the change in financial interests so that the Contracting Officer can determine whether an exception applies or whether the Contractor will be allowed to continue performance on this contract. If an organizational conflict of interest in the performance of this contract that is attributable to the Contractor's direct financial interest cannot be avoided, eliminated, or mitigated to the Contracting Officer's satisfaction, the Contracting Officer may terminate this contract for default or may take other remedial measures as appropriate in the Contracting Officer's sole discretion.

(d) Notwithstanding any other clause of this contract, if the Contracting Officer determines that the Contractor misrepresented its financial interests at the time of award or has violated the agreement in paragraph (c) of this clause, the Government may terminate this contract for default or may take other remedial measures as appropriate in the Contracting Officer's sole discretion.

(e) This clause implements the requirements of 6 U.S.C. 396, as added by Section 6405 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, And Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28).

(End of clause)

[75 FR 41100, July 15, 2010]

### § 3052.209–76 Prohibition on Federal Protective Service guard services contracts with business concerns owned, controlled, or operated by an individual convicted of a felony.

As prescribed at (HSAR) 48 CFR 3009.171–9, insert the following clause:

PROHIBITION ON FEDERAL PROTECTIVE SERVICE GUARD SERVICES CONTRACTS WITH BUSINESS CONCERNS OWNED, CONTROLLED, OR OPERATED BY AN INDIVIDUAL CONVICTED OF A FELONY (DEC 2009)

(a) *Prohibitions.* Section 2 of the Federal Protective Service Guard Contracting Reform Act of 2008, Public Law 110–356, generally prohibits the Department of Homeland Security from entering into a contract for guard services under the Federal Protective Service (FPS) guard services program with any business concern owned, controlled, or operated by an individual convicted of a serious felony.

(b) *Definitions.* As used in this clause:

*Business concern* means a commercial enterprise and the people who constitute it.

*Felony* means an offense which, if committed by a natural person, would be punishable by death or imprisonment for a term exceeding one year.

*Individual* means any person, corporation, partnership, or other entity with a legally independent status.

*Convicted of a felony* means any conviction of a felony in violation of state or federal criminal statutes, including the Uniform Code of Military Justice, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which a sentence has been imposed.

(c) A business concern that is owned, controlled, or operated by an individual who has been convicted of any felony, and that wishes to submit a bid, proposal, or other offer on a solicitation to obtain a FPS contract for guard services, must submit with its offer an award request as specified in paragraph (d) of this clause.

(1) A financial, voting, operational, or employment interest in the business concern of the individual's spouse, child, or other family member, or person with whom the individual shares his or her household, will be imputed to the individual in determining whether the individual owns, controls, or operates a business concern.

(2) An individual owns, controls, or operates a business concern by fulfilling or holding the following types of roles or interests with respect to the business concern:

(i) Director or officer, including incumbents of boards and offices that perform duties ordinarily performed by a chairman or member of a board of directors, a secretary, treasurer, president, a vice president, or

other chief official of a business concern, including Chief Financial Officer, Chief Operating Officer, or Chief contracting official.

(ii) Officials of comparable function and status to those described in paragraph (c)(2)(i) of this clause as exist in partnerships of all kind and other business organizations, including sole proprietorships.

(iii) A general partner in a general or limited partnership.

(iv) An individual with a limited partnership interest of 25% or more.

(v) An individual that has the:

(A) Power to vote, directly or indirectly, 25% or more interest in any class of voting stock of the business concern;

(B) Ability to direct in any manner the election of a majority of the business concern's directors or trustees; or

(C) Ability to exercise a controlling influence over the business concern's management and policies.

(3) Generally, the existence of one or more of the roles or interests set forth in paragraph (c)(2) of this clause, including roles or interests attributed to the individual, will be sufficient to determine that the individual owns, controls or operates the business concern. However, specific facts of the case may warrant a different determination by Government in light of all of the facts and circumstances. Conversely, ownership, control, or the ability to operate the business concern, if it exists in fact, can be reflected by other roles or interests, and the offeror or contractor should reveal the existence of felony convictions if there is doubt as to whether the individual owns, controls or operates the business concern.

(d) *Award request.* (1) A business concern owned, operated or controlled by an individual convicted of any felony may submit an award request to the Contracting Officer. The basis for such request shall be either that the subject felony is not a serious felony as defined in (HSAR) 48 CFR 3009.171–5; that such individual no longer owns, controls or operates the business concern; or that commission of the serious felony no longer calls into question the individual or business concern's integrity or business ethics and that an award would be consistent with the mission of FPS. The business concern shall bear the burden of proof for award requests.

(2) If the Contracting Officer in his or her sole discretion, is unable to affirmatively determine that the subject felony is not a serious felony as defined in (HSAR) 48 CFR 3009.171–5 or that such individual no longer owns, controls or operates the business concern, then the Contracting Officer shall deny the award request.

(3) The Head of the Contracting Activity has sole discretion to approve an award request.

(4) A copy of the award request with supporting documentation or a copy of a previously approved award request shall be attached with the bid or proposal.

(5) An award request shall contain the basis for the request (i.e., that the subject felony is not a serious felony as defined by this regulation; that the convicted individual does not or no longer owns, controls or operates the business concern; or that the commission of a serious felony no longer calls into question the individual or business concern's integrity or business ethics and that an award would be consistent with the mission of FPS). The award request shall contain, at a minimum, the following information:

(i) Name and Date of Birth of Individual Convicted of a felony.

(ii) A full description of which roles or interests indicate that the individual owns, controls, or operates or may own control or operate the business concern.

(iii) Date sentenced.

(iv) Statute/Charge.

(v) Docket/Case Number.

(vi) Court/Jurisdiction.

(vii) The nature and circumstances surrounding the conviction.

(viii) Protective measures taken by the individual or business concern to reduce or eliminate the risk of further misconduct.

(ix) Whether the individual has made full restitution for the felony.

(x) Whether the individual has accepted responsibility for past misconduct resulting in the felony conviction.

(6) Upon the request of the Contracting Officer, and prior to contract award, in addition to information described in paragraph (d)(5) of this clause, the business concern must provide such other documentation as is requested by the Contracting Officer to use in determining and evaluating ownership, control, or operation; the nature of the felonies committed; and such other information as is needed to make a decision on whether award should be made to the offeror under the Federal Protective Service Guard Contracting Reform Act of 2008. The refusal to timely provide such documentation may serve as grounds to preclude contract award.

(e)(1) *Privacy Statement.* The offeror shall provide the following statement to any individual whose information will be submitted in an award request pursuant to (d)(5) and (6) of this clause.

(2) *Privacy Notice.* The collection of this information is authorized by the Federal Protective Service Guard Contracting Reform Act of 2008 (Pub. L. 110–356) and Department of Homeland Security (DHS) implementing regulations at Homeland Security Acquisition Regulation (HSAR) 48 CFR 3009.171. This information is being collected to determine whether an individual that owns, controls, or operates the business concern submitting this offer has been convicted of a felony that would disqualify the offeror from receiving

an award. This information will be used by and disclosed to DHS personnel and contractors or other agents who require this information to determine whether an award request should be approved or denied. Additionally, DHS may share this personal information with the U.S. Justice Department and other Federal and State agencies for collection, enforcement, investigatory, or litigation purposes, or as otherwise authorized. Submission of this information by the individual is voluntary, however, failure to provide it may result in denial of an award to the offeror. Individuals who wish to correct inaccurate information in or to remove their information from an offer that has been submitted should contact the business concern submitting the offer and request correction. Should individuals seek to correct inaccurate information or remove their information from an offer that has been submitted in response to a solicitation for FPS guard services prior to contract award, an authorized representative of the business concern submitting the offer must contact the contracting officer of record and request that the firm's offer be formally withdrawn or submit a correction to the award request. After contract award, it is recommended that an authorized representative of the business concern that submitted the inaccurate or erroneous information contact the contracting officer of record. The contracting officer will handle such requests on a case by case basis.

(f) *Disclosure.* The offeror under this solicitation represents that [Check one]:

__It is not a business concern owned, controlled, or operated by an individual convicted of a felony.

__It is a business concern owned, controlled, or operated by an individual convicted of a felony, and has submitted an award request pursuant to paragraph (d) of this clause.

(g) If an award request is applied for, the offeror shall attach the request with supporting documentation, to the bid or proposal. The supporting documentation may include copies of prior award requests granted to the offeror.

(h) The notification in this paragraph applies if this is an indefinite delivery/indefinite quantity contract, blanket purchase agreement, or other contractual instrument that may result in the issuance of task orders, calls or option to extend the terms of a contract. The Contractor must immediately notify the Contracting Officer in writing upon any felony conviction of personnel who own, control or operate a business concern as defined in paragraph (c) of this clause at any time during the performance of this contract. Upon notification of a felony conviction the Contracting Officer will review and make a new determination of eligibility prior to the issuance of any task order, call or exercise of an option.

(End of clause)

[74 FR 58856, Nov. 16, 2009, 74 FR 66584, Dec. 16, 2009]

### 3052.211–70 Index for specifications.

As prescribed in (HSAR) 48 CFR 3011.204–70 insert the following clause:

INDEX FOR SPECIFICATIONS (DEC 2003)

If an index or table of contents is furnished in connection with specifications, it is understood that such index or table of contents is for convenience only. Its accuracy and completeness is not guaranteed, and it is not to be considered as part of the specifications. In case of discrepancy between the index or table of contents and the specifications, the specifications shall govern.

(End of clause)

### 3052.212–70 Contract Terms and Conditions Applicable to DHS Acquisition of Commercial Items.

As prescribed in (HSAR) 48 CFR 3012.301, insert the following clause:

CONTRACT TERMS AND CONDITIONS APPLICABLE TO DHS ACQUISITION OF COMMERCIAL ITEMS (SEP 2012)

The Contractor agrees to comply with any provision or clause that is incorporated herein by reference to implement agency policy applicable to acquisition of commercial items or components. The provision or clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The following provisions and clauses are incorporated by reference: [The Contracting Officer should either check the provisions and clauses that apply or delete the provisions and clauses that do not apply from the list. The Contracting Officer may add the date of the provision or clause if desired for clarity.]

(a) *Provisions.*

___3052.209–72 Organizational Conflicts of Interest.

___3052.216–70 Evaluation of Offers Subject to An Economic Price Adjustment Clause.

___3052.219–72 Evaluation of Prime Contractor Participation in the DHS Mentor Protégé Program.

(b) *Clauses.*

___3052.203–70 Instructions for Contractor Disclosure of Violations.

___3052.204–70 Security Requirements for Unclassified Information Technology Resources.

___3052.204–71 Contractor Employee Access. Alternate I
___3052.205–70 Advertisement, Publicizing Awards, and Releases.
___3052.209–73 Limitation on Future Contracting.
___3052.215–70 Key Personnel or Facilities.
___3052.216–71 Determination of Award Fee.
___3052.216–72 Performance Evaluation Plan.
___3052.216–73 Distribution of Award Fee.
___3052.217–91 Performance. (USCG)
___3052.217–92 Inspection and Manner of Doing Work. (USCG)
___3052.217–93 Subcontracts. (USCG)
___3052.217–94 Lay Days. (USCG)
___3052.217–95 Liability and Insurance. (USCG)
___3052.217–96 Title. (USCG)
___3052.217–97 Discharge of Liens. (USCG)
___3052.217–98 Delays. (USCG)
___3052.217–99 Department of Labor Safety and Health Regulations for Ship Repair. (USCG)
___3052.217–100 Guarantee. (USCG)
___3052.219–70 Small Business Subcontracting Plan Reporting.
___3052.219–71 DHS Mentor Protégé Program.
___3052.228–70 Insurance.
___3052.228–90 Notification of Miller Act Payment Bond Protection. (USCG)
___3052.228–91 Loss of or Damage to Leased Aircraft. (USCG)
___3052.228–92 Fair Market Value of Aircraft. (USCG)
___3052.228–93 Risk and Indemnities. (USCG)
___3052.236–70 Special Provisions for Work at Operating Airports.
___3052.242–72 Contracting Officer's Technical Representative.
___3052.247–70 F.o.B. Origin Information.
___Alternate I
___Alternate II
___3052.247–71 F.o.B. Origin Only.
___3052.247–72 F.o.B. Destination Only.

(End of clause)

[77 FR 50636, Aug. 22, 2012, as amended at 77 FR 54836, Sept. 6, 2012]

### 3052.215–70 Key personnel or facilities.

As prescribed in (HSAR) 48 CFR 3015.204–3, insert the following clause:

KEY PERSONNEL OR FACILITIES. (DEC 2003)

(a) The personnel or facilities specified below are considered essential to the work being performed under this contract and may, with the consent of the contracting parties, be changed from time to time during the course of the contract by adding or deleting personnel or facilities, as appropriate.

(b) Before removing or replacing any of the specified individuals or facilities, the Contractor shall notify the Contracting Officer, in writing, before the change becomes effective. The Contractor shall submit sufficient information to support the proposed action and to enable the Contracting Officer to evaluate the potential impact of the change on this contract. The Contractor shall not remove or replace personnel or facilities until the Contracting Officer approves the change.

The Key Personnel or Facilities under this Contract:

(*specify key personnel or facilities*)

(End of clause)

### 3052.216–70 Evaluation of offers subject to an economic price adjustment clause.

As prescribed in (HSAR) 48 CFR 3016.203–470, insert a provision substantially the same as the following:

EVALUATION OF OFFERS SUBJECT TO AN ECONOMIC PRICE ADJUSTMENT CLAUSE (JUN 2006)

Offers shall be evaluated without adding an amount for an economic price adjustment. Offers may be rejected which: (1) Increase the stipulated ceiling; (2) limit the downward adjustment; or (3) delete the economic price adjustment clause. If the offer stipulates a ceiling lower than that included in the solicitation, the lower ceiling will be incorporated into any resulting contract.

(End of provision)

[71 FR 25775, May 2, 2006]

### 3052.216–71 Determination of award fee.

As prescribed in (HSAR) 48 CFR 3016.406(e)(1)(i), insert a clause substantially the same as the following:

DETERMINATION OF AWARD FEE (SEP 2012)

(a) The Government shall evaluate contractor performance at the end of each specified evaluation period(s) to determine the amount of award. The contractor agrees that the amount of award and the award fee methodology are unilateral decisions to be made at the sole discretion of the Government.

(b) Contractor performance shall be evaluated according to a Performance Evaluation Plan. The contractor shall be periodically informed of the quality of its performance and areas in which improvements are expected.

(c) The contractor shall be promptly advised, in writing, of the determination and

reasons why the award fee was or was not earned. The contractor may submit a performance self-evaluation for each evaluation period. The amount of award is at the sole discretion of the Government but any self-evaluation received within _____ (*insert number*) days after the end of the current evaluation period will be given such consideration, as may be deemed appropriate by the Government.

(End of clause)

[68 FR 67871, Dec. 4, 2003, as amended at 77 FR 50637, Aug. 22, 2012]

### 3052.216–72 Performance evaluation plan.

As prescribed in (HSAR) 48 CFR 3016.406(e)(i)(ii), insert a clause substantially the same as the following:

PERFORMANCE EVALUATION PLAN (DEC 2003)

(a) A Performance Evaluation Plan shall be unilaterally established by the Government based on the criteria stated in the contract and used for the determination of award fee. This plan shall include the criteria used to evaluate each area and the percentage of award fee (if any) available for each area. A copy of the plan shall be provided to the contractor _____ (*insert number*) calendar days prior to the start of the first evaluation period.

(b) The criteria contained within the Performance Evaluation Plan may relate to: (1) Technical (including schedule) requirements if appropriate; (2) Management; and (3) Cost.

(c) The Performance Evaluation Plan may, consistent with the contract, be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the contractor _____ (*insert number*) calendar days prior to the start of the evaluation period to which the change will apply.

(End of clause)

### 3052.216–73 Distribution of award fee.

As prescribed in (HSAR) 48 CFR 3016.406(e)(1)(iii), insert a clause substantially the same as the following:

DISTRIBUTION OF AWARD FEE (DEC 2003)

(a) The total amount of award fee available under this contract is assigned according to the following evaluation periods and amounts:

Evaluation Period:
Available Award Fee:
(*insert appropriate information*)

(b) Payment of the base fee and award fee shall be made, provided that after payment of 85 percent of the base fee and potential award fee, the Government may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Government considers necessary to protect its interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or $100,000, whichever is less.

(c) In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a pro rata distribution associated with evaluation period activities or events as determined by the Government.

(d) The Government will promptly make payment of any award fee upon the submission by the contractor to the contracting officer's authorized representative, of a public voucher or invoice in the amount of the total fee earned for the period evaluated. Payment may be made without using a contract modification.

(End of clause)

### 3052.216–74 Settlement of letter contract.

As prescribed in (HSAR) 48 CFR 3016.603–4, insert a clause substantially the same as the following:

SETTLEMENT OF LETTER CONTRACT (DEC 2003)

(a) This contract constitutes the definitive contract contemplated by letter contract _____ (*insert number*) issued on _____ (*insert effective date*). It supersedes the letter contract and its modification numbered _____ (*insert number(s)*). To the extent there are inconsistencies between the definitive contract and the letter contract, the former governs.

(b) The cost(s) and fee(s), or price(s), established in this definitive contract represents full and complete settlement of letter contract _____ (*insert number*) and modification numbered _____ (*insert number(s)*). Payment of the fee agreed upon or profit withheld pending definitization of the letter contract, may start immediately at the rate and times stated within this contract.

(End of clause)

### 3052.217–90 Delivery and Shifting of Vessel (USCG).

As prescribed in the USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

DELIVERY AND SHIFTING OF VESSEL (DEC 2003)

The Government shall deliver the vessel to the Contractor at his place of business. Upon completion of the work, the Government shall accept delivery of the vessel at the

Contractor's place of business. The Contractor shall provide, at no additional charge, upon 24 hours' advance notice, a tug or tugs and docking pilot, acceptable to the Contracting Officer, to assist in handling the vessel between (to and from) the Contractor's plant and the nearest point in a waterway regularly navigated by vessels of equal or greater draft and length. While the vessel is in the hands of the Contractor, any necessary towage, cartage, or other transportation between ship and shop or elsewhere, which may be incident to the work herein specified, shall be furnished by the Contractor without additional charge to the Government.

(End of clause)

### 3052.217–91 Performance (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

PERFORMANCE (DEC 2003)

(a) Upon the award of the contract, the Contractor shall promptly start the work specified and shall diligently prosecute the work to completion. The Contractor shall not start work until the contract has been awarded except in the case of emergency work ordered by the Contracting Officer in writing.

(b) The Government shall deliver the vessel described in the contract at the time and location specified in the contract. Upon completion of the work, the Government shall accept delivery of the vessel at the time and location specified in the contract.

(c) The Contractor shall without charge,—

(1) Make available to personnel of the vessel while in dry dock or on a marine railway, sanitary lavatory and similar facilities at the plant acceptable to the Contracting Officer;

(2) Supply and maintain suitable brows and gangways from the pier, dry dock, or marine railway to the vessel;

(3) Treat salvage, scrap or other ship's material of the Government resulting from performance of the work as items of Government-furnished property, in accordance with the Government Property (Fixed Price Contracts) clause;

(4) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, rigging, or pipe lines; and

(5) Furnish suitable offices, office equipment and telephones at or near the site of the work for the Government's use.

(d) The contract will state whether dock and sea trials are required to determine whether or not the Contractor has satisfactorily performed the work.

(1) If dock and sea trials are required, the vessel shall be under the control of the vessel's commander and crew.

(2) The Contractor shall not conduct dock and sea trials not specified in the contract without advance approval of the Contracting Officer. Dock and sea trials not specified in the contract shall be at the Contractor's expense and risk.

(3) The Contractor shall provide and install all fittings and appliances necessary for dock and sea trials. The Contractor shall be responsible for care, installation, and removal of instruments and apparatus furnished by the Government for use in the trials.

(End of clause)

### 3052.217–92 Inspection and manner of doing work (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

INSPECTION AND MANNER OF DOING WORK (DEC 2003)

(a) The Contractor shall perform work in accordance with the contract, any drawings and specifications made a part of the job order, and any change or modification issued under the Changes clause.

(b)(1) Except as provided in paragraph (b)(2) of this clause, and unless otherwise specifically provided in the contract, all operational practices of the Contractor and all workmanship, material, equipment, and articles used in the performance of work under this contract shall be in accordance with the best commercial marine practices and the rules and requirements of all appropriate regulatory bodies including, but not limited to the American Bureau of Shipping, the U.S. Coast Guard, and the Institute of Electrical and Electronic Engineers, in effect at the time of Contractor's submission of offer, and shall be intended and approved for marine use.

(2) When Navy specifications are specified in the contract, the Contractor shall follow Navy standards of material and workmanship.

(c) The Government may inspect and test all material and workmanship at any time during the Contractor's performance of the work.

(1) If, prior to delivery, the Government finds any material or workmanship is defective or not in accordance with the contract, in addition to its rights under the Guarantee clause, the Government may reject the defective or nonconforming material or workmanship and require the Contractor to correct or replace it at the Contractor's expense.

(2) If the Contractor fails to proceed promptly with the replacement or correction of the material or workmanship, the Government may replace or correct the defective or nonconforming material or workmanship and charge the Contractor the excess costs incurred.

(3) As specified in the contract, the Contractor shall provide and maintain an inspection system acceptable to the Government.

(4) The Contractor shall maintain complete records of all inspection work and shall make them available to the Government during performance of the contract and for 90 days after the completion of all work required.

(d) The Contractor shall not permit any welder to work on a vessel unless the welder is, at the time of the work, qualified to the standards established by the U.S. Coast Guard, American Bureau of Shipping, or Department of the Navy for the type of welding being performed. Qualifications of a welder shall be as specified in the contract.

(e) The Contractor shall—

(1) Exercise reasonable care to protect the vessel from fire;

(2) Maintain a reasonable system of inspection over activities taking place in the vicinity of the vessel's magazines, fuel oil tanks, or storerooms containing flammable materials.

(3) Maintain a reasonable number of hose lines ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in dry dock or on a marine railway;

(4) Unless otherwise provided in the contract, provide sufficient security patrols to reasonably maintain a fire watch for protection of the vessel when it is in the Contractor's custody;

(5) To the extent necessary, clean, wash, and steam out or otherwise make safe, all tanks under alteration or repair.

(6) Furnish the Contracting Officer a ''gas-free'' or ''safe-for-hotwork'' certificate before any hot work is done on a tank;

(7) Treat the contents of any tank as Government property in accordance with the Government Property (Fixed-Price Contracts) clause; and

(8) Dispose of the contents of any tank only at the direction, or with the concurrence, of the Contracting Officer.

(9) Be responsible for the proper closing of all openings to the vessel's underwater structure upon which work has been performed. The contractor additionally must advise the COTR of the status of all valves closures and openings for which the contractor's workers were responsible.

(f) Except as otherwise provided in the contract, when the vessel is in the custody of the Contractor or in dry dock or on a marine railway and the temperature is expected to go as low as 35 Fahrenheit, the Contractor shall take all necessary steps to—

(1) Keep all hose pipe lines, fixtures, traps, tanks, and other receptacles on the vessel from freezing; and

(2) Protect the stern tube and propeller hubs from frost damage.

(g) The Contractor shall, whenever practicable—

(1) Perform the required work in a manner that will not interfere with the berthing and messing of Government personnel attached to the vessel; and

(2) Provide Government personnel attached to the vessel access to the vessel at all times.

(h) Government personnel attached to the vessel shall not interfere with the Contractor's work or workers.

(i)(1) The Government does not guarantee the correctness of the dimensions, sizes, and shapes set forth in any contract, sketches, drawings, plans, or specifications prepared or furnished by the Government, unless the contract requires that the Contractor perform the work prior to any opportunity to inspect.

(2) Except as stated in paragraph (i)(1) of this clause, and other than those parts furnished by the Government, and the Contractor shall be responsible for the correctness of the dimensions, sizes, and shapes of parts furnished under this agreement.

(j) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by its employees or the work. At the completion of the work, unless the contract specifies otherwise, the Contractor shall remove all rubbish from the site of the work and leave the immediate vicinity of the work area ''broom clean.''

(End of clause)

### 3052.217–93 Subcontracts (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

SUBCONTRACTS (DEC 2003)

(a) Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissions of its own employees, and of subcontractors and their employees. The Contractor shall also be responsible for the coordination of the work of the trades, subcontractors, and material men.

(c) The Contractor shall, without additional expense to the Government, employ specialty subcontractors where required by the specifications.

(d) The Government or its representatives will not undertake to settle any differences between the Contractor and its subcontractors, or between subcontractors.

(End of clause)

### 3052.217–94 Lay days (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

LAY DAYS (DEC 2003)

(a) Lay day time will be paid by the Government at the Contractor's stipulated bid price for this item of the contract when the vessel remains on the dry dock or marine railway as a result of any change that involves work in addition to that required under the basic contract.

(b) No lay day time shall be paid until all items of the basic contract for which a price was established by the Contractor and for which docking of the vessel was required have been satisfactorily completed and accepted.

(c) Days of hauling out and floating, whatever the hour, shall not be paid as lay day time, and days when no work is performed by the Contractor shall not be paid as lay day time.

(d) Payment of lay day time shall constitute complete compensation for all costs, direct and indirect, to reimburse the Contractor for use of dry dock or marine railway.

(End of clause)

### 3052.217–95 Liability and insurance (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

LIABILITY AND INSURANCE (DEC 2003)

(a) The Contractor shall exercise its best efforts to prevent accidents, injury, or damage to all employees, persons, and property, in and about the work, and to the vessel or part of the vessel upon which work is done.

(b) Loss or damage to the vessel, materials, or equipment. (1) Unless otherwise directed or approved in writing by the Contracting Officer, the Contractor shall not carry insurance against any form of loss or damage to the vessel(s) or to the materials or equipment to which the Government has title or which have been furnished by the Government for installation by the Contractor. The Government assumes the risks of loss of and damage to that property.

(2) The Government does not assume any risk with respect to loss or damage compensated for by insurance or otherwise or resulting from risks with respect to which the Contractor has failed to maintain insurance, if available, as required or approved by the Contracting Officer.

(3) The Government does not assume risk of and will not pay for any costs of the following:

(i) Inspection, repair, replacement, or renewal of any defects in the vessel(s) or material and equipment due to—

(A) Defective workmanship performed by the Contractor or its subcontractors;

(B) Defective materials or equipment furnished by the Contractor or its subcontractors; or

(C) Workmanship, materials, or equipment which do not conform to the requirements of the contract, whether or not the defect is latent or whether or not the nonconformance is the result of negligence.

(ii) Loss, damage, liability, or expense caused by, resulting from, or incurred as a consequence of any delay or disruption, willful misconduct or lack of good faith by the Contractor or any of its representatives that have supervision or direction of—

(A) All or substantially all of the Contractor's business; or

(B) All or substantially all of the Contractor's operation at any one plant.

(4) As to any risk that is assumed by the Government, the Government shall be subrogated to any claim, demand or cause of action against third parties that exists in favor of the Contractor. If required by the Contracting Officer, the Contractor shall execute a formal assignment or transfer of the claim, demand, or cause of action.

(5) No party other than the Contractor shall have any right to proceed directly against the Government or join the Government as a codefendant in any action.

(6) Notwithstanding the foregoing, the Contractor shall bear the first $5,000 of loss or damage from each occurrence or incident, the risk of which the Government would have assumed under the provision of this paragraph (b).

(c) *Indemnification.* The Contractor indemnifies the Government and the vessel and its owners against all claims, demands, or causes of action to which the Government, the vessel or its owner(s) might be subject as a result of damage or injury (including death) to the property or person of anyone other than the Government or its employees, or the vessel or its owner, arising in whole or in part from the negligence or other wrongful act of the Contractor, or its agents or employees, or any subcontractor, or its agents or employees.

(1) The Contractor's obligation to indemnify under this paragraph shall not exceed the sum of $300,000 as a consequence of any single occurrence with respect to any one vessel.

(2) The indemnity includes, without limitation, suits, actions, claims, costs, or demands of any kind, resulting from death, personal injury, or property damage occurring during the period of performance of work on the vessel or within 90 days after redelivery of the vessel. For any claim, etc., made after 90 days, the rights of the parties shall be as determined by other provisions of this contract and by law. The indemnity does apply to death occurring after 90 days where the injury was received during the period covered by the indemnity.

(d) *Insurance.* (1) The Contractor shall, at its own expense, obtain and maintain the following insurance—

(i) Casualty, accident, and liability insurance, as approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause.

(ii) Workers Compensation Insurance (or its equivalent) covering the employees engaged on the work.

(2) The Contractor shall ensure that all subcontractors engaged on the work obtain and maintain the insurance required in paragraph (d)(1) of this clause.

(3) Upon request of the Contracting Officer, the Contractor shall provide evidence of the insurance required by paragraph (d) of this clause.

(e) The Contractor shall not make any allowance in the contract price for the inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) The Contractor shall give the Contracting Officer written notice as soon as practicable after the occurrence of a loss or damage for which the Government has assumed the risk.

(1) The notice shall contain full details of the loss or damage.

(2) If a claim or suit is later filed against the Contractor as a result of the event, the Contractor shall immediately deliver to the Government every demand, notice, summons, or other process received by the Contractor or its employees or representatives.

(3) The Contractor shall cooperate with the Government and, upon request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits. The Government shall reimburse the Contractor for expenses incurred in this effort, other than the cost of maintaining the Contractor's usual organization.

(4) The Contractor shall not, except at its own expense, voluntarily make any payments, assume any obligation, or incur any expense other than what would be imperative for the protection of the vessel(s) at the time of the event.

(g) In the event of loss of or damage to any vessel(s), material, or equipment which may result in a claim against the Government under the insurance provisions of this contract, the Contractor shall promptly notify the Contracting Officer of the loss or damage. The Contracting Officer may, without prejudice to any right of the Government, either—

(1) Order the Contractor to proceed with replacement or repair, in which event the Contractor shall effect the replacement or repair;

(i) The Contractor shall submit to the Contracting Officer a request for reimbursement of the cost of the replacement or repair together with whatever supporting documentation the Contracting Officer may reasonably require, and shall identify the request as being submitted under the Insurance clause of this contract.

(ii) If the Government determines that the risk of the loss or damage is within the scope of the risks assumed by the Government under this clause, the Government will reimburse the Contractor for the reasonable allowable cost of the replacement or repair, plus a reasonable profit (if the work or replacement or repair was performed by the Contractor) less the deductible amount specified in paragraph (b) of this clause.

(iii) Payments by the Government to the Contractor under this clause are outside the scope of and shall not affect the pricing structure of the contract, and are additional to the compensation otherwise payable to the Contractor under this contract; or

(2) Decide that the loss or damage shall not be replaced or repaired and in that event, the Contracting Officer shall—

(i) Modify the contract appropriately, consistent with the reduced requirements reflected by the unreplaced or unrepaired loss or damage; or

(ii) Terminate the repair of any part or all of the vessel(s) under the Termination for Convenience of the Government clause of this contract.

(End of clause)

### 3052.217–96 Title (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

TITLE (DEC 2003)

(a) Unless otherwise provided, title to all materials and equipment to be incorporated in a vessel in the performance of this contract shall vest in the Government upon delivery at the location specified for the performance of the work.

(b) Upon completion of the contract, or with the approval of the Contracting Officer during performance of the contract, all Contractor-furnished materials and equipment not incorporated in, or placed on, any vessel, shall become the property of the Contractor, unless the Government has reimbursed the Contractor for the cost of the materials and equipments.

(c) The vessel, its equipment, movable stores, cargo, or other ship's materials shall not be considered Government-furnished property.

(End of clause)

### 3052.217–97 Discharge of liens (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

DISCHARGE OF LIENS (DEC 2003)

(a) The Contractor shall immediately discharge or cause to be discharged, any lien or right *in rem* of any kind, other than in favor of the Government, that exists or arises in connection with work done or materials furnished under this contract.

(b) If any such lien or right *in rem* is not immediately discharged, the Government, at the expense of the Contractor, may discharge, or cause to be discharged, the lien or right.

(End of clause)

### 3052.217–98 Delays (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

DELAYS (DEC 2003)

When during the performance of this contract the Contractor is required to delay work on a vessel temporarily, due to orders or actions of the Government respecting stoppage of work to permit shifting the vessel, stoppage of hot work to permit bunkering, stoppage of work due to embarking or debarking passengers and loading or discharging cargo, and the Contractor is not given sufficient advance notice or is otherwise unable to avoid incurring additional costs on account thereof, an equitable adjustment shall be made in the price of the contract pursuant to the ''Changes'' clause.

(End of clause)

### 3052.217–99 Department of Labor safety and health regulations for ship repairing (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

DEPARTMENT OF LABOR SAFETY AND HEALTH REGULATIONS FOR SHIP REPAIR (DEC 2003)

Nothing contained in this contract shall relieve the Contractor of any obligations it may have to comply with—

(a) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651, et seq.);

(b) The Safety and Health Regulations for Ship Repairing (29 CFR part 1915); or

(c) Any other applicable Federal, State, and local laws, codes, ordinances, and regulations.

(End of clause)

### 3052.217–100 Guarantee (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(c), insert the following clause:

GUARANTEE (USCG) (JUN 2006)

(a) In the event any work performed or materials furnished by the contractor prove defective or deficient within 60 days from the date of redelivery of the vessel(s), the Contractor, as directed by the Contracting Officer and at its own expense, shall correct and repair the deficiency to the satisfaction of the Contracting Officer.

(b) If the Contractor or any subcontractor has a guarantee for work performed or materials furnished that exceeds the 60 day period, the Government shall be entitled to rely upon the longer guarantee until its expiration.

(c) With respect to any individual work item identified as incomplete at the time of redelivery of the vessel(s), the guarantee period shall run from the date the item is completed.

(d) If practicable, the Government shall give the Contractor an opportunity to correct the deficiency.

(1) If the Contracting Officer determines it is not practicable or is otherwise not advisable to return the vessel(s) to the Contractor, or the Contractor fails to proceed with the repairs promptly, the Contracting Officer may direct that the repairs be performed elsewhere, at the Contractor's expense.

(2) If correction and repairs are performed by other than the Contractor, the Contracting Officer may discharge the Contractor's liability by making an equitable deduction in the price of the contract.

(e) The Contractor's liability shall extend for an additional 60-day guarantee period on those defects or deficiencies that the Contractor corrected.

(f) At the option of the Contracting officer, defects and deficiencies may be left uncorrected. In that event, the Contractor and Contracting Officer shall negotiate an equitable reduction in the contract price. Failure to agree upon an equitable reduction shall constitute a dispute under the Disputes clause of this contract.

(End of clause)

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 25775, May 2, 2006]

### 3052.219–70 Small Business subcontracting program reporting.

As prescribed in (HSAR) 48 CFR 3019.708–70(a), insert the following clause:

SMALL BUSINESS SUBCONTRACTING PLAN REPORTING (JUN 2006)

(a) The Contractor shall enter the information for the Subcontracting Report for Individual Contracts (formally the Standard Form 294 (SF 294)) and the Summary Subcontract Report (formally the Standard Form 295 (SF–295)) into the Electronic Subcontracting Reporting System (eSRS) at *http://www.esrs.gov*.

(b) The Contractor shall include this clause in all subcontracts that include the clause at (FAR) 48 CFR 52.219–9.

(End of clause)

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 25775, May 2, 2006]

### 3052.219–71 DHS mentor-protégé program.

As prescribed in (HSAR) 48 CFR 3019.708–70(b), insert the following clause:

DHS MENTOR-PROTÉGÉ PROGRAM (JUN 2006)

(a) Large businesses are encouraged to participate in the DHS Mentor-Protégé program for the purpose of providing developmental assistance to eligible small business protégé entities to enhance their capabilities and increase their participation in DHS contracts.

(b) The program consists of:

(1) Mentor firms, which are large prime contractors capable of providing developmental assistance;

(2) Protégé firms, which are small businesses, veteran-owned small businesses, service-disabled veteran-owned small businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small business concerns; and

(3) Mentor-Protégé agreements, approved by the DHS OSDBU.

(c) Mentor participation in the program means providing business developmental assistance to aid Protégés in developing the requisite expertise to effectively compete for and successfully perform DHS contracts and subcontracts.

(d) Large business prime contractors serving as mentors in the DHS Mentor-Protégé program are eligible for a post-award incentive for subcontracting plan credit. The mentor may receive credit for costs it incurs to provide assistance to a protégé firm. The mentor may use this additional credit towards attaining its subcontracting plan participation goal under the same or another DHS contract. The amount of credit given to a mentor firm for these protégé developmental assistance costs shall be calculated on a dollar for dollar basis and reported in the Summary Subcontract Report via the Electronic Subcontracting Reporting System (eSRS) at *http://www.esrs.gov*. For example, a mentor/large business prime contractor would report a $10,000 subcontract to the protégé/small business subcontractor and $5,000 of developmental assistance to the protégé/small business subcontractor as $15,000. The Mentor and Protégé will submit a signed joint statement agreeing on the dollar value of the developmental assistance and the Summary Subcontract Report.

(e) Contractors interested in participating in the program are encouraged to contact the DHS OSDBU for more information.

(End of clause)

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 25775, May 2, 2006]

### 3052.219–72 Evaluation of prime contractor participation in the DHS mentor-protégé program.

As prescribed in (HSAR) 48 CFR 3019.708–70(c), insert the following provision:

EVALUATION OF PRIME CONTRACTOR PARTICIPATION IN THE DHS MENTOR-PROTÉGÉ PROGRAM (JUN 2006)

This solicitation contains a source selection factor or subfactor regarding participation in the DHS Mentor-Protégé Program. In order to receive credit under the source selection factor or subfactor, the offeror shall provide a signed letter of mentor-protégé agreement approval from the DHS Office of Small Business and Disadvantaged Business Utilization (OSDBU) before initial evaluation of proposals. The contracting officer may, in his or her discretion, give credit for

approvals that occur after initial evaluation of proposals, but before final evaluation.

(End of provision)

[71 FR 25775, May 2, 2006]

### 3052.222–70 Strikes or picketing affecting timely completion of the contract work.

As prescribed in (HSAR) 48 CFR 3022.101–71(a), insert the following clause:

STRIKES OR PICKETING AFFECTING TIMELY COMPLETION OF THE CONTRACT WORK (DEC 2003)

Notwithstanding any other provision hereof, the Contractor is responsible for delays arising out of labor disputes, including but not limited to strikes, if such strikes are reasonably avoidable. A delay caused by a strike or by picketing which constitutes an unfair labor practice is not excusable unless the Contractor takes all reasonable and appropriate action to end such a strike or picketing, such as the filing of a charge with the National Labor Relations Board, the use of other available Government procedures, and the use of private boards or organizations for the settlement of disputes.

(End of clause)

### 3052.222–71 Strikes or picketing affecting access to a DHS facility.

As prescribed in (HSAR) 48 CFR 3022.101–71(b), insert the following clause:

STRIKES OR PICKETING AFFECTING ACCESS TO A DHS FACILITY (DEC 2003)

If the Contracting Officer notifies the Contractor in writing that a strike or picketing: (a) is directed at the Contractor or subcontractor or any employee of either; and (b) impedes or threatens to impede access by any person to a DHS facility where the site of the work is located, the Contractor shall take all appropriate action to end such strike or picketing, including, if necessary, the filing of a charge of unfair labor practice with the National Labor Relations Board or the use of other available judicial or administrative remedies.

(End of clause)

### 3052.222–90 Local hire (USCG).

As prescribed in (HSAR) 48 CFR 3022.9001, insert the following clause:

LOCAL HIRE (USCG) (JUN 2006)

(a) When performing a contract in whole or in part in a State with an unemployment rate in excess of the national average determined by the Secretary of Labor, the Contractor shall employ, for the purpose of performing the portion of the contract in that State, individuals who are local residents and who, in the case of any craft or trade, possess or would be able to acquire promptly, the necessary skills.

(b) Local resident defined. As used in this section, ''local resident'' means a resident of, or an individual who commutes daily to, a State described in subsection (a).

(c) The Secretary of Homeland Security may waive the requirements of paragraph (a) the interest of national security or economic efficiency.

(End of clause)

[71 FR 25775, May 2, 2006]

### 3052.223–70 Removal or disposal of hazardous substances—applicable licenses and permits.

As prescribed in (HSAR) 48 CFR 3023.303, insert the following clause:

REMOVAL OR DISPOSAL OF HAZARDOUS SUBSTANCES—APPLICABLE LICENSES AND PERMITS (JUN 2006)

The Contractor shall have all licenses and permits required by Federal, state, and local laws to perform hazardous substance(s) removal or disposal services. If the Contractor does not currently possess these documents, it shall obtain all requisite licenses and permits within __[''insert days'']__ days after date of award. The Contractor shall provide evidence of said documents to the Contracting Officer or designated Government representative prior to commencement of work under the contract.

(End of clause)

[71 FR 25775, May 2, 2006]

### 3052.223–90 Accident and fire reporting (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3023.9000(a), insert the following clause:

ACCIDENT AND FIRE REPORTING (DEC 2003)

(a) The Contractor shall report to the Contracting Officer any accident or fire occurring at the site of the work that causes:

(1) A fatality or the loss of at least one lost workday on the part of any employee of the Contractor or subcontractor at any tier;

(2) Damage of $1,000 or more to Federal real or personal property; either real or personal;

(3) Damage of $1,000 or more to Contractor or subcontractor owned or leased motor vehicles or mobile equipment; or

(4) Damage for which a contract time extension may be requested.

(b) Accident and fire reports required by paragraph (a) above shall be accomplished by the following means:

(1) Accidents or fires resulting in a death, hospitalization of five or more persons, or destruction of Federal real or personal property, the total value of which is estimated at $100,000 or more, shall be reported immediately by telephone to the Contracting Officer or his/her authorized representative and shall be confirmed by telegram, facsimile or e-mail transmission within 24 hours to the Contracting Officer. Such telegram or facsimile transmission shall state all known facts as to extent of injury and damage and as to cause of the accident or fire.

(2) Other accident and fire reports required by paragraph (a) above may be reported by the Contractor using a state, private insurance carrier, or Contractor accident report form which provides for the statement of:

(i) The extent of injury; and

(ii) The damage and cause of the accident or fire.

Such report shall be mailed or otherwise delivered to the Contracting Officer within 48 hours of the occurrence of the accident or fire.

(c) The Contractor shall assure compliance by subcontractors at all tiers with the requirements of this clause.

(End of clause)

### 3052.225–70 Requirement for Use of Certain Domestic Commodities.

As prescribed in (HSAR) 48 CFR 3025.7003, use the following clause:

REQUIREMENT FOR USE OF CERTAIN DOMESTIC COMMODITIES (AUG 2009)

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

(1) ''Commercial,'' as applied to an item described in subsection (b) of this clause, means an item of supply, whether an end product or component, that meets the definition of ''commercial item'' set forth in (FAR) 48 CFR 2.101.

(2) ''Component'' means any item supplied to the Government as part of an end product or of another component.

(3) ''End product'' means supplies delivered under a line item of this contract.

(4) ''Non-commercial,'' as applied to an item described in subsections (b) or (c) of this clause, means an item of supply, whether an end product or component, that does not meet the definition of ''commercial item'' set forth in (FAR) 48 CFR 2.101.

(5) ''Qualifying country'' means a country with a memorandum of understanding or international agreement with the United States under which DHS procurement is covered.

(6) ''United States'' includes the possessions of the United States.

(b) The Contractor shall deliver under this contract only such of the following commercial or non-commercial items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

(1) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof; or

(2) Tents, tarpaulins, covers, textile belts, bags, protective equipment (such as body armor), sleep systems, load carrying equipment (such as fieldpacks), textile marine equipment, parachutes or bandages.

(c) The Contractor shall deliver under this contract only such of the following non-commercial items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

(1) Cotton and other natural fiber products.

(2) Woven silk or woven silk blends.

(3) Spun silk yarn for cartridge cloth.

(4) Synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics).

(5) Canvas products.

(6) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).

(7) Any item of individual equipment manufactured from or containing any of the fibers, yarns, fabrics, or materials listed in this paragraph (c).

(d) This clause does not apply—

(1) To items listed in (FAR) 48 CFR 25.104, or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at United States market prices;

(2) To incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool is not more than 10 percent of the total price of the end product; or

(3) To items that are eligible products per (FAR) 48 CFR Subpart 25.4.

(End of clause)

[74 FR 41350, Aug. 17, 2009]

### 3052.228–70 Insurance.

As prescribed in (HSAR) 48 CFR 3028.310–70 and 3028.311–1, insert a clause substantially the same as follows. The contracting officer may specify additional kinds (e.g., aircraft public and passenger liability, vessel liability) or increased amounts of insurance.

INSURANCE (DEC 2003)

In accordance with the clause entitled ''Insurance—Work on a Government Installation'' [*or Insurance—Liability to Third Persons*] in Section I, insurance of the following kinds and minimum amounts shall be provided and maintained during the period of performance of this contract:

(a) Worker's compensation and employer's liability. The contractor shall, as a minimum, meet the requirements specified at (FAR) 48 CFR 28.307–2(a).

(b) General liability. The contractor shall, as a minimum, meet the requirements specified at (FAR) 48 CFR 28.307–2(b).

(c) Automobile liability. The contractor shall, as a minimum, meet the requirements specified at (FAR) 48 CFR 28.307–2(c).

(End of clause)

### 3052.228–90 Notification of Miller Act payment bond protection (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3028.106–490, insert the following clause:

NOTIFICATION OF MILLER ACT PAYMENT BOND PROTECTION (DEC 2003)

This notice clause shall be inserted by first tier subcontractors in all their subcontracts and shall contain information pertaining to the surety that provided the payment bond under the prime contract.

(a) The prime contract is subject to the Miller Act (40 U.S.C. 270), under which the prime contractor has obtained a payment bond. This payment bond may provide certain unpaid employees, suppliers, and subcontractors a right to sue the bonding surety under the Miller Act for amounts owned for work performed and materials delivery under the prime contract.

(b) Persons believing that they have legal remedies under the Miller Act should consult their legal advisor regarding the proper steps to take to obtain these remedies. This notice clause does not provide any party any rights against the Federal Government, or create any relationship, contractual or otherwise, between the Federal Government and any private party.

(c) The surety which has provided the payment bond under the prime contract is:

(Name)

(Street Address)

(City, State, Zip Code)

(Contact & Tel. No.)

(End of clause)

### 3052.228–91 Loss of or damage to leased aircraft (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3028.306–90(a) and (b), insert the following clause:

LOSS OF OR DAMAGE TO LEASED AIRCRAFT (DEC 2003)

(a) The Government assumes all risk of loss of, or damage (except normal wear and tear) to, the leased aircraft during the term of this lease while the aircraft is in the possession of the Government.

(b) In the event of damage to the aircraft, the Government, at its option, shall make the necessary repairs with its own facilities or by contract, or pay the Contractor the reasonable cost of repair of the aircraft.

(c) In the event the aircraft is lost or damaged beyond repair, the Government shall pay the Contractor a sum equal to the fair market value of the aircraft at the time of such loss or damage, which value may be specifically agreed to in clause 3052.228–92, ''Fair Market Value of Aircraft,'' less the salvage value of the aircraft. However, the Government may retain the damaged aircraft or dispose of it as it wishes. In that event, the Contractor will be paid the fair market value of the aircraft as stated in the clause.

(d) The Contractor agrees that the contract price does not include any cost attributable to hull insurance or to any reserve fund it has established to protect its interest in the aircraft. If, in the event of loss or damage to the leased aircraft, the Contractor receives compensation for such loss or damage in any form from any source, the amount of such compensation shall be:

(1) Credited to the Government in determining the amount of the Government's liability; or

(2) For an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss of or damage to the aircraft, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and the Contractor shall promptly assign such rights in writing to the Government.

(End of clause)

### 3052.228–92 Fair market value of aircraft (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3028.306–90(a) and (c), insert the following clause:

FAIR MARKET VALUE OF AIRCRAFT (DEC 2003)

For purposes of the clause entitled ''Loss of or Damage to Leased Aircraft,'' the fair market value of the aircraft to be used in the performance of this contract shall be the lesser of the two values set out in paragraphs (a) and (b) below:

(a) $_____; or

(b) If the contractor has insured the same aircraft against loss or destruction in connection with other operations, the amount of such insurance coverage on the date of the loss or damage for which the Government may be responsible under this contract.

(End of clause)

### 3052.228–93 Risk and indemnities (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3028.306–90(a) and (d), insert the following clause:

RISK AND INDEMNITIES (DEC 2003)

The Contractor hereby agrees to indemnify and hold harmless the Government, its officers and employees from and against all claims, demands, damages, liabilities, losses, suits and judgments (including all costs and expenses incident thereto) which may be suffered by, accrue against, be charged to or recoverable from the Government, its officers and employees by reason of injury to or death of any person other than officers, agents, or employees of the Government or by reason of damage to property of others of whatsoever kind (other than the property of the Government, its officers, agents or employees) arising out of the operation of the aircraft. In the event the Contractor holds or obtains insurance in support of this covenant, evidence of insurance shall be delivered to the Contracting Officer.

(End of clause)

### 3052.231–70 Precontract costs.

As prescribed in (HSAR) 48 CFR 3031.205–32, insert the following clause:

PRECONTRACT COSTS (DEC 2003)

The Contractor shall be entitled to reimbursement for pre-contract costs incurred on or after _____ in an amount not to exceed $_____ that, if incurred after this contract had been entered into, would have been reimbursable under this contract.

(End of clause)

### 3052.235–70 Dissemination of information—educational institutions.

As prescribed in (HSAR) 48 CFR 3035.70–2, insert the following clause:

DISSEMINATION OF INFORMATION—EDUCATIONAL INSTITUTIONS (DEC 2003)

(a) The Department of Homeland Security (DHS) desires widespread dissemination of the results of funded non-sensitive research. The Contractor, therefore, may publish (subject to the provisions of the ''Data Rights'' and ''Patent Rights'' clauses of the contract) research results in professional journals, books, trade publications, or other appropriate media (a thesis or collection of theses should not be used to distribute results because dissemination will not be sufficiently widespread). All costs of publication pursuant to this clause shall be borne by the Contractor and shall not be charged to the Government under this or any other Federal contract.

(b) Any copy of material published under this clause shall contain acknowledgment of DHS's sponsorship of the research effort and a disclaimer stating that the published material represents the position of the author(s) and not necessarily that of DHS. Articles for publication or papers to be presented to professional societies do not require the authorization of the Contracting Officer prior to release. However, a printed or electronic copy of each article shall be transmitted to the Contracting Officer at least two weeks prior to release or publication.

(c) Publication under the terms of this clause does not release the Contractor from the obligation of preparing and submitting to the Contracting Officer a final report containing the findings and results of research, as set forth in the schedule of the contract.

(End of clause)

[68 FR 67871, Dec. 4, 2003. Redesignated and amended at 71 FR 25775, May 2, 2006; 77 FR 50637, Aug. 22, 2012]

### 3052.236–70 Special precautions for work at operating airports.

As prescribed in (HSAR) 48 CFR 3036.570, insert the following clause:

SPECIAL PRECAUTIONS FOR WORK AT OPERATING AIRPORTS (DEC 2003)

(a) When work is to be performed at an operating airport, the Contractor must arrange its work schedule so as not to interfere with

flight operations. Such operations will take precedence over construction convenience. Any operations of the Contractor which would otherwise interfere with or endanger the operations of aircraft shall be performed only at times and in the manner directed by the Contracting Officer. The Government will make every effort to reduce the disruption of the Contractor's operation.

(b) Unless otherwise specified by local regulations, all areas in which construction operations are underway shall be marked by yellow flags during daylight hours and by red lights at other times. The red lights along the edge of the construction areas within the existing aprons shall be the electric type of not less than 100 watts intensity placed and supported as required. All other construction markings on roads and adjacent parking lots may be either electric or battery type lights. These lights and flags shall be placed so as to outline the construction areas and the distance between any two flags or lights shall not be greater than 25 feet. The Contractor shall provide adequate watch to maintain the lights in working condition at all times other than daylight hours. The hour of beginning and the hour of ending of daylight will be determined by the Contracting Officer.

(c) All equipment and material in the construction areas or when moved outside the construction area shall be marked with airport safety flags during the day and when directed by the Contracting Officer, with red obstruction lights at nights. All equipment operating on the apron, taxiway, runway, and intermediate areas after darkness hours shall have clearance lights in conformance with instructions from the Contracting Officer. No construction equipment shall operate within 50 feet of aircraft undergoing fuel operations. Open flames are not allowed on the ramp except at times authorized by the Contracting Officer.

(d) Trucks and other motorized equipment entering the airport or construction area shall do so only over routes determined by the Contracting Officer. Use of runways, aprons, taxiways, or parking areas as truck or equipment routes will not be permitted unless specifically authorized for such use. Flag personnel shall be furnished by the Contractor at points on apron and taxiway for safe guidance of its equipment over these areas to assure right of way to aircraft. Areas and routes used during the contract must be returned to their original condition by the Contractor. Airport management shall establish the maximum speed allowed at the airport. Vehicles shall be operated so as to be under safe control at all times, weather and traffic conditions considered. Vehicles must be equipped with head and taillights during the hours of darkness.

(End of clause)

### 3052.242–70 [Reserved]

### 3052.242–72 Contracting officer's technical representative.

As prescribed in (HSAR) 48 CFR 3042.7000, insert the following clause:

CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (DEC 2003)

(a) The Contracting Officer may designate Government personnel to act as the Contracting Officer's Technical Representative (COTR) to perform functions under the contract such as review or inspection and acceptance of supplies, services, including construction, and other functions of a technical nature. The Contracting Officer will provide a written notice of such designation to the Contractor within five working days after contract award or for construction, not less than five working days prior to giving the contractor the notice to proceed. The designation letter will set forth the authorities and limitations of the COTR under the contract.

(b) The Contracting Officer cannot authorize the COTR or any other representative to sign documents, such as contracts, contract modifications, etc., that require the signature of the Contracting Officer.

(End of clause)

### 3052.247–70 F.o.b. origin information.

As prescribed in (HSAR) 48 CFR 3047.305–70(a), insert the following provision:

F.O.B. ORIGIN INFORMATION (DEC 2003)

The offeror shall furnish information with the offer:

(a) Location of the offeror's actual shipping point(s) (street address, city, state, and zip code) from which supplies will be delivered to the Government;

(b) Whether the offered shipping point has a private railroad siding, and the name of the rail carrier serving it;

(c) When the offered shipping point does not have a private siding, the names and addresses of the nearest public rail siding and of the carrier serving it; and

(d) The quantity of supplies to be shipped from each shipping point.

(End of provision)

*Alternate I* (DEC 2003). If delivery is ''f.o.b. origin, contractor's facility,'' and the designated facility is not covered by the line-haul transportation

rate, add the following paragraph to the basic provision:

(e) The charges required to deliver the shipment to the point where the line-haul rate is applicable.

*Alternate II* (DEC 2003). When delivery is ''f.o.b. origin, freight allowed,'' add the following paragraph to the basic provision:

(e) The basis on which transportation charges will be allowed, including the origin and destination from and to which transportation charges will be allowed.

**3052.247–71 F.o.b. origin only.**

As prescribed in (HSAR) 48 CFR 3047.305–70(b), insert the following provision:

F.O.B. ORIGIN ONLY (DEC 2003)

Offers are invited on the basis of f.o.b. origin only. Offers submitted on any other basis will be rejected as nonresponsive.

(End of provision)

**3052.247–72 F.o.b. destination only.**

As prescribed in (HSAR) 48 CFR 3047.305–70(c), insert the following provision:

F.O.B. DESTINATION ONLY (DEC 2003)

Offers are invited on the basis of f.o.b. destination only. Offers submitted on any other basis will be rejected as nonresponsive.

# PART 3053—FORMS

## Subpart 3053.1—General

Sec.

3053.101 Requirements for use of forms.
3053.103 Exceptions.

## Subpart 3053.2—Prescription of Forms

3053.204–70 Administrative matters.
3053.222–70 Application of labor laws to Government acquisitions.
3053.227–70 Conveyance of invention rights acquired by the Government.
3053.245–70 [Reserved]

## Subpart 3053.3—Illustrations of Forms

3053.303 Agency forms.

AUTHORITY: 5 U.S.C. 301–302, 41 U.S.C. 1707, 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

## Subpart 3053.1—General

**3053.101 Requirements for use of forms.**

Unless excepted, forms prescribed in (FAR) 48 CFR part 53 and (HSAR) 48 CFR part 3053 are required for use by all Components.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 48802, Aug. 22, 2006]

**3053.103 Exceptions.**

Requests for exceptions to forms contained in (FAR) 48 CFR part 53 and to DHS forms in (HSAR) 48 CFR part 3053 shall be submitted, as prescribed in (FAR) 48 CFR 53.103, to the CPO.

## Subpart 3053.2—Prescription of Forms

**3053.204–70 Administrative matters.**

The following forms are prescribed for use in the closeout of applicable contracts, as specified in (HSAR) 48 CFR 3004.804–570:

(a) DHS Form 700–1, Cumulative Claim and Reconciliation Statement. (See (HSAR) 48 CFR 3004.804–570(a)(3).)

(b) DHS Form 700–2, Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts. (See (HSAR) 48 CFR 3004.804–570(a)(2).)

(c) DHS Form 700–3, Contractor Release. (See (HSAR) 48 CFR 3004.804–570(a)(1).)

[68 FR 67871, Dec. 4, 2003, as amended at 77 FR 50637, Aug. 22, 2012]

**3053.222–70 Application of labor laws to Government acquisitions.**

The following form is prescribed for use in connection with the application of labor laws, as specified in (HSAR) 48 CFR 3022.406–9: DHS Form 700–4, Employee's Claim for Wage Restitution.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 25776, May 2, 2006; 77 FR 50637, Aug. 22, 2012]

**3053.227–70 Conveyance of invention rights acquired by the Government.**

The following form is prescribed for including a means for contractors to report inventions made in the course of contract performance, as specified in (HSAR) 48 CFR 3027.305–4: DD Form 882, Report of Inventions and Subcontracts.

**3053.245–70 [Reserved]**

## Subpart 3053.3—Illustrations of Forms

### 3053.303 Agency forms.

This section illustrates agency-specified forms. To access these forms go to: *http://www.dhs.gov* (under ''Business, Acquisition Information'') or *https://dhsonline.dhs.gov/portal/jhtml/general/forms.jhtml*.

| Form name | Form No. |
|---|---|
| Cumulative Claim and Reconciliation Statement. | DHS Form 700–1. |
| Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts. | DHS Form 700–2. |
| Contractor's Release | DHS Form 700–3. |
| Employee's Claim for Wage Restitution | DHS Form 700–4. |
| Contractor Report of Government Property. | DHS Form 700–5. |
| Report of Inventions and Subcontract | DD 882. |

[71 FR 25776, May 2, 2006, as amended at 77 FR 50637, Aug. 22, 2012]

# CHAPTER 34—DEPARTMENT OF EDUCATION ACQUISITION REGULATION

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# SUBCHAPTER A—GENERAL

## PART 3401—ED ACQUISITION REGULATION SYSTEM

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### Subpart 3401.1—Purpose, Authority, Issuance

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### Subpart 3401.3—Agency Acquisition Regulations

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### Subpart 3401.6—Career Development, Contracting Authority, and Responsibilities

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3401.670 Nomination and appointment of contracting officer's representatives (CORs).
3401.670–1 General.
3401.670–2 Appointment.
3401.670–3 Contract clause.

AUTHORITY: 5 U.S.C. 301 and 20 U.S.C. 1018a.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

### 3401.000 Scope of part.

The Federal Acquisition Regulation System brings together, in title 48 of the Code of Federal Regulations, the acquisition regulations applicable to all executive agencies of the Federal government. This part establishes a system of Department of Education (Department) acquisition regulations, referred to as the EDAR, for the codification and publication of policies and procedures of the Department that implement and supplement the Federal Acquisition Regulation (FAR).

## Subpart 3401.1—Purpose, Authority, Issuance

### 3401.104 Applicability.

(a) The FAR and the EDAR apply to all Department contracts, as defined in FAR Part 2, except where expressly excluded.

(b) 20 U.S.C. 1018a provides the PBO with procurement authority and flexibility associated with sections (a)–(l) of the statute.

(c) For non-appropriated fund contracts, the FAR and EDAR will be followed to the maximum extent practicable, excluding provisions determined by the contracting officer, with the advice of counsel, not to apply to contracts funded with non-appropriated funds. Adherence to a process similar to those required by or best practices suggested by the FAR will not confer court jurisdiction concerning non-appropriated funds that does not otherwise exist.

### 3401.105 Issuance.

### 3401.105–2 Arrangement of regulations.

(c)(5) *References and citations.* The regulations in this chapter may be referred to as the Department of Education Acquisition Regulation or the EDAR. References to the EDAR are made in the same manner as references to the FAR. *See* FAR 1.105–2(c).

### 3401.105–3 Copies.

Copies of the EDAR in the FEDERAL REGISTER and Code of Federal Regulations (CFR) may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402. An electronic version of the EDAR is available for viewing at: *http://www.ed.gov/policy/fund/reg/clibrary/edar.html.*

## Subpart 3401.3—Agency Acquisition Regulations

### 3401.301 Policy.

(a)(1) Subject to the authorities in FAR 1.301(c) and other statutory authority, the Secretary of Education (Secretary) or delegate may issue or authorize the issuance of the EDAR. It implements or supplements the FAR and incorporates, together with the FAR, Department policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between the Agency, including its suborganizations, and contractors or prospective contractors. The Head of Contracting Activity (HCA) for FSA may issue supplementary guidelines applicable to FSA.

### 3401.303 Publication and codification.

(a) The EDAR is issued as chapter 34 of title 48 of the CFR.

(1) The FAR numbering illustrations at FAR 1.105–2 apply to the EDAR.

(2) The EDAR numbering system corresponds with the FAR numbering system. An EDAR citation will include the prefix ''34'' prior to its corresponding FAR part citation; *e.g.*, FAR 25.108–2 would have corresponding EDAR text numbered as EDAR 3425.108–2.

(3) Supplementary material for which there is no counterpart in the FAR will be codified with a suffix beginning with ''70'' or, in cases of successive sections and subsections, will be numbered in the 70 series (*i.e.*, 71–79). These supplementing sections and subsections will appear to the closest corresponding FAR citation; *e.g.*, FAR 16.4 (Incentive Contracts) may be augmented in the EDAR by citing EDAR 3416.470 (Award Term) and FAR 16.403 (Fixed-price incentive contracts) may be augmented in the EDAR by citing EDAR 3416.403–70 (Award fee contracts). (*Note:* These citations are for illustrative purposes only and may not actually appear in the published EDAR). For example:

| FAR | Is implemented as | Is augmented as |
|---|---|---|
| 15 | 3415 | 3415.70 |
| 15.1 | 3415.1 | 3415.170 |
| 15.101 | 3415.101 | 3415.101–70 |
| 15.101–1 | 3415.101–1 | 3415.101–1–70 |
| 15.101–1(b) | 3415.101–1(b) | 3415.101–1(b)(70) |
| 15.101–1(b)(1) | 3415.101–1(b)(1) | 3415.101–1(b)(1)(70) |

(c) *Activity-specific authority.* Guidance that is unique to an organization with HCA authority contains that activity's acronym directly preceding the cite. The following activity acronyms apply:

FSA—Federal Student Aid.

### 3401.304 Agency control and compliance procedures.

(a) The EDAR is issued for Department acquisition guidance in accordance with the policies stated in FAR 1.301. The EDAR is subject to the same review procedures within the Department as other regulations of the Department.

## Subpart 3401.4—Deviations

### 3401.401 Definition.

A deviation from the EDAR has the same meaning as a deviation from the FAR.

### 3401.403 Individual deviations.

An individual deviation from the FAR or the EDAR must be approved by the Senior Procurement Executive (SPE).

### 3401.404 Class deviations.

A class deviation from the FAR or the EDAR must be approved by the Chief Acquisition Officer (CAO).

## Subpart 3401.5—Agency and Public Participation

### 3401.501 Solicitation of agency and public views.

### 3401.501–2 Opportunity for public comments.

Unless the Secretary approves an exception, the Department issues the EDAR, including any amendments to the EDAR, in accordance with the procedures for public participation in 5 U.S.C. 553. Comments on proposed Department notices of proposed rulemaking may be made at *http://www.regulations.gov*.

## Subpart 3401.6—Career Development, Contracting Authority, and Responsibilities

### 3401.601 General.

(a) Contracting authority is vested in the Secretary. The Secretary has delegated this authority to the CAO. The Secretary has also delegated contracting authority to the SPE, giving the SPE broad authority to perform functions dealing with the management direction of the entire Department's procurement system, including implementation of its unique procurement policies, regulations, and standards. Limitations to the extent of this authority and successive delegations are set forth in the respective memorandums of delegations.

### 3401.602–3 Ratification of unauthorized commitments.

(a) *Definitions.* As used in this subpart, *commitment* includes issuance of letters of intent and arrangements for free vendor services or use of equipment with the promise or the appearance of commitment that a contract, modification, or order will, or may, be awarded.

(b) *Policy.*

(1) The HCA or Chief of the Contracting Office may, or may not, later ratify unauthorized commitments made by individuals without contracting authority or by contracting officers acting in excess of the limits of their delegated authority. Law and regulation requires that only individuals acting within the scope of their authority make acquisitions. Within the Department, that authority vests solely with the Contracting Officer. Acquisitions made by other than authorized personnel are matters of serious misconduct. The employee may be held legally and personally liable for the unauthorized commitment.

(2) Ratifications do not require concurrence from legal counsel.

(3) The person who made the unauthorized commitment must prepare the request for approval that must be submitted through the person's manager to the approving official.

(4) The Chief of the Contracting Office may review and sign or reject ratification requests up to $25,000.

(5) All other ratification requests must be reviewed and signed or rejected by the HCA.

### 3401.670 Nomination and appointment of contracting officer's representatives (CORs).

### 3401.670–1 General.

(a) Program offices must nominate personnel for consideration of a COR appointment in accordance with the Department's COR Policy Guide.

(b) The contracting officer must determine what, if any, duties will be delegated to a COR.

(c) The contracting officer may appoint as many CORs as is deemed necessary to support efficient contract administration.

(d) Only individuals with a written delegation of authority from a contracting officer may act in any capacity as a representative of that contracting officer, including any alternate, assistant, or back-up duties to the COR.

(e) For all contracts in which an information technology system exists, the System Security Officer for that system will perform all responsibilities necessary for contractor access to the system.

### 3401.670–2 Appointment.

COR appointments must be in accordance with the Department's COR Program Guide.

**3401.670–3 Contract clause.**

Contracting officers must insert a clause substantially the same as the clause at 3452.201–70 (Contracting Officer's Representative (COR)), in all solicitations and contracts for which a COR will be (or is) appointed.

# PART 3402—DEFINITIONS OF WORDS AND TERMS

## Subpart 3402.1—Definitions

Sec.
3402.101 Definitions.
3402.101–70 Abbreviations and acronyms.

## Subpart 3402.2—Definitions Clause

3402.201 Contract clause.

AUTHORITY: 5 U.S.C. 301 and 20 U.S.C. 1018a.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

## Subpart 3402.1—Definitions

**3402.101 Definitions.**

As used in this chapter—

*Chief Acquisition Officer* or *CAO* means the official responsible for monitoring the agency's acquisition activities, evaluating them based on applicable performance measurements, increasing the use of full and open competition in agency acquisitions, making acquisition decisions consistent with applicable laws, and establishing clear lines of authority, accountability, and responsibility for acquisition decision-making and developing and maintaining an acquisition career management program.

*Chief of the Contracting Office* means an official serving in the contracting activity (CAM or FSA Acquisitions) as the manager of a group that awards and administers contracts for a principal office of the Department. *See also* definition of *Head of the Contracting Activity* or *HCA* below.

*Contracting Officer's Representative* or *COR* means the person representing the Federal government for the purpose of technical monitoring of contract performance. The COR is not authorized to issue any instructions or directions that effect any increases or decreases in the scope of work or that would result in the increase or decrease of the cost or price of a contract or a change in the delivery dates or performance period of a contract.

*Department* or *ED* means the United States Department of Education.

*Head of the Contracting Activity* or *HCA* means those officials within the Department who have responsibility for and manage an acquisition organization and usually hold unlimited procurement authority. The Director, Federal Student Aid Acquisitions, is the HCA for FSA. The Director, Contracts and Acquisitions Management (CAM), is the HCA for all other Departmental program offices and all boards, commissions, and councils under the management control of the Department.

*Performance-Based Organization* or *PBO* is the office within the Department that is mandated by Public Law 105–244 to carry out Federal student assistance or aid programs and report to Congress on an annual basis. It may also be referred to as ''Federal Student Aid.''

*Senior Procurement Executive* or *SPE* means the single agency official appointed as such by the head of the agency and delegated broad responsibility for acquisition functions, including issuing agency acquisition policy and reporting on acquisitions agency-wide. The SPE also acts as the official one level above the contracting officer when the HCA is acting as a contracting officer.

**3402.101–70 Abbreviations and acronyms.**

CAO—Chief Acquisition Officer.
CO—Contracting Officer.
COR—Contracting Officer's Representative.
FSA—Federal Student Aid.
HCA—Head of the Contracting Activity.
IPv6—Internet Protocol version 6.
OMB—Office of Management and Budget.
OSDBU—Office of Small and Disadvantaged Business Utilization.
PBO—Performance-Based Organization (Federal Student Aid).
RFP—Request for Proposal.
SBA—Small Business Administration.
SPE—Senior Procurement Executive.

## Subpart 3402.2—Definitions Clause

**3402.201 Contract clause.**

The contracting officer must insert the clause at 3452.202–1 (Definitions—

Department of Education) in all solicitations and contracts in which the clause at FAR 52.202–1 is required.

# PART 3403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

### Subpart 3403.1—Safeguards

Sec.
3403.101 Standards of conduct.
3403.101–3 Agency regulations.

### Subpart 3403.2—Contractor Gratuities to Government Personnel

3403.203 Reporting suspected violations of the Gratuities clause.

### Subpart 3403.3—Reports of Suspected Antitrust Violations

3403.301 General.

### Subpart 3403.4—Contingent Fees

3403.409 Misrepresentation or violations of the covenant against contingent fees.

### Subpart 3403.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

3403.602 Exceptions.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

## Subpart 3403.1—Safeguards

### 3403.101 Standards of conduct.

### 3403.101–3 Agency regulations.

The Department's regulations on standards of conduct and conflicts of interest are in 34 CFR part 73, Standards of Conduct.

## Subpart 3403.2—Contractor Gratuities to Government Personnel

### 3403.203 Reporting suspected violations of the Gratuities clause.

(a) Suspected violations of the Gratuities clause at FAR 52.203–3 must be reported to the HCA in writing detailing the circumstances.

(b) The HCA evaluates the report with the assistance of the Designated Agency Ethics Officer. If the HCA determines that a violation may have occurred, the HCA refers the report to the SPE for disposition.

## Subpart 3403.3—Reports of Suspected Antitrust Violations

### 3403.301 General.

Any Departmental personnel who have evidence of a suspected antitrust violation in an acquisition must—

(1) Report that evidence through the HCA to the Office of the General Counsel for referral to the Attorney General; and

(2) Provide a copy of that evidence to the SPE.

## Subpart 3403.4—Contingent Fees

### 3403.409 Misrepresentation or violations of the covenant against contingent fees.

Any Departmental personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or other violation of the Covenant Against Contingent Fees, must report the matter promptly in accordance with the procedures in 3403.203.

## Subpart 3403.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

### 3403.602 Exceptions.

Exceptions under FAR 3.601 must be approved by the HCA.

# SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

## PART 3405—PUBLICIZING CONTRACT ACTIONS

### Subpart 3405.2—Synopses of Proposed Contract Actions

Sec.
3405.202 Exceptions.
3405.203 Publicizing and response time.
3405.205 Special situations.
3405.207 Preparation and transmittal of synopses.
3405.270 Notices to perform market surveys.

### Subpart 3405.5—Paid Advertisements

3405.502 Authority.

AUTHORITY: 5 U.S.C. 301 and 20 U.S.C. 1018a.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

## Subpart 3405.2—Synopses of Proposed Contract Actions

**3405.202 Exceptions.**

(a)(15) FSA—Issuance of a synopsis is not required when the firm to be solicited has previously provided a module for the system under a contract that contained cost, schedule, and performance goals and the contractor met those goals.

**3405.203 Publicizing and response time.**

(c) FSA—Notwithstanding other provisions of the FAR, a bid or proposal due date of less than 30 days is permitted after issuance of a synopsis for acquisitions for noncommercial items. However, if time permits, a bid or proposal due date that affords potential offerors reasonable time to respond and fosters quality submissions should be established.

**3405.205 Special situations.**

(g) *FSA—Module of a previously awarded system.* Federal Student Aid must satisfy the publication requirements for sole source and competitive awards for a module of a previously awarded system by publishing a notice of intent on the governmentwide point of entry, not less than 30 days before issuing a solicitation. This notice is not required if a contractor who is to be solicited to submit an offer previously provided a module for the system under a contract that contained cost, schedule, and performance goals, and the contractor met those goals.

**3405.207 Preparation and transmittal of synopses.**

(c) FSA—In Phase One of a Two-Phase Source Selection as described in 3415.302–70, the contracting officer must publish a notice in accordance with FAR 5.2, except that the notice must include only the following:

(1) Notification that the procurement will be conducted using the specific procedures included in 3415.302–70.

(2) A general notice of the scope or purpose of the procurement that provides sufficient information for sources to make informed business decisions regarding whether to participate in the procurement.

(3) A description of the basis on which potential sources are to be selected to submit offers in the second phase.

(4) A description of the information that is to be required to be submitted if the request for information is made separate from the notice.

(5) Any other information that the contracting officer deems is appropriate.

(h) FSA—When modular contracting authority is being utilized, the notice must invite comments and support if it is believed that modular contracting is not suited for the requirement being procured.

**3405.270 Notices to perform market surveys.**

(a) If a sole source contract is anticipated, the issuance of a notice of a proposed contract action that is detailed enough to permit the submission of meaningful responses and the subsequent evaluation of the responses by the Federal government constitutes an acceptable market survey.

(b) The notice must include—

(1) A clear statement of the supplies or services to be procured;
(2) Any capabilities or experience required of a contractor and any other factor relevant to those requirements;
(3) A statement that all responsible sources submitting a proposal, bid, or quotation must be considered;
(4) Name, business address, and phone number of the Contracting Officer; and
(5) Justification for a sole source and the identity of that source.

## Subpart 3405.5—Paid Advertisements

### 3405.502 Authority.

Authority to approve publication of paid advertisements in newspapers is delegated to the HCA.

# PART 3406—COMPETITION REQUIREMENTS

Sec.
3406.001 Applicability.

### Subpart 3406.3—Other Than Full and Open Competition

3406.302–5 Authorized or required by statute.

### Subpart 3406.5—Competition Advocates

3406.501 Requirement.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(a) and (b); and 20 U.S.C. 1018a.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

### 3406.001 Applicability.

(b) FSA—This part does not apply to proposed contracts and contracts awarded based on other than full and open competition when the conditions for successive systems modules set forth in 3417.70 are utilized.

## Subpart 3406.3—Other Than Full and Open Competition

### 3406.302–5 Authorized or required by statute.

(a) *Authority.*
(1) Citations: 20 U.S.C. 1018a.
(2) Noncompetitive awards of successive modules for systems are permitted when the conditions set forth in 3417.70 are met.

## Subpart 3406.5—Competition Advocates

### 3406.501 Requirement.

The Competition Advocate for the Department is the Deputy Director, Contracts and Acquisitions Management.

# PART 3408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

### Subpart 3408.8—Acquisition of Printing and Related Supplies

Sec.
3408.870 Printing clause.
3408.871 Paperwork reduction.

AUTHORITY: 5 U.S.C. 301, unless otherwise noted.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

## Subpart 3408.8—Acquisition of Printing and Related Supplies

AUTHORITY: 44 U.S.C. 501.

### 3408.870 Printing clause.

The contracting officer must insert the clause at 3452.208–71 (Printing) in all solicitations and contracts other than purchase orders.

### 3408.871 Paperwork reduction.

The contracting officer must insert the clause at 3452.208–72 (Paperwork Reduction Act) in all solicitations and contracts in which the contractor will develop forms or documents for public use.

# PART 3409—CONTRACTOR QUALIFICATIONS

### Subpart 3409.4—Debarment, Suspension, and Ineligibility

Sec.
3409.400 Scope of subpart.
3409.401 Applicability.
3409.403 Definitions.
3409.406 Debarment.
3409.406–3 Procedures.
3409.407 Suspension.
3409.407–3 Procedures.

**Subpart 3409.5—Organizational and Consultant Conflicts of Interest**

3409.502 Applicability.
3409.503 Waiver.
3409.506 Procedures.
3409.507 Solicitation provision and contract clause.
3409.507–1 Solicitation provision.
3409.507–2 Contract clause.
3409.570 Certification at or below the simplified acquisition threshold.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

## Subpart 3409.4—Debarment, Suspension, and Ineligibility

### 3409.400 Scope of subpart.

This subpart implements FAR subpart 9.4 by detailing policies and procedures governing the debarment and suspension of organizations and individuals from participating in ED contracts and subcontracts.

### 3409.401 Applicability.

This subpart applies to all procurement debarment and suspension actions initiated by ED. This subpart does not apply to nonprocurement debarment and suspension.

### 3409.403 Definitions.

The SPE is designated as the ''debarring official'' and ''suspending official'' as defined in FAR 9.403 and is designated as the agency official authorized to make the decisions required in FAR 9.406 and FAR 9.407.

### 3409.406 Debarment.

### 3409.406–3 Procedures.

(b) *Decision making process.*

(1) Contractors proposed for debarment may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment. The contractor must submit additional information within 30 days of receipt of the notice of proposal to debar, as described in FAR 9.406–3(c).

(2) In actions not based upon a conviction or civil judgment, if the contractor's submission in opposition raises a genuine dispute over facts material to the proposed debarment, the contractor may request a fact-finding conference. If the Debarring Official determines that there is a genuine dispute of material fact, the Debarring Official will conduct fact-finding and base the decision in accordance with FAR 9.406–3(b)(2) and (d)–(f).

### 3409.407 Suspension.

### 3409.407–3 Procedures.

(b) *Decision making process.*

(1) Contractors suspended in accordance with FAR 9.407 may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension. The contractor must submit this information and argument within 30 days of receipt of the notice of suspension, as described in FAR 9.407–3(c).

(2) In actions not based upon an indictment, if the contractor's submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of Department of Justice advice, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, the contractor may request a fact-finding conference. The Suspending Official will conduct fact-finding and base the decision in accordance with FAR 9.407–3(b)(2) and (d) through (e).

## Subpart 3409.5—Organizational and Consultant Conflicts of Interest

### 3409.502 Applicability.

This subpart applies to all ED contracts except contracts with other Federal agencies. However, this subpart applies to contracts with the Small Business Administration (SBA) under the 8(a) program.

### 3409.503 Waiver.

The HCA is designated as the official who may waive any general rule or procedure of FAR subpart 9.5 or of this subpart.

### 3409.506 Procedures.

(a) If the effects of a potential or actual conflict of interest cannot be

avoided, neutralized, or mitigated before award, the prospective contractor is not eligible for that award. If a potential or actual conflict of interest is identified after award and the effects cannot be avoided, neutralized, or mitigated, ED will terminate the contract unless the HCA deems continued performance to be in the best interest of the Federal government.

(b) The HCA is designated as the official to conduct reviews and make final decisions under FAR 9.506(b) and (c).

### 3409.507 Solicitation provision and contract clause.

### 3409.507–1 Solicitation provision.

The contracting officer must insert the provision in 3452.209–70 (Conflict of interest certification) in all solicitations for services above the simplified acquisition threshold.

### 3409.507–2 Contract clause.

The contracting officer must insert the clause at 3452.209–71 (Conflict of interest) in all contracts for services above the simplified acquisition threshold. The clause is applicable to each order for services over the simplified acquisition threshold under task order contracts.

### 3409.570 Certification at or below the simplified acquisition threshold.

By accepting any contract, including orders against any Schedule or Government-wide Acquisition Contract (GWAC), with the Department at or below the simplified acquisition threshold:

(a) The contractor warrants that, to the best of the contractor's knowledge and belief, there are no relevant facts or circumstances that would give rise to an organizational conflict of interest, as defined in FAR subpart 2.1, or that the contractor has disclosed all such relevant information.

(b) The contractor agrees that if an actual or potential organizational conflict of interest is discovered after award, the contractor will make an immediate full disclosure in writing to the contracting officer. This disclosure must include a description of actions that the contractor has taken or proposes to take, after consultation with the contracting officer, to avoid, mitigate, or neutralize the actual or potential conflict.

(c) The contractor agrees that:

(1) The Government may terminate this contract for convenience, in whole or in part, if such termination is necessary to avoid an organizational conflict of interest.

(2) The Government may terminate this contract for default or pursue other remedies permitted by law or this contract if the contractor was aware or should have been aware of a potential organizational conflict of interest prior to award, or discovers or should have discovered an actual or potential conflict after award, and does not disclose, or misrepresents, relevant information to the contracting officer regarding the conflict.

(d) The contractor further agrees to insert provisions that substantially conform to the language of this section, including this paragraph (d), in any subcontract or consultant agreement hereunder.

# PART 3412—ACQUISITION OF COMMERCIAL ITEMS

## Subpart 3412.2—Special Requirements for the Acquisition of Commercial Items

Sec.

3412.203 Procedures for solicitation, evaluation, and award.

## Subpart 3412.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

3412.302 Tailoring of provisions and clauses for the acquisition of commercial items.

AUTHORITY: 5 U.S.C. 301 and 20 U.S.C. 1018a.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

## Subpart 3412.2—Special Requirements for the Acquisition of Commercial Items

### 3412.203 Procedures for solicitation, evaluation, and award.

As specified in 3413.003, simplified acquisition procedures for commercial items may be used without regard to

any dollar or timeframe limitations described in FAR 13.5 when acquired by the FSA and used for its purposes.

## Subpart 3412.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

### 3412.302 Tailoring of provisions and clauses for the acquisition of commercial items.

The HCA is authorized to approve waivers in accordance with FAR 12.302(c). The approved waiver may be either for an individual contract or for a class of contracts for the specific item. The approved waiver and supporting documentation must be incorporated into the contract file.

# SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

## PART 3413—SIMPLIFIED ACQUISITION PROCEDURES

Sec.
3413.000 Scope of part.
3413.003 Policy.

### Subpart 3413.3—Simplified Acquisition Methods

3413.303 Blanket purchase agreements (BPAs).
3413.303–5 Purchases under BPAs.

AUTHORITY: 5 U.S.C. 301 and 20 U.S.C. 1018a.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

**3413.000 Scope of part.**

**3413.003 Policy.**

(c)(1)(iii) FSA—FSA may use simplified acquisition procedures for commercial items without regard to any dollar or timeframe limitations described in FAR 13.5.

(iv) FSA—FSA may use simplified acquisition procedures for non-commercial items up to $1,000,000 when the acquisition is set aside for small businesses, pursuant to 3419.502.

## Subpart 3413.3—Simplified Acquisition Methods

**3413.303 Blanket purchase agreements (BPAs).**

**3413.303–5 Purchases under BPAs.**

(b) Individual purchases under blanket purchase agreements for commercial items may exceed the simplified acquisition threshold but shall not exceed the threshold for the test program for certain commercial items in FAR 13.500(a).

## PART 3414—SEALED BIDDING

### Subpart 3414.4—Opening of Bids and Award of Contract

Sec.
3414.407 Mistakes in bids.
3414.407–3 Other mistakes disclosed before award.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

## Subpart 3414.4—Opening of Bids and Award of Contract

**3414.407 Mistakes in bids.**

**3414.407–3 Other mistakes disclosed before award.**

Authority is delegated to the HCA to make determinations under FAR 14.407–3(a) through (d).

## PART 3415—CONTRACTING BY NEGOTIATION

### Subpart 3415.2—Solicitation and Receipt of Proposals and Information

Sec.
3415.209 Solicitation provisions and contract clauses.

### Subpart 3415.3—Source Selection

3415.302 Source selection objective.
3415.302–70 Two-phase source selection.

### Subpart 3415.6—Unsolicited Proposals

3415.605 Content of unsolicited proposals.
3415.606 Agency procedures.

AUTHORITY: 5 U.S.C. 301 and 20 U.S.C. 1018a.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

## Subpart 3415.2—Solicitation and Receipt of Proposals and Information

**3415.209 Solicitation provisions and contract clauses.**

(a) The Freedom of Information Act (FOIA), 5 U.S.C. 552, may require ED to release data contained in an offeror's proposal even if the offeror has identified the data as restricted in accordance with the provision in FAR 52.215–1(e). The solicitation provision in 3452.215–70 (Release of restricted data) informs offerors that ED is required to consider release of restricted data under FOIA and Executive Order 12600.

(b) The contracting officer must insert the provision in 3452.215–70, in all solicitations that include a reference to FAR 52.215–1 (Instructions to Offerors—Competitive Acquisitions).

## Subpart 3415.3—Source Selection

### 3415.302 Source selection objective.

### 3415.302–70 Two-phase source selection.

(a) FSA—May utilize a two-phase process to solicit offers and select a source for award. The contracting officer can choose to use this optional method of solicitation when deemed beneficial to the FSA in meeting its needs as a PBO.

(b) *Phase One.*

(1) The contracting officer must publish a notice in accordance with FAR 5.2, except that the notice must include limited information as specified in 3405.207.

(2) *Information Submitted by Offerors.* Each offeror must submit basic information such as the offeror's qualifications, the proposed conceptual approach, costs likely to be associated with the approach, and past performance data, together with any additional information requested by the contracting officer.

(3) *Selection for participating in second phase.* The contracting officer must select the offerors that are eligible to participate in the second phase of the process. The contracting officer must limit the number of the selected offerors to the number of sources that the contracting officer determines is appropriate and in the best interests of the Federal government.

(c) *Phase Two.*

(1) The contracting officer must conduct the second phase of the source selection consistent with FAR 15.2 and 15.3, except as provided by 3405.207.

(2) Only sources selected in the first phase will be eligible to participate in the second phase.

## Subpart 3415.6—Unsolicited Proposals

### 3415.605 Content of unsolicited proposals.

(d) Each unsolicited proposal must contain the following certification:

UNSOLICITED PROPOSAL CERTIFICATION BY OFFEROR

This is to certify, to the best of my knowledge and belief, that—

a. This proposal has not been prepared under Federal government supervision;

b. The methods and approaches stated in the proposal were developed by this offeror;

c. Any contact with employees of the Department of Education has been within the limits of appropriate advance guidance set forth in FAR 15.604; and

d. No prior commitments were received from Departmental employees regarding acceptance of this proposal.

Date:

Organization:

Name:

Title:

(This certification must be signed by a responsible person authorized to enter into contracts on behalf of the organization.)

### 3415.606 Agency procedures.

(b)(1) The HCA or designee is the contact point to coordinate the receipt, control, and handling of unsolicited proposals.

(2) Offerors must direct unsolicited proposals to the HCA.

# PART 3416—TYPES OF CONTRACTS

## Subpart 3416.3—Cost-Reimbursement Contracts

Sec.
3416.303 Cost-sharing contracts.
3416.307 Contract clauses.

## Subpart 3416.4—Incentive Contracts

3416.402 Application of predetermined, formula-type incentives.
3416.402–2 Performance incentives.

3416.470 Award-term contracting.

### Subpart 3416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

3416.603 Letter contracts.
3416.603–3 Limitations.

AUTHORITY: 5 U.S.C. 301 and 20 U.S.C. 1018a.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

## Subpart 3416.3—Cost-Reimbursement Contracts

### 3416.303 Cost-sharing contracts.

(b) *Application*. Costs that are not reimbursed under a cost-sharing contract may not be charged to the Federal government under any other grant, contract, cooperative agreement, or other arrangement.

### 3416.307 Contract clauses.

(a) If the clause at FAR 52.216–7 (Allowable Cost and Payment) is used in a contract with a hospital, the contracting officer must modify the clause by deleting the words ''Subpart 31.2 of the Federal Acquisition Regulation (FAR)'' from paragraph (a) and substituting ''34 CFR part 74, Appendix E.''

(b) The contracting officer must insert the clause at 3452.216–70 (Additional cost principles) in all solicitations of and resultant cost-reimbursement contracts with nonprofit organizations other than educational institutions, hospitals, or organizations listed in Attachment C to Office of Management and Budget Circular A–122.

## Subpart 3416.4—Incentive Contracts

### 3416.402 Application of predetermined, formula-type incentives.

### 3416.402–2 Performance incentives.

(b) Award-term contracting may be used for performance-based contracts or task orders. *See* 3416.470 for the definition of *award-term contracting* and implementation guidelines.

### 3416.470 Award-term contracting.

(a) *Definition*. Award-term contracting is a method, based upon a predetermined plan in the contract, to extend the contract term for superior performance and to reduce the contract term for substandard or poor performance.

(b) *Applicability*. A Contracting Officer may authorize use of an award-term incentive contract for acquisitions where the quality of contractor performance is of a critical or highly important nature. The basic contract term may be extended on the basis of the Federal government's determination of the excellence of the contractor's performance. Additional periods of performance, which are referred to herein as ''award terms,'' are available for possible award to the contractor. As award term(s) are awarded, each additional period of performance will immediately follow the period of performance for which the award term was granted. The contract may end at the base period of performance if the Federal government determines that the contractor's performance does not reflect a level of performance as described in the award-term plan. Award-term periods may only be earned based on the evaluated quality of the performance of the contractor. Meeting the terms of the contract is not justification to award an award-term period. The use of an award-term plan does not exempt the contract from the requirements of FAR 17.207, with respect to performing due diligence prior to extending a contract term.

(c) *Approvals*. The Contracting Officer must justify the use of an award-term incentive contract in writing. The award-term plan approving official will be appointed by the HCA.

(d) *Disputes*. The Federal government unilaterally makes all decisions regarding award-term evaluations, points, methodology used to calculate points, and the degree of the contractor's success.

(e) *Award-term limitations*.

(1) Award periods may be earned during the base period of performance and each option period, except the last option period. Award-term periods may not be earned during the final option year of any contract.

(2) Award-term periods may not exceed twelve months.

(3) The potential award-term periods will be priced, evaluated, and considered in the initial contract selection process.

(f) *Implementation of extensions or reduced contract terms.*

(1) An award term is contingent upon a continuing need for the supplies or services and the availability of funds. Award terms may be cancelled prior to the start of the period of performance at no cost to the Federal government if there is not a continued need or available funding.

(2) The extension or reduction of the contract term is affected by a unilateral contract modification.

(3) Award-term periods occur after the period for which the award term was granted. Award-term periods effectively move option periods to later contract performance periods.

(4) Contractors have the right to decline the award of an award-term period. A contractor loses its ability to earn additional award terms if an earned Award-Term Period is declined.

(5) Changes to the contract award-term plan must be mutually agreed upon.

(g) *Clause.* Insert a clause substantially the same as the clause at 3452.216–71 (Award-term) in all solicitations and resulting contracts where an award-term incentive contract is anticipated.

## Subpart 3416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

### 3416.603 Letter contracts.

### 3416.603–3 Limitations.

If the HCA is to sign a letter contract as the contracting officer, the SPE signs the written determination under FAR 16.603–3.

# PART 3417—SPECIAL CONTRACTING METHODS

### Subpart 3417.2—Options

Sec.

3417.204 Contracts.
3417.207 Exercise of options.

### Subpart 3417.5—Interagency Acquisitions Under the Economy Act

3417.502 General.

### Subpart 3417.7—Modular Contracting

3417.70 Modular contracting.

AUTHORITY: 31 U.S.C. 1535 and 20 U.S.C. 1018a.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

## Subpart 3417.2—Options

### 3417.204 Contracts.

(e) Except as otherwise provided by law, contract periods that exceed the five-year limitation specified in FAR 17.204(e) must be approved by—

(1) The HCA for individual contracts; or

(2) The SPE for classes of contracts.

### 3417.207 Exercise of options.

If a contract provision allows an option to be exercised within a specified timeframe after funds become available, it must also specify that the date on which funds ''become available'' is the actual date funds become available to the contracting officer for obligation.

(f)(2) The Federal government may accept price reductions offered by contractors at any time during contract performance. Acceptance of price reductions offered by contractors will not be considered renegotiations as identified in this subpart if they were not initiated or requested by the Federal government.

## Subpart 3417.5—Interagency Acquisitions Under the Economy Act

### 3417.502 General.

No other Federal department or agency may purchase property or services under contracts established or administered by FSA unless the purchase is approved by SPE for the requesting Federal department or agency.

## Subpart 3417.7—Modular Contracting

### 3417.70 Modular contracting.

(a) FSA—May incrementally conduct successive procurements of modules of overall systems. Each module must be useful in its own right or useful in combination with the earlier procurement modules. Successive modules may be procured on a sole source basis under the following circumstances:

(1) Competitive procedures are used for awarding the contract for the first system module; and

(2) The solicitation for the first module included the following:

(i) A general description of the entire system that was sufficient to provide potential offerors with reasonable notice of the general scope of future modules;

(ii) Other sufficient information to enable offerors to make informed business decisions to submit offers for the first module; and

(iii) A statement that procedures, *i.e.*, the sole source awarding of follow-on modules, could be used for the subsequent awards.

# SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

## PART 3419—SMALL BUSINESS PROGRAMS

### Subpart 3419.2—Policies

Sec.
3419.201 General policy.
3419.201–70 Office of Small and Disadvantaged Business Utilization (OSDBU).

### Subpart 3419.5—Set-Asides for Small Business

3419.502 Setting aside acquisitions.
3419.502–4 Methods of conducting set-asides.

AUTHORITY: 5 U.S.C. 301 and 20 U.S.C. 1018a.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

## Subpart 3419.2—Policies

### 3419.201 General policy.

### 3419.201–70 Office of Small and Disadvantaged Business Utilization (OSDBU).

The Office of Small and Disadvantaged Business Utilization (OSDBU), Office of the Deputy Secretary, is responsible for facilitating the implementation of the Small Business Act, as described in FAR 19.201. The OSDBU develops rules, policy, procedures, and guidelines for the effective administration of ED's small business program.

## Subpart 3419.5—Set-Asides for Small Business

### 3419.502 Setting aside acquisitions.

### 3419.502–4 Methods of conducting set-asides.

(a) Simplified acquisition procedures as described in FAR Part 13 for the procurement of noncommercial services for FSA requirements may be used under the following circumstances:

(1) The procurement does not exceed $1,000,000;

(2) The procurement is conducted as a small business set-aside pursuant to section 15(a) of the Small Business Act;

(3) The price charged for supplies associated with the services are expected to be less than 20 percent of the total contract price;

(4) The procurement is competitive; and

(5) The procurement is not for construction.

## PART 3422—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

### Subpart 3422.10—Service Contract Act of 1965, as Amended

Sec.
3422.1002 Statutory requirements.
3422.1002–1 General.

AUTHORITY: 5 U.S.C. 301 Subpart 3422.10—Service Contract Act of 1965, as Amended

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

### 3422.1002 Statutory requirements.

### 3422.1002–1 General.

Consistent with 29 CFR 4.145, Extended term contracts, the five-year limitation set forth in the Service Contract Act of 1965, as amended (Service Contract Act), applies to each period of the contract individually, not the cumulative period of base and option periods. Accordingly, no contract subject to the Service Contract Act issued by the Department of Education will have a base period or option period that exceeds five years.

## PART 3424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

### Subpart 3424.1—Protection of Individual Privacy

Sec.
3424.103 Procedures.
3424.170 Protection of human subjects.

### Subpart 3424.2—Freedom of Information Act

3424.201 Authority.
3424.203 Policy.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

## Subpart 3424.1—Protection of Individual Privacy

### 3424.103 Procedures.

(a) If the Privacy Act of 1974 (Privacy Act) applies to a contract, the contracting officer must specify in the contract the disposition to be made of the system or systems of records upon completion of performance. For example, the contract may require the contractor to completely destroy the records, to remove personal identifiers, to turn the records over to ED, or to keep the records but take certain measures to keep the records confidential and protect the individual's privacy.

(b) If a notice of the system of records has not been published in the FEDERAL REGISTER, the contracting officer may proceed with the acquisition but must not award the contract until the notice is published, unless the contracting officer determines, in writing, that portions of the contract may proceed without maintaining information subject to the Privacy Act. In this case, the contracting officer may—

(1) Award the contract, authorizing performance only of those portions not subject to the Privacy Act; and

(2) After the notice is published and effective, authorize performance of the remainder of the contract.

### 3424.170 Protection of human subjects.

In this subsection, ''Research'' means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. (34 CFR 97.102(d)) Research is considered to involve human subjects when a researcher obtains information about a living individual through intervention or interaction with the individual or obtains personally identifiable private information about an individual. Some categories of research are exempt under the regulations, and the exemptions are in 34 CFR part 97.

(a) The contracting officer must insert the provision in 3452.224–71 (Notice about research activities involving human subjects) in any solicitation where a resultant contract will include, or is likely to include, research activities involving human subjects covered under 34 CFR part 97.

(b) The contracting officer must insert the clause at 3452.224–72 (Research activities involving human subjects) in any solicitation that includes the provision in 3452.224–71 (Notice about research activities involving human subjects) and in any resultant contract.

## Subpart 3424.2—Freedom of Information Act

### 3424.201 Authority.

The Department's regulations implementing the Freedom of Information Act, 5 U.S.C. 552, are in 34 CFR part 5.

### 3424.203 Policy.

(a) [Reserved]

(b) The Department's policy is to release all information incorporated into a contract and documents that result from the performance of a contract to the public under the Freedom of Information Act. The release or withholding of documents requested will be made on a case-by-case basis. Contracting officers must advise offerors and prospective contractors of the possibility that their submissions may be released under the Freedom of Information Act, not withstanding any restrictions that are included at the time of proposal submission. A clause substantially the same as the clause at 3452.224–70 (Release of information under the Freedom of Information Act) must be included in all solicitations and contracts.

# PART 3425—FOREIGN ACQUISITION

## Subpart 3425.1—Buy American Act—Supplies

Sec.

3425.102 Exceptions.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

## Subpart 3425.1—Buy American Act—Supplies

### 3425.102 Exceptions.

The HCA approves determinations under FAR 25.103(b)(2)(i).

# SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

## PART 3427—PATENTS, DATA, AND COPYRIGHTS

### Subpart 3427.4—Rights in Data and Copyrights

Sec.
3427.409 Solicitation provisions and contract clauses.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

## Subpart 3427.4—Rights in Data and Copyrights

**3427.409 Solicitation provisions and contract clauses.**

(a) The contracting officer must insert the clause at 3452.227–70 (Publication and publicity) in all solicitations and contracts other than purchase orders.

(b) The contracting officer must insert the clause at 3452.227–71 (Advertising of awards) in all solicitations and contracts other than purchase orders.

(c) The contracting officer must insert the clause at 3452.227–72 (Use and non-disclosure agreement) in all contracts over the simplified acquisition threshold, and in contracts under the simplified acquisition threshold, as appropriate.

(d) The contracting officer must insert the clause at 3452.227–73 (Limitations on the use or disclosure of Government-furnished information marked with restrictive legends) in all contracts of third party vendors who require access to Government-furnished information including other contractors' technical data, proprietary information, or software.

## PART 3428—BONDS AND INSURANCE

### Subpart 3428.3—Insurance

Sec.
3428.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
3428.311–2 Contract clause.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

## Subpart 3428.3—Insurance

**3428.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.**

**3428.311–2 Contract clause.**

The contracting officer must insert the clause at 3452.228–70 (Required insurance) in all solicitations and resultant cost-reimbursement contracts.

## PART 3432—CONTRACT FINANCING

### Subpart 3432.4—Advance Payments for Non-Commercial Items

Sec.
3432.402 General.
3432.407 Interest.

### Subpart 3432.7—Contract Funding

3432.705 Contract clauses.
3432.705–2 Clauses for limitation of cost or funds.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

## Subpart 3432.4—Advance Payments for Non-Commercial Items

**3432.402 General.**

The HCA is delegated the authority to make determinations under FAR 32.402(c)(1)(iii). This authority may not be redelegated.

**3432.407 Interest.**

The HCA is designated as the official who may authorize advance payments without interest under FAR 32.407(d).

## Subpart 3432.7—Contract Funding

### 3432.705 Contract clauses.

### 3432.705–2 Clauses for limitation of cost or funds.

(a) The contracting officer must insert the clause at 3452.232–70 (Limitation of cost or funds) in all solicitations and contracts where a Limitation of cost or Limitation of funds clause is utilized.

(b) The contracting officer must insert the provision in 3452.232–71 (Incremental funding) in a solicitation if a cost-reimbursement contract using incremental funding is contemplated.

# PART 3433—PROTESTS, DISPUTES, AND APPEALS

## Subpart 3433.1—Protests

Sec.
3433.103 Protests to the agency.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

## Subpart 3433.1—Protests

### 3433.103 Protests to the agency.

(f)(3) The contracting officer's HCA must approve the justification or determination to continue performance. The criteria in FAR 33.103(f)(3) must be followed in making the determination to award a contract before resolution of a protest.

# SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

## PART 3437—SERVICE CONTRACTING

### Subpart 3437.1—Service Contracts—General

Sec.
3437.102 Policy.
3437.170 Observance of administrative closures

### Subpart 3437.2—Advisory and Assistance Services

3437.270 Services of consultants clauses.

### Subpart 3437.6—Performance-Based Acquisition

3437.670 Contract type.

AUTHORITY: 5 U.S.C. 301 and 20 U.S.C. 1018a.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

## Subpart 3437.1—Service Contracts—General

### 3437.102 Policy.

If a service contract requires one or more end items of supply, FAR Subpart 37.1 and this subpart apply only to the required services.

### 3437.170 Observance of administrative closures.

The contracting officer must insert the clause at 3452.237–71 (Observance of administrative closures) in all solicitations and contracts for services.

## Subpart 3437.2—Advisory and Assistance Services

### 3437.270 Services of consultants clause.

The contracting officer must insert the clause at 3452.237–70 (Services of consultants) in all solicitations and resultant cost-reimbursement contracts that do not provide services to FSA.

## Subpart 3437.6—Performance-Based Acquisition

### 3437.670 Contract type.

Award-term contracting may be used for performance-based contracts and task orders that provide opportunities for significant improvements and benefits to the Department. Use of award-term contracting must be approved in advance by the HCA.

## PART 3439—ACQUISITION OF INFORMATION TECHNOLOGY

### Subpart 3439.70—Department Requirements for Acquisition of Information Technology

Sec.
3439.701 Internet Protocol version 6.
3439.702 Department security requirements.
3439.703 Federal desktop core configuration (FDCC) compatibility.

AUTHORITY: 5 U.S.C. 301 and 20 U.S.C. 1018a.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

## Subpart 3439.70—Department Requirements for Acquisition of Information Technology

### 3439.701 Internet Protocol version 6.

The contracting officer must insert the clause at 3452.239–70 (Internet protocol version 6 (IPv6)) in all solicitations and resulting contracts for hardware and software.

### 3439.702 Department security requirements.

The contracting officer must include the solicitation provision in 3452.239–71 (Notice to offerors of Department security requirements) and the clause at 3452.239–72 (Department security requirements) when contractor employees will have access to Department-controlled facilities or space, or when the work (wherever located) involves the design, operation, repair, or maintenance of information systems and access to sensitive but unclassified information.

### 3439.703 Federal desktop core configuration (FDCC) compatibility.

The contracting officer must include the clause at 3452.239–73 (Federal desktop core configuration (FDCC) compatibility) in all solicitations and contracts where software will be developed, maintained, or operated on any system using the FDCC configuration.

# SUBCHAPTER G—CONTRACT MANAGEMENT

## PART 3442—CONTRACT ADMINISTRATION AND AUDIT SERVICES

### Subpart 3442.70—Contract Monitoring

Sec.
3442.7001 Litigation and claims clause.
3442.7002 Delays.

### Subpart 3442.71—Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities

3442.7101 Policy and clause.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

## Subpart 3442.70—Contract Monitoring

**3442.7001 Litigation and claims clause.**

The contracting officer must insert the clause at 3452.242–70 (Litigation and claims) in all solicitations and resultant cost-reimbursement contracts.

**3442.7002 Delays.**

The contracting officer must insert the clause at 3452.242–71 (Notice to the Government of delays) in all solicitations and contracts other than purchase orders.

## Subpart 3442.71—Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities

**3442.7101 Policy and clause.**

(a) It is the policy of ED that all meetings, conferences, and seminars be accessible to persons with disabilities.

(b) The contracting officer must insert the clause at 3452.242–73 (Accessibility of meetings, conferences, and seminars to persons with disabilities) in all solicitations and contracts.

## PART 3443—CONTRACT MODIFICATIONS

### Subpart 3443.1—General

Sec.
3443.107 Contract clause.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

## Subpart 3443.1—General

**3443.107 Contract clause.**

The contracting officer must insert a clause substantially the same as 3452.243–70 (Key personnel) in all solicitations and resultant cost-reimbursement contracts in which it will be essential for the contracting officer to be notified that a change of designated key personnel is to take place by the contractor.

## PART 3445—GOVERNMENT PROPERTY

### Subpart 3445.4—Contractor Use and Rental of Government Property

Sec.
3445.405 Contracts with foreign governments or international organizations.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

## Subpart 3445.4—Contractor Use and Rental of Government Property

**3445.405 Contracts with foreign governments or international organizations.**

Requests by, or for the benefit of, foreign governments or international organizations to use ED production and research property must be approved by the HCA. The HCA must determine the amount of cost to be recovered or rental charged, if any, based on the facts and circumstances of each case.

# PART 3447—TRANSPORTATION

## Subpart 3447.7—Foreign Travel

Sec.
3447.701 Foreign travel clause.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

## Subpart 3447.7—Foreign Travel

### 3447.701 Foreign travel clause.

The contracting officer must insert the clause at 3452.247–70 (Foreign travel) in all solicitations and resultant cost-reimbursement contracts.

# SUBCHAPTER H—CLAUSES AND FORMS

## PART 3452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

### Subpart 3452.2—Text of Provisions and Clauses

Sec.


3452.201–70 Contracting Officer's Representative (COR).
3452.202–1 Definitions—Department of Education.
3452.208–71 Printing.
3452.208–72 Paperwork Reduction Act.
3452.209–70 Conflict of interest. certification.
3452.209–71 Conflict of interest.
3452.215–70 Release of restricted data.
3452.216–70 Additional cost principles.
3452.216–71 Award-Term.
3452.224–70 Release of information under the Freedom of Information Act.
3452.224–71 Notice about research activities involving human subjects.
3452.224–72 Research activities involving human subjects.
3452.227–70 Publication and publicity.
3452.227–71 Advertising of awards.
3452.227–72 Use and non-disclosure agreement.
3452.227–73 Limitations on the use or disclosure of Government-furnished information marked with restrictive legends.
3452.228–70 Required insurance.
3452.232–70 Limitation of cost or funds.
3452.232–71 Incremental funding.
3452.237–70 Services of consultants.
3452.237–71 Observance of administrative closures.
3452.239–70 Internet protocol version 6 (IPv6).
3452.239–71 Notice to offerors of Department security requirements.
3452.239–72 Department security requirements.
3452.239–73 Federal desktop core configuration (FDCC) compatibility.
3452.242–70 Litigation and claims.
3452.242–71 Notice to the Government of delays.
3452.242–73 Accessibility of meetings, conferences, and seminars to persons with disabilities.
3452.243–70 Key personnel.
3452.247–70 Foreign travel.


AUTHORITY: 5 U.S.C. 301.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

## Subpart 3452.2—Text of Provisions and Clauses

### 3452.201–70 Contracting Officer's Representative (COR).

As prescribed in 3401.670–3, insert a clause substantially the same as:

CONTRACTING OFFICER'S REPRESENTATIVE (COR) (MAR 2011)

(a) The Contracting Officer's Representative (COR) is responsible for the technical aspects of the project, technical liaison with the contractor, and any other responsibilities that are specified in the contract. These responsibilities include inspecting all deliverables, including reports, and recommending acceptance or rejection to the contracting officer.

(b) The COR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes that affect the contract price, terms, or conditions. Any contractor requests for changes shall be submitted in writing directly to the contracting officer or through the COR. No such changes shall be made without the written authorization of the contracting officer.

(c) The COR's name and contact information:

(d) The COR may be changed by the Government at any time, but notification of the change, including the name and address of the successor COR, will be provided to the contractor by the contracting officer in writing.

(End of clause)

### 3452.202–1 Definitions—Department of Education.

As prescribed in 3402.201, insert the following clause in solicitations and contracts in which the clause at FAR 52.202–1 is required.

DEFINITIONS—DEPARTMENT OF EDUCATION (MAR 2011)

(a) The definitions at FAR 2.101 are appended with those contained in Education Department Acquisition Regulations (EDAR) 3402.101.

(b) The EDAR is available via the Internet at *http://www.ed.gov/policy/fund/reg/clibrary/edar.html*.

(End of clause)

**3452.208–71 Printing.**

As prescribed in 3408.870, insert the following clause in all solicitations and contracts other than purchase orders:

PRINTING (MAR 2011)

Unless otherwise specified in this contract, the contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract; except that performance involving the duplication of fewer than 5,000 units of any one page, or fewer than 25,000 units in the aggregate of multiple pages, shall not be deemed to be printing. A unit is defined as one side of one sheet, one color only (with black counting as a color), with a maximum image size of 10¾ by 14¼ inches on a maximum paper size of 11 by 17 inches. Examples of counting the number of units: black plus one additional color on one side of one page counts as two units. Three colors (including black) on two sides of one page count as six units.

(End of clause)

**3452.208–72 Paperwork Reduction Act.**

As prescribed in 3408.871, insert the following clause in all relevant solicitations and contracts:

PAPERWORK REDUCTION ACT (MAR 2011)

(a) The Paperwork Reduction Act of 1995 applies to contractors that collect information for use or disclosure by the Federal government. If the contractor will collect information requiring answers to identical questions from 10 or more people, no plan, questionnaire, interview guide, or other similar device for collecting information may be used without first obtaining clearance from the Chief Acquisition Officer (CAO) or the CAO's designee within the Department of Education (ED) and the Office of Management and Budget (OMB). Contractors and Contracting Officers' Representatives shall be guided by the provisions of 5 CFR part 1320, Controlling Paperwork Burdens on the Public, and should seek the advice of the Department's Paperwork Clearance Officer to determine the procedures for acquiring CAO and OMB clearance.

(b) The contractor shall obtain the required clearances through the Contracting Officer's Representative before expending any funds or making public contacts for the collection of information described in paragraph (a) of this clause. The authority to expend funds and proceed with the collection shall be in writing by the contracting officer. The contractor must plan at least 120 days for CAO and OMB clearance. Excessive delay caused by the Government that arises out of causes beyond the control and without the fault or negligence of the contractor will be considered in accordance with the Excusable Delays or Default clause of this contract.

(End of clause)

**3452.209–70 Conflict of interest certification.**

As prescribed in 3409.507–1, insert the following provision in all solicitations anticipated to result in contract actions for services above the simplified acquisition threshold:

CONFLICT OF INTEREST CERTIFICATION (MAR 2011)

(a)(1) The contractor, subcontractor, employee, or consultant, by signing the form in this clause, certifies that, to the best of its knowledge and belief, there are no relevant facts or circumstances that could give rise to an organizational or personal conflict of interest, (*see* FAR Subpart 9.5 for organizational conflicts of interest) (or apparent conflict of interest), for the organization or any of its staff, and that the contractor, subcontractor, employee, or consultant has disclosed all such relevant information if such a conflict of interest appears to exist to a reasonable person with knowledge of the relevant facts (or if such a person would question the impartiality of the contractor, subcontractor, employee, or consultant). Conflicts may arise in the following situations:

(i) *Unequal access to information.* A potential contractor, subcontractor, employee, or consultant has access to non-public information through its performance on a government contract.

(ii) *Biased ground rules.* A potential contractor, subcontractor, employee, or consultant has worked, in one government contract, or program, on the basic structure or ground rules of another government contract.

(iii) *Impaired objectivity.* A potential contractor, subcontractor, employee, or consultant, or member of their immediate family (spouse, parent, or child) has financial or other interests that would impair, or give the appearance of impairing, impartial judgment in the evaluation of government programs, in offering advice or recommendations to the government, or in providing technical assistance or other services to recipients of Federal funds as part of its contractual responsibility. ''Impaired objectivity'' includes but is not limited to the following situations that would cause a reasonable person with knowledge of the relevant facts to question a person's objectivity:

(A) Financial interests or reasonably foreseeable financial interests in or in connection with products, property, or services that may be purchased by an educational agency, a person, organization, or institution in the course of implementing any program administered by the Department;

(B) Significant connections to teaching methodologies or approaches that might require or encourage the use of specific products, property, or services; or

(C) Significant identification with pedagogical or philosophical viewpoints that might require or encourage the use of a specific curriculum, specific products, property, or services.

(2) Offerors must provide the disclosure described above on any actual or potential conflict of interest (or apparent conflict of interest) regardless of their opinion that such a conflict or potential conflict (or apparent conflict of interest) would not impair their objectivity.

(3) In a case in which an actual or potential conflict (or apparent conflict of interest) is disclosed, the Department will take appropriate actions to eliminate or address the actual or potential conflict, including but not limited to mitigating or neutralizing the conflict, when appropriate, through such means as ensuring a balance of views, disclosure with the appropriate disclaimers, or by restricting or modifying the work to be performed to avoid or reduce the conflict. In this clause, the term ''potential conflict'' means reasonably foreseeable conflict of interest.

(b) The contractor, subcontractor, employee, or consultant agrees that if ''impaired objectivity'', or an actual or potential conflict of interest (or apparent conflict of interest) is discovered after the award is made, it will make a full disclosure in writing to the contracting officer. This disclosure shall include a description of actions that the contractor has taken or proposes to take to avoid, mitigate, or neutralize the actual or potential conflict (or apparent conflict of interest).

(c) *Remedies.* The Government may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid the appearance of a conflict of interest. If the contractor was aware of a potential conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the contracting officer, the Government may terminate the contract for default, or pursue such other remedies as may be permitted by law or this contract. These remedies include imprisonment for up to five years for violation of 18 U.S.C. 1001 and fines of up to $5000 for violation of 31 U.S.C. 3802. Further remedies include suspension or debarment from contracting with the Federal government. The contractor may also be required to reimburse the Department for costs the Department incurs arising from activities related to conflicts of interest. An example of such costs would be those incurred in processing Freedom of Information Act requests related to a conflict of interest.

(d) In cases where remedies short of termination have been applied, the contractor, subcontractor, employee, or consultant agrees to eliminate the organizational conflict of interest, or mitigate it to the satisfaction of the contracting officer.

(e) The contractor further agrees to insert in any subcontract or consultant agreement hereunder, provisions that conform substantially to the language of this clause, including specific mention of potential remedies and this paragraph (e).

(f) *Conflict of Interest Certification.*

The offeror, [insert name of offeror], hereby certifies that, to the best of its knowledge and belief, there are no present or currently planned interests (financial, contractual, organizational, or otherwise) relating to the work to be performed under the contract or task order resulting from Request for Proposal No. [insert number] that would create any actual or potential conflict of interest (or apparent conflicts of interest) (including conflicts of interest for immediate family members: spouses, parents, children) that would impinge on its ability to render impartial, technically sound, and objective assistance or advice or result in it being given an unfair competitive advantage. In this clause, the term ''potential conflict'' means reasonably foreseeable conflict of interest. The offeror further certifies that it has and will continue to exercise due diligence in identifying and removing or mitigating, to the Government's satisfaction, such conflict of interest (or apparent conflict of interest).

Offeror's Name _____

RFP/Contract No. _____

Signature _____

Title _____

Date _____

(End of clause)

### 3452.209–71 Conflict of interest.

As prescribed in 3409.507–2, insert the following clause in all contracts for services above the simplified acquisition threshold:

CONFLICT OF INTEREST (MAR 2011)

(a)(1) The contractor, subcontractor, employee, or consultant, has certified that, to the best of its knowledge and belief, there are no relevant facts or circumstances that could give rise to an organizational or personal conflict of interest (*see* FAR Subpart

9.5 for organizational conflicts of interest) (or apparent conflict of interest) for the organization or any of its staff, and that the contractor, subcontractor, employee, or consultant has disclosed all such relevant information if such a conflict of interest appears to exist to a reasonable person with knowledge of the relevant facts (or if such a person would question the impartiality of the contractor, subcontractor, employee, or consultant). Conflicts may arise in the following situations:

(i) *Unequal access to information*—A potential contractor, subcontractor, employee, or consultant has access to non-public information through its performance on a government contract.

(ii) *Biased ground rules*—A potential contractor, subcontractor, employee, or consultant has worked, in one government contract, or program, on the basic structure or ground rules of another government contract.

(iii) *Impaired objectivity*—A potential contractor, subcontractor, employee, or consultant, or member of their immediate family (spouse, parent, or child) has financial or other interests that would impair, or give the appearance of impairing, impartial judgment in the evaluation of government programs, in offering advice or recommendations to the government, or in providing technical assistance or other services to recipients of Federal funds as part of its contractual responsibility. ''Impaired objectivity'' includes but is not limited to the following situations that would cause a reasonable person with knowledge of the relevant facts to question a person's objectivity:

(A) Financial interests or reasonably foreseeable financial interests in or in connection with products, property, or services that may be purchased by an educational agency, a person, organization, or institution in the course of implementing any program administered by the Department;

(B) Significant connections to teaching methodologies that might require or encourage the use of specific products, property, or services; or

(C) Significant identification with pedagogical or philosophical viewpoints that might require or encourage the use of a specific curriculum, specific products, property, or services.

(2) Offerors must provide the disclosure described above on any actual or potential conflict (or apparent conflict of interest) of interest regardless of their opinion that such a conflict or potential conflict (or apparent conflict of interest) would not impair their objectivity.

(3) In a case in which an actual or potential conflict (or apparent conflict of interest) is disclosed, the Department will take appropriate actions to eliminate or address the actual or potential conflict (or apparent conflict of interest), including but not limited to mitigating or neutralizing the conflict, when appropriate, through such means as ensuring a balance of views, disclosure with the appropriate disclaimers, or by restricting or modifying the work to be performed to avoid or reduce the conflict. In this clause, the term ''potential conflict'' means reasonably foreseeable conflict of interest.

(b) The contractor, subcontractor, employee, or consultant agrees that if ''impaired objectivity'', or an actual or potential conflict of interest (or apparent conflict of interest) is discovered after the award is made, it will make a full disclosure in writing to the contracting officer. This disclosure shall include a description of actions that the contractor has taken or proposes to take, after consultation with the contracting officer, to avoid, mitigate, or neutralize the actual or potential conflict (or apparent conflict of interest).

(c) *Remedies.* The Government may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid the appearance of a conflict of interest. If the contractor was aware of a potential conflict of interest prior to award or discovered an actual or potential conflict (or apparent conflict of interest) after award and did not disclose or misrepresented relevant information to the contracting officer, the Government may terminate the contract for default, or pursue such other remedies as may be permitted by law or this contract. These remedies include imprisonment for up to five years for violation of 18 U.S.C. 1001 and fines of up to $5,000 for violation of 31 U.S.C. 3802. Further remedies include suspension or debarment from contracting with the Federal government. The contractor may also be required to reimburse the Department for costs the Department incurs arising from activities related to conflicts of interest. An example of such costs would be those incurred in processing Freedom of Information Act requests related to a conflict of interest.

(d) In cases where remedies short of termination have been applied, the contractor, subcontractor, employee, or consultant agrees to eliminate the organizational conflict of interest, or mitigate it to the satisfaction of the contracting officer.

(e) The contractor further agrees to insert in any subcontract or consultant agreement hereunder, provisions that conform substantially to the language of this clause, including specific mention of potential remedies and this paragraph (e).

(End of clause)

### 3452.215–70 Release of restricted data.

As prescribed in 3415.209, insert the following provision in solicitations:

RELEASE OF RESTRICTED DATA (MAR 2011)

(a) Offerors are hereby put on notice that regardless of their use of the legend set forth in FAR 52.215–1(e), Restriction on Disclosure and Use of Data, the Government may be required to release certain data contained in the proposal in response to a request for the data under the Freedom of Information Act (FOIA). The Government's determination to withhold or disclose a record will be based upon the particular circumstance involving the data in question and whether the data may be exempted from disclosure under FOIA. In accordance with Executive Order 12600 and to the extent permitted by law, the Government will notify the offeror before it releases restricted data.

(b) By submitting a proposal or quotation in response to this solicitation:

(1) The offeror acknowledges that the Department may not be able to withhold or deny access to data requested pursuant to FOIA and that the Government's FOIA officials shall make that determination;

(2) The offeror agrees that the Government is not liable for disclosure if the Department has determined that disclosure is required by FOIA;

(3) The offeror acknowledges that proposals not resulting in a contract remain subject to FOIA; and

(4) The offeror agrees that the Government is not liable for disclosure or use of unmarked data and may use or disclose the data for any purpose, including the release of the information pursuant to requests under FOIA.

(c) Offerors are cautioned that the Government reserves the right to reject any proposal submitted with:

(1) A restrictive legend or statement differing in substance from the one required by the solicitation provision in FAR 52.215–1(e), Restriction on Disclosure and Use of Data, or

(2) A statement taking exceptions to the terms of paragraphs (a) or (b) of this provision.

(End of provision)

### 3452.216–70 Additional cost principles.

Insert the following clause in solicitations and contracts as prescribed in 3416.307(b):

ADDITIONAL COST PRINCIPLES (MAR 2011)

(a) *Bid and Proposal Costs.* Bid and proposal costs are the immediate costs of preparing bids, proposals, and applications for potential Federal and non-Federal grants, contracts, and other agreements, including the development of scientific, cost, and other data needed to support the bids, proposals, and applications. Bid and proposal costs of the current accounting period are allowable as indirect costs; bid and proposal costs of past accounting periods are unallowable as costs of the current period. However, if the organization's established practice is to treat these costs by some other method, they may be accepted if they are found to be reasonable and equitable. Bid and proposal costs do not include independent research and development costs or pre-award costs.

(b) *Independent research and development costs.* Independent research and development is research and development that is not sponsored by Federal and non-Federal grants, contracts, or other agreements. Independent research and development shall be allocated its proportionate share of indirect costs on the same basis as the allocations of indirect costs of sponsored research and development. The costs of independent research and development, including its proportionate share of indirect costs, are unallowable.

(End of clause)

### 3452.216–71 Award-Term.

As prescribed in 3416.470, insert a clause substantially the same as the following in all solicitations and contracts where an award-term arrangement is anticipated:

AWARD–TERM (MAR 2011)

(a) The initial [insert initial contract term] contract term or ordering period may be extended or reduced on the basis of contractor performance, resulting in a contract term or an ordering period lasting at least [insert minimum contract term] years from the date of contract award, to a maximum of [insert maximum contract term] years after the date of contract award.

(b) The contractor's performance will be measured against stated standards by the performance monitors, who will report their findings to the Award Term Determining Official (or Board).

(c) Bilateral changes may be made to the award-term plan at any time. If agreement cannot be made within 60 days, the Government reserves the right to make unilateral changes prior to the start of an award-term period.

(d) The contractor will submit a brief written self-evaluation of its performance within X days after the end of the evaluation period. The self-evaluation report shall not exceed seven pages, and it may be considered in the Award Term Review Board's (ATRB's) (or Term Determining Official's) evaluation of the contractor's performance during this period.

(e) The contract term or ordering period may be unilaterally modified to reflect the ATRB's decision. If the contract term or ordering period has one year remaining, the

operation of the contract award-term feature will cease and the contract term or ordering period will not extend beyond the maximum term stated in the contract.

(f) Award terms that have not begun may be cancelled (rather than terminated), should the need for the items or services no longer exists. No equitable adjustments to the contract price are applicable, as this is not the same procedure as a termination for convenience.

(g) The decisions made by the ATRB or Term Determining Official may be made unilaterally. Alternate Dispute Resolution procedures shall be utilized when appropriate.

(End of clause)

### 3452.224–70 Release of information under the Freedom of Information Act.

As prescribed in 3424.203, insert the following clause in solicitations and contracts.

RELEASE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT (MAR 2011)

By entering into a contract with the Department of Education, the contractor, without regard to proprietary markings, approves the release of the entire contract and all related modifications and task orders including, but not limited to:

(1) Unit prices, including labor rates;

(2) Statements of Work/Performance Work Statements generated by the contractor;

(3) Performance requirements, including incentives, performance standards, quality levels, and service level agreements;

(4) Reports, deliverables, and work products delivered in performance of the contract (including quality of service, performance against requirements/standards/service level agreements);

(5) Any and all information, data, software, and related documentation first provided under the contract;

(6) Proposals or portions of proposals incorporated by reference; and

(7) Other terms and conditions.

(End of clause)

### 3452.224–71 Notice about research activities involving human subjects.

As prescribed in 3424.170, insert the following provision in any solicitation where a resultant contract will include, or is likely to include, research activities involving human subjects covered under 34 CFR part 97:

NOTICE ABOUT RESEARCH ACTIVITIES INVOLVING HUMAN SUBJECTS (MAR 2011)

(a) *Applicable Regulations.* In accordance with Department of Education regulations on the protection of human subjects, title 34, Code of Federal Regulations, part 97 (''the regulations''), the contractor, any subcontractors, and any other entities engaged in covered (nonexempt) research activities are required to establish and maintain procedures for the protection of human subjects.

(b) *Definitions.* (1) The regulations define *research* as ''a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.'' (34 CFR 97.102(d)). If an activity follows a deliberate plan designed to develop or contribute to generalizable knowledge, it is research. Research includes activities that meet this definition, whether or not they are conducted under a program considered research for other purposes. For example, some demonstration and service programs may include research activities.

(2) The regulations define a *human subject* as a living individual about whom an investigator (whether professional or student) conducting research obtains data through intervention or interaction with the individual, or obtains identifiable private information. (34 CFR 97.102(f)). The definition of a human subject is met if an activity involves obtaining—

(i) Information about a living person by—

(A) Manipulating that person's environment, as might occur when a new instructional technique is tested; or

(B) Communicating or interacting with the individual, as occurs with surveys and interviews; or

(ii) Private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information). Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information that has been provided for specific purposes by an individual and that an individual can reasonably expect will not be made public (for example, a school health record).

(c) *Exemptions.* The regulations provide exemptions from coverage for activities in which the only involvement of human subjects will be in one or more of the categories set forth in 34 CFR 97.101(b)(1)–(6). However, if the research subjects are children, the exemption at 34 CFR 97.101(b)(2) (*i.e.,* research involving the use of educational tests, survey procedures, interview procedures or observation of public behavior) is modified by 34 CFR 97.401(b), as explained in paragraph

(d) of this provision. Research studies that are conducted under a Federal statute that requires without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter, *e.g.*, the Institute of Education Sciences confidentiality statute, 20 U.S.C. 9573, are exempt under 34 CFR 97.101(b)(3)(ii).

(d) *Children as research subjects*. Paragraph (a) of 34 CFR 97.402 of the regulations defines *children* as ''persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law of the jurisdiction in which the research will be conducted.'' Paragraph (b) of 34 CFR 97.401 of the regulations provides that, if the research involves children as subjects—

(1) The exemption in 34 CFR 97.101(b)(2) does not apply to activities involving—

(i) Survey or interview procedures involving children as subjects; or

(ii) Observations of public behavior of children in which the investigator or investigators will participate in the activities being observed.

(2) The exemption in 34 CFR 97.101(b)(2) continues to apply, unmodified by 34 CFR 97.401(b), to—

(i) Educational tests; and

(ii) Observations of public behavior in which the investigator or investigators will not participate in the activities being observed.

(e) *Proposal Instructions*. An offeror proposing to do research that involves human subjects must provide information to the Department on the proposed exempt and nonexempt research activities. The offeror should submit this information as an attachment to its technical proposal. No specific page limitation applies to this requirement, but the offeror should be brief and to the point.

(1) For exempt research activities involving human subjects, the offeror should identify the exemption(s) that applies and provide sufficient information to allow the Department to determine that the designated exemption(s) is appropriate. Normally, the narrative on the exemption(s) can be provided in one paragraph.

(2) For nonexempt research activities involving human subjects, the offeror must cover the following seven points in the information it provides to the Department:

(i) *Human subjects' involvement and characteristics:* Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, institutionalized individuals, or others who are likely to be vulnerable.

(ii) *Sources of materials:* Identify the sources of research material obtained from or about individually identifiable living human subjects in the form of specimens, records, or data.

(iii) *Recruitment and informed consent:* Describe plans for the recruitment of subjects and the consent procedures to be followed.

(iv) *Potential risks:* Describe potential risks (physical, psychological, social, financial, legal, or other) and assess their likelihood and seriousness. Where appropriate, discuss alternative treatments and procedures that might be advantageous to the subjects.

(v) *Protection against risk:* Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(vi) *Importance of knowledge to be gained:* Discuss why the risks to the subjects are reasonable in relation to the importance of the knowledge that may reasonably be expected to result.

(vii) *Collaborating sites:* If research involving human subjects will take place at collaborating site(s), name the sites and briefly describe their involvement or role in the research. Normally, the seven-point narrative can be provided in two pages or less.

(3) If a reasonable potential exists that a need to conduct research involving human subjects may be identified after award of the contract and the offeror's proposal contains no definite plans for such research, the offeror should briefly describe the circumstances and nature of the potential research involving human subjects.

(f) *Assurances and Certifications*. (1) In accordance with the regulations and the terms of this provision, all contractors and subcontractors that will be engaged in covered human subjects research activities shall be required to comply with the requirements for Assurances and Institutional Review Board approvals, as set forth in the contract clause 3452.224–72 (Research activities involving human subjects).

(2) The contracting officer reserves the right to require that the offeror have or apply for the assurance and provide documentation of Institutional Review Board (IRB) approval of the research prior to award.

(g)(1) The regulations, and related information on the protection of human research subjects, can be found on the Department's protection of human subjects in research Web site: *http://ed.gov/about/offices/list/ocfo/humansub.html*.

(2) Offerors may also contact the following office to obtain information about the regulations for the protection of human subjects and related policies and guidelines: Protection of Human Subjects Coordinator, U.S. Department of Education, Office of the Chief Financial Officer, Financial Management Operations, 400 Maryland Avenue, SW., Washington, DC 20202–4331, Telephone: (202) 245 8090.

(End of provision)

### 3452.224–72 Research activities involving human subjects.

As prescribed in 3424.170, insert the following clause in any contract that includes research activities involving human subjects covered under 34 CFR part 97:

RESEARCH ACTIVITIES INVOLVING HUMAN SUBJECTS (MAR 2011)

(a) In accordance with Department of Education regulations on the protection of human subjects in research, title 34, Code of Federal Regulations, part 97 (''the regulations''), the contractor, any subcontractors, and any other entities engaged in covered (nonexempt) research activities are required to establish and maintain procedures for the protection of human subjects. The definitions in 34 CFR 97.102 apply to this clause. As used in this clause, *covered research* means research involving human subjects that is not exempt under 34 CFR 97.101(b) and 97.401(b).

(b) If ED determines that proposed research activities involving human subjects are covered (*i.e.*, not exempt under the regulations), the contracting officer or contacting officer's designee will require the contractor to apply for the Federal Wide Assurance from the Office for Human Research Protections, U.S. Department of Health and Human Services, if the contractor does not already have one on file. The contracting officer will also require that the contractor obtain and send to the Department documentation of Institutional Review Board (IRB) review and approval of the research.

(c) In accordance with 34 CFR part 97, all subcontractors and any legally separate entity (neither owned nor operated by the contractor) that will be engaged in covered research activities under or related to this contract shall be required to comply with the requirements for assurances and IRB approvals. The contractor must include the substance of this clause, including paragraph (c) of this clause, in all subcontracts, and must notify any other entities engaged in the covered research activities of their responsibility to comply with the regulations.

(d) Under no condition shall the contractor conduct, or allow to be conducted, any covered research activity involving human subjects prior to the Department's receipt of the certification that the research has been reviewed and approved by the IRB. (34 CFR 97.103(f).) No covered research involving human subjects shall be initiated under this contract until the contractor has provided the contracting officer (or the contracting officer's designee) a properly completed certification form certifying IRB review and approval of the research activity, and the contracting officer or designee has received the certification. This restriction applies to the activities of each participating entity.

(e) In accordance with 34 CFR 97.109(e), an IRB must conduct continuing reviews of covered research activities at intervals appropriate to the degree of risk, but not less than once a year. Covered research activities that are expected to last one year or more are therefore subject to review by an IRB at least once a year.

(1) For each covered activity under this contract that requires continuing review, the contractor shall submit an annual written representation to the contracting officer (or the contracting officer's designee) stating whether covered research activities have been reviewed and approved by an IRB within the previous 12 months. The contractor may use the form titled ''Protection of Human Subjects: Assurance Identification/Certification/Declaration of Exemption'' for this representation. For multi-institutional projects, the contractor shall provide this information on its behalf and on behalf of any other entity engaged in covered research activities for which continuing IRB reviews are required.

(2) If the IRB disapproves, suspends, terminates, or requires modification of any covered research activities under this contract, the contractor shall immediately notify the contracting officer in writing of the IRB's action.

(f) The contractor shall bear full responsibility for performing as safely as is feasible all activities under this contract involving the use of human subjects and for complying with all applicable regulations and requirements concerning human subjects. No one (neither the contractor, nor any subcontractor, agent, or employee of the contractor, nor any other person or organization, institution, or group of any kind whatsoever) involved in the performance of such activities shall be deemed to constitute an agent or employee of the Department of Education or of the Federal government with respect to such activities. The contractor agrees to discharge its obligations, duties, and undertakings and the work pursuant thereto, whether requiring professional judgment or otherwise, as an independent contractor without imputing liability on the part of the Government for the acts of the contractor and its employees.

(g) Upon discovery of any noncompliance with any of the requirements or standards stated in paragraphs (b) and (c) of this clause, the contractor shall immediately correct the deficiency. If at any time during performance of this contract, the contracting officer determines, in consultation with the Protection of Human Subjects Coordinator, Office of the Chief Financial Officer, or the sponsoring office, that the contractor is not in compliance with any of the requirements or standards stated in paragraphs (b) and (c) of this clause, the contracting officer may immediately suspend, in whole or in part, work and further payments under this contract until the contractor corrects such noncompliance. Notice of the suspension may be communicated by telephone and confirmed in writing.

(h) The Government may terminate this contract, in full or in part, for failure to fully comply with any regulation or requirement related to human subjects involved in research. Such termination may be in lieu of or in addition to suspension of work or payment. Nothing herein shall be construed to limit the Government's right to terminate the contract for failure to fully comply with such requirements.

(i) The regulations, and related information on the protection of human research subjects, can be found on the Department's protection of human subjects in research Web site: *http://ed.gov/about/offices/list/ocfo/humansub.html*.

Contractors may also contact the following office to obtain information about the regulations for the protection of human subjects and related policies and guidelines: Protection of Human Subjects Coordinator, U.S. Department of Education, Office of the Chief Financial Officer, Financial Management Operations, 400 Maryland Avenue, SW., Washington, DC 20202–4331, Telephone: (202) 245–8090.

(End of clause)

### 3452.227–70 Publication and publicity.

As prescribed in 3427.409, insert the following clause in all solicitations and contracts other than purchase orders:

PUBLICATION AND PUBLICITY (MAR 2011)

(a) Unless otherwise specified in this contract, the contractor is encouraged to publish and otherwise promote the results of its work under this contract. A copy of each article or work submitted by the contractor for publication shall be promptly sent to the contracting officer's representative. The contractor shall also inform the representative when the article or work is published and furnish a copy in the published form.

(b) The contractor shall acknowledge the support of the Department of Education in publicizing the work under this contract in any medium. This acknowledgement shall read substantially as follows:

''This project has been funded at least in part with Federal funds from the U.S. Department of Education under contract number [Insert number]. The content of this publication does not necessarily reflect the views or policies of the U.S. Department of Education nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.''

(End of clause)

### 3452.227–71 Advertising of awards.

As prescribed in 3427.409, insert the following clause in all solicitations and contracts other than purchase orders:

ADVERTISING OF AWARDS (MAR 2011)

The contractor agrees not to refer to awards issued by, or products or services delivered to, the Department of Education in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed by the Federal government or is considered by the Federal government to be superior to other products or services.

(End of clause)

### 3452.227–72 Use and Non-Disclosure Agreement.

As prescribed in 3427.409, insert the following clause in all contracts over the simplified acquisition threshold, and in contracts under the simplified acquisition threshold as appropriate:

USE AND NON-DISCLOSURE AGREEMENT (MAR 2011)

(a) Except as provided in paragraph (b) of this clause, proprietary data, technical data, or computer software delivered to the Government with restrictions on use, modification, reproduction, release, performance, display, or disclosure may not be provided to third parties unless the intended recipient completes and signs the use and non-disclosure agreement in paragraph (c) of this clause prior to release or disclosure of the data.

(1) The specific conditions under which an intended recipient will be authorized to use, modify, reproduce, release, perform, display, or disclose proprietary data or technical data subject to limited rights, or computer software subject to restricted rights must be stipulated in an attachment to the use and non-disclosure agreement.

(2) For an intended release, disclosure, or authorized use of proprietary data, technical data, or computer software subject to special

license rights, modify paragraph (c)(1)(iv) of this clause to enter the conditions, consistent with the license requirements, governing the recipient's obligations regarding use, modification, reproduction, release, performance, display, or disclosure of the data or software.

(b) The requirement for use and non-disclosure agreements does not apply to Government contractors that require access to a third party's data or software for the performance of a Government contract that contains the 3452.227–73 clause, Limitations on the use or disclosure of Government-furnished information marked with restrictive legends.

(c) The prescribed use and non-disclosure agreement is:

USE AND NON-DISCLOSURE AGREEMENT

The undersigned, *[Insert Name],* an authorized representative of the *[Insert Company Name],* (which is hereinafter referred to as the ''recipient'') requests the Government to provide the recipient with proprietary data, technical data, or computer software (hereinafter referred to as ''data'') in which the Government's use, modification, reproduction, release, performance, display, or disclosure rights are restricted. Those data are identified in an attachment to this agreement. In consideration for receiving such data, the recipient agrees to use the data strictly in accordance with this agreement.

(1) The recipient shall—

(i) Use, modify, reproduce, release, perform, display, or disclose data marked with Small Business Innovative Research (SBIR) data rights legends only for government purposes and shall not do so for any commercial purpose. The recipient shall not release, perform, display, or disclose these data, without the express written permission of the contractor whose name appears in the restrictive legend (the contractor), to any person other than its subcontractors or suppliers, or prospective subcontractors or suppliers, who require these data to submit offers for, or perform, contracts with the recipient. The recipient shall require its subcontractors or suppliers, or prospective subcontractors or suppliers, to sign a use and non-disclosure agreement prior to disclosing or releasing these data to such persons. Such an agreement must be consistent with the terms of this agreement.

(ii) Use, modify, reproduce, release, perform, display, or disclose proprietary data or technical data marked with limited rights legends only as specified in the attachment to this agreement. Release, performance, display, or disclosure to other persons is not authorized unless specified in the attachment to this agreement or expressly permitted in writing by the contractor.

(iii) Use computer software marked with restricted rights legends only in performance of contract number *[insert contract number(s)].* The recipient shall not, for example, enhance, decompile, disassemble, or reverse engineer the software; time share; or use a computer program with more than one computer at a time. The recipient may not release, perform, display, or disclose such software to others unless expressly permitted in writing by the licensor whose name appears in the restrictive legend.

(iv) Use, modify, reproduce, release, perform, display, or disclose data marked with special license rights legends [To be completed by the contracting officer. *See* paragraph (a)(2) of this clause. Omit if none of the data requested is marked with special license rights legends].

(2) The recipient agrees to adopt or establish operating procedures and physical security measures designed to protect these data from inadvertent release or disclosure to unauthorized third parties.

(3) The recipient agrees to accept these data ''as is'' without any Government representation as to suitability for intended use or warranty whatsoever. This disclaimer does not affect any obligation the Government may have regarding data specified in a contract for the performance of that contract.

(4) The recipient may enter into any agreement directly with the contractor with respect to the use, modification, reproduction, release, performance, display, or disclosure of these data.

(5) The recipient agrees to indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of data received from the Government with restrictive legends by the recipient or any person to whom the recipient has released or disclosed the data.

(6) The recipient is executing this agreement for the benefit of the contractor. The contractor is a third party beneficiary of this agreement who, in addition to any other rights it may have, is intended to have the rights of direct action against the recipient or any other person to whom the recipient has released or disclosed the data, to seek damages from any breach of this agreement, or to otherwise enforce this agreement.

(7) The recipient agrees to destroy these data, and all copies of the data in its possession, no later than 30 days after the date shown in paragraph (8) of this agreement, to have all persons to whom it released the data do so by that date, and to notify the contractor that the data have been destroyed.

(8) This agreement shall be effective for the period commencing with the recipient's execution of this agreement and ending upon *[Insert Date].* The obligations imposed by this

agreement shall survive the expiration or termination of the agreement.

*[Insert business name.]*
Recipient's Business Name
*[Have representative sign.]*
Authorized Representative
*[Insert date.]*
Date
*[Insert name and title.]*
Representative's Typed Name and Title

(End of clause)

### 3452.227–73 Limitations on the use or disclosure of Government-furnished information marked with restrictive legends.

As prescribed in 3427.409, insert the following clause in all contracts of third party vendors who require access to Government-furnished information including other contractors' technical data, proprietary information, or software:

LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS (MAR 2011)

(a) For contracts under which data are to be produced, furnished, or acquired, the terms *limited rights* and *restricted rights* are defined in the rights in data—general clause (FAR 52.227–14).

(b) Proprietary data, technical data, or computer software provided to the contractor as Government-furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) *Proprietary data with legends that serve to restrict disclosure or use of data.* The contractor shall use, modify, reproduce, perform, or display proprietary data received from the Government with proprietary or restrictive legends only in the performance of this contract. The contractor shall not, without the express written permission of the party who owns the data, release, or disclose such data or software to any person.

(2) *GFI marked with limited or restricted rights legends.* The contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends or computer software received with restricted rights legends only in the performance of this contract. The contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any person.

(3) *GFI marked with specially negotiated license rights legends.* The contractor shall use, modify, reproduce, release, perform, or display proprietary data, technical data, or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the use and non-disclosure agreement. The contractor shall modify paragraph (c)(1)(iii) of the use and non-disclosure agreement (3452.227–72) to reflect the recipient's obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(c) Indemnification and creation of third party beneficiary rights.

(1) The contractor agrees to indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of proprietary data, technical data, or computer software received from the Government with restrictive legends by the contractor or any person to whom the contractor has released or disclosed such data or software.

(2) The contractor agrees that the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third party beneficiary who has the right of direct action against the contractor, or any person to whom the contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of proprietary data, technical data, or computer software subject to restrictive legends.

(End of clause)

### 3452.228–70 Required insurance.

As prescribed in 3428.311–2, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

REQUIRED INSURANCE (MAR 2011)

(a) The contractor shall procure and maintain such insurance as required by law or regulation, including but not limited to the requirements of FAR Subpart 28.3. Prior written approval of the contracting officer shall be required with respect to any insurance policy, the premiums for which the contractor proposes to treat as a direct cost under this contract, and with respect to any proposed qualified program of self-insurance. The terms of any other insurance policy shall be submitted to the contracting officer for approval upon request.

(b) Unless otherwise authorized in writing by the contracting officer, the contractor

shall not procure or maintain for its own protection any insurance covering loss or destruction of, or damage to, Government property.

(End of clause)

### 3452.232–70 Limitation of cost or funds.

The following clause shall be inserted in all contracts that include a Limitation of cost or Limitation of funds clause in accordance with 3432.705–2:

LIMITATION OF COST OR FUNDS (MAR 2011)

(a) Under the circumstances in FAR 32.704(a)(1), the contractor shall submit the following information in writing to the contracting officer:

(1) Name and address of the contractor.

(2) Contract number and expiration date.

(3) Contract items and amounts that will exceed the estimated cost of the contract or the limit of the funds allotted.

(4) The elements of cost that changed from the original estimate (for example: labor, material, travel, overhead), furnished in the following order:

(i) Original estimate.

(ii) Costs incurred to date.

(iii) Estimated cost to completion.

(iv) Revised estimate.

(v) Amount of adjustment.

(5) The factors responsible for the increase.

(6) The latest date by which funds must be available to the contractor to avoid delays in performance, work stoppage, or other impairments.

(b) A fixed fee provided in a contract may not be changed if a cost overrun is funded. Changes in a fixed fee may be made only to reflect changes in the scope of work that justify an increase or decrease in the fee.

(End of clause)

### 3452.232–71 Incremental funding.

As prescribed in 3432.705–2, insert the following provision in solicitations if a cost-reimbursement contract using incremental funding is contemplated:

INCREMENTAL FUNDING (MAR 2011)

Sufficient funds are not presently available to cover the total cost of the complete project described in this solicitation. However, it is the Government's intention to negotiate and award a contract using the incremental funding concepts described in the clause titled ''Limitation of Funds'' in FAR 52.232–22. Under that clause, which will be included in the resultant contract, initial funds will be obligated under the contract to cover an estimated base performance period. Additional funds are intended to be allotted to the contract by contract modification, up to and including the full estimated cost of the entire period of performance. This intent notwithstanding, the Government will not be obligated to reimburse the contractor for costs incurred in excess of the periodic allotments, nor will the contractor be obligated to perform in excess of the amount allotted.

(End of provision)

### 3452.237–70 Services of consultants.

As prescribed in 3437.270, insert the following clause in all solicitations and resultant cost-reimbursement contracts that do not provide services to FSA:

SERVICES OF CONSULTANTS (MAR 2011)

Except as otherwise expressly provided elsewhere in this contract, and notwithstanding the provisions of the clause of the contract entitled ''Subcontracts'' (FAR 52.244–2), the prior written approval of the contracting officer shall be required—

(a) If any employee of the contractor is to be paid as a ''consultant'' under this contract; and

(b)(1) For the utilization of the services of any consultant under this contract exceeding the daily rate set forth elsewhere in this contract or, if no amount is set forth, $800, exclusive of travel costs, or if the services of any consultant under this contract will exceed 10 days in any calendar year.

(2) If that contracting officer's approval is required, the contractor shall obtain and furnish to the contracting officer information concerning the need for the consultant services and the reasonableness of the fee to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by the consultant to others for performing consultant services of a similar nature.

(End of clause)

### 3452.237–71 Observance of administrative closures.

As prescribed in 3437.170, insert the following clause in all solicitations and service contracts:

OBSERVANCE OF ADMINISTRATIVE CLOSURES (MAR 2011)

(a) The contract schedule identifies all Federal holidays that are observed under this contract. Contractor performance is required under this contract at all other times, and compensated absences are not extended due to administrative closures of Government facilities and operations due to inclement weather, Presidential decree, or other administrative issuances where Government

personnel receive early dismissal instructions.

(b) In cases of contract performance at a Government facility when the facility is closed, the vendor may arrange for performance to continue during the closure at the contractor's site, if appropriate.

(End of clause)

### 3452.239–70 Internet protocol version 6 (IPv6).

As prescribed in 3439.701, insert the following clause in all solicitations and resulting contracts for hardware and software:

INTERNET PROTOCOL VERSION 6 (MAR 2011)

(a) Any system hardware, software, firmware, or networked component (voice, video, or data) developed, procured, or acquired in support or performance of this contract shall be capable of transmitting, receiving, processing, forwarding, and storing digital information across system boundaries utilizing system packets that are formatted in accordance with commercial standards of Internet protocol (IP) version 6 (IPv6) as set forth in Internet Engineering Task Force (IETF) Request for Comments (RFC) 2460 and associated IPv6-related IETF RFC standards. In addition, this system shall maintain interoperability with IPv4 systems and provide at least the same level of performance and reliability capabilities of IPv4 products.

(b) Specifically, any new IP product or system developed, acquired, or produced must—

(1) Interoperate with both IPv6 and IPv4 systems and products; and

(2) Have available contractor/vendor IPv6 technical support for development and implementation and fielded product management.

(c) Any exceptions to the use of IPv6 require the agency's CIO to give advance, written approval.

(End of clause)

### 3452.239–71 Notice to offerors of Department security requirements.

As prescribed in 3439.702, include the following provision in solicitations when the offeror's employees would have access to Department-controlled facilities or space, or when the work (wherever located) would involve the design, operation, repair, or maintenance of information systems and access to sensitive but unclassified information:

NOTICE TO OFFERORS OF DEPARTMENT SECURITY REQUIREMENTS (MAR 2011)

(a) The offeror and any of its future subcontractors will have to comply with Department security policy requirements as set forth in the ''Bidder's Security Package: Security Requirements for Contractors Doing Business with the Department of Education'' at: *http://www.ed.gov/fund/contract/about/bsp.html*.

(b) All contractor employees must undergo personnel security screening if they will be employed for 30 days or more, in accordance with Departmental Directive OM:5–101, ''Contractor Employee Personnel Security Screenings,'' available at: *http://www.ed.gov/fund/contract/about/acs/acsom5101.doc*.

(c) The offeror shall indicate the following employee positions it anticipates to employ in performance of this contract and their proposed risk levels based on the guidance provided in Appendix I of Departmental Directive OM:5–101:

High Risk (HR): [Specify HR positions.].

Moderate Risk (MR): [Specify MR positions.].

Low Risk (LR): [Specify LR positions.].

(d) In the event the Department disagrees with a proposed risk level assignment, the issue shall be subject to negotiation. However, if no agreement is reached, the Department's risk level assignment shall be used. The type of screening and the timing of the screening will depend upon the nature of the contractor position, the type of data to be accessed, and the type of information technology (IT) system access required. Personnel security screenings will be commensurate with the risk and magnitude of harm the individual could cause.

(End of provision)

### 3452.239–72 Department security requirements.

As prescribed in 3439.702, include the following clause in contracts when the contractor's employees will have access to Department-controlled facilities or space, or when the work (wherever located) would involve the design, operation, repair, or maintenance of information systems and access to sensitive but unclassified information:

DEPARTMENT SECURITY REQUIREMENTS (MAR 2011)

(a) The contractor and its subcontractors shall comply with Department security policy requirements as set forth in the ''Bidder's Security Package: Security Requirements for Contractors Doing Business with the Department of Education'' at *http://www.ed.gov/fund/contract/about/bsp.html*.

(b) The following are the contractor employee positions required under this contract and their designated risk levels:

High Risk (HR): [Specify HR positions.]

Moderate Risk (MR): [Specify MR positions.]

Low Risk (LR): [Specify LR positions.]

(c) All contractor employees must undergo personnel security screening if they will be employed for 30 days or more, in accordance with Departmental Directive OM:5–101, ''Contractor Employee Personnel Security Screenings.'' The type of screening and the timing of the screening will depend upon the nature of the contractor position, the type of data to be accessed, and the type of information technology (IT) system access required. Personnel security screenings will be commensurate with the risk and magnitude of harm the individual could cause.

(d) The contractor shall—

(1) Ensure that all non-U.S. citizen contractor employees are lawful permanent residents of the United States or have appropriate work authorization documents as required by the Department of Homeland Security, Bureau of Immigration and Appeals, to work in the United States.

(2) Ensure that no employees are assigned to high risk designated positions prior to a completed preliminary screening.

(3) Submit all required personnel security forms to the contracting officer's representative (COR) within 24 hours of an assignment to a Department contract and ensure that the forms are complete.

(4) Ensure that no contractor employee is placed in a higher risk position than that for which he or she was previously approved, without the approval of the contracting officer or the COR, the Department personnel security officer, and the Department computer security officer.

(5) Ensure that all contractor employees occupying high-risk designated positions submit forms for reinvestigation every five years for the duration of the contract or if there is a break in service to a Department contract of 365 days or more.

(6) Report to the COR all instances of individuals seeking to obtain unauthorized access to any departmental IT system, or sensitive but unclassified and/or Privacy Act protected information.

(7) Report to the COR any information that raises an issue as to whether a contractor employee's eligibility for continued employment or access to Department IT systems, or sensitive but unclassified and/or Privacy Act protected information, promotes the efficiency of the service or violates the public trust.

(8) Withdraw from consideration under the contract any employee receiving an unfavorable adjudication determination.

(9) Officially notify each contractor employee if he or she will no longer work on a Department contract.

(10) Abide by the requirements in Departmental Directive OM:5–101, ''Contractor Employee Personnel Security Screenings.''

(e) Further information including definitions of terms used in this clause and a list of required investigative forms for each risk designation are contained in Departmental Directive OM:5–101, ''Contractor Employee Personnel Security Screenings'' available at the Web site listed in the first paragraph of this clause.

(f) Failure to comply with the contractor personnel security requirements may result in a termination of the contract for default.

(End of clause)

### 3452.239–73 Federal desktop core configuration (FDCC) compatibility.

As prescribed in 3439.703, insert the following clause in all solicitations and contracts where software will be developed, maintained, or operated on any system using the FDCC configuration:

FEDERAL DESKTOP CORE CONFIGURATION (FDCC) COMPATIBILITY (MAR 2011)

(a) (1) The provider of information technology shall certify applications are fully functional and operate correctly as intended on systems using the Federal desktop core configuration (FDCC). This includes Internet Explorer 7 configured to operate on Windows XP and Windows Vista (in Protected Mode on Vista).

(2) For the Windows XP settings, *see: http://csrc.nist.gov/itsec/guidance_WinXP.html*, and for the Windows Vista settings, *see: http://csrc.nist.gov/itsec/guidance_vista.html*.

(b) The standard installation, operation, maintenance, update, or patching of software shall not alter the configuration settings from the approved FDCC configuration. The information technology should also use the Windows Installer Service for installation to the default ''program files'' directory and should be able to silently install and uninstall.

(c) Applications designed for normal end users shall run in the standard user context without elevated system administration privileges.

(End of clause)

### 3452.242–70 Litigation and claims.

As prescribed in 3442.7001, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

LITIGATION AND CLAIMS (MAR 2011)

(a) The contractor shall give the contracting officer immediate notice in writing of—

(1) Any legal action, filed against the contractor arising out of the performance of this contract, including any proceeding before any administrative agency or court of law, and also including, but not limited to, the performance of any subcontract hereunder; and

(2) Any claim against the contractor for cost that is allowable under the ''allowable cost and payment'' clause.

(b) Except as otherwise directed by the contracting officer, the contractor shall immediately furnish the contracting officer copies of all pertinent papers received under that action or claim.

(c) If required by the contracting officer, the contractor shall—

(1) Effect an assignment and subrogation in favor of the Government of all the contractor's rights and claims (except those against the Government) arising out of the action or claim against the contractor; and

(2) Authorize the Government to settle or defend the action or claim and to represent the contractor in, or to take charge of, the action.

(d) If the settlement or defense of an action or claim is undertaken by the Government, the contractor shall furnish all reasonable required assistance. However, if an action against the contractor is not covered by a policy of insurance, the contractor shall notify the contracting officer and proceed with the defense of the action in good faith.

(e) To the extent not in conflict with any applicable policy of insurance, the contractor may, with the contracting officer's approval, settle any such action or claim.

(f)(1) The Government shall not be liable for the expense of defending any action or for any costs resulting from the loss thereof to the extent that the contractor would have been compensated by insurance that was required by law, regulation, contract clause, or other written direction of the contracting officer, but that the contractor failed to secure through its own fault or negligence.

(2) In any event, unless otherwise expressly provided in this contract, the contractor shall not be reimbursed or indemnified by the Government for any cost or expense of liability that the contractor may incur or be subject to by reason of any loss, injury, or damage, to the person or to real or personal property of any third parties as may arise from the performance of this contract.

(End of clause)

### 3452.242–71 Notice to the Government of delays.

As prescribed in 3442.7002, insert the following clause in all solicitations and contracts other than purchase orders:

NOTICE TO THE GOVERNMENT OF DELAYS (MAR 2011)

The contractor shall notify the contracting officer of any actual or potential situation, including but not limited to labor disputes, that delays or threatens to delay the timely performance of work under this contract. The contractor shall immediately give written notice thereof, including all relevant information.

(End of clause)

### 3452.242–73 Accessibility of meetings, conferences, and seminars to persons with disabilities.

As prescribed in 3442.7101(b), insert the following clause in all solicitations and contracts:

ACCESSIBILITY OF MEETINGS, CONFERENCES, AND SEMINARS TO PERSONS WITH DISABILITIES (MAR 2011)

The contractor shall assure that any meeting, conference, or seminar held pursuant to the contract will meet all applicable standards for accessibility to persons with disabilities pursuant to section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and any implementing regulations of the Department.

(End of clause)

### 3452.243–70 Key personnel.

As prescribed in 3443.107, insert a clause substantially the same as the following in all solicitations and resultant cost-reimbursement contracts in which it will be essential for the contracting officer to be notified that a change of designated key personnel is to take place by the contractor:

KEY PERSONNEL (MAR 2011)

(a) The personnel designated as key personnel in this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, or otherwise substituting any other personnel for specified personnel, the contractor shall notify

the contracting officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the contract effort. No diversion or substitution shall be made by the contractor without written consent of the contracting officer; provided, that the contracting officer may ratify a diversion or substitution in writing and that ratification shall constitute the consent of the contracting officer required by this clause. The contract shall be modified to reflect the addition or deletion of key personnel.

(b) The following personnel have been identified as Key Personnel in the performance of this contract:

| Labor category | Name |
|---|---|
| [Insert category.] | [Insert name.] |

(End of clause)

### 3452.247–70 Foreign travel.

As prescribed in 3447.701, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

FOREIGN TRAVEL (MAR 2011)

Foreign travel shall not be undertaken without the prior written approval of the contracting officer. As used in this clause, *foreign travel* means travel outside the Continental United States, as defined in the Federal Travel Regulation. Travel to non-foreign areas (including the States of Alaska and Hawaii, the Commonwealths of Puerto Rico, Guam and the Northern Mariana Islands and the territories and possessions of the United States) is considered ''foreign travel'' for the purposes of this clause.

(End of clause)

# CHAPTER 51—DEPARTMENT OF THE ARMY ACQUISITION REGULATIONS


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# PART 5108—REQUIRED SOURCES OF SUPPLIES AND SERVICES

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35 and DOD FAR Supplement 201.301.

**5108.070 Definitions.**

As used in this section:

*Memorandum of Understanding Planned Producer* means an industrial firm which has indicated its willingness to produce specified military items in a declared national emergency by completing a Memorandum of Understanding with an accompanying Industrial Preparedness Program Production Capacity Survey (DD Form 1519 TEST). The firm is eligible to be solicited for all buys of the item(s) over $25,000 excluding acquisitions for which competition is restricted to the Restricted Specified Base or Limited Fee Planned Producers in accordance with an approved Justification and Approval.

*Limited Fee Planned Producer* means an industrial firm which is contractually bound by inclusion of AFARS 5152.208–9001 in their contract to maintain production capacity for a negotiated length of time, to conduct subcontractor planning, and to produce specified military items in the event of a declared national emergency or in the event of a declared national emergency or contingencies short of a declared national emergency. The firm is eligible to be solicited for all buys of the item(s) over $25,000 except acquisitions for which competition is restricted to the Restricted Specified Base in accordance with an approved Justification and Approval.

*Restricted Specified Base Planned Producer* means an industrial firm which is contractually bound to maintain production capacity for a negotiated length of time, to conduct subcontractor planning, and to produce specified military items in the event of a declared national emergency, or contingencies short of a declared national emergency. The firm is eligible to be solicited for all buys of the item(s) over $25,000.

(g)(1)(i) Solicitation of Memorandum of Understanding Planned Producers in all acquisitions over $25,000 which are for items for which they have been designated as a Memorandum of Understanding Planned Producer except those restricted to the Restricted Specified Base Planned Producers or Limited Fee Planned Producers in accordance with an approved Justification and Approval.

(ii) Solicitation of Limited Fee Planned Producers in all acquisitions over $25,000 which are for items for which they have been designated as a Limited Fee Planned Producer, except those restricted to the Restricted Specified Base.

(iii) Solicitation of Restricted Specified Base Planned Producers in all acquisitions over $25,000 which are for items for which they have been designated as a Restricted Specified Base Planned Producer.

(g)(4) The clause at 5152.208–9001 is to be used for all contracted planning efforts.

[54 FR 38682, Sept. 20, 1989]

# PART 5119—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

## Subpart 5119.10—Small Business Competitiveness Demonstration Program

Sec.

5119.1001 General.
5119.1002 Definitions.
5119.1003 Purpose.
5119.1004 Participating agencies.
5119.1005 Applicability.
5119.1070 Procedures.
5119.1070–2 Emerging small business set-aside.
5119.1070–3 Identification and reporting.
5119.1071 Solicitation provisions and contract clauses.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35, FAR 1.301 and DOD FAR Supplement 201.301.

SOURCE: 54 FR 15410, Apr. 18, 1989, unless otherwise noted.

## Subpart 5119.10—Small Business Competitiveness Demonstration Program

**5119.1001 General.**

This subpart implements Pub. L. 100–656, section 722, ''Expanding Small Business Participation in Dredging''

(the Dredging Program). The Program will be conducted through 30 September 1992.

**5119.1002 Definitions.**

(S–90) ''Emerging Small Business Reserve Amount'' (ESBRA) means the dollar threshold for contracting opportunities in dredging, below which competition shall be conducted exclusively among emerging small business concerns. This amount is set forth in 5119.1070–2(a)(S–90).

**5119.1003 Purpose.**

(c)(S–90) The purpose of the Dredging Program is to—

(i) Expand small business and emerging small businesses (ESB) participation in contracting opportunities for dredging through restricted competition.

(ii) Demonstrate the existence of a sufficient number of small businesses and ESBs which meet the current size standard for Standard Industrial Code (SIC) Code 1629 (Dredging and Surface Cleanup Activities) as an indicator of the adequacy of the current size standard.

**5119.1004 Participating agencies.**

Participation in this Dredging Program is limited to the Department of the Army, Corps of Engineers.

**5119.1005 Applicability.**

(S–90) The program shall apply to solicitations issued by the Department of the Army Corps of Engineers buying activities for the procurement of dredging under SIC 1629 (Dredging and Surface Cleanup Activities), limited to Federal Procurement Data Systems (FPDS) codes Y216 and Z216. This includes both maintenance dredging and new start (new work) construction dredging. Dredging to be performed by Government forces utilizing the Federally owned fleet pursuant to 33 U.S.C. 622 is not subject to the program.

**5119.1070 Procedures.**

**5119.1070–2 Emerging small business set-aside.**

(a)(S–90) Solicitations for dredging shall be set-aside for exclusive competition among ESBs when the estimated award value is equal to or less than the emerging small business reserve amount (ESBRA) of $600,000. (Except that dredging acquisitions shall continue to be considered for placement under the 8(a) program (see FAR subpart 19.8) and for small disadvantaged business set-asides (see DFARS 219.502–72)). The ESBRA applies only to new awards. Modifications or follow-on awards to contracts having an initial award value in excess of the ESBRA are not subject to this requirement. The set-aside requirements in DFARS 219.1070–2 (a) and (b) for designated industry groups acquisitions valued at $25,000 or less shall be complied with for all dredging program set-asides.

(S–90) The contracting office shall include the applicable SIC Code and dollar size standard in the synopsis of proposed procurement as published in the Commerce Business Daily (CBD), in the presolicitation notice (construction contract) SF 1417 when issued, and in the solicitation documents.

(S–91) The contracting officer shall consider use of the following initiatives to increase participation by small businesses and emerging small businesses:

(1) Specifying of contract requirements and contractual terms and conditions which are conducive to competition among small business and emerging small business concerns, consistent with the mission or program requirements of the Department of the Army, Corp of Engineers.

(2) Encouraging joint ventures, teaming agreements, and similar arrangements consistent with the Small Business Act (15 U.S.C. 637(d)) for the purpose of including small business concerns in contracting opportunities. However, no such joint venture shall exceed the applicable size standard.

(3) Making maximum use of subcontracting through plans negotiated and enforced pursuant to section 8(d) of the Small Business Act. Goals may be specified in solicitations stating minimum percentages of subcontracting.

**5119.1070–3 Identification and reporting.**

(b) Reporting shall be done in accordance with DFARS 204.6 designated industry group requirements. Block

B12A, DD Form 350, shall contain either the FPDS Code Y216 or Z216, as applicable, per 5119.1005 (S–90).

### 5119.1071 Solicitation provisions and contract clauses.

(a) DFARS provision 252.219–7012 shall be inserted in all solicitations issued under the Small Business Dredging Program (SIC 1629, limited to FPDS Service Codes Y216/Z216).

(b) DFARS clause 252.219–7013 shall be inserted in all solicitations and contracts set-aside for emerging small businesses in accordance with 5119.1070–2(a) (S–90).

## PART 5145—GOVERNMENT PROPERTY

Sec.
5145.301 Definitions.
5145.302–3 Other contracts.
5145.303 Providing material.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

SOURCE: 54 FR 39538, Sept. 27, 1989, unless otherwise noted.

### 5145.301 Definitions.

*Other Government Property* means all property, other than Special Use Property as defined below, which may be offered to a contractor for use in performance of installation support services contracts.

*Special Use Property* means property that is (a) ''agency peculiar property'', (b) necessary for mobilization requirements; or (c) property for which it has been determined that title should remain with the Government.

### 5145.302–3 Other contracts.

(S–90)(1) When it is determined that contractor use of existing Government facilities, other than special use property, in the performance of installation support services contracts, is in the best interest of the Government, the Government facilities will be offered to a contractor for use in the performance of the Government contract. Facilities provided to a contractor under this authority will not be replaced by the Government when they can no longer be used by the contractor. Nevertheless, it will be the contractor's responsibility to continue performance in accordance with the terms of the contract.

(2)(i) New facilities shall not be purchased in order to provide them to contractors. Prior to offering existing facilities under this authority, a contracting officer shall make a written determination, based on the detailed justification provided by the approving officials and program/project manager, that such use is in the best interest of the Government. The written determination shall be kept in the contract file.

(ii) Existing facilities offered for contractor use will be offered to all bidders/offerors for their consideration in the preparation of their bids and offers. Bidders/offerors may choose to use any or all of the facilities offered.

(3) When it is determined that contractor use of special use property in the performance of installation support services contracts is in the best interest of the Government, such property will be provided. It will be accounted for and managed under the appropriate Government property clause. For example, FAR 52.245–2 for fixed-price contracts or FAR 52.245–5 for cost-reimbursement contracts and any appropriate provision from FAR 52.245–11, Facilities Use Clause.

(S–91) Required Government property clauses for other than facilities contracts.

(1) In addition to the clauses at FAR 52.245–2 and 52.245–19, the Contracting Officer shall insert the clause at 5152.245–9000, Government Property for Installation Support Services (Fixed-Price Contracts), in solicitations and contracts when a fixed-price contract is contemplated and Government property will be provided without being replaced by the Government.

(2) The Contracting Officer shall insert the clause at 5152.245–9001, Government Property for Installation Support Services (Cost-Reimbursement Contracts), in solicitations and contracts when a cost-reimbursement type contract is contemplated and the Government property will be provided without being replaced by the Government.

### 5145.303 Providing material.

(S–90) Existing Government material on hand or being used prior to conversion to contractor performance of commercial activities may be offered to contractors if it is determined to be in the best interest of the Government per FAR 45.303–1. If the material is to be provided without replacement by the Government, the solicitation must state that it will not be replaced. If it is determined that the Government will be responsible for replacement of any of the material, those items must be listed on a separate Technical Exhibit and the solicitation state that replacement will be by the Government. These items will be governed by the appropriate Government Property clause in the contract in accordance with FAR 52.245–2 for fixed-price and FAR 52.245–5 for cost-reimbursement type contracts.

## PART 5152—SOLICITATIONS PROVISIONS AND CONTRACT CLAUSES

Sec.

5152.208–9001 Industrial preparedness planning.
5152.245–9000 Government property for installation support services (fixed-price contracts).
5152.245–9001 Government property for installation support services (cost-reimbursement contracts).

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35, and DOD FAR Supplement 201.301.

### 5152.208–9001 Industrial preparedness planning.

As prescribed at 5108–070(g)(4) insert the following clause in full text in contracts where the contractor is designated a Limited Fee Planned Producer.

INDUSTRIAL PREPAREDNESS PLANNING (XXX 1989) (DEV)

(a) The Government designates the contractor a Limited Fee Planned Producer (LFPP) for the item(s) listed in paragraph (e) of this clause. As an LFPP for the listed items, the contractor will be solicited for all acquisitions over $25,000 which are for the item(s), excluding those for which competition is restricted to the Restricted Specified Base pursuant to an approved Justification and Approval. The Government reserves the right to obtain the item(s) listed from sources other than the commercial marketplace, i.e. by assigning workload to a government-owned facility.

(b) The Contractor agrees to:

(i) Update the Production Capacity Survey DD Form 1519 TEST for each item biennially;

(ii) Accomplish subcontractor planning as required in paragraph (f) of this clause;

(iii) Permit Government personnel access to records, manufacturing process data, plants and facilities in order to verify data on the Production Capacity Survey DD Form 1519 TEST.

(iv) Maintain the surge/mobilization capacity set forth in the Production Planning Schedules during active production of the item and for a period of (negotiated number) years after physical completion of this production contract.

(c) The Contractor is aware of the Government's dependence upon the Production Planning Schedules as a basis to take appropriate measures to ensure the adequacy of the United States Industrial Base. The Contractor also recognizes the Government's intention to convert Production Planning Schedule to contracts on a selective basis, as may be required to minimize materiel shortages during mobilization or to meet contingencies short of a declared national emergency. The Contractor agrees to accept contracts for the item(s) in accordance with the Production Planning Schedules. In the event mobilization or contingencies short of a declared national emergency occur after active production has ceased, and the allocated capacity is in use for the production of other item(s), the Contractor agrees to immediately discontinue production of such other item(s) if necessary to meet production schedules for the planned item(s). The Contractor further recognizes that it is the Government's intention to require that planned subcontractor support will be similarly converted to production subcontracts. Production delivery obligations under this clause are governed by Title I of the Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, *et seq.*) (Defense Production Act) and as applicable are within the purview of the Defense Priorities and Allocation System.

(d) For the listed item(s), the Contractor certifies by signing this contract that the plant capacity required to support the mobilization quantity listed on the Production Capacity Survey DD Form 1519 TEST will be dedicated exclusively for the production of that item at mobilization. Furthermore, the Contractor certifies that this capacity is not shared by any other mobilization production requirements.

(e) This clause covers the item(s) listed below:

| Item schedule No. | Item nomenclature (sample) |
|---|---|
| M11111 | Fuze, Rocket MK987. |
| M22222 | Machine Gun, MK35. |

(f) Subcontractors, suppliers and vendors provide many of the components of military end items. The lack of critical components could be one of the major limitations of the United States' ability to support its Armed Forces warfighting capabilities. Therefore, the Government designated critical components and/or subassemblies in Block #27 of the attached Production Capacity Survey (DD Form 1519 TEST) are those for which the Contractor will conduct vertical planning if not produced in-house. Additional critical components and/or subassemblies may be identified by the Contractor in block #21 of the attached Production Capacity Survey (DD Form 1519 TEST). Foreign producers (other than Canada) will not be considered as a source of supply for critical components. Mandatory vertical (subcontractor) planning will be accomplished by the ASPPO and the Contractor for all critical components identified on the Production Capacity Survey, (DD Form 1519 TEST), by using a sub-tier Production Capacity Survey (DD Form 1519 TEST). The Contractor agrees to coordinate completion of the DD Form 1519 TEST and finalize prime and subcontractor planning with the Armed Services Production Planning Officer (ASPPO) having cognizance over the prime contractor's facility.

(g) After completion of active production of the item(s), the Government will annually, or as changes occur but not more than annually, furnish the Contractor updated technical data for the item. The Contractor agrees to review the technical data and to report to the Government within 60 days of receipt of the data, the impact of technical changes, if any, to the current Production Planning Schedules at no additional cost to the Government.

(h) Retention by the Contractor of the surge/mobilization capacity set forth in the Production Planning Schedules after completion of active production of the planned item(s) will not necessarily require that the Contractor maintain such capacity in idle status. Contractor utilization of capacity allocated for planned production for production of other non-planned items is consistent with the intent of any postproduction provisions of this contract, provided no degradation of surge/mobility capacity occurs as a result, and provided that the approval of the Contracting Officer with property cognizance is obtained for the use of any Government-owned property.

[54 FR 38683, Sept. 20, 1989]

### 5152.245–9000 Government property for installation support services (fixed-price contracts).

As prescribed in 5145.302–3(91), insert the following:

GOVERNMENT PROPERTY FOR INSTALLATION SUPPORT SERVICES (FIXED-PRICE CONTRACTS) (OCT 1989) (DEV)

The Government property listed at Technical Exhibit ____ is provided ''as is'' to the contractor for use in the performance of this contract. This property may be used by the Contractor until the Contractor no longer desires to use it for contract performance or the Contracting Officer withdraws it from use under this contract in accordance with FAR 52.245–2(b). The Contractor will comply with instructions from the Contracting Officer relative to disposition of the property. No equitable adjustment or other claim will be payable to the Contractor based upon the condition or availability of the property, except as provided in FAR 52.245–19. The Contractor remains responsible for performance of the required services under this contract regardless of the length of time which the property provided hereunder remains operational. Property provided by or obtained by the Contractor under this contract remains Contractor property. Except as provided herein, the property listed at Technical Exhibit ____ will be governed by FAR 52.245–2, Government Property (Fixed-Price Contracts), and FAR 52.245–19, Government Property Furnished ''as is''.

(End of clause)

[54 FR 39539, Sept. 27, 1989]

### 5152.245–9001 Government property for installation support services (cost-reimbursement contracts).

As prescribed in 5145.302–3(S–91), insert the following clause:

GOVERNMENT PROPERTY FOR INSTALLATION SUPPORT SERVICES (COST-REIMBURSEMENT CONTRACTS) (OCT 1989) (DEV)

(a) *Government-furnished property*. The Government property listed at Technical Exhibit ____ is provided to the contractor for use in the performance of this contract for installation support services. This property will be used, maintained and administered by the Contractor until it is no longer required by the Contractor. Cessation of such use of the property, and subsequent turn-in, must be approved by the Contracting Officer. The

Contracting Officer will provide the Contractor with appropriate disposition instructions. The Contractor will continue to perform following such disposition with Contractor-owned property. No equitable adjustment or claim will be payable resulting from turn-in or unsuitability for intended use of this property. No change to this contract is indicated by approval of turn-in of the property. No delay claim or performance delay will be allowed based on unsuitability of property or turn-in. The Contractor's proposal includes an estimate of the costs for providing its own property for the period following turn-in of Government property.

(b) *Changes in Government-furnished property.* The Contracting Officer may, by written notice, decrease the Government-furnished property or substitute other property for the property being used by the contractor. In the case of this withdrawal of property by the Contracting Officer, an equitable adjustment may be appropriate. Nevertheless, even in the case of such withdrawal, the Contractor is obligated to continue performance under this contract.

(c) *Title in Government Property.* (1) Title to the Property shall remain in the Government. Title to parts replaced by the Contractor in carrying out its normal maintenance obligations under paragraph (g) of this clause shall pass to and vest in the Government upon completion of their installation in the property.

(2) Title to the property shall not be affected by their incorporation into or attachment to any property not owned by the Government, nor shall any item of the property become a fixture or lose its identity as personal property by being attached to any real property. The Contractor shall keep the property free and clear of all liens and encumbrances and, except as otherwise authorized by this contract or by the Contracting Officer, shall not remove or otherwise part with possession of, or permit the use by others of any of the property.

(3) The Contractor may, with the written approval of the Contracting Officer, install, arrange, or rearrange, on Government furnished premises, readily removable machinery, equipment and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it may be attached to real property owned by the Government, unless the Contracting Officer determines that it is so permanently attached that removal would cause substantial injury to Government property.

(4) The Contractor shall not construct or install, at its own expense, any fixed improvement or structural alterations in Government buildings or other real property without advance written approval of the Contracting Officer. Fixed improvement or structural alterations as used herein, means any alteration or improvement in the nature of the building or other real property that, after completion, cannot be removed without substantial loss of value or damage to the premises. The term does not include foundations for production equipment.

(d) *Location of the property.* The Contractor may use the property only at the installation location(s) specified in the schedule. Written approval of the Contracting Officer is required prior to moving the property to any other location. In granting this approval, the Contracting Officer may prescribe such terms and conditions as may be deemed necessary for protecting the Government's interest in the property involved. Those terms and conditions shall take precedence over any conflicting provisions of this contract.

(e) *Notice of use of the property.* The Contractor shall notify the Contracting Officer in writing whenever any item of the property is no longer needed or usable for performing under this contract. The contracting officer will then make a decision as to disposition if agreement is reached with the Contractor that the property is no longer usable or suitable for its intended use.

(f) *Property Control.* The Contractor shall maintain property control procedures and records, and a system of identification of the property, in accordance with the provisions of FAR subpart 45.5 in effect on the date of this contract.

(g) *Maintenance.* (1) Except as otherwise provided in the Schedule, the Contractor shall protect, preserve, maintain (including normal parts replacement), and repair the property in accordance with sound industrial practice.

(2) No later than 45 days after the execution of this contract, the Contractor shall submit to the Contracting Officer a written proposed maintenance program, including a maintenance records system, in sufficient detail to show the adequacy of the proposed program. If the Contracting Officer agrees to the proposed program, it shall become the normal maintenance obligation of the Contractor. The Contractor's performance according to the approved program shall satisfy the Contractor's obligations under paragraphs (g) (1) and (5) of this clause.

(3) The Contracting Officer may at any time direct the Contractor in writing to reduce the work required by the normal maintenance program. If such order reduces the cost of performing the maintenance, an appropriate equitable adjustment may be made.

(4) The Contractor shall perform any maintenance work directed by the Contracting Officer in writing. Work in excess of the maintenance required under paragraphs (g)(1) through (g)(3) of this clause shall be at Government expense. The Contractor shall notify the Contracting Officer in writing when sound industrial practice requires

maintenance in excess of the normal maintenance program. The Contracting Officer shall then make a determination whether to repair the facilities or whether the Contractor should provide contractor property while continuing to perform.

(5) The Contractor shall keep records of all work done on the property and shall give the Government reasonable opportunity to inspect such records. When property is disposed of under this contract, the Contractor shall deliver the related records to the Government, or, if directed by the Contracting Officer, to third persons.

(6) The Contractor's obligation under this clause for each item of property shall continue until the item is removed, abandoned, or disposed of in accordance with Contracting Officer's instructions.

(h) *Access.* The Government and any persons designated by it shall, at all reasonable times have access to the premises where any of the property is located.

(i) *Indemnification of the Government.* The Contractor shall indemnify the Government and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the property under this contract. Nevertheless, this provision applies only to injury arising out of use of property provided under this clause.

(j) *Representation and warranties.* (1) The Government makes no warranty, express or implied, regarding the condition or fitness for use of any property. To the extent practical, the Contractor shall be allowed to inspect all the property to be furnished by the Government.

(2) If, however, the Contractor receives property in a condition not suitable for the intended use, the Contractor shall, within 30 days after receipt and installation thereof, so notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer, and at Government expense, either return such item or otherwise dispose of it or effect repairs or modifications. If the determination is made by the Contracting Officer to require turn-in rather than repair of the property, then the Contractor will continue to perform the contract by using its own property, for which reimbursement will be made in accordance with applicable cost principles.

(k) *Limited risk of loss.* (1) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract or for expenses incidental to such loss, destruction, or damage, except as provided in paragraphs (k) (2) and (3) of this clause.

(2) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)—

(i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement:

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (f) of this clause.

(3)(i) If the Contractor fails to act as provided by paragraph (k)(2)(v) of this clause, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage—

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Contractor.

(4) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(5) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of—

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(6) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (k)(6). However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (k) when making any such equitable adjustment.

(7) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

(8) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Government, as directed by the Contracting Officer.

(9) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

(l) *Disposition of the facilities.* (1) The provisions of this paragraph shall apply to facilities whose use has been terminated by either the Contracting Officer or the Contractor because the property is no longer suitable for intended use, no longer desired, or is withdrawn from use by the Government.

(2) The Contractor shall dispose of the property provided hereunder in accordance with guidance provided by the Contracting Officer.

(3) The Contracting Officer shall give disposition instructions within 60 days of agreement that the property should be returned to the Government.

(4) The Government may remove or otherwise dispose of any facilities for which the Contractor's authority to use has been terminated.

(5) When Government property is returned to the Government, upon termination of the contract relationship between Government and Contractor or when Government furnished property is replaced by Contractor property, the Contracting Officer may direct repair of Government property necessitated by the change from Government to Contractor property such as removal of fixtures. When Contractor property is removed from Government property at the end of contract performance, the Government property will be restored to its condition prior to installation of Contractor property in accordance with Contracting officer direction.

(End of clause)

[54 FR 39539, Sept. 27, 1989]

# CHAPTER 52—DEPARTMENT OF THE NAVY ACQUISITION REGULATIONS


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# PART 5215—CONTRACTING BY NEGOTIATION

## Subpart 5215.4—Solicitation and Receipt of Proposals and Quotations

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5215.608 Proposal evaluation.

## Subpart 5215.8—Price Negotiation

5215.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35.

SOURCE: 53 FR 16280, May 6, 1988, unless otherwise noted.

## Subpart 5215.4—Solicitation and Receipt of Proposals and Quotations

### 5215.402 General.

(a) Competition is the cornerstone of Navy acquisition policy. As such, the preferred and predominant method of pricing in the Navy is through the use of competition, without the need for cost or pricing data and cost analysis. The Navy has found that not only does competition generate more favorable prices, but significant time and effort can be saved by relying on the forces of competition to establish prices, as opposed to the use of detailed cost analysis. This approach is not only consistent with the Competition in Contracting Act (CICA), but it affords the opportunity for significant efficiencies and reduction of procurement leadtime as a result of minimizing the requirement for cost or pricing data and associated audit reports. As competition is increasingly relied upon and the need for cost or pricing data is reduced, there may be a corresponding requirement for performing a cost realism evaluation for many competitive procurements to guard against unrealistically low prices which can lead to quality deficiencies, late deliveries, performance shortfalls, and cost overruns. In performing cost realism evaluation, only the minimum selected data to perform the cost realism evaluation is to be obtained, as opposed to full cost or pricing data which would be required when it is necessary to perform cost-based negotiations, such as in the case of sole source negotiations.

### 5215.407 Solicitation provisions.

(S–90) During acquisition planning, an assessment shall be made as to the likelihood that adequate price competition will exist. If it is anticipated that an award will be based on adequate price competition, the solicitation shall include the provision at 5252.215–9000. If the procurement schedule is critical, this provision with its Alternate I shall be used so that there will be a minimum delay in the event that adequate price competition does not materialize and it is necessary to obtain cost or pricing data. Contracting officers must be judicious in the use of the Alternate I provision, as it may cause offerors to incur certain costs in preparing standby cost or pricing data in anticipation that it may be subsequently requested.

## Subpart 5215.6—Source Selection

### 5215.605 Evaluation factors.

(S–90)(1) When a cost realism evaluation will be performed, the source selection evaluation criteria shall include a notice that the proposed costs may be adjusted, for purposes of evaluation, based upon the results of the cost realism evaluation.

(2) Technical criteria may include quality standards that are based on either a minimally acceptable approach or a cost/benefit approach. When the quality desired is that necessary to meet minimum needs, proposals should be evaluated for acceptability and award made to the lowest priced, technically acceptable offer. When the quality desired is the highest affordable or that representing the best value, proposals should be evaluated on a cost/benefit basis that would permit an award based on paying appropriate premiums for measured increments of quality. When a cost/benefit approach is used, cost must carry a weight of not less than 40% unless thoroughly justified.

(3) Cost realism evaluation. (i) Cost realism evaluation involves a summary level review of the cost portion (excluding profit/fee) of the offerors' proposals to determine if the overall costs proposed are realistic for the work to be performed. Cost realism evaluation differs from the detailed cost analysis usually undertaken in a noncompetitive procurement to determine the reasonableness of the various cost elements and profit/fee to arrive at a fair and reasonable price. Data submitted only for cost realism evaluation generally will not be certified.

(ii) The purpose of cost realism evaluation is to:

(A) Verify the offeror's understanding of the requirements;

(B) Assess the degree to which the cost/price proposal reflects the approaches and/or risk assessments made in the technical proposal as well as the risk that the offeror will provide the supplies or services for the offered prices/costs; and

(C) Assess the degree to which the cost included in the cost/price proposal accurately represents the work effort included in the technical proposal.

(iii) Some examples of data and information that may be obtained to perform cost realism evaluation are:

(A) Manloading (quantity and mix of labor hours);

(B) Engineering, labor and overhead rates; and

(C) Make or buy plans.

A price analysis approach where there is adequate price history may also be a suitable and efficient means to evaluate cost realism. The amount of data required will be dependent upon the complexity of the procurement and the data already obtained by the contracting officer (e.g. information on recent Forward Pricing Rate Agreements (FPRAs)).

(iv) Cost realism evaluation generally will be performed as a part of the proposal evaluation process (see 5215.605) for all competitive solicitations where a cost reimbursement contract is contemplated. For competitive solicitations contemplating a fixed price, labor hour, or time and material type contract, a cost realism evaluation would be the exception and not the rule, although its use may be appropriate where the proposal evaluation process will encompass both a cost/price evaluation and a technical evaluation. Also, where the contracting officer suspects a ''buy-in'' (see FAR 3.501) or a misunderstanding of the requirements as a result of reviewing the initial offers, data and information should be obtained and a cost realism evaluation performed.

(v) When cost realism data are required, the contracting officer shall not request a formal field pricing report but rather, shall request a review of only those specific areas of information necessary to allow the contracting officer to perform a cost realism evaluation. For example, the contracting officer may only need to know the current or FPRA labor and/or overhead rates. In these instances, the request for information from DCAA may be oral or written.

**5215.608 Proposal evaluation.**

(a) When a cost realism evaluation will be performed in accordance with 5215.605(S–90), the resulting realistic cost estimate shall be used in the evaluation of cost.

## Subpart 5215.8—Price Negotiation

**5215.804–3 Exemptions from or waiver of submission of certified cost or pricing data.**

(a) *General.* As explained in 5215.402, cost or pricing data would not normally be obtained because the predominant portion of Navy procurements are awarded on the basis of adequate price competition.

(b)(1)(iii) Adequate price competition may also exist where price is a secondary factor in the evaluation of proposals, as long as price is a substantial factor. Price, as used herein, means cost plus any fee or profit applicable to the contract price. Thus, in competitive acquisitions where adequate price competition is contemplated, the contracting officer shall not require the submission of cost or pricing data whether certified or not, as defined in FAR 15.801, regardless of the type of contract.

(b)(3) Examples of contract awards for which prices may be based on adequate price competition and/or to have

been established by adequate price competition are:

(i) Contracts for items for which there are a limited number of sources and the prices at which award will be made are within a reasonable amount of each other and compare favorably with independent Government estimates and with prior prices paid;

(ii) Any contract, including cost-type contracts, when cost is a significant evaluation factor; and

(iii) Contracts for which there are dual sources.

# PART 5231—CONTRACT COST PRINCIPLES AND PROCEDURES

## Subpart 5231.2—Contracts with Commercial Organizations

Sec.

5231.205 Selected costs.

5231.205–90 Shipbuilding capability preservation agreements.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2501, 10 U.S.C. 7315, DoD Directive 5000.35.

SOURCE: 62 FR 66827, Dec. 22, 1997, unless otherwise noted.

## Subpart 5231.2—Contracts With Commercial Organizations

### 5231.205 Selected costs.

### 5231.205–90 Shipbuilding capability preservation agreements.

(a) *Scope and authority.* Where it would facilitate the achievement of the policy objectives set forth in 10 U.S.C. 2501(b), the Navy may enter into a shipbuilding capability preservation agreement with a contractor. As authorized by section 1027 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85), such an agreement permits the contractor to claim certain indirect costs attributable to its private sector work as allowable costs on Navy shipbuilding contracts.

(b) *Definition. Incremental indirect cost,* as used in this subsection, means an additional indirect cost that results from performing private sector work described in a shipbuilding capability preservation agreement.

(c) *Purpose and guidelines.* The purpose of a shipbuilding capability preservation agreement is to broaden and strengthen the shipbuilding industrial base by providing an incentive for a shipbuilder to obtain new private sector work, thereby reducing the Navy's cost of doing business. The Navy will use the following guidelines to evaluate requests for shipbuilding capability preservation agreements:

(1) The Assistant Secretary of the Navy for Research, Development and Acquisition must make a determination that an agreement would facilitate the achievement of the policy objectives set forth in 10 U.S.C. 2501(b). The primary consideration in making this determination is whether an agreement would promote future growth in the amount of private sector work that a shipbuilder is able to obtain.

(2) An agreement generally will be considered only for a shipbuilder with little or no private sector work.

(3) The agreement shall apply to prospective private sector work only, and shall not extend beyond 5 years.

(4) The agreement must project an overall benefit to the Navy, including net savings. This would be achieved by demonstrating that private sector work will absorb costs that otherwise would be absorbed by the Navy.

(d) *Cost-reimbursement rules.* If the Navy enters into a shipbuilding capability preservation agreement with a contractor, the following cost-reimbursement rules apply:

(1) The agreement shall require the contractor to allocate the following costs to private sector work:

(i) The direct costs attributable to the private sector work;

(ii) The incremental indirect costs attributable to the private sector work; and

(iii) The non-incremental indirect costs to the extent that the revenue attributable to the private sector work exceeds the sum of the costs specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this subsection.

(2) The agreement shall require that the sum of the costs specified in paragraphs (d)(1)(ii) and (d)(1)(iii) of this subsection not exceed the amount of indirect costs that would have been allocated to the private sector work in accordance with the contractor's established accounting practices.

(3) The Navy may agree to modify the amount calculated in accordance with paragraph (d)(1) of this subsection if it determines that a modification is appropriate to the particular situation. In so doing, the Navy may agree to the allocation of a smaller or larger portion of the amount calculated in accordance with paragraph (d)(1) of this subsection, to private sector work.

(i) Any smaller amount shall not be less than the sum of the costs specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this subsection.

(ii) Any larger amount shall not exceed the sum of the costs specified in paragraph (d)(1)(i) of this subsection and the amount of indirect costs that would have been allocated to the private sector work in accordance with the contractor's established accounting practices.

(iii) In determining whether such a modification is appropriate, the Navy will consider factors such as the impact of pre-existing firm-fixed-price Navy contracts on the amount of costs that would be reimbursed by the Navy, the impact of pre-existing private sector work on the cost benefit that would be received by the contractor, and the extent to which allocating a smaller or larger portion of costs to private sector work would provide a sufficient incentive for the contractor to obtain additional private sector work.

(e) *Procedure.* A contractor may submit a request for a shipbuilding capability preservation agreement, together with appropriate justification, through the Deputy Assistant Secretary of the Navy for Ships, to the Assistant Secretary of the Navy for Research, Development and Acquisition, who has approval or disapproval authority. The contractor should also provide an informational copy of any such request to the cognizant administrative contracting officer.

# PART 5242—CONTRACT ADMINISTRATION

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35

## Subpart 5242.90—Refunds Requirements (Spares and Support Equipment)

### 5242.9000 Requests for refunds.

(a) *Policy.* (1) This subpart establishes uniform policy and procedures on requesting refunds for spare parts or items of support equipment. This policy is not intended to diminish the responsibility of Navy contracting personnel to properly price spare parts and items of support equipment. Further, it is not intended to serve as a mechanism for the recovery of excess profits.

(2) In accordance with the guidance set forth in paragraph (c) of this section, contracting activities shall request a refund whenever the contract price of any spare part or item of support equipment significantly exceeds the item's intrinsic value as defined in the clause at 5252.242–9000. Refunds shall be requested only for the difference between the intrinsic value of the item at the time an agreement on price was reached and the contract price. Refunds will not be requested to recoup the amount of cost decreases that occur over time due to productivity gains (beyond economic quantity considerations) or changes in market conditions.

(b) *Examples.* The following are examples of circumstances which may establish a basis for a refund request or pricing adjustment:

(1) A technical or engineering analysis results in a determination that the intrinsic value is significantly lower than the historical price.

(2) The price paid for an item bought competitively in similar quantity and circumstances (e.g., urgency, delivery terms) is significantly less than the former sole source price.

(3) Prices paid to the manufacturer of an item indicate the amount previously charged by the prime contractor for the item significantly exceeded the intrinsic value of the prime contractor's efforts in providing the item.

(c) *Solicitation provisions.* The contracting officer shall insert the clause at 5252.242–9000 in solicitations, Basic Ordering Agreements, and contracts (as defined in FAR 2.101) which contain

or may contain requirements for spare parts or items of support equipment, except those contracts awarded as a result of competitive small purchase procedures and orders under federal supply schedules. If added to existing contracts, the clause will not apply to items or components ordered by the Government prior to the date of incorporation of the clause into the contract. Heads of Contracting Activities (HCAs) are delegated, without power of redelegation, authority to establish monetary thresholds below which refunds will not be requested.

[51 FR 46671, Dec. 24, 1986]

# PART 5243 [RESERVED]

# PART 5252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

## Subpart 5252.2—Texts of Provisions and Clauses

Sec.

5252.215–9000 Submission of cost or pricing data.
5252.242–9000 Refunds.
5252.243–9000—5252.243–9001 [Reserved]

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2405, DOD Directive 5000.35, and DFARS subparts 201.3 and 243.1.

SOURCE: 53 FR 16282, May 6, 1988, unless otherwise noted.

## Subpart 5252.2—Texts of Provisions and Clauses

### 5252.215–9000 Submission of cost or pricing data.

As prescribed at 5215.407, insert the following provision:

SUBMISSION OF COST OR PRICING DATA (NOV 1987)

(a) It is expected that this contract will be awarded based upon a determination that there is adequate price competition; therefore, the offeror is not required to submit or certify cost or pricing data (SF 1411) with its proposal.

(b) If, after receipt of the proposals, the contracting officer determines that adequate price competition does not exist in accordance with FAR 15.804–3, the offeror shall provide certified cost or pricing data as requested by the contracting officer.

(End of clause)

*Alternate I* (NOV 1987). As prescribed at 5215.407, substitute the following paragraph (b):

(b) If, after receipt of the proposals, the contracting officer determines that adequate price competition does not exist, the offeror shall provide certified cost or pricing data as requested by the contracting officer. The offeror shall provide the requested data within[1] calendar days from the date of the contracting officer's request.

(End of clause)

### 5252.242–9000 Refunds.

As prescribed in 5242.9000 insert the following clause:

REFUNDS (SPARES AND SUPPORT EQUIPMENT) (DEC 1986)

(a) In the event that the price of a spare part or item of support equipment delivered under this contract significantly exceeds its intrinsic value, the contractor agrees to refund the difference. Refunds will only be made for the difference between the intrinsic value of the item at the time an agreement on price was reached and the contract price. Refunds will not be made to recoup the amount of cost decreases that occur over time due to productivity gains (beyond economic purchase quantity considerations) or changes in market conditions.

(b) For purposes of this clause, the intrinsic value of an item is defined as follows:

(1) If the item is one which is sold, or is substantially similar or functionally equivalent to one that is sold in substantial quantities to the general public, intrinsic value is the established catalog or market price, plus the value of any unique requirements, including delivery terms, inspection, packaging, or labeling.

(2) If there is no comparable item sold in substantial quantities to the general public, intrinsic value is defined as the price an individual would expect to pay for the item based upon an economic quantity as defined in FAR 52.207–4, plus the value of any unique requirements, including delivery terms, inspection, packaging, or labeling.

(c) At any time up to two years after delivery of a space part or item of support equipment, the contracting officer may notify the contractor that based on all information available at the time of the notice, the price of the part or item apparently exceeds its intrinsic value.

(d) If notified in accordance with paragraph (c) of this clause, the contractor

[1] To be completed by the contracting officer.

agrees to enter into good faith negotiations with the Government to determine if, and in what amount, the Government is entitled to a refund.

(e) If agreement pursuant to paragraph (d) of this clause, cannot be reached, and the Navy's return of the new or unused item to the contractor is practical, the Navy, subject to the contractor's agreement, may elect to return the item to the contractor. Upon return of the item to its original point of government acceptance, the contractor shall refund in full the price paid. If no agreement pursuant to paragraph (d) of this clause is reached, and return of the item by the Navy is impractical, the contracting officer may, with the approval of the Head of the Contracting Activity, issue a contracting officer's final decision on the matter, subject to contractor appeal as provided in the Disputes clause.

(f) The contractor will make refunds, as required under this clause, in accordance with instructions from the contracting officer.

(g) The contractor shall not be liable for a refund if the contractor advised the contracting officer in a timely manner that the price it would propose for a spare part or item of support equipment exceeded its intrinsic value, and with such advice, specified the estimated proposed price, the estimated intrinsic value, and known alternative sources or items, if any, that can meet the requirement.

(h) This clause does not apply to any spare parts or items of support equipment whose price is determined through adequate price competition. This clause also does not apply to any spare part or item of support equipment with a unit price in excess of $100,000; or in excess of $25,000 if the contractor submitted, and certified the currency, accuracy and completeness of, cost or pricing data applicable to the item.

(End of clause)

**5252.243–9000—5252.243–9001 [Reserved]**

# CHAPTER 53—DEPARTMENT OF THE AIR FORCE FEDERAL ACQUISITION REGULATION SUPPLEMENT [RESERVED]

# CHAPTER 54—DEFENSE LOGISTICS AGENCY, DEPARTMENT OF DEFENSE


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# PART 5416—TYPES OF CONTRACTS

## Subpart 5416.2—Fixed Price Contracts

Sec.
5416.203 Fixed-price contracts with economic price adjustment.
5416.203–1 Description.
5416.203–3 Limitations.
5416.203–4 Contract clauses.

AUTHORITY: Fixed Price Contracts

SOURCE: 64 FR 41835, Aug. 2, 1999, unless otherwise noted.

## Subpart 5416.2—Fixed Price Contracts

### 5416.203 Fixed-price contracts with economic price adjustment.

### 5416.203–1 Description.

(a)(S–90) Adjustments based on established prices. Established prices may reflect industry-wide and/or geographically based market price fluctuations for commodity groups, specific supplies or services, or contract end items.

(c)(S–90) Adjustments based on cost indexes of labor or materials. These price adjustments may also be based on increases or decreases in indexes for commodity groups, specific supplies or services, or contract end items.

### 5416.203–3 Limitations.

(S–90) A fixed price contract with economic price adjustment may also be used to provide for price adjustments authorized in this section.

### 5416.203–4 Contract clauses.

(S–90) When the contracting officer determines that an existing EPA clause is not appropriate, the contracting officer may develop and use another EPA clause in accordance with 5416.203–1 (a)(S–90) or (c)(S–90). Established prices and cost indexes need not reflect changes in the costs or established prices of a specific contractor. The established price or cost index may be derived from sales prices in the marketplace, quotes, or assessments as reported or made available in a consistent manner in a publication, electronic database, or other form, by an independent trade association, Governmental body, or other third party independent of the contractor. More than one established price or cost index may be combined in a formula for economic price adjustment purposes in the absence of an appropriate single price or cost index.

# PART 5433—PROTESTS, DISPUTES AND APPEALS

AUTHORITY: 10 U.S.C. Chapter 137.

### 5433.214. Alternative Dispute Resolution (ADR).

The contracting officer shall insert the provision in 5452.233 in all solicitations unless the conditions at FAR 33.203(b) apply.

[66 FR 27474, May 17, 2001]

# PART 5452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

## Subpart 5452.2—Texts of Provisions and Clauses

Sec.
5452.233–9001 Disputes: Agreement To Use Alternative Dispute Resolution (ADR).
5452.249 Allocation.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, 48 CFR part 1, subpart 1.3 and 48 CFR part 201, subpart 201.3

## Subpart 5452.2—Texts of Provisions and Clauses

### 5452.233–9001 Disputes: Agreement To Use Alternative Dispute Resolution (ADR).

As prescribed in 5433.214, insert the following provision:

DISPUTES: AGREEMENT TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (APR 2001)—DLAD

(a) The parties agree to negotiate with each other to try to resolve any disputes that may arise. If unassisted negotiations are unsuccessful, the parties will use alternative dispute resolution (ADR) techniques to try to resolve the dispute. Litigation will only be considered as a last resort when ADR is unsuccessful or has been documented by the party rejecting ADR to be inappropriate for resolving the dispute.

(b) Before either party determines ADR inappropriate, that party must discuss the use of ADR with the other party. The documentation rejecting ADR must be signed by

an official authorized to bind the contractor (see FAR 52.233–1), or, for the Agency, by the contracting officer, and approved at a level above the contracting officer after consultation with the ADR Specialist and with legal counsel. Contractor personnel are also encouraged to include the ADR Specialist in their discussions with the contracting officer before determining ADR to be inappropriate.

(c) If you wish to opt out of this clause, check here [ ]. Alternate wording may be negotiated with the contracting officer.

[66 FR 27474, May 17, 2001]

### 5452.249 Allocation.

The Defense Fuel Supply Center is authorized to use the following clause in domestic and overseas petroleum solicitations/contracts, including those for Canal Zone and Puerto Rico, when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation.

ALLOCATION (DFSC 1995) (DEVIATION) (9F01)

(a) *Reduced Supplies.* If, for any cause beyond the control and without the fault or negligence of the Contractor, the total supply of crude oil and/or refined petroleum product is reduced below the level that would have otherwise been available to the Contractor, the Contractor allocates to its regular customers its remaining available supplies of crude oil or product, then the Contractor may also allocate to the U.S. Government supplies to be delivered under this contract, provided—

(1) Prompt notice of and evidence substantiating the necessity to allocate and describing the allocation rate for all the Contractor's customers are submitted to the Contracting Officer;

(2) Allocation among the Contractor's regular customers is made on a fair and reasonable basis (except where allocation on a different basis is required by a governmental authority, agency or instrumentality); and

(3) Reduction of the quantity of product due the Government under this contract shall not exceed the pro rata amount by which the Contractor reduces delivery to its other contractual customers.

(b) *Additional Supplies.* If, after the event causing the shortage of crude oil and/or refined petroleum product as described in (a) above, additional supply becomes available to the Contractor, the Contracting Officer may choose any one of the following three possible courses of action:

(1) Accept an updated pro rata reduction as outlined in (a);

(2) Determine that continuance of the contract with the quantities as originally stated in the Schedule is in the best interests of the Government; or

(3) Terminate the contract as permitted in (d) below.

(c) *Reduced Deliveries.* If the Contractor believes that a law, regulation, or order of a foreign government requires the Contractor to deliver less than the quantity set forth in the Schedule for any location within that country, the Contractor may request allocation in accordance with (a) above. In addition to the criteria in (a) above, the Contractor's request shall cite—

(1) The law, regulation or order, furnishing copies of the same;

(2) The authority under which is imposed; and

(3) The nature of the Government's waiver, exception, and enforcement procedure.

The Contracting Officer will promptly review the matter and advise the Contractor whether or not the need to allocate has been substantiated. If the law, regulation, or order requiring the Contractor to reduce deliveries ceases to be effective, the Contractor shall resume deliveries in accordance with the original Schedule.

(d) If, as a result of reduced deliveries permitted by (a), (b), or (c) above, the Contracting Officer decides that continuation of this contract is no longer in the best interests of the Government, the Government may terminate this contract or any quantity thereunder, by written notice, at no cost to the Government. However, the Government shall not be relieved of its obligation to pay for supplies actually delivered to and accepted by it.

(e) Except as otherwise stated in (b) above, any volumes omitted pursuant to (a) or (b) above shall be deleted from this contract, and the Contractor shall have no continuing obligation, so far as this contract is concerned, to make up such omitted supplies.

(f) For Posts, Camps, and Stations contracts, Department of Energy priority orders and allocation regulations will take precedence over any conflicting provisions of this clause.

(g) For Bulk Fuels contracts, the provisions contained in (a) and (b) above shall be inoperative when the Secretary of Defense makes a written determination that it is essential to the National Defense that the Defense Fuel Supply Center be provided contract volumes exceeding the pro rata amount of product to which it would otherwise be entitled. However, in no case will the Contractor be required, under this contract, to supply more than 100% of the quantity specified in the Schedule.

(End of clause)

[60 FR 21992, May 4, 1995]

# CHAPTER 57—AFRICAN DEVELOPMENT FOUNDATION

SUBCHAPTER B—ACQUISITION PLANNING


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# SUBCHAPTER B—ACQUISITION PLANNING

## PART 5706—COMPETITION REQUIREMENTS

AUTHORITY: 40 U.S.C. 474.

### Subpart 5706.3—Other Than Full and Open Competition

**5706.302–70 Impairment of foreign aid programs.**

(a) Full and open competition need not be obtained when it would impair or otherwise have an adverse effect on programs conducted for the purposes of foreign aid, relief and rehabilitation.

(b) *Application*. This authority may be used for:

(1) An award under section 506(a)(5) of the African Development Foundation Act involving a personal service contractor serving abroad;

(2) An award of $100,000 or less for audit, evaluation or program support services to be provided abroad;

(3) An award for which the President of the Foundation makes a formal written determination, with supporting findings, that compliance with full and open competition procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of the Foundation program.

(c) *Limitation*. (1) Offers shall be requested from as many potential offerors as is practicable under the circumstances.

(2) The contract file must include an appropriate explanation and support justifying award without full and open competition, as provided in FAR 6.303, except that determinations made under paragraph (b)(3) of this section will not be subject to the requirement for contracting officer certification or to approvals in accord with FAR 6.304.

[53 FR 5578, Feb. 25, 1988]

# CHAPTER 61—CIVILIAN BOARD OF CONTRACT APPEALS, GENERAL SERVICES ADMINISTRATION


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# PART 6101—CONTRACT DISPUTE CASES

Sec.


6101.1 Scope of rules; definitions; construction; rulings, orders, and directions; panels; location and address [Rule 1].
6101.2 Filing cases; time limits for filing; notice of docketing; consolidation [Rule 2].
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6101.27 Relief from decision or order [Rule 27].
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6101.51 Variation from standard proceedings [Rule 51].
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6101.54 Alternate dispute resolution [Rule 54].

APPENDIX TO PART 6101—FORM NOS. 1–5.


AUTHORITY: 41 U.S.C. 7101–7109.

SOURCE: 72 FR 36795, July 5, 2007, unless otherwise noted.

### 6101.1 Scope of rules; definitions; construction; rulings, orders, and directions; panels; location and address [Rule 1].

(a) *Scope.* The rules of this chapter govern proceedings in all cases filed with the Board on or after January 6, 2007, and all further proceedings in cases then pending, except to the extent that, in the opinion of the Board, their use in a particular case pending on the effective date would be infeasible or would work an injustice. The Board will look to the rules of this chapter for guidance in conducting other proceedings authorized by law.

(b) *Definitions*—(1) *Appeal; appellant.* The term ''appeal'' means a contract dispute filed with the Board. The term ''appellant'' means a party filing an appeal.

(2) *Application; applicant.* The term ''application'' means a submission to the Board of a request for award of fees and other expenses, under the Equal Access to Justice Act, 5 U.S.C. 504, pursuant to 6101.30 (Rule 30). The term ''applicant'' means a party filing an application.

(3) *Board judge; judge.* The term ''Board judge'' or ''judge'' means a member of the Board.

(4) *Case.* The term ''case'' means an appeal, petition, or application.

(5) *Filing.* (i) Any document, other than a notice of appeal or an application for award of fees and other expenses, is filed when it is received by the Office of the Clerk of the Board during the Board's working hours. A notice of appeal or an application for award of fees and other expenses is filed upon the earlier of its receipt by the Office of the Clerk of the Board or if mailed, the date on which it is mailed to the Board. A United States Postal Service postmark shall be prima facie evidence that the document with which it is associated was mailed on the date of the postmark.

(ii) Facsimile transmissions to the Board and the parties are permitted. The filing of a document by facsimile transmission occurs upon receipt by the Board of the entire submission by facsimile. Parties are specifically cautioned that a deadline for filing will not be extended merely because the Board's facsimile machine is busy or otherwise unavailable when a filing is due. Parties are expected to submit their facsimile machine numbers with their filings.

(iii) Filings submitted by electronic mail (e-mail) are permitted, with the exception of appeal files submitted pursuant to 6101.4 (Rule 4), classified documents, and filings submitted *in camera* or under protective order pursuant to 6101.9(c) (Rule 9(c)). Filings by e-mail shall be submitted to: *cbca.efile@cbca.gov*. Filings must be in PDF format and may not exceed 18 megabytes (MB) total. Filings that are not in PDF format or over 18 MB will not be accepted. The filing of a document by e-mail occurs upon receipt by the Board on a working day, as defined in 6101.1(b)(9) (Rule 1(b)(9)). All e-mail filings received by 4:30 p.m., Eastern Time, on a working day will be considered to be filed on that day. E-mail filings received after that time will be considered to be filed on the next working day.

(6) *Party*. The term ''party'' means an appellant, applicant, petitioner, or respondent.

(7) *Petition; petitioner*. The term ''petition'' means a request filed under 41 U.S.C. 605(c)(4) that the Board direct a contracting officer to issue a written decision on a claim. The term ''petitioner'' means a party submitting a petition.

(8) *Respondent*. The term ''respondent'' means the government agency whose decision, action, or inaction is the subject of an appeal, petition, or application.

(9) *Working day*. The term ''working day'' means any day other than a Saturday, Sunday, federal holiday, day on which the Office of the Clerk is required to close earlier than 4:30 p.m., or day on which the Office of the Clerk does not open at all, as in the event of inclement weather.

(10) *Working hours*. The Board's working hours are 8:00 a.m. to 4:30 p.m., Eastern Time, on each working day.

(c) *Construction*. The rules of this chapter shall be construed to secure the just, informal, expeditious, and inexpensive resolution of every case. The Board looks to the Federal Rules of Civil Procedure for guidance in construing those Board rules which are similar to Federal Rules.

(d) *Rulings, orders, and directions*. The Board may apply the rules of this chapter and make such rulings and issue such orders and directions as are necessary to secure the just, informal, expeditious, and inexpensive resolution of every case before the Board. Any ruling, order, or direction that the Board may make or issue pursuant to the rules of this chapter may be made on the motion or request of any party or on the initiative of the Board. The Board may also amend, alter, or vacate a ruling, order, or direction upon such terms as it deems just. In making rulings and issuing orders and directions pursuant to the rules of this chapter, the Board takes into consideration those Federal Rules of Civil Procedure which address matters not specifically covered herein.

(e) *Panels*. Each case will be assigned to a panel consisting of three judges, with one member designated as the presiding judge, in accordance with such procedures as may be established by the Board. The presiding judge is responsible for processing the case, including scheduling and conducting proceedings and hearings. In addition, the presiding judge may, without participation by other panel members, decide an appeal under the small claims procedure in 6101.52 [Rule 52], rule on nondispositive motions (except for amounts in controversy under 6101.52(a)(2) [Rule 52(a)(2)] and 6101.53(a)(2) [Rule 53(a)(2)]), and dismiss a case as permitted by 6101.12(e) [Rule 12(e)]). All other matters, except for those before the full Board under 6101.28 [Rule 28], are decided for the Board by a majority of the panel.

(f) *Location and address*. The location of the Office of the Clerk of the Board is: 1800 M Street, NW, 6th Floor, Washington, DC 20036. The mailing address of the Office of the Clerk of the Board

is: 1800 F Street, NW, Washington, DC 20405. The Clerk's telephone number is: (202) 606–8800. The Clerk's facsimile machine number is: (202) 606–0019. The Clerk's e-mail address for receipt of filings is: *cbca.efile@cbca.gov*.

[72 FR 36795, July 5, 2007, as amended at 73 FR 26950, May 12, 2008; 74 FR 66585, Dec. 16, 2009; 76 FR 50927, Aug. 17, 2011]

### 6101.2 Filing cases; time limits for filing; notice of docketing; consolidation [Rule 2].

(a) *Filing cases.* Filing of a case occurs as provided in 6101.1(b)(5) (Rule 1(b)(5)).

(1) *Notice of appeal.* (i) A notice of appeal shall be in writing and shall be signed by the appellant or by the appellant's attorney or authorized representative. If the appeal is from a contracting officer's decision, the notice of appeal should describe the decision in enough detail to enable the Board to differentiate that decision from any other; the appellant can satisfy this requirement by attaching to the notice of appeal a copy of the contracting officer's decision. If an appeal is taken from the failure of a contracting officer to issue a decision, the notice of appeal should describe in detail the claim that the contracting officer has failed to decide; the appellant can satisfy this requirement by attaching a copy of the written claim submission to the notice of appeal.

(ii) A written notice in any form, including the one specified in the Appendix to the rules in this chapter, is sufficient to initiate an appeal. The notice of appeal should include the following information:

(A) The number and date of the contract;

(B) The name of the government agency and the component thereof against which the claim has been asserted;

(C) The name, address, telephone number, facsimile machine number, and e-mail address, if available, of the contracting officer whose decision is appealed and the date of the decision;

(D) If the appeal is from the failure of the contracting officer to decide a claim, the name, address, telephone number, facsimile machine number, and e-mail address, if available, of the contracting officer who received the claim;

(E) A brief account of the circumstances giving rise to the appeal; and

(F) An estimate of the amount of money in controversy, if any and if known.

(iii) The appellant must send a copy of the notice of appeal to the contracting officer whose decision is appealed or, if there has been no decision, to the contracting officer before whom the appellant's claim is pending.

(2) *Petition.* (i) A petition shall be in writing and signed by the petitioner or by the petitioner's attorney or authorized representative. The petition should describe in detail the claim that the contracting officer has failed to decide; the contractor can satisfy this requirement by attaching to the petition a copy of the written claim submission.

(ii) The petition should include the following information:

(A) The number and date of the contract;

(B) The name of the government agency and the component thereof against which the claim has been asserted; and

(C) The name, address, telephone number, facsimile machine number, and e-mail address, if available, of the contracting officer whose decision is sought.

(3) *Application.* An application for fees and other expenses shall meet all requirements specified in 6101.30 (Rule 30).

(b) *Time limits for filing*—(1) *Appeals.* (i) An appeal from a decision of a contracting officer shall be filed no later than 90 calendar days after the date the appellant receives that decision.

(ii) An appeal may be filed with the Board if the contracting officer fails or refuses to issue a timely decision on a claim submitted in writing, properly certified if required.

(2) *Applications.* An application for fees and other expenses shall be filed within 30 calendar days of a final disposition in the underlying appeal, as provided in 6101.30 (Rule 30).

(c) *Notice of docketing.* Notices of appeal, petitions, and applications will be docketed by the Office of the Clerk of the Board, and a written notice of

docketing will be sent promptly to all parties.

(d) *Consolidation.* When cases involving common questions of law or fact are filed, the Board may:

(1) Order the cases consolidated; or

(2) Make such other orders concerning the proceedings as are needed to avoid unnecessary costs or delay.

[72 FR 36795, July 5, 2007,, as amended at 76 FR 50927, Aug. 17, 2011]

### 6101.3 Time: enlargement; computation [Rule 3].

(a) *Time for performing required actions.* All time limitations prescribed in the rules of this chapter or in any order or direction given by the Board are maximums, and the action required should be accomplished in less time whenever possible.

(b) *Enlarging time.* Upon request of a party for good cause shown, the Board may enlarge any time prescribed by the rules in this chapter or by an order or direction of the Board except the time limit for filing appeals (6101.2(b)(1) (Rule 2(b)(1))). A written request is required, but in exigent circumstances an oral request may be made and followed by a written request. An enlargement of time may be granted even though the request was filed after the time for taking the required action expired, but the party requesting the enlargement must show good cause for its inability to make the request before that time expired.

(c) *Computing time.* Except as otherwise required by law, in computing a period of time prescribed by the rules in this chapter or by order of the Board, the day from which the designated period of time begins to run shall not be counted, but the last day of the period shall be counted unless that day is a Saturday, a Sunday, or a federal holiday, or a day on which the Office of the Clerk of the Board is required to close earlier than 4:30 p.m., or does not open at all, as in the case of inclement weather, in which event the period shall include the next working day. Except as otherwise provided in this paragraph, when the period of time prescribed or allowed is less than 11 days, any intervening Saturday, Sunday, or federal holiday shall not be counted. When the period of time prescribed or allowed is 11 days or more, intervening Saturdays, Sundays, and federal holidays shall be counted. Time for filing any document or copy thereof with the Board expires when the Office of the Clerk of the Board closes on the last day on which such filing may be made.

### 6101.4 Appeal file [Rule 4].

(a) *Submission to the Board by the respondent.* Within 30 calendar days from receipt of the Board's docketing notice or within such time as the Board may allow, the respondent shall file with the Board appeal file exhibits consisting of all documents and other tangible things relevant to the claim and to the contracting officer's decision which has been appealed. Exhibits will be numbered as required by 6101.4(b) [Rule 4(b)] and will include, if any:

(1) The contracting officer's decision from which the appeal is taken;

(2) The contract, including amendments, specifications, plans, and drawings;

(3) All correspondence between the parties that is relevant to the appeal, including the written claim or claims that are the subject of the appeal, and evidence of their certification;

(4) Affidavits or statements of any witnesses concerning the matter in dispute and transcripts of any testimony taken before the filing of the notice of appeal;

(5) All documents and other tangible things on which the contracting officer relied in making the decision, and any related correspondence;

(6) The abstract of bids, if relevant; and

(7) Any additional existing evidence or information necessary to determine the merits of the appeal, such as internal memoranda and notes to the file.

(b) *Organization of the appeal file.* Appeal file exhibits may be originals or true, legible, and complete copies. They shall be arranged in chronological order, earliest documents first; bound in a loose-leaf binder on the left margin except where size or shape makes such binding impracticable; numbered; tabbed; and indexed. The loose-leaf binders cannot exceed four inches in depth. The numbering shall

be consecutive, in whole Arabic numerals (no letters, decimals, or fractions), and continuous from one submission to the next, so that the complete file, after all submissions, will consist of one set of consecutively numbered exhibits. In addition, the pages within each exhibit containing more than three pages shall be numbered consecutively unless the exhibit already is paginated in a logical manner. Consecutive pagination of the entire file is not required. The index shall include the date and a brief description of each exhibit and shall identify which exhibits, if any, have been filed with the Board *in camera* or under protective order or otherwise have not been served on the other party.

(c) *Service.* The respondent shall serve a copy of the appeal file on the appellant at the same time that the respondent files it with the Board, except that the respondent need not serve on the appellant those documents furnished the Board *in camera* pursuant to 6101.9(c) (Rule 9(c)), and the respondent shall serve documents submitted under protective order only on those individuals who have been granted access to such documents by the Board. However, the respondent must serve on the appellant a list identifying the specific documents filed *in camera* or under protective order with the Board, giving sufficient details necessary for their recognition. This list must also be filed with the Board as an exhibit to the appeal file.

(d) *Submission to the Board by the appellant.* Within 30 calendar days after the respondent files its appeal file exhibits, or within such time as the Board may allow, the appellant shall file with the Board for inclusion in the appeal file documents or other tangible things relevant to the appeal that have not been submitted by the respondent. The appellant shall serve a copy of its additional exhibits upon the respondent at the same time as it files them with the Board, and shall organize the file as required by 6101.4(b) (Rule 4(b)).

(e) *Submissions on order of the Board.* The Board may, at any time during the pendency of the appeal, require any party to file other documents and tangible things as additional exhibits. The Board may also require a party to file either copies of electronically stored information or printed versions of electronically stored information.

(f) *Lengthy or bulky materials.* The Board may waive the requirement to furnish the other party copies or duplicates of bulky, lengthy, or outsized materials submitted to the Board as exhibits if furnishing copies would impose an undue burden, so long as the materials are available to the opposing party for inspection.

(g) *Use of appeal file as evidence.* All exhibits in the appeal file, except for those as to which an objection has been sustained, are part of the evidentiary record upon which the Board will render its decision. Unless otherwise ordered by the Board, objection to any exhibit may be made at any time before the first witness is sworn or, if the appeal is submitted on the record without a hearing pursuant to 6101.19 [Rule 19], at any time prior to or concurrent with the first record submission. The Board may shorten or enlarge the time for such objections and will consider an objection made during a hearing if the ground for objection could not reasonably have been earlier known to the objecting party. If an objection is sustained, the Board will so note in the record.

(h) *When appeal file not required.* Upon motion of a party, the Board may postpone or dispense with the submission of any or all appeal file exhibits.

[72 FR 36795, July 5, 2007, as amended at 73 FR 26950, May 12, 2008]

### 6101.5 Appearances; notice of appearance [Rule 5].

(a) *Appearances before the Board*—(1) *Appellant; petitioner; applicant.* Any appellant, petitioner, or applicant may appear before the Board by an attorney-at-law licensed to practice in a state, commonwealth, or territory of the United States, or in the District of Columbia. An individual appellant, petitioner, or applicant may appear in his or her own behalf; a corporation, trust, or association may appear by one of its officers; and a partnership may appear by one of its members.

(2) *Respondent.* The respondent may appear before the Board by an attorney-at-law licensed to practice in a state, commonwealth, or territory of

the United States, or in the District of Columbia. Alternatively, if not prohibited by agency regulation or otherwise, the respondent may appear by the contracting officer or by the contracting officer's authorized representative.

(3) *Others.* The Board may, on motion, in its discretion, permit a special or limited appearance, such as by an amicus curiae. Permission to appear, if granted, will be for such purposes and in such manner as allowed by the presiding judge.

(b) *Notice of appearance.* Unless a notice of appearance is filed by some other person, the person signing the notice of appeal, petition, or application shall be deemed to have appeared on behalf of the appellant, petitioner, or applicant, and the head of the respondent agency's litigation office shall be deemed to have appeared on behalf of the respondent. Other attorneys actively participating in the proceedings before the Board must file notices of appearance. A notice of appearance in the form specified in the Appendix to the rules of this chapter is sufficient. Attorneys representing parties before the Board are required to list the state bars to which they are admitted and their state bar numbers or other bar identifiers.

(c) *Withdrawal of appearance.* Any person who has filed a notice of appearance and who wishes to withdraw from a case must file a motion which includes the name, address, telephone number, facsimile machine number, and e-mail address, if available, of the person who will assume responsibility for representation of the party in question. The motion shall state the grounds for withdrawal unless it is accompanied by a representation from the successor representative or existing co-counsel that the established case schedule will be met.

[72 FR 36795, July 5, 2007, as amended at 73 FR 26950, May 12, 2008; 76 FR 50928, Aug. 17, 2011]

### 6101.6 Pleadings and amendment of pleadings [Rule 6].

(a) *Pleadings required and permitted.* Except as the Board may otherwise order, the Board requires the submission of a complaint and an answer. In appropriate circumstances, the Board may order or permit a reply to an answer.

(b) *Complaint.* No later than 30 calendar days after the docketing of the appeal, the appellant shall file with the Board a complaint setting forth its claim or claims in simple, concise, and direct terms. The complaint should set forth the factual basis of the claim or claims, with appropriate reference to the contract provisions, and should state the amount in controversy, or an estimate thereof, if any and if known. No particular form is prescribed for a complaint, and the Board may designate the notice of appeal, a claim submission, or any other document as the complaint, either on its own initiative or on request of the appellant, if such document sufficiently states the factual basis and amount of the claim.

(c) *Answer.* No later than 30 calendar days after the filing of the complaint or of the Board's designation of a complaint, the respondent shall file with the Board an answer setting forth simple, concise, and direct statements of its defenses to the claim or claims asserted in the complaint, as well as any affirmative defenses it chooses to assert. A dispositive motion or a motion for a more definite statement may be filed in lieu of the answer only with the permission of the Board. If no answer is timely filed, the Board may enter a general denial, in which case the respondent may thereafter amend the answer to assert affirmative defenses only by leave of the Board and as otherwise prescribed by paragraph (e) of this section. The Board will inform the parties when it enters a general denial on behalf of the respondent.

(d) *Small claims and accelerated procedures.* When an appellant elects to use the small claims or accelerated procedures described in 6101.52 and 6101.53 (Rules 52 and 53), the Board may shorten the time for filing the complaint and the answer.

(e) *Amendment of pleadings.* Each party to an appeal may amend its pleadings once without leave of the Board at any time before a responsive pleading is filed. The Board may permit other amendments on conditions fair to both parties. A response to an amended pleading will be filed within the time set by the Board.

(f) *Amendments to conform to the evidence.* When issues within the proper scope of a case, but not raised in the pleadings, have been raised without objection or with permission of the Board at a hearing or in record submissions, they shall be treated in all respects as if they had been raised in the pleadings. The Board may order the parties to amend the pleadings to conform to the proof or may order that the record be deemed to contain amended pleadings.

[72 FR 36795, July 5, 2007, as amended at 73 FR 26950, May 12, 2008]

### 6101.7 Service of papers other than subpoenas [Rule 7].

(a) *On whom and when service must be made.* Except for subpoenas (6101.16 [Rule 16]) and documents filed *in camera* (6101.9(c) [Rule 9(c)]), when a party sends a document to the Board it must at the same time send a copy to the other party by an equally or more expeditious means of transmittal. The parties will confer and agree upon the method they will use to serve one another. They may agree to use electronic mail, facsimile, overnight courier, hand delivery, or any other mutually acceptable method for accomplishing service promptly and efficiently.

(b) *Proof of service.* A party sending a document to the Board must represent to the Board that a copy has also been sent to the other party. This may be done by certificate of service, by the notation of a photostatic copy (cc:), or by any other means that can reasonably be expected to show the Board that the other party has been provided a copy.

(c) *Failure to make service.* If a document sent to the Board by a party does not show that a copy has been served on the other party, the Board may return the document to the party that submitted it with such directions as it considers appropriate, or the Board may inquire whether a party has received a copy and note on the record the fact of inquiry and the response, and may also direct the party that submitted the document to serve a copy on the other party. In the absence of proof of service a document may be treated by the Board as not properly filed.

[72 FR 36795, July 5, 2007, as amended at 73 FR 26950, May 12, 2008]

### 6101.8 Motions [Rule 8].

(a) *How motions are made.* Motions may be oral or written. A written motion shall state the relief sought and, either in the text of the motion or in an accompanying legal memorandum, the grounds therefor. In addition, a motion for summary relief shall comply with the requirements of paragraph (g) of this section. Section 6101.23 (Rule 23) prescribes the form and content of legal memoranda. Oral motions shall be made on the record and in the presence of the other party. Except for joint motions by the parties, all motions must represent that the moving party has attempted to discuss the grounds for the motion with the nonmoving party and tried to resolve the matter informally.

(b) *When motions may be made.* A motion filed in lieu of an answer pursuant to 6101.6(c) (Rule 6(c)) shall be filed no later than the date on which the answer is required to be filed or such later date as may be established by the Board. Any other dispositive motion shall be made as soon as practicable after the grounds therefor are known. Any other motion shall be made promptly or as required by the rules of this chapter.

(c) *Dispositive motions.* The following dispositive motions may properly be made before the Board:

(1) Motions to dismiss for lack of jurisdiction or for failure to state a claim upon which relief can be granted;

(2) Motions to dismiss for failure to prosecute;

(3) Motions for summary relief (analogous to summary judgment); and

(4) Any other motion to dismiss.

(d) *Other motions.* Other motions may be made in good faith and in proper form. When filing a motion for an enlargement of time, the moving party shall state that it has contacted the opposing party about the request and shall inform the Board whether the opposing party consents to the request or will file an opposition.

(e) *Jurisdictional questions.* The Board may at any time consider the issue of its jurisdiction to decide a case.

(f) *Procedure.* Unless otherwise directed by the Board, a party may respond to a written motion other than a motion pursuant to 6101.26, 6101.27, 6101.28, or 6101.29 (Rules 26, 27, 28, or 29) at any time within 20 calendar days after the filing of the motion. Responses to motions pursuant to 6101.26, 6101.27, 6101.28, or 6101.29 (Rules 26, 27, 28, or 29) may be made only as permitted or directed by the Board. The Board may permit hearing or oral argument on written motions and may require additional submissions from any of the parties.

(g) *Motions for summary relief.* (1) A motion for summary relief should be filed only when a party believes that, based upon uncontested material facts, it is entitled to relief in whole or in part as a matter of law. A motion for summary relief should be filed as soon as feasible, to allow the Board to rule on the motion in advance of a scheduled hearing date.

(2) With each motion for summary relief, there shall be served and filed a separate document titled Statement of Uncontested Facts, which shall contain in separately numbered paragraphs all of the material facts upon which the moving party bases its motion and as to which it contends there is no genuine issue. This statement shall include references to the supporting affidavits or declarations and documents, if any, and to the 6101.4 (Rule 4) appeal file exhibits relied upon to support such statement.

(3) An opposing party shall file with its opposition (or cross-motion) a separate document titled Statement of Genuine Issues. This document shall identify, by reference to specific paragraph numbers in the moving party's Statement of Uncontested Facts, those facts as to which the opposing party claims there is a genuine issue necessary to be litigated. An opposing party shall state the precise nature of its disagreement and give its version of the facts. This statement shall include references to the supporting affidavits or declarations and documents, if any, and to the 6101.4 (Rule 4) appeal file exhibits that demonstrate the existence of a genuine dispute. An opposing party may also file a Statement of Uncontested Facts as to any relevant matters not covered by the moving party's statement.

(4) When a motion for summary relief is made and supported as provided in 6101.8 (Rule 8), an opposing party may not rest upon the mere allegations or denials of its pleadings. The opposing party's response, by affidavits or as otherwise provided by 6101.8 (Rule 8), must set forth specific facts showing that there is a genuine issue of material fact. If the opposing party does not so respond, summary relief, if appropriate, shall be entered against that party. For good cause shown, if an opposing party cannot present facts essential to justify its opposition, the Board may defer ruling on the motion to permit affidavits to be obtained or depositions to be taken or other discovery to be conducted, or may make such other order as is just.

(h) *Effect of pending motion.* Except as the rules of this chpater provide or the Board may order, a pending motion shall not excuse the parties from proceeding with the case in accordance with the rules of this chapter and the orders and directions of the Board.

[72 FR 36795, July 5, 2007, as amended at 73 FR 26950, May 12, 2008]

### 6101.9 Record of Board proceedings; review and copying [Rule 9].

(a) *Composition of the record for decision.* The record upon which any decision of the Board will be rendered consists of:

(1) The notice of appeal, petition, or application;

(2) Appeal file exhibits other than those as to which an objection has been sustained;

(3) Hearing exhibits other than those as to which an objection has been sustained;

(4) Pleadings;

(5) Motions and responses thereto;

(6) Memoranda, orders, rulings, and directions to the parties issued by the Board;

(7) Documents and other tangible things admitted in evidence by the Board;

(8) Written transcripts or electronic recordings of proceedings;

(9) Stipulations and admissions by the parties;

(10) Depositions, or parts thereof, received in evidence;

(11) Written interrogatories and responses received in evidence;

(12) Briefs and memoranda of law; and

(13) Anything else that the Board may designate. All other papers and documents are part of the administrative record of the proceedings and are not included in the record upon which the Board's decision will be rendered.

(b) *Enlargement of the record.* The Board may at any time require or permit enlargement of the record with additional evidence and briefs. It may reopen the record to receive additional evidence and oral argument at a hearing.

(c) *Protected and in camera submissions.* (1) A party may by motion request that the Board receive and hold materials under conditions that would limit access to them on the ground that such documents are privileged or confidential, or sensitive in some other way. The moving party must state the grounds for such limited access. The Board may also determine on its own initiative to hold materials under such conditions. The manner in which such materials will be held, the persons who shall have access to them, and the conditions (if any) under which such access will be allowed will be specified in an order of the Board. If the materials are held under such an order, they will be part of the record of the case. If the Board denies the motion, the materials may be returned to the party that submitted them. If the moving party asks, however, that the materials be placed in the administrative record, *in camera*, for the purpose of possible later review of the Board's denial, the Board will comply with the request.

(2) A party may also ask, or the Board may direct, that testimony be received under protective order or *in camera*. The procedures under paragraph (c)(1) of this section shall be followed with respect to such request or direction.

(d) *Review and copying.* Except for any part thereof that is subject to a protective order or deemed an *in camera* submission, the record in a Board proceeding shall be made available for review at the Office of the Clerk of the Board during the Board's normal working hours, as soon as practicable given the demands on the Board of processing the subject case and other cases. If a request is made for copies of documents, and if making such copies involves more than minimal costs to the Board, reimbursement will be required. If a request is made for a copy of a transcript which was prepared pursuant to a contract with the Board, the fee charged by the Board for a copy of the transcript will be at the rate established by the contract. When required, the Office of the Clerk will certify copies of papers and documents as a true record of the Board. Except as provided in 6101.17 and 6101.32 (Rules 17 and 32), the Office of the Clerk will not release any part of the record in its possession to anyone.

### 6101.10 Admissibility of evidence [Rule 10].

In general, any relevant and material evidence will be admitted into the record. The Board may exclude evidence to avoid unfair prejudice, confusion of the issues, undue delay, waste of time, or needless presentation of cumulative evidence. Hearsay evidence is admissible unless the Board finds it unreliable or untrustworthy. As a general matter, and subject to the other provisions of 6101.10 [Rule 10], the Board will look to the Federal Rules of Evidence for guidance when it makes evidentiary rulings.

[73 FR 26950, May 12, 2008]

### 6101.11 Conferences; conference memorandum [Rule 11].

(a) *Conferences.* The Board may convene the parties in conference, either by telephone or in person, for any purpose. The conference may be stenographically or electronically recorded, at the discretion of the Board. Matters to be considered and actions to be taken at a conference may include:

(1) Simplifying, clarifying, or severing the issues;

(2) Stipulations, admissions, agreements, and rulings to govern the admissibility of evidence, understandings on matters already of record, or other

similar means of avoiding unnecessary proof;

(3) Plans, schedules, and rulings to facilitate discovery;

(4) Limiting the number of witnesses and other means of avoiding cumulative evidence;

(5) Stipulations or agreements disposing of matters in dispute; or

(6) Ways to expedite disposition of the case or to facilitate settlement of the dispute, including, if the parties and the Board agree, the use of alternative dispute resolution techniques, as provided in 6101.51 and 6101.54 (Rules 51 and 54).

(b) *Conference memorandum.* The Board may issue a memorandum of the results of a conference, an order reflecting any actions taken, or both. A memorandum or order so issued shall be placed in the record of the case and sent to each party. Each party shall have 5 working days after receipt of a memorandum to object to the substance of it.

### 6101.12 Suspensions and dismissals [Rule 12].

(a) *Suspension of proceedings to obtain contracting officer's decision.* The Board may in its discretion suspend proceedings to permit a contracting officer to issue a decision when an appeal has been taken from the contracting officer's alleged failure to render a timely decision.

(b) *Suspension for other cause.* The Board may suspend proceedings in a case for good cause, such as to permit the parties to finalize a settlement. The order suspending proceedings will prescribe the duration of the suspension or the conditions on which it will expire. The order may also prescribe actions to be taken by the parties during the period of suspension or following its expiration.

(c) *Dismissal, generally.* A case may be dismissed by the Board on motion of either party. A case may also be dismissed for reasons cited by the Board in a show cause order to which a response has been permitted. Every dismissal shall be with prejudice to reinstatement of the case except as specified in paragraph (d) of this section.

(d) *Dismissal without prejudice.* When circumstances beyond the control of the Board prevent the continuation of proceedings in a case, the Board may, in lieu of issuing an order suspending proceedings, dismiss the case without prejudice to reinstatement within 180 calendar days after the date of the dismissal. When a case has been dismissed without prejudice and neither party has timely requested that the case be reinstated, the case shall be deemed to be dismissed with prejudice on the last day such a request could have been made.

(e) *Issuance of order.* The presiding judge alone may issue an order suspending proceedings. An order of dismissal shall be issued by the panel of judges to which the case has been assigned if the motion is contested or if the Board is acting consequent to its own show cause order. An order of dismissal may be issued by the presiding judge alone if the motion to dismiss is not contested.

[72 FR 36795, July 5, 2007, as amended at 73 FR 26951, May 12, 2008]

### 6101.13 General provisions governing discovery [Rule 13].

(a) *Discovery methods.* The parties are encouraged to exchange documents and other information voluntarily. In addition, the parties may obtain discovery by one or more of the following methods:

(1) Depositions upon oral examination or written questions;

(2) Written interrogatories;

(3) Requests for production of documents, electronically stored information, or other tangible or intangible things; and

(4) Requests for admission.

(b) *Scope of discovery.* Except as otherwise limited by order of the Board, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending case, whether it relates to the claim or defense of a party, including the existence, description, nature, custody, condition, and location of any books, documents, electronically stored information, or other tangible or intangible things, and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that

the information sought will be inadmissible if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) *Discovery limits.* The Board may limit the frequency or extent of use of the discovery methods set forth in 6101.13 (Rule 13) if it determines that:

(1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(2) The party seeking discovery has had ample opportunity by discovery in the case to obtain the information sought; or

(3) The discovery is unduly burdensome and expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake.

(d) *Conduct of discovery.* Parties may engage in discovery only to the extent the Board enters an order which either incorporates an agreed plan and schedule acceptable to the Board or otherwise permits such discovery as the moving party can demonstrate is required for the expeditious, fair, and reasonable resolution of the case.

(e) *Discovery conference.* Upon request of a party or on its own initiative, the Board may at any time hold an informal meeting or telephone conference with the parties to identify the issues for discovery purposes; establish a plan and schedule for discovery; set limitations on discovery, if any; and determine such other matters as are necessary for the proper management of discovery. The Board may include in the conference such other matters as it deems appropriate in accordance with 6101.11 (Rule 11).

(f) *Discovery objections.* (1) In connection with any discovery procedure, the Board, on motion or on its own initiative, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including, but not limited to, one or more of the following:

(i) That the discovery not be had;

(ii) That the discovery be had only on specified terms and conditions, including a designation of the time and place, or that the scope of discovery be limited to certain matters;

(iii) That the discovery be conducted with no one present except persons designated by the Board; and

(iv) That confidential information not be disclosed or that it be disclosed only in a designated way.

(2) Unless otherwise ordered by the Board, any objection to a discovery request must be filed within 15 calendar days after receipt. A party shall fully respond to any discovery request to which it does not file a timely objection. The parties are required to make a good faith effort to resolve objections to discovery requests informally.

(3) A party receiving an objection to a discovery request, or a party which believes that another party's response to a discovery request is incomplete or entirely absent, may file a motion to compel a response, but such a motion must include a representation that the moving party has tried in good faith, prior to filing the motion, to resolve the matter informally. The motion to compel shall include a copy of each discovery request at issue and the response, if any.

(g) *Failure to make or cooperate in discovery.* If a party fails to appear for a deposition, after being served with a proper notice; to serve answers or objections to interrogatories submitted under 6101.14 [Rule 14], after proper service of interrogatories; or to serve a written response to a request for inspection, production, and copying of any documents, electronically stored information, and things under 6101.14 [Rule 14], the party seeking discovery may move the Board to impose appropriate sanctions under 6101.33 [Rule 33].

(h) *Subpoenas.* A party may request the issuance of a subpoena in aid of discovery under the provisions of 6101.16 (Rule 16).

[72 FR 36795, July 5, 2007, as amended at 73 FR 26951, May 12, 2008]

### 6101.14 Interrogatories to parties; requests for admission; requests for production [Rule 14].

Upon order from the Board permitting such discovery, a party may serve on another party written interrogatories, requests for admission, and requests for production.

(a) *Written interrogatories.* Written interrogatories shall be answered separately in writing, signed under oath or accompanied by a declaration under penalty of perjury, and answered within 30 calendar days after service. Objections shall be filed within the time limits set forth in 6101.13(f)(2) (Rule 13(f)(2)).

(b) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon which the interrogatory has been served, or from an examination, audit, or inspection of such business records, including a compilation, abstract, or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries thereof. Such specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(c) *Written requests for admission.* A written request for the admission of the truth of any matter, within the proper scope of discovery, that relates to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents or electronically stored information, is to be answered in writing and signed within 30 calendar days after service. Objections shall be filed within the time limits set forth in 6101.13(f)(2) [Rule 13(f)(2)]. Otherwise, the matter therein may be deemed to be admitted. Any matter admitted is conclusively established for the purpose of the pending action, unless the Board on motion permits withdrawal or amendment of the admission. Any admission made by a party under this paragraph (c) is for the purpose of the pending action only and is not an admission for any other purpose, nor may it be used against the party in any other proceeding.

(d) *Written requests for production.* A written request for the production, inspection, and copying of any documents, electronically stored information, or things shall be answered within 30 calendar days after service. Objections shall be filed within the time limits set forth in 6101.13(f)(2) [Rule 13(f)(2)].

(e) *Change in time for response.* Upon request of a party, or on its own initiative, the Board may prescribe a period of time other than that specified in 6101.14 (Rule 14).

(f) *Responses.* A party that has responded to written interrogatories, requests for admission, or requests for production of documents, electronically stored information, or things, upon becoming aware of deficiencies or inaccuracies in its original responses, or upon acquiring additional information or additional documents, electronically stored information, or things relevant thereto, shall, as quickly as practicable, and as often as necessary, supplement its responses to the requesting party with correct and sufficient additional information and such additional documents, electronically stored information, and things as are necessary to give a complete and accurate response to the request.

[72 FR 36795, July 5, 2007, as amended at 73 FR 26951, May 12, 2008]

### 6101.15 Depositions [Rule 15].

(a) *When depositions may be taken.* Upon request of a party, the Board may order the taking of testimony of any person by deposition upon oral examination or written questions before an officer authorized to administer oaths at the place of examination. Attendance of witnesses may be compelled by subpoena as provided in 6101.16 (Rule 16), and the Board may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order may designate the manner of recording, preserving, and filing the deposition and may include other provisions to ensure that the recorded testimony will be accurate and trustworthy. In addition, if the Board orders deposition testimony to be recorded by other than stenographic means, the Board will also determine who shall

bear the burden of the cost of such recording, and shall permit the non-moving party to arrange to have a stenographic transcription made at its own expense.

(b) *Depositions: time; place; manner of taking.* The time, place, and manner of taking depositions, including the taking of depositions by telephone, shall be as agreed upon by the parties or, failing such agreement, as ordered by the Board. A deposition taken by telephone is taken at the place where the deponent is to answer questions.

(c) *Use of depositions.* At a hearing on the merits or upon a motion or interlocutory proceeding, any part or all of a deposition, so far as admissible and as though the witness were then present and testifying, may be used against a party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by a party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated to testify on behalf of a corporation, partnership, association, or government agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by a party for any purpose in its own behalf if the Board finds that:

(i) The witness is dead;

(ii) The attendance of the witness at the place of hearing cannot be reasonably obtained, unless it appears that the absence of the witness was procured by the party offering the deposition;

(iii) The witness is unable to attend or testify because of illness, infirmity, age, or imprisonment;

(iv) The party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon request and notice, exceptional circumstances exist which make it desirable in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offering party to introduce any other part which in fairness ought to be considered with the part introduced.

(d) *Depositions pending appeal from a decision of the Board.* If an appeal has been taken from a decision of the Board, or before the taking of an appeal if the time therefor has not expired, the Board may allow the taking of depositions of witnesses to perpetuate their testimony for use in the event of further proceedings before the Board. In such case, the party that desires to perpetuate testimony may make a motion before the Board for leave to take the depositions as if the action were pending before the Board. The motion shall show:

(1) The names and addresses of the persons to be examined and the substance of the testimony which the moving party expects to elicit from each; and

(2) The reasons for perpetuating the testimony of the persons named. If the Board finds that the perpetuation of testimony is proper to avoid a failure or a delay of justice, it may order the depositions to be taken and may make orders of the character provided for in 6101.13 (Rule 13) and in 6101.15 (Rule 15). Thereupon, the depositions may be taken and used as prescribed in the rules of this chapter for depositions taken in actions pending before the Board. Upon request and for good cause shown, a judge may issue or obtain a subpoena, in accordance with 6101.16 (Rule 16), for the purpose of perpetuating testimony by deposition during the pendency of an appeal from a Board decision.

### 6101.16 Subpoenas [Rule 16].

(a) *Voluntary cooperation in lieu of subpoena.* Each party is expected to:

(1) Cooperate by making available witnesses and evidence under its control, when requested by another party, without issuance of a subpoena; and

(2) Secure the cooperation of third-party witnesses and production of evidence by third parties, when practicable, without issuance of a subpoena.

(b) *General.* Upon the written request of any party filed with the Office of the Clerk of the Board, or upon the initiative of a judge, a subpoena may be issued that commands the person to whom it is directed to:

(1) Attend and give testimony at a deposition in a city or county where that person resides or is employed or transacts business in person, or at another location convenient to that person that is specifically determined by the Board;

(2) Attend and give testimony at a hearing; and

(3) Produce the books, papers, documents, electronically stored information, and other tangible and intangible things designated in the subpoena.

(c) *Request for subpoena.* A request for a subpoena shall contain the name of the assigned judge, the name of the case, and the docket number of the case. It shall state the reasonable scope and general relevance to the case of the testimony and of any evidence sought. A request for a subpoena shall be filed at least 15 calendar days before the testimony of a witness or evidence is to be provided. The Board may, in its discretion, honor requests for subpoenas not made within this time limitation.

(d) *Form; issuance.* (1) Every subpoena shall be in the form specified in the Appendix to the rules of this chapter and this form shall not be altered. Unless a party has the approval of a judge to submit a subpoena in blank (in whole or in part), a party shall submit to the judge a completed subpoena (save the ''Return on Service'' portion). In issuing a subpoena to a requesting party, the judge shall sign the subpoena. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) If the person subpoenaed is located in a foreign country, a letter rogatory or a subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781-1784.

(e) *Service.* (1) The party requesting a subpoena shall arrange for service. Service shall be made as soon as practicable after the subpoena has been issued.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personal delivery of a copy to that person and tender of the fees for one day's attendance and the mileage allowed by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(f) *Proof of service.* The person serving the subpoena shall make proof of service thereof to the Board promptly and in any event before the date on which the person served must respond to the subpoena. Proof of service shall be made by completion and execution and submission to the Board of the ''Return on Service'' portion of a duplicate copy of the subpoena issued by a judge. If service is made by a person other than a United States marshal or his deputy, that person shall make an affidavit as proof by executing the ''Return on Service'' in the presence of a notary.

(g) *Motion to quash or to modify.* Upon written motion by the person subpoenaed or by a party, made within 14 calendar days after service, but in any event not later than the time specified in the subpoena for compliance, the Board may quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or require the party in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed evidence. Where circumstances require, the Board may act upon such a motion at any time after a copy has been served upon opposing parties.

(h) *Contumacy or refusal to obey a subpoena.* In a case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States district court, the Board shall apply to the court through the Attorney General of the United States for an

order requiring the person to appear before the Board to give testimony, produce evidence, or both.

[72 FR 36795, July 5, 2007, as amended at 73 FR 26951, May 12, 2008]

### 6101.17 Exhibits [Rule 17].

(a) *Marking of exhibits.* (1) Documents and other tangible things offered in evidence by a party will be marked for identification by the Board during the hearing or, if ordered by the Board, will be added to the appeal file as exhibits before the commencement of the hearing in order, for example, to eliminate the introduction of additional exhibits at the hearing.

(2) If a party elects to proceed on the record without a hearing pursuant to 6101.19 (Rule 19), documentary evidence submitted by that party will be numbered consecutively as appeal file exhibits.

(b) *Copies as exhibits.* Except upon objection sustained by the Board for good cause shown, copies of documents may be offered and received into evidence as exhibits, provided they are of equal legibility and quality as the originals, and such copies shall have the same force and effect as if they were the originals. If the Board directs, a party offering a copy of a document as an exhibit shall have the original available at the hearing for examination by the Board and any other party. When the original of a document has been received into evidence as an exhibit, an accurate copy may be substituted in evidence for the original by leave of the Board at any time. The Board may require a party to provide either copies of electronically stored information or printed versions of electronically stored information to be included in the record.

(c) *Withdrawal of exhibits and other items.* With the permission of the Board, a party that submits an exhibit or any other item may withdraw the exhibit or item from the record during the course of a proceeding.

(d) *Disposition of physical exhibits.* Any physical (as opposed to documentary) exhibit may be disposed of by the Board at any time more than 90 calendar days after the expiration of the period for appeal from the decision of the Board.

[72 FR 36795, July 5, 2007, as amended at 73 FR 26951, May 12, 2008]

### 6101.18 Election of hearing or record submission [Rule 18].

Each party shall inform the Board, in writing, whether it elects a hearing or submission of its case on the record pursuant to 6101.19 (Rule 19). Such an election may be filed at any time unless a time for filing is prescribed by the Board. In most cases, the Board will require the parties to make an election soon after discovery closes. A party electing to submit its case on the record pursuant to 6101.19 (Rule 19) may also elect to appear at a hearing solely to cross-examine any witness presented by the opposing party, provided that the Board is informed of that party's intention within 10 working days of its receipt of notice of the election of hearing by the other party. If a hearing is elected, the election should state where and when the electing party desires the hearing to be held and should explain the reasons for its choices. A hearing will be held if either party elects one. If a party's decision whether to elect a hearing is dependent upon the intentions of the other party, it shall consult with the other party before filing its election. If there is to be a hearing, it will be held at a time and place prescribed by the Board after consultation with the party or parties electing the hearing. The record submissions from a party that has elected to submit its case on the record shall be due as provided in 6101.19 (Rule 19).

### 6101.19 Submission on the record without a hearing [Rule 19].

(a) *Submission on the record.* A party may elect to submit its case on the record without a hearing. A party submitting its case on the record may include in its written record submission or submissions:

(1) Any relevant documents or other tangible things it wishes the Board to admit into evidence;

(2) Affidavits, depositions, and other discovery materials that set forth relevant evidence; and

(3) A brief or memorandum of law. The Board may require the submission

of additional evidence or briefs and may order oral argument in a case submitted on the record.

(b) *Time for submission.* (1) If both parties have elected to submit the case on the record, the Board will issue an order prescribing the time for initial and, if appropriate, reply record submissions.

(2) If one party has elected a hearing and the other party has elected to submit its case on the record, the party submitting on the record shall make its initial submission no later than the commencement of the hearing or at an earlier date if the Board so orders, and a further submission in the form of a brief at the time for submission of posthearing briefs.

(c) *Objections to evidence.* Unless otherwise directed by the Board, objections to evidence (other than the appeal file and supplements thereto) in a record submission may be made within 10 working days after the filing of the submission, and replies to such objections, if any, may be made within 10 working days after the filing of the objection. The Board may rule on such objections either before it issues its decision or at the time it issues its decision.

### 6101.20 Hearings: scheduling; notice; unexcused absences [Rule 20].

(a) *Scheduling of hearings.* Hearings will be held at the time and place ordered by the Board and will be scheduled at the discretion of the Board. In scheduling hearings, the Board will consider the requirements of the rules of this chapter, the need for orderly management of the Board's caseload, and the stated desires of the parties as expressed in their elections filed pursuant to 6101.18 (Rule 18) or otherwise. The time or place for hearing may be changed by the Board at any time.

(b) *Notice of hearing.* Notice of hearing will be by written order of the Board. Notice of changes in the hearing schedule will also be by written order when practicable but may be oral in exigent circumstances. Except as the Board may otherwise order, each party that plans to attend the hearing shall, within 10 working days of receipt of a written notice of hearing or any notice of a change in hearing schedule stating that an acknowledgment is required, notify the Board in writing that it will attend the hearing. If a party fails to acknowledge a notice of hearing as required, the Board will deem the party to have consented to the time and place of hearing.

(c) *Unexcused absence from hearing.* In the event of the unexcused absence of a party from a hearing, the hearing will proceed, and the absent party will be deemed to have elected to submit its case on the record pursuant to 6101.19 (Rule 19).

### 6101.21 Hearing procedures [Rule 21].

(a) *Nature and conduct of hearings.* (1) Except when necessary to maintain the confidentiality of protected material or testimony, or material submitted *in camera*, all hearings on the merits of cases shall be open to the public and conducted insofar as is convenient in regular hearing rooms. All other acts or proceedings may be done or conducted by the Board either in its offices or at other places.

(2) When cases involving common questions of law or fact are pending, the Board may order a joint hearing of any or all of the matters, claims, or issues in the cases.

(3) The Board may order a separate hearing of any matters, claims, or issues pending in any case. The Board may enter appropriate orders or decisions with respect to any matters, claims, or issues that are heard separately.

(4) Upon the agreement of the parties or upon its own initiative, the Board may notify the parties before a hearing begins that it will limit the hearing to those issues of law and fact relating to the right of a party to recover, reserving the determination of the amount of recovery, if any, for other proceedings.

(5) Before the hearing begins, the Board may prescribe a time within which the presentation of evidence must be concluded, and may establish time limits on the direct and cross-examination of witnesses.

(6) Upon the request of either party or if the Board deems it advisable, the Board will order witnesses to be excluded from the hearing room so they cannot hear the testimony of other witnesses. The Board will not exclude a

party who is an individual, the designated representative of a party which is an entity, a person whose presence is essential to the presentation of a party's case, or someone authorized by statute to be present.

(b) *Continuances; change of location.* Whenever practicable, a hearing will be conducted in one continuous session or a series of consecutive sessions at a single location. However, the Board may at any time continue the hearing to a future date and may arrange to conduct the hearing in more than one location. The Board may also continue a hearing to permit a party to conduct additional discovery on conditions established by the Board. In exercising its discretion to continue a hearing or to change its location, the Board will give due consideration to the same elements (set forth in 6101.20(a) (Rule 20(a))) that it considers in scheduling hearings.

(c) *Availability of witnesses, documents, and other tangible things.* It is the responsibility of a party desiring to call any witness, or to use any document or other tangible thing as an exhibit in the course of a hearing, to ensure that whomever it wishes to call and whatever it wishes to use is available at the hearing. If a witness cannot be made available at the site of the hearing, the party who wishes to call the witness may file a motion that the witness be allowed to testify remotely, whether by telephone, video conference, or some other method.

(d) *Enlargement of the record.* The Board may at any time during the conduct of a hearing require evidence or argument in addition to that put forth by the parties.

(e) *Examination of witnesses.* Witnesses before the Board will testify under oath or affirmation. A party or the Board may obtain an answer from any witness to any question that is not the subject of an objection that the Board sustains.

(f) *Refusal to be sworn.* If a person called as a witness refuses to be sworn or to affirm before testifying, the Board may direct that witness to be sworn or to affirm and, in the event of continued refusal, the Board may permit the taking of testimony without oath or affirmation. If the Board permits a witness to testify without oath or affirmation, the Board will explain that statements made during the hearing are subject to provisions of federal law imposing penalties, including criminal penalties, for knowingly making false representations. Alternatively, the Board may refuse to permit the examination of that witness, in which event it may state for the record the inferences it draws from the witness's refusal to testify under oath or affirmation. Alternatively, the Board may issue a subpoena to compel that witness to testify under oath or affirmation and, in the event of the witness's continued refusal to be sworn or to affirm, may seek enforcement of that subpoena pursuant to 6101.16(h) (Rule 16(h)).

(g) *Refusal to answer.* If a witness refuses to answer a question put to him in the course of his testimony, the Board may direct that witness to answer and, in the event of continued refusal, the Board may state for the record the inferences it draws from the refusal to answer. Alternatively, the Board may issue a subpoena to compel that witness to testify and, in the event of the witness's continued refusal to testify, may seek enforcement of that subpoena pursuant to 6101.16(h) (Rule 16(h)).

(h) *Issues not raised by pleadings.* If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may nevertheless be admitted by the Board if it is within the proper scope of the case. If such evidence is admitted, the Board may grant the objecting party a continuance to enable it to meet such evidence. If such evidence is admitted, the pleadings may be amended to conform to the evidence, as provided by 6101.6(f) (Rule 6(f)).

(i) *Delay by parties.* If the Board determines that the hearing is being unreasonably delayed by the failure of a party to produce evidence, or by the undue prolongation of the presentation of evidence, it may, during the hearing, prescribe a time or times within which the presentation of evidence must be concluded, establish time limits on the direct or cross-examination of witnesses, and enforce such order or ruling by appropriate sanctions.

**6101.22 Transcripts of proceedings; corrections [Rule 22].**

(a)*Transcripts.* Except as the Board may otherwise order, all hearings, other than those under the small claims procedure prescribed by 6101.52 (Rule 52), will be stenographically or electronically recorded and transcribed. Any other hearing or conference will be recorded or transcribed only by order of the Board. Each party is responsible for obtaining its own copy of the transcript if one is prepared.

(b) *Corrections.* Corrections to an official transcript will be made only when they involve errors affecting its substance. The Board may order such corrections on motion or on its own initiative, and only after notice to the parties giving them opportunity to object. Such corrections will ordinarily be made either by hand with pen and ink or by the appending of an errata sheet, but when no other method of correction is practicable the Board may require the reporter to provide substitute or additional pages.

**6101.23 Briefs and memoranda of law [Rule 23].**

(a) *Form and content of briefs and memoranda of law.* Briefs and memoranda of law shall be on standard size 8½ by 11-inch paper. They shall be double-spaced with text in the body and in the footnotes no smaller than 12 point. Otherwise, no particular form or organization is prescribed. The presiding judge may request prehearing and posthearing briefs and may also request, at any point in the proceedings, memoranda of law. Prehearing and posthearing briefs should, at a minimum, succinctly set forth:

(1) The facts of the case with citations to those places in the record where supporting evidence can be found; and

(2) Argument with citations to supporting legal authorities.

(b) *Submission of posthearing briefs.* Except as the Board may otherwise order, posthearing briefs shall be filed 30 calendar days after the Board's receipt of the transcript; reply briefs, if filed, shall be filed 15 calendar days after the parties' receipt of the initial posthearing briefs. The Board will notify the parties of the date of its receipt of the transcript. In the event one party has elected a hearing and the other party has elected to submit its case on the record pursuant to 6101.19 (Rule 19), the filing of record submissions in the form of briefs shall be governed by 6101.23 (Rule 23).

[72 FR 36795, July 5, 2007, as amended at 73 FR 26951, May 12, 2008]

**6101.24 Closing the record [Rule 24].**

(a) *Closing of the record.* Except as the Board may otherwise order, no proof shall be received in evidence after a hearing is completed or, in cases submitted on the record without a hearing, after notice by the Board to the parties that the record is closed and that the case is ready for decision.

(b) *Notice that the case is ready for decision.* The Board will give written notice to the parties when the record is closed and the case is ready for decision.

**6101.25 Decisions; settlements [Rule 25].**

(a) *Decisions.* (1) Except as provided in 6101.52 (Rule 52) (small claims procedure), decisions of the Board will be made in writing upon the record as prescribed in 6101.9 (Rule 9). The Board may also take notice of any fact or law of which a court could take judicial notice. Each of the parties will be furnished a copy of the decision certified by the Office of the Clerk of the Board, and the date of the receipt thereof by each party will be established in the record. In addition, all Board decisions are posted weekly on the Internet. The Board's Internet address is: *http://www.cbca.gov.*

(2) In its decision, the Board may reserve determination of the amount of recovery for other proceedings, regardless of whether there is evidence in the record concerning the amount of recovery, provided the Board notified the parties before the hearing began that its decision would not address the amount of any recovery. In any instance in which the Board has reserved its determination of the amount of recovery for other proceedings, as provided in 6101.21(a)(4) (Rule 21(a)(4)), its decision on the question of the right to

recover shall be final so far as proceedings at the Board are concerned, subject to the provisions of 6101.26 through 6101.28 (Rules 26 through 28).

(b) *Settlements.* When an appeal or application is settled, the parties may file with the Board a stipulation setting forth the amount of the award. The Board will adopt the parties' stipulation by decision, provided the stipulation states the parties will not seek reconsideration of, or relief from, the Board's decision, and they will not appeal the decision. The Board's decision under this paragraph (b) is an adjudication of the case on the merits.

[72 FR 36795, July 5, 2007,, as amended at 76 FR 50928, Aug. 17, 2011]

### 6101.26 Reconsideration; amendment of decisions; new hearings [Rule 26].

(a) *Grounds.* Reconsideration may be granted, a decision or order may be altered or amended, or a new hearing may be granted, for any of the reasons stated in 6101.27(a) (Rule 27(a)) and the reasons established by the rules of common law or equity applicable as between private parties in the courts of the United States. Reconsideration or a new hearing may be granted on all or any of the issues. Arguments already made and reinterpretations of old evidence are not sufficient grounds for granting reconsideration, for altering or amending a decision, or for granting a new hearing. Upon granting a motion for a new hearing, the Board will take additional testimony and, if a decision has been issued, either amend its findings of fact and conclusions or law or issue a new decision.

(b) *Procedure.* Any motion under 6101.26 (Rule 26) shall comply with the provisions of 6101.8 (Rule 8) and shall set forth:

(1) The reason or reasons why the Board should consider the motion; and

(2) The relief sought and the grounds therefor. If the Board concludes that the reasons asserted for its consideration of the motion are insufficient, it may deny the motion without considering the relief sought and the grounds asserted therefor. If the Board grants the motion, it will issue an appropriate order which may include directions to the parties for further proceedings.

(c) *Time for filing.* In an appeal or petition, a motion for reconsideration, to alter or amend a decision or order, or for a new hearing shall be filed within 30 calendar days after the date the moving party receives the decision or order. In an application, such a motion shall be filed within 7 working days after the date the moving party receives the decision or order. Not later than 30 calendar days after issuance of a decision or order, the Board may, on its own initiative, order reconsideration or a new hearing or alter or amend a decision or order for any reason that would justify such action on motion of a party.

(d) *Effect of motion.* A motion pending under 6101.26 (Rule 26) does not affect the finality of a decision or suspend its operation.

### 6101.27 Relief from decision or order [Rule 27].

(a) *Grounds.* The Board may relieve a party from the operation of a final decision or order for any of the following reasons:

(1) Newly discovered evidence which could not have been earlier discovered, even through due diligence;

(2) Justifiable or excusable mistake, inadvertence, surprise, or neglect;

(3) Fraud, misrepresentation, or other misconduct of an adverse party;

(4) The decision has been satisfied, released, or discharged, or a prior decision upon which it is based has been reversed or otherwise vacated, and it is no longer equitable that the decision should have prospective application;

(5) The decision is void, whether for lack of jurisdiction or otherwise; or

(6) Any other ground justifying relief from the operation of the decision or order.

(b) *Procedure.* Any motion under 6101.27 (Rule 27) shall comply with the provisions of 6101.8 and 6101.26(b) (Rules 8 and 26(b)), and will be considered and ruled upon by the Board as provided in 6101.26 (Rule 26).

(c) *Time for filing.* Any motion under 6101.27 (Rule 27) shall be filed as soon as practicable after the discovery of the reasons therefor, but in any event no later than 120 calendar days after the date of the moving party's receipt of the decision or order from which relief

is sought. In considering the timeliness of a motion filed under 6101.27 (Rule 27), the Board may consider when the grounds therefor should reasonably have been known to the moving party.

(d) *Effect of motion.* A motion pending under 6101.27 (Rule 27) does not affect the finality of a decision or suspend its operation.

### 6101.28 Full Board consideration [Rule 28].

(a) *Requests by parties.* (1) A request for full Board consideration is not favored. Ordinarily, full Board consideration will be ordered only when it is necessary to secure or maintain uniformity of Board decisions, or the matter to be referred is one of exceptional importance.

(2) A request for full Board consideration may be made by either party on any date which is both after the panel to which the case is assigned has issued its decision on a motion for reconsideration or relief from decision and within 10 working days after the date on which that party receives that decision. Any party making a request for full Board consideration shall state concisely in the motion the precise grounds on which the request is based.

(3) Promptly after such a request is made, a ballot will be taken among the judges; if a majority of them favors the request, the request will be granted. The result of the vote will promptly be reported by the Board through an order. The concurring or dissenting view of any judge who wishes to express such a view may issue at the time of such order or at any time thereafter.

(b) *Initiation by Board.* A majority of the judges may initiate full Board consideration of a matter at any time while the case is before the Board, no later than the last date on which any party may file a motion for reconsideration or relief from decision or order, or if such a motion is filed by a party, within ten days after a panel has resolved it. The parties will be informed promptly, through an order, of the matter to be considered by the full Board. The concurring or dissenting view of any judge who wishes to express such a view may issue at the time of such order or at any time thereafter.

(c) *Decisions.* If full Board consideration is granted at the request of a party or initiated by the Board, a vote shall be taken promptly on the pending matter. After this vote is taken, the Board shall promptly, by order, issue its determination, which shall include the concurring or dissenting view of any judge who wishes to express such a view.

(d) *Effect of motion.* A pending request for full Board consideration, whether initiated by a party or by the Board, does not affect the finality of a decision or suspend its operation.

### 6101.29 Clerical mistakes; harmless error [Rule 29].

(a) *Clerical mistakes.* Clerical mistakes in decisions, orders, or other parts of the record, and errors arising therein through oversight or inadvertence, may be corrected by the Board at any time on its own initiative or upon motion of a party on such terms, if any, as the Board may prescribe. During the pendency of an appeal to another tribunal, such mistakes may be corrected only with leave of the appellate tribunal.

(b) *Harmless error.* No error in the admission or exclusion of evidence, and no error or defect in any ruling, order, or decision of the Board, and no other error in anything done or not done by the Board will be a ground for granting a new hearing or for vacating, reconsidering, modifying, or otherwise disturbing a decision or order of the Board unless refusal to act upon such error will prejudice a party or work a substantial injustice. At every stage of the proceedings the Board will disregard any error or defect that does not affect the substantial rights of the parties.

### 6101.30 Award of fees and other expenses [Rule 30].

(a) *Applications for fees and other expenses.* An appropriate party in a proceeding before the Board may apply for an award of fees and other expenses, including if applicable an award of attorney fees, under the Equal Access to Justice Act, 5 U.S.C. 504, or any other provision that may entitle that party to such an award, subsequent to the Board's decision in the proceeding. Until it issues a decision, the Board

will not consider a request for fees and other expenses.

(b) *Time for filing*. A party seeking an award may submit an application no later than 30 calendar days after a final disposition in the underlying appeal. The Board's decision becomes final (for purposes of 6101.30 [Rule 30]) when it is not appealed to the United States Court of Appeals for the Federal Circuit within the time permitted for appeal or, if the decision is appealed, when the time for petitioning the Supreme Court for certiorari has expired. An application for fees or other expenses may not be filed before the Board's decision is final; a request for fees or other expenses made before the Board's decision is final does not constitute an application.

(c) *Application requirements*. An application for fees and other expenses shall:

(1) Identify the applicant and the appeal for which fees and other expenses are sought, and the amount being sought;

(2) Establish that all applicable prerequisites for an award have been satisfied, including a succinct statement of why the applicant is eligible for an award of fees and other expenses;

(3) Be accompanied by an exhibit fully documenting any fees or expenses being sought, including the cost of any study, analysis, engineering report, test, project, or similar matter. The date and a description of all services rendered or costs incurred shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the particular services performed by specific date, the rate at which each fee has been computed, any expenses for which reimbursement is sought, and the total amount paid or payable by the applicant. Except in exceptional circumstances, all exhibits supporting applications for fees or expenses sought shall be publicly available. The Board may require the applicant to provide vouchers, receipts, or other substantiation for any fees and other expenses claimed and/or to submit to an audit by the Government of the claimed fees and other expenses;

(4) Be signed by the applicant or an authorized officer, employee, or attorney of the applicant;

(5) Contain or be accompanied by a written verification under oath or affirmation, or declaration under penalty of perjury, that the information provided in the application is true and correct;

(6) If the applicant asserts that it is a qualifying small business concern, contain evidence thereof; and

(7) If the application requests reimbursement of attorney fees that exceed the statutory rate, explain why an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies such fees.

(d) *Proceedings*. (1) Within 30 calendar days after receipt by the respondent of an application under 6101.30 (Rule 30), the respondent may file an answer. The answer shall explain in detail any objections to the award requested and set out the legal and factual bases supporting the respondent's position. If the respondent contends that any fees for consultants or expert witnesses for which reimbursement is sought in the application exceed the highest rate of compensation for expert witnesses paid by the agency, the respondent shall include in the answer evidence of such highest rate.

(2) Further proceedings shall be held only by order of the Board and only when necessary for full and fair resolution of the issues arising from the application. Such proceedings shall be minimized to the extent possible and shall not include relitigation of the case on the merits. A request that the Board order further proceedings under 6101.30 (Rule 30) shall describe the disputed issues and explain why additional proceedings are necessary to resolve those issues.

(e) *Decision*. Any award ordered by the Board shall be paid pursuant to 6101.31 (Rule 31).

[72 FR 36795, July 5, 2007, as amended at 73 FR 26952, May 12, 2008]

### 6101.31 Payment of Board awards [Rule 31].

(a) *Generally*. When permitted by law, payment of Board awards may be made in accordance with 31 U.S.C. 1304.

Awards by the Board pursuant to the Equal Access to Justice Act shall be directly payable by the respondent agency over which the applicant has prevailed in the underlying appeal.

(b) *Conditions for payment.* Before a party may obtain payment of a Board award pursuant to 31 U.S.C. 1304, one of the following must occur:

(1) Both parties must, by execution of a Certificate of Finality, waive their rights to relief under 6101.26 and 6101.27 (Rules 26 and 27) and also their rights to appeal the decision of the Board; or

(2) The time for filing an appeal must expire.

(c) *Procedure.* Whenever the Board issues a decision or an order awarding an appellant any amount of money, it will attach to the copy of the decision sent to each party forms such as those contained in the appendix to the rules of this chapter. Unless the appellant files a timely appeal from the decision, the appellant will complete the Certificate of Finality, sign it, and forward it to the person or persons who entered an appearance in the appeal on behalf of the respondent. Upon receipt of a completed and executed Certificate of Finality, unless the respondent files a timely appeal from the decision, the person or persons who entered an appearance in the appeal on behalf of the respondent will promptly transmit the appellant's Certificate of Finality, along with a certified copy of the Board's decision and any other necessary documentation, to the United States Department of the Treasury for payment.

[72 FR 36795, July 5, 2007, as amended at 73 FR 26952, May 12, 2008]

### 6101.32 Appeal from a Board decision [Rule 32].

(a) *Record on review.* When a party has appealed a Board decision to the United States Court of Appeals for the Federal Circuit, the record on review shall consist of the decision sought to be reviewed, the record before the Board as described in 6101.9(a)(1) through (a)(13) (Rule 9(a)(1) through (a)(13)), and such other material contained in the Board's file as may be required by the Court of Appeals.

(b) *Notice.* At the same time a party seeking review of a Board decision files a notice of appeal, that party shall provide a copy of the notice to the Board.

(c) *Filing of certified list of record materials.* Promptly after service upon the Board of a copy of the notice of appeal of a Board decision, the Office of the Clerk of the Board shall file with the Clerk of the United States Court of Appeals for the Federal Circuit a certified list of all documents, transcripts of testimony, exhibits, and other materials constituting the record, or a list of such parts thereof as the parties may designate, adequately describing each. The Board will retain the record and transmit any part thereof to the Court upon the Court's order during the pendency of the appeal.

(d) *Request by attorney of record to review record.* When a case is on appeal, an attorney of record may request permission from the Board to sign out for a reasonable period of time the record on appeal to review and to copy if the attorney is unable to gain access to the record from another source.

### 6101.33 Ex parte contact; sanctions and other proceedings [Rule 33].

(a) *Standards.* All parties and their representatives, attorneys, and any expert/consultant retained by them or their attorneys, must obey directions and orders prescribed by the Board and adhere to standards of conduct applicable to such parties and persons. As to an attorney, the standards include the rules of professional conduct and ethics of the jurisdictions in which that attorney is licensed to practice, to the extent that those rules are relevant to conduct affecting the integrity of the Board, its process, or its proceedings. The Board will also look to voluntary professional guidelines in evaluating an individual's conduct.

(b) *Ex parte communications.* No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, without the knowledge and consent of the adverse party, regarding any matter at issue in that appeal. This provision does not apply to consultation among Board

members or to ex parte communications concerning the Board's administrative functions or procedures.

(c) *Sanctions.* When a party or its representative or attorney or any expert/consultant fails to comply with any direction or order issued by the Board (including an order to provide or permit discovery), or engages in misconduct affecting the Board, its process, or its proceedings, the Board may make such orders as are just, including the imposition of appropriate sanctions. The sanctions may include:

(1) Taking the facts pertaining to the matter in dispute to be established for the purpose of the case in accordance with the contention of the party submitting the discovery request;

(2) Forbidding challenge of the accuracy of any evidence;

(3) Refusing to allow the disobedient party to support or oppose designated claims or defenses;

(4) Prohibiting the disobedient party from introducing in evidence designated documents or items of testimony;

(5) Striking pleadings or parts thereof, or staying further proceedings until the order is obeyed;

(6) Dismissing the case or any part thereof;

(7) Enforcing the protective order and disciplining individuals subject to such order for violation thereof, including disqualifying a party's representative, attorney, or expert/consultant from further participation in the case; or

(8) Imposing such other sanctions as the Board deems appropriate.

(d) *Denial of access to protected material for prior violations of protective orders.* The Board may in its discretion deny access to protected material to any person found to have previously violated a protective order, regardless of who issued the order.

(e) *Disciplinary proceedings.* (1) In addition to the procedures in this section 6101.33 (Rule 33), the Board may discipline individual party representatives, attorneys, and experts/consultants for a violation of any Board order or direction or standard of conduct applicable to such individual where the violation seriously affects the integrity of the Board, its process, or its proceedings. Sanctions may be public or private, and may include admonishment, disqualification from a particular matter, referral to an appropriate licensing authority, or such other action as circumstances may warrant.

(2) The Board in its discretion may suspend an individual from appearing before the Board as a party representative, attorney, or expert/consultant if, after affording such individual notice and an opportunity to be heard, a majority of the members of the full Board determines such a sanction is warranted.

### 6101.34 Seal of the Board [Rule 34].

The Seal of the Board shall be a circular boss, the outer margin of which shall bear the legend ''Civilian Board of Contract Appeals.'' The Seal shall be the means of authentication of all records, notices, orders, dismissals, opinions, subpoenas, and certificates issued by the Board.

### 6101.35–6101.50 [Reserved]

### 6101.51 Variation from standard proceedings [Rule 51].

The ultimate purpose of any Board proceeding is to resolve fairly and expeditiously any dispute properly before the Board. When, during the normal course of a Board proceeding, the parties agree that a change in established procedure will promote this purpose, the Board will make that change if it is deemed to be feasible and in the best interest of the parties, the Board, and the resolution of the issue(s) in controversy. Although any party may ask the Board to vary from standard proceedings, individuals and small businesses may find such variations to be especially useful. The following are examples of these changes:

(a) Establishing an expedited schedule of proceedings, such as by limiting the times provided in 6101.1 through 6101.34 (Rules 1 through 34) for various filings, to facilitate a prompt resolution of the case;

(b) Developing a record and rendering a decision on the issue of entitlement prior to reviewing the issue of quantum in a party's claim;

(c) Developing a record and rendering a decision on any legal or factual issue

in advance of others when that issue is deemed critical to resolving the case or effecting a settlement of any items in dispute; and

(d) Developing a record regarding relevant facts through an on-the-record round-table discussion with sworn witnesses, counsel, and the presiding judge rather than through formal direct and cross-examination of each of these same witnesses. This discussion shall be controlled by the presiding judge. It may be conducted, for example, through the presentation of narrative statements of witnesses or on an issue by issue basis. The presiding judge may also request that the parties' counsel or representatives present opening and/or closing statements in lieu of written briefs.

[72 FR 36795, July 5, 2007, as amended at 73 FR 26952, May 12, 2008]

### 6101.52 Small claims procedure [Rule 52].

(a) *Election.* (1) The small claims procedure is available solely at the appellant's election. Such election shall be made no later than 30 calendar days after the appellant's receipt of the agency answer, unless the presiding judge enlarges the time for good cause shown. The appellant may elect this procedure when:

(i) There is a monetary amount in dispute and that amount is $50,000 or less, or

(ii)(A) There is a monetary amount in dispute and that amount is $150,000 or less, and

(B) The appellant is a small business concern (as that term is defined in the Small Business Act and regulations promulgated under that Act).

(2) At the request of the respondent, or on its own initiative, the Board may determine whether the amount in dispute and/or the appellant's status makes the election inappropriate. The respondent shall raise any objection to the election no later than 10 working days after receipt of a notice of election.

(b) *Decision.* The presiding judge may issue a decision, which may be in summary form, orally or in writing. A decision which is issued orally shall be reduced to writing; however, such a decision takes effect at the time it is rendered, prior to being reduced to writing. A decision shall be final and conclusive and shall not be set aside except in case of fraud. A decision shall have no value as precedent.

(c) *Procedure.* Promptly after receipt of the appellant's election of the small claims procedure, the Board shall establish a schedule of proceedings that will allow for the timely resolution of the appeal. Pleadings, discovery, and other prehearing activities may be restricted or eliminated.

(d) *Time of decision.* Whenever possible, the presiding judge shall resolve an appeal under this procedure within 120 calendar days from the Board's receipt of the election. The time for processing an appeal under this procedure may be extended if the appellant has not adhered to the established schedule. Either party's failure to abide by the Board's schedule may result in the Board drawing evidentiary inferences adverse to the party at fault.

[72 FR 36795, July 5, 2007, as amended at 73 FR 26952, May 12, 2008]

### 6101.53 Accelerated procedure [Rule 53].

(a) *Election.* (1) The accelerated procedure is available solely at the appellant's election, and only when there is a monetary amount in dispute and that amount is $100,000 or less. Such election shall be made no later than 30 calendar days after the appellant's receipt of the agency answer, unless the presiding judge enlarges the time for good cause shown.

(2) At the request of the respondent, or on its own initiative, the Board may determine whether the amount in dispute is greater than $100,000, such that the election is inappropriate. The respondent shall raise any objection to the election no later than 10 working days after receipt of a notice of election.

(b) *Decision.* Each decision shall be rendered by the presiding judge with the concurrence of one of the other judges assigned to the panel; in the event the two judges disagree, the third judge assigned to the panel will participate in the decision.

(c) *Procedure.* Promptly after receipt of the appellant's election of the accelerated procedure, the Board shall establish a schedule of proceedings that will allow for the timely resolution of the appeal. Pleadings may be simplified, and discovery and other prehearing activities may be restricted or eliminated.

(d) *Time of decision.* Whenever possible, the Board shall resolve an appeal under this procedure within 180 calendar days from the Board's receipt of the election. The time for processing an appeal under this procedure may be extended if the appellant has not adhered to the established schedule. Either party's failure to abide by the Board's schedule may result in the Board drawing evidentiary inferences adverse to the party at fault.

[72 FR 36795, July 5, 2007, as amended at 73 FR 26952, May 12, 2008]

### 6101.54 Alternative dispute resolution [Rule 54].

(a) *Availability of alternative dispute resolution (ADR) procedures at the Board.* The Board will make its services available for ADR proceedings to help resolve issues in controversy and claims involving procurements, contracts (including interagency agreements), and grants. The use of ADR will not toll any relevant statutory time limitations.

(1) *Matters not on Board's Contract Disputes Act (CDA) docket.* Upon request, the Board will make an ADR Neutral available for an ADR proceeding, even if a contracting officer's decision has not been issued or is not contemplated. To initiate an ADR proceeding for all matters other than docketed CDA appeals, the parties shall jointly request ADR in writing and direct such a request to the Board Chairman. For agencies whose issues in controversy do not fall within the Board's jurisdiction, the Board may provide ADR services on a reimbursable basis.

(2) *Docketed CDA appeals.* Parties are encouraged to consider the advantages of using ADR techniques at any stage of an appeal. Joint requests for ADR services for docketed appeals should be addressed to the Board Chairman, with a copy to the presiding judge. ADR may be used concurrently with standard litigation proceedings such as the filing of pleadings and discovery, or the presiding judge may suspend such proceedings for a reasonable period of time while the parties attempt to resolve the appeal using ADR.

(b) *Conduct of ADR*—(1) *Selection of ADR Neutral.* The parties may ask the Board Chairman to appoint a judge(s) to serve as the ADR Neutral(s). If desired, the parties may request the appointment of a particular judge(s). In a docketed appeal, the parties may also request that the presiding judge serve as the ADR Neutral for the ADR proceeding. If the parties elect a non-binding ADR procedure and the implementation of the procedure does not result in a settlement, where the procedure has involved *ex parte* contact, the ADR Neutral may retain the case for adjudication as the presiding judge, but only if the parties and the presiding judge all agree to such retention. If the procedure has not involved ex parte contact, the ADR Neutral, after considering the parties' views, may retain the case as the presiding judge at his/her discretion.

(2) *The ADR agreement.* Before an ADR proceeding can occur, the parties must execute a written ADR agreement. This agreement should set forth, among other things, the identity of the ADR Neutral to be used, the role and authority of the Neutral, the ADR techniques to be employed, the scope and extent of any discovery relating to ADR, the location and schedule for the ADR proceeding, and the extent to which dispute resolution communications in conjunction with the ADR proceeding are to be kept confidential (6101.54(b)(3) (Rule 54(b)(3))).

(3) *Confidentiality of ADR communications and materials.* Written material prepared specifically for use in an ADR proceeding, oral presentations made at an ADR proceeding, and all discussions in connection with such proceedings are considered ''dispute resolution communications'' as defined in 5 U.S.C. 571(5) and are subject to the confidentiality requirements of 5 U.S.C. 574. Unless otherwise specifically agreed by

the parties, confidential dispute resolution communications shall be inadmissible as evidence in any pending or future Board proceeding involving the parties or the issue in controversy which is the subject of the ADR proceeding. However, evidence otherwise admissible before the Board is not rendered inadmissible because of its use in an ADR proceeding. The Board will not retain written materials used in an ADR proceeding after the proceeding is concluded or otherwise terminated. Parties may request a protective order in an ADR proceeding in the manner provided in 6101.9(c) (Rule 9(c)).

(c) *Types of ADR.* ADR is not defined by any single procedure or set of procedures. Board judges, when engaged as ADR Neutrals, most commonly use a combination of facilitative and evaluative mediation approaches, as explained in paragraphs (c)(1) through (c)(7) of this section. However, the Board will consider the use of any ADR technique or combination of techniques proposed by the parties in their ADR agreement which is deemed to be fair, reasonable, and in the best interest of the parties, the Board, and the resolution of the issue(s) in controversy. The following are descriptions of some available techniques:

(1) *Facilitative mediation.* Facilitative mediations usually begin with a joint session, where the parties each make informal presentations to one another and the ADR Neutral regarding the facts and circumstances giving rise to the issues in controversy as well as an explanation of their respective legal positions. The ADR Neutral, as a mediator, aids the parties in settling their dispute, frequently by meeting with each party separately in confidential sessions and engaging in ex parte discussions with each of the parties, for the purpose of facilitating the formulation and transmission of settlement offers.

(2) *Evaluative mediation.* In addition to engaging in facilitative mediation, if authorized under the terms of the parties' ADR agreement, the ADR Neutral may also discuss informally the strengths and weaknesses of the parties' respective positions in either joint sessions or confidential sessions.

(3) *Mini-trial.* The parties make abbreviated presentations to an ADR Neutral who sits with the parties' designated principal representatives as a mini-trial panel to hear and evaluate evidence relating to an issue in controversy. The ADR Neutral may thereafter meet with the principal representatives to attempt to mediate a settlement. The mini-trial process may also be a prelude to the Neutral's provision of a non-binding advisory opinion (6101.54(c)(4) (Rule 54(c)(4))) or to the Neutral's rendering of a binding decision (6101.54(c)(5) (Rule 54(c)(5))).

(4) *Non-binding advisory opinion.* The parties present to the ADR Neutral information upon which the Neutral bases a non-binding, advisory opinion regarding the merits of the dispute. The opinion may be delivered to the parties jointly, either orally or in writing. The manner in which the information is presented will vary, depending upon the circumstances of the dispute and the terms of the parties' ADR agreement. Presentations may range from an informal proffer of evidence together with limited argument from the parties, to a more formal presentation, with oral testimony, exchange of documentary evidence, and argument from counsel.

(5) *Summary binding decision.* This is a binding ADR procedure similar to binding arbitration under which, by prior agreement of the parties, the ADR Neutral renders a brief written decision which is binding, non-precedential, and non-appealable. As in a procedure under which the Neutral provides a non-binding advisory opinion, the manner in which information is presented for a summary binding decision may vary depending on the circumstances of the particular dispute and the wishes of the parties as set out in their ADR agreement.

(6) *Other procedures.* In addition to other ADR techniques, including modifications to those listed in paragraphs (c)(1) through (c)(5) of this section, the parties may use ADR neutrals outside the Board and techniques which do not require direct Board involvement.

(7) *Selective use of standard procedures.* Parties considering ADR proceedings are encouraged to adapt for their purposes any provisions in 6101.1 through

6101.34 (Rules 1 through 34) of the Board's rules which they believe will be useful.

## APPENDIX TO PART 6101—FORM NOS. 1–5

FORM 1, GSA FORM 2465, NOTICE OF APPEAL.

| NOTICE OF APPEAL | DATE | OMB APPROVAL NO. 3090-0221 |
|---|---|---|

TO: Civilian Board of Contract Appeals

I/We hereby appeal the final decision of _____ (Name of Contracting Officer) issued _____ (Date),

in connection with a dispute under Contract No. _____. This contract was awarded _____ (Date)

for _____ (Type of commodity, service, or construction)

by _____ (Name of agency and organizational unit), _____ (City and State)

1. DESCRIBE THE NATURE OF THE DISPUTE INVOLVED IN THE FINAL DECISION AND ANY OTHER CIRCUMSTANCES GIVING RISE TO THIS APPEAL:

2. DESCRIBE THE RELIEF WHICH YOU SEEK INCLUDING AN ESTIMATE OF THE AMOUNT OF MONEY IN CONTROVERSY, IF ANY, AND IF KNOWN:

| APPELLANT | | | ATTORNEY FOR APPELLANT | | |
|---|---|---|---|---|---|
| NAME | | | NAME | | |
| TITLE | | | FIRM | | |
| STREET | | | STREET | | |
| CITY | | | CITY | | |
| STATE | ZIP CODE | TELEPHONE NUMBER ( ) | STATE | ZIP CODE | TELEPHONE NUMBER ( ) |
| APPELLANT'S SIGNATURE | | | ATTORNEY'S SIGNATURE | | |

**GENERAL SERVICES ADMINISTRATION**
**AUTHORIZED FOR LOCAL REPRODUCTION**
**PREVIOUS EDITION NOT USABLE**

**GSA 2465** (REV. 6/2007)

FORM 2, NOTICE OF APPEARANCE.

Form 2

UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

_____ :
_____ : CBCA _____
_____ :
Contract/Solicitation No. :
_____ :

NOTICE OF APPEARANCE

To: _____
Board Judge
Civilian Board of Contract Appeals

Please enter my appearance as counsel for / representative of _____

_____ in the above captioned case.

_____ _____
(Name) (Date)

_____ _____
(Title) (Phone)

_____ _____
(Address) (Facsimile)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appearance was mailed postage paid/delivered this _____ day of _____, 20___, to _____.

_____
Signature

Note: This format shall be used only as a guide for individual preparation.
FORM 3, GSA FORM 9534, SUBPOENA.

_____

**Civilian Board of Contract Appeals**

| **SUBPOENA** | **OMB No. 3090-0221**<br>**Expires: 1/31/2007** |
|---|---|

Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Civilian Board of Contract Appeals (G), GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (3090-0221), Washington, DC 20503.

_____ . CBCA _____

_____ .

_____ .

.

Contract/Solicitation No. .

.

_____ .

TO: _____

_____

_____

YOU ARE HEREBY COMMANDED to appear at _____ _____
*(Room Number)* *(Building)*

_____
*(Street Number)* *(City)* *(State)*

at _____ o'clock am/pm *(circle one)* on the _____ day of _____ , _____ ,
*(Year)*

to testify at a (deposition/hearing) in this case; and to bring with you* _____

_____

_____

_____

and to stay there until given permission to leave. This subpoena is issued at the request of *(circle one)* (Appellant/Petitioner/Applicant/Respondent).

Your appearance as ordered by this subpoena will entitle you to receive the fees and mileage provided by 28 U.S.C. § 1821 or other applicable law.

** Strike the words "and to bring with you" unless the subpoena is to require the production of documents or tangible things, in which case the documents and things should be designated in the blank space provided for that purpose. If testimony by an organization representative or designee is requested, describe with reasonable particularity the matters on which examination is requested.*

**GENERAL SERVICES ADMINISTRATION** **GSA 9534** (REV. 6/2007)
**AUTHORIZED FOR LOCAL REPRODUCTION**
**PREVIOUS EDITION NOT USABLE**

Upon written request to this Board by you or by a party to this case, which request should be made within 10 days after service but in any event no later than the time specified in the subpoena for attendance, the Board may (i) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (ii) require the party in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books, papers, documents, or tangible things.

_____ (Board Judge)

_____ (Date)

_____ (Representative for Appellant/Petitioner/Applicant)

_____ (Representative for Respondent)

_____ (Date Signed)

_____ (Date Signed)

_____ (Name of Firm)

_____ (Agency)

_____ (Street Address)

_____ (Street Address)

_____ (City, State, Zip Code)

_____ (City, State, Zip Code)

_____ (Telephone Number)

_____ (Telephone Number)

**RETURN ON SERVICE**

Summoned the above named witness by delivering a copy to him/her *(circle one)* and tendering to him/her *(circle one)* the fees for one day's attendance and mileage allowed by law, on the _____ day of _____, _____ (Year), at _____ (Address).

_____ (Deliverer) _____ (Date Signed)

Subscribed and sworn to before me, a _____ this _____ day of _____, _____ (Year).

_____ (Notary Public)

NOTE: Affidavit not required if service is made by U.S. Marshal or Deputy. Service may also be made by any other person who is not a party and is not less than 18 years of age. Service shall be made by personally delivering a copy to the person named and tendering the fees for one day's attendance and the mileage allowed by law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

**GSA 9534** (REV. 6/2007) **BACK**

FORM 4, GOVERNMENT CERTIFICATE OF FINALITY.

Form 4

UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

_____ :
_____ : CBCA _____
_____ :
Contract/Solicitation No. :
_____ :

GOVERNMENT CERTIFICATE OF FINALITY

A. Date claim(s) filed with the contracting officer:

B. Amount to be paid: $ _____.

C. Agency address (regional office if other than central office):

D. Agency Certification

_____ hereby certifies that:

(1) it has not initiated and will not initiate any proceeding at the Board for the reconsideration of, or relief from, this award;

(2) it has not initiated and will not initiate any appeal of this award to the United States Court of Appeals for the Federal Circuit.

Government Agency

_____ By _____
Date Signature and Title

Note: This format shall be used only as a guide for individual preparation.

FORM 5, APPELLANT/APPLICANT CERTIFICATE OF FINALITY.

Form 5

UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

_____ :
_____ : CBCA _____
_____ :
Contract/Solicitation No. :
_____ :

APPELLANT/APPLICANT CERTIFICATE OF FINALITY

A. Address to which check should be sent (if check is to be sent to counsel, enclose a power of attorney):

B. Appellant/Applicant Certification

_____ hereby certifies that:

(1) it has not initiated and will not initiate any proceeding at the Board for the reconsideration of, or relief from, this award;

(2) it has not initiated and will not initiate any appeal of this award to the United States Court of Appeals for the Federal Circuit; and

(3) it agrees to accept the amount awarded, plus any interest awarded, in accordance with the Board's decision in this case, in full and final satisfaction of its case.

Appellant/Applicant

_____ By _____
Date Signature and Title

Note: This format shall be used only as a guide for individual preparation.

# PART 6102—CROP INSURANCE CASES

Sec.
6102.201 Scope of rules [Rule 201].
6102.202 Rules for crop insurance cases [Rule 202].

AUTHORITY: 7 U.S.C. 1501 et seq.; 41 U.S.C. 438(c)(2).

SOURCE: 72 FR 36816, July 5, 2007, unless otherwise noted.

### 6102.201 Scope of rules [Rule 201].

These procedures govern the Board's resolution of disputes between insurance companies and the Department of Agriculture's Risk Management Agency (RMA) involving actions of the Federal Crop Insurance Corporation (FCIC). Prior to the creation of this Board, the Department of Agriculture Board of Contract Appeals resolved this variety of dispute pursuant to statute, 7 U.S.C. 1501 et seq. (the Federal Crop Insurance Act), and regulation, 7 CFR 24.4(b) and 400.169. The Board has this authority under an agreement with the Secretary of Agriculture, as permitted under section 42(c)(2) of the Office of Federal Procurement Policy Act, 41 U.S.C. 438(c)(2).

### 6102.202 Rules for crop insurance cases [Rule 202].

The rules of procedure for these cases are the same as the rules of procedure for Contract Disputes Act appeals, with these exceptions:

(a) *Rule 1.* (1) In 6101.1(b)(1) (Rule 1(b)(1)), the term ''appeal'' means a dispute between an insurance company that is a party to a Standard Reinsurance Agreement (or other reinsurance agreement) and the RMA, and the term ''appellant'' means the insurance company filing an appeal.

(2) In 6101.1(b)(5)(i) (Rule 1(b)(5)(i)), a notice of appeal is filed upon its receipt by the Office of the Clerk of the Board, not when it is mailed.

(3) Section 6101.1(b)(7) (Rule 1(b)(7)) does not apply to FCIC cases.

(b) *Rule 2.* (1) Section 6101.2(a)(1)(i) (Rule 2(a)(1)(i)) is replaced with the following for FCIC cases: A notice of appeal shall be in writing and shall be signed by the appellant or by the appellant's attorney or authorized representative. If the appeal is from a determination by the Deputy Administrator of Insurance Services regarding an action alleged not to be in accordance with the provisions of a Standard Reinsurance Agreement (or other reinsurance agreement), or if the appeal is from a determination by the Deputy Administrator of Compliance concerning a determination regarding a compliance matter, the notice of appeal should describe the determination in enough detail to enable the Board to differentiate that decision from any other; the appellant can satisfy this requirement by attaching to the notice of appeal a copy of the Deputy Administrator's determination. If an appeal is taken from the failure of the Deputy Administrator to make a timely determination (see 6101.2(b)(1)(ii) (Rule 2(b)(1)(ii))), the notice of appeal should describe in detail the matter that the Deputy Administrator has failed to determine; the appellant can satisfy this requirement by attaching to the notice of appeal a copy of the written request for a determination it sent to the Deputy Administrator.

(2) In 6101.2(a)(1)(ii) and (iii) (Rule 2(a)(1)(ii) and (iii)), the references to ''contracting officer'' are references to ''Deputy Administrator.''

(3) Section 6101.2(a)(2) (Rule 2(a)(2)) does not apply to FCIC cases.

(4) In 6101.2(b)(1)(i) (Rule 2(b)(1)(i)), an appeal from a determination of a Deputy Administrator shall be filed no later than 90 calendar days after the date the appellant receives that determination. The Board is authorized to resolve only those appeals that are timely filed.

(5) In 6101.2(b)(1)(ii) (Rule 2(b)(1)(ii)), an appeal may be filed with the Board if the Deputy Administrator fails or refuses to issue a determination within 90 days after the appellant submits a request for a determination.

(c) *Rule 4.* (1) In 6101.4 (Rule 4), the references to ''contracting officer'' are references to ''Deputy Administrator.''

(2) In 6101.4(a), paragraphs (1) through (7) (Rule 4(a), paragraphs (1) through (7)), describing materials included in the appeal file, are replaced by the following:

(i) The determination of the Deputy Administrator that is the subject of the dispute;

(ii) The reinsurance agreement (with amendments or modifications) at issue in the dispute;

(iii) Pertinent correspondence between the parties that is relevant to the dispute, including prior administrative determinations and related submissions;

(iv) Documents and other tangible materials on which the Deputy Administrator relied in making the underlying determination; and

(v) Any additional material pertinent to the authority of the Board or the resolution of the dispute.

(3) The following subsection is added to 6101.4 (Rule 4): Media on which appeal file is to be submitted. All appeal file submissions, including the index, shall be submitted in two forms: paper and in a text or .pdf format submitted on a compact disk. Each compact disk shall be labeled with the name and docket number of the case. The judge may delay the submission of the compact disk copy of the appeal file until the close of the evidentiary record.

(d) *Rule 5.* In 6101.5(a)(2) (Rule 5(a)(2)), the references to ''contracting officer'' are references to ''Deputy Administrator.''

(e) *Rule 6.* In 6101.6(d) (Rule 6(d)) does not apply to FCIC cases.

(f) *Rule 12.* In 6101.12(a) (Rule 12(a)), the references to ''contracting officer'' are references to ''Deputy Administrator.''

(g) *Rule 15.* In 6101.15(d) (Rule 15(d)), the final sentence does not apply to FCIC cases.

(h) *Rule 16.* In 6101.16(b) through (h) (Rule 16(b) through (h)) do not apply to FCIC cases. Instead, upon the written request of any party filed with the Office of the Clerk of the Board, or upon the initiative of a judge, a judge is authorized by delegation from the Secretary of Agriculture to request the appropriate United States Attorney to apply to the appropriate United States District Court for the issuance of subpoenas pursuant to 5 U.S.C. 304.

(i) *Rule 21.* (1) In 6101.21(f) (Rule 21(f)), the final sentence does not apply to FCIC cases.

(2) In 6101.21(g) (Rule 21(g)), the final sentence does not apply to FCIC cases.

(j) *Rule 25.* In 6101.25(a) (Rule 25(a)), the initial phrase, ''Except as provided in 6101.52 (Rule 52) (small claims procedure),'' does not apply to FCIC cases.

(k) *Rule 32.* In 6101.32(a) through (c) (Rule 32(a) through (c)) are replaced with the following for FCIC cases:

(1) *Finality of Board decision.* A decision of the Board is a final administrative decision.

(2) *Appeal permitted.* An appellant may file suit in the appropriate United States District Court to challenge the Board's decision. An appellant which files such a suit shall provide the Board with a copy of the complaint.

(l) *Rule 52.* 6101.52 (Rule 52) does not apply to FCIC cases.

(m) *Rule 53.* 6101.53 (Rule 53) does not apply to FCIC cases.

# PART 6103—TRANSPORTATION RATE CASES

Sec.

6103.301 Scope [Rule 301].
6103.302 Filing claims [Rule 302].
6103.303 Responses to claims [Rule 303].
6103.304 Reply to the audit division and agency responses [Rule 304].
6103.305 Proceedings [Rule 305].
6103.306 Decisions [Rule 306].
6103.307 Reconsideration of Board decision [Rule 307].
6103.308 Payment of successful claims [Rule 308].

AUTHORITY: 31 U.S.C. 3726(i)(1); 41 U.S.C. 7101–7109; Sec. 201(o), Pub. L. 104–316, 110 Stat. 3826.

SOURCE: 72 FR 36816, July 5, 2007, unless otherwise noted.

## 6103.301 Scope [Rule 301].

(a) *Authority.* 31 U.S.C. 3726(i)(1) provides that a carrier or freight forwarder may request the Administrator of General Services to review an action taken by the Audit Division of the General Services Administration's Office of Transportation and Property Management (the Audit Division). The Administrator has redelegated those functions to the Civilian Board of Contract Appeals.

(b) *Type of claim; review of claim.* These procedures are applicable to the review of claims made by a carrier or freight forwarder pursuant to 31 U.S.C. 3726(i)(1). The Board will issue the final agency decision on a claim based on the information submitted by the claimant, the Audit Division, and the department or agency (the agency) for which the services were provided. The burden is on the claimant to establish the timeliness of its claim, the liability of the agency, and the claimant's right to payment.

### 6103.302 Filing claims [Rule 302].

(a) *Form.* A claim shall be in writing and must be signed by the claimant or by the claimant's attorney or authorized representative. No particular form is required. The request should describe the basis for the claim and state the amount sought. The request should also include—

(1) The name, address, telephone number, facsimile machine number, and e-mail address, if available, of the claimant;

(2) The Government bill of lading or Government transportation request number;

(3) The claimant's bill number;

(4) The Government voucher number and date of payment;

(5) The Audit Division claim number;

(6) The agency for which the services were provided; and

(7) Any other identifying information.

(b) *When and where claims are filed.* A claim is filed when it is received by the Office of the Clerk of the Board during the Board's working hours. The Board's mailing address is: 1800 F Street, NW, Washington, DC 20405. The Board is located at: 1800 M Street, NW, 6th Floor, Washington, DC 20036. The Clerk's telephone number is: (202) 606–8800. The Clerk's facsimile machine number is: (202) 606–0019. The Clerk's e-mail address for receipt of filings is: *cbca.efile@cbca.gov*. The Board's working hours are 8:00 a.m. to 4:30 p.m., Eastern Time, on each day other than a Saturday, Sunday, or federal holiday.

(c) *Notice of docketing.* A claim will be docketed by the Office of the Clerk of the Board, and a written notice of docketing will be sent promptly to the claimant, the Director of the Audit Division, and the agency for which the services were provided. The notice of docketing will identify the judge to whom the claim has been assigned.

(d) *Service of copy.* The claimant shall send to the Audit Division and the agency identified in paragraph (a)(6) of this section copies of all material provided to the Board. All submissions to the Board by a claimant shall indicate that a copy has been provided to the Audit Division and the agency.

[72 FR 36816, July 5, 2007, as amended at 76 FR 50928, Aug. 17, 2011]

### 6103.303 Responses to claims [Rule 303].

(a) *Content of responses.* Within 30 calendar days after docketing by the Board (or within 60 calendar days after docketing if the agency office for which the services were provided is located outside the 50 states and the District of Columbia), the Audit Division and the agency for which the services were provided shall each submit to the Board:

(1) A simple, concise, and direct statement of its response to the claim;

(2) Citations to applicable statutes, regulations, and cases; and

(3) Any additional information deemed necessary to the Board's review of the claim.

(b) *Service of copy.* All responses submitted to the Board shall indicate that a copy has been sent to the claimant and to the Audit Division or the agency, as appropriate. To expedite proceedings, if either the Audit Division or the agency will not file a response (e.g., it believes its reasons for denying the claim were sufficiently explained in the material filed by the claimant), it should notify the Board, the claimant, and the Audit Division or the agency, as appropriate, that it does not intend to file a response.

### 6103.304 Reply to the audit division and agency responses [Rule 304].

A claimant may file with the Board and serve on the Audit Division and the agency a reply to the Audit Division and agency responses within 30 calendar days after receiving the responses (or within 60 calendar days after receiving the responses, if the claimant is located outside the 50 states and the District of Columbia). To expedite proceedings, if the claimant does not wish to respond, the claimant should so notify the Board, the Audit Division, and the agency.

### 6103.305 Proceedings [Rule 305].

(a) *Requests for additional time.* The claimant, the Audit Division, or the agency may request additional time to make any filing.

(b) *Conferences.* The judge will not engage in *ex parte* communications involving the underlying facts or merits

of the claim. The judge may hold a conference with the claimant, the Audit Division, and the agency at any time, for any purpose. The judge may provide the participants a memorandum reflecting the results of a conference.

(c) *Submissions.* The judge may require the submission of additional information at any time. The claimant, the Audit Division, or the agency may request an opportunity to make additional submissions; however, no such submission may be made unless authorized by the judge.

### 6103.306 Decisions [Rule 306].

The judge will issue a written decision based upon the record, which includes submissions by the claimant, the Audit Division, and the agency, and information provided during conferences. The claimant, the Audit Division, and the agency will each be furnished a copy of the decision by the Office of the Clerk of the Board. In addition, all Board decisions are posted weekly on the Internet. The Board's Internet address is: *http://www.cbca.gov.*

[72 FR 36816, July 5, 2007, as amended at 76 FR 50928, Aug. 17, 2011]

### 6103.307 Reconsideration of Board decision [Rule 307].

A request for reconsideration may be made by the claimant, the Audit Division, or the agency. Such requests must be received by the Board within 30 calendar days after the date the decision was issued (or within 60 calendar days after the date the decision was issued, if the claimant or agency office making the request is located outside the 50 states and the District of Columbia). The request for reconsideration should state the reasons why the Board should consider the request. Mere disagreement with a decision or re-argument of points already made is not a sufficient ground for seeking reconsideration.

### 6103.308 Payment of successful claims [Rule 308].

The agency for which the services were provided shall pay amounts the Board determines are due the claimant.

## PART 6104—TRAVEL AND RELOCATION EXPENSES CASES

Sec.
6104.401 Scope [Rule 401].
6104.402 Filing claims [Rule 402].
6104.403 Response to claim [Rule 403].
6104.404 Reply to agency response [Rule 404].
6104.405 Proceedings [Rule 405].
6104.406 Decisions [Rule 406].
6104.407 Reconsideration of Board decision [Rule 407].
6104.408 Payment of successful claims [Rule 408].

AUTHORITY: Secs. 202(n), 204, Pub. L. 104–316, 110 Stat. 3826; Sec. 211, Pub. L. 104–53, 109 Stat. 535; 31 U.S.C. 3702; 41 U.S.C. 7101–7109.

SOURCE: 72 FR 36817, July 5, 2007, otherwise noted.

### 6104.401 Scope [Rule 401].

(a) *Authority.* These procedures govern the Board's resolution of claims by Federal civilian employees for certain travel or relocation expenses. 31 U.S.C. 3702 vests the authority to settle these claims in the Administrator of General Services, who has redelegated that function to the Civilian Board of Contract Appeals. The requirements contained in 31 U.S.C. 3702, including limitations on the time within which claims may be filed, apply to the Board's review of these claims.

(b) *Types of claims.* These procedures are applicable to the review of two types of claims made against the United States by federal civilian employees:

(1) Claims for reimbursement of expenses incurred while on official temporary duty travel; and

(2) Claims for reimbursement of expenses incurred in connection with relocation to a new duty station.

(c) *Review of claims.* Any claim for entitlement to travel or relocation expenses must first be filed with the claimant's own department or agency (the agency). The agency shall initially adjudicate the claim. A claimant disagreeing with the agency's determination may request review of the claim by the Board. The burden is on the claimant to establish the timeliness of the claim, the liability of the agency, and the claimant's right to payment. The Board will issue the final decision on a claim based on the information

submitted by the claimant and the agency.

**6104.402 Filing claims [Rule 402].**

(a) *Filing claims.* A claim may be sent to the Board in either of the following ways:

(1) *Claim filed by claimant.* A claim shall be in writing and must be signed by the claimant or by the claimant's attorney or authorized representative. No particular form is required. The request should describe the basis for the claim and state the amount sought. The request should also include—

(i) The name, address, telephone number, facsimile machine number, and e-mail address, if available, of the claimant;

(ii) The name, address, telephone number, facsimile machine number, and e-mail address, if available, of the agency employee who denied the claim;

(iii) A copy of the denial of the claim; and

(iv) Any other information which the claimant believes the Board should consider.

(2) *Claim forwarded by agency on behalf of claimant.* If an agency has denied a claim for travel or relocation expenses, it may, at the claimant's request, forward the claim to the Board. The agency shall include the information required by paragraph (a)(1) of this section and by 6104.403 (Rule 403).

(3) *Where claims are filed.* Claims should be filed with the Office of the Clerk of the Board. The Board's mailing address is: 1800 F Street, NW, Washington, DC 20405. The Board is located at: 1800 M Street, NW, 6th Floor, Washington, DC 20036. The Clerk's telephone number is: (202) 606–8800. The Clerk's facsimile machine number is: (202) 606–0019. The Clerk's e-mail address for receipt of filings is: *cbca.efile@cbca.gov.* The Board's working hours are 8:00 a.m. to 4:30 p.m., Eastern Time, on each day other than a Saturday, Sunday, or federal holiday.

(b) *Notice of docketing.* A request for review will be docketed by the Office of the Clerk of the Board. A written notice of docketing will be sent promptly to the claimant and the agency contact. The notice of docketing will identify the judge to whom the claim has been assigned.

(c) *Service of copy.* The claimant shall send to the agency employee identified in paragraph (a)(1)(ii) of this section, or the individual otherwise identified by the agency to handle the claim, copies of all material provided to the Board. If an agency forwards a claim to the Board, it shall, at the same time, send to the claimant a copy of all material sent to the Board. All submissions to the Board shall indicate that a copy has been provided to the claimant or the agency.

[72 FR 36817, July 5, 2007, as amended at 76 FR 50928, Aug. 17, 2011]

**6104.403 Response to claim [Rule 403].**

(a) *Content of response.* When a claim has been filed with the Board by a claimant, within 30 calendar days after docketing by the Board (or within 60 calendar days after docketing, if the agency office involved is located outside the 50 states and the District of Columbia), the agency shall submit to the Board:

(1) A simple, concise, and direct statement of its response to the claim;

(2) Citations to applicable statutes, regulations, and cases; and

(3) Any additional information the agency considers necessary to the Board's review of the claim.

(b) *Service of copy.* A copy of these submissions shall also be sent to the claimant. To expedite proceedings, if the agency believes its reasons for denying the claim were sufficiently explained in the material filed by the claimant, it should notify the Board and the claimant that it does not intend to file a response.

**6104.404 Reply to agency response [Rule 404].**

A claimant may file a reply to the agency response within 30 calendar days after receiving the response (or within 60 calendar days after receiving the response, if the claimant is located outside the 50 states and the District of Columbia). If the claim has been forwarded by the agency, the claimant shall have 30 calendar days from the time the claim is docketed by the Board (or 60 calendar days after docketing, if the claimant is located outside the 50 states and the District of Columbia) to reply. To expedite proceedings,

if the claimant does not wish to reply, the claimant should so notify the Board and the agency.

### 6104.405 Proceedings [Rule 405].

(a) *Requests for additional time.* The claimant or the agency may request additional time to make any filing.

(b) *Conferences.* The judge will not engage in *ex parte* communications involving the underlying facts or merits of the claim. The judge may hold a conference with the claimant and the agency contact, at any time, for any purpose. The judge may provide the participants a memorandum reflecting the results of a conference.

(c) *Additional submissions.* The judge may require the submission of additional information at any time.

### 6104.406 Decisions [Rule 406].

The judge will issue a written decision based upon the record, which includes submissions by the claimant and the agency, and information provided during conferences. The claimant and the agency will each be furnished a copy of the decision by the Office of the Clerk of the Board. In addition, all Board decisions are posted weekly on the Internet. The Board's Internet address is: *http://www.cbca.gov*.

[72 FR 36817, July 5, 2007, as amended at 76 FR 50928, Aug. 17, 2011]

### 6104.407 Reconsideration of Board decision [Rule 407].

A request for reconsideration may be made by the claimant or the agency. Such requests must be received by the Board within 30 calendar days after the date the decision was issued (or within 60 calendar days after the date the decision was issued, if the claimant or the agency office making the request is located outside the 50 states and the District of Columbia). The request for reconsideration should state the reasons why the Board should consider the request. Mere disagreement with a decision or re-argument of points already made is not a sufficient ground for seeking reconsideration.

### 6104.408 Payment of successful claims [Rule 408].

The agency shall pay amounts the Board determines are due the claimant.

## PART 6105—DECISIONS AUTHORIZED UNDER 31 U.S.C. 3529

Sec.

6105.501 Scope [Rule 501].
6105.502 Request for decision [Rule 502].
6105.503 Additional submissions [Rule 503].
6105.504 Proceedings [Rule 504].
6105.505 Decisions [Rule 505].
6105.506 Reconsideration of Board decision [Rule 506].

AUTHORITY: 31 U.S.C. 3529; 31 U.S.C. 3702; 41 U.S.C. 7101–7109; Secs. 202(n), 204, Pub. L. 104–316, 110 Stat. 3826; Sec. 211, Pub. L. 104–53, 109 Stat. 535.

SOURCE: 72 FR 36819, July 5, 2007, unless otherwise noted.

### 6105.501 Scope [Rule 501].

These procedures govern the Board's issuance of decisions, upon the request of an agency disbursing or certifying official, or agency head, on questions involving payment of travel or relocation expenses that were formerly issued by the Comptroller General under 31 U.S.C. 3529. Section 204 of the General Accounting Office Act of 1996, Pub. L. 104–316, transfers the authority to issue these decisions to the Director of the Office of Management and Budget, and authorizes the Director to delegate the authority to perform that function to another agency or agencies. The Director has delegated the authority to issue these decisions to the Administrator of General Services, who has redelegated that function to the Civilian Board of Contract Appeals.

### 6105.502 Request for decision [Rule 502].

(a) *Request for decision.* (1) A disbursing or certifying official of an agency, or the head of an agency, may request from the Board a decision (referred to as a ''Section 3529 decision'') on a question involving a payment the disbursing official or head of agency will make, or a voucher presented to a certifying official for certification, which concerns the following type of claim made against the United States by a federal civilian employee:

(i) A claim for reimbursement of expenses incurred while on official temporary duty travel; and

(ii) A claim for reimbursement of expenses incurred in connection with relocation to a new duty station.

(2) A request for a Section 3529 decision shall be in writing; no particular form is required. The request must refer to a specific payment or voucher; it may not seek general legal advice. The request should—

(i) Explain why the official is seeking a Section 3529 decision, rather than taking action on his or her own regarding the matter;

(ii) State the question presented and include citations to applicable statutes, regulations, and cases;

(iii) Include—

(A) The name, address, telephone number, facsimile machine number, and e-mail address, if available, of the official making the request;

(B) The name, address, telephone number, facsimile machine number, and e-mail address, if available, of the employee affected by the specific payment or

(C) Any other information which the official believes the Board should consider; and

(iv) Be delivered to the Office of the Clerk of the Board. The Board's mailing address is: 1800 F Street, NW, Washington, DC 20405. The Board is located at: 1800 M Street, NW, 6th Floor, Washington, DC 20036. The Clerk's telephone number is: (202) 606–8800. The Clerk's e-mail address for receipt of filings is: *cbca.efile@cbca.gov*. The Clerk's facsimile machine number is: (202) 606–0019. The Board's working hours are 8:00 a.m. to 4:30 p.m., Eastern Time, on each day other than a Saturday, Sunday, or federal holiday.

(b) *Notice of docketing*. A request for a Section 3529 decision will be docketed by the Office of the Clerk of the Board. A written notice of docketing will be sent promptly to the official and the affected employee. The notice of docketing will identify the judge to whom the request has been assigned.

(c) *Service of copy*. The official submitting a request for a Section 3529 decision shall send to the affected employee copies of all material provided to the Board. All submissions to the Board shall indicate that a copy has been provided to the affected employee.

[72 FR 36819, July 5, 2007, as amended at 76 FR 50928, Aug. 17, 2011]

### 6105.503 Additional submissions [Rule 503].

If the affected employee wishes to submit any additional information to the Board, he or she must submit such information within 30 calendar days after receiving the copy of the request for decision and supporting material (or within 60 calendar days after receiving the copy, if the affected employee is located outside the 50 states and the District of Columbia). To expedite proceedings, if the employee does not wish to make an additional submission, the employee should so notify the Board and the agency.

### 6105.504 Proceedings [Rule 504].

(a) *Requests for additional time*. The agency or the affected employee may request additional time to make any filing.

(b) *Conferences*. The judge will not engage in ex parte communications involving the underlying facts or merits of the request. The judge may hold a conference with the agency and the affected employee, at any time, for any purpose. The judge may provide the participants a memorandum reflecting the results of a conference.

(c) *Additional submissions*. The judge may require the submission of additional information at any time.

### 6105.505 Decisions [Rule 505].

The judge will issue a written decision based upon the record, which includes submissions by the agency and the affected employee, and information provided during conferences. The agency and the affected employee will each be furnished a copy of the decision by the Office of the Clerk of the Board. In addition, all Board decisions are posted weekly on the Internet. The Board's Internet address is: *http://www.cbca.gov*.

[72 FR 36819, July 5, 2007, as amended at 76 FR 50928, Aug. 17, 2011]

**6105.506 Reconsideration of Board decision [Rule 506].**

A request for reconsideration may be made by the agency or the affected employee. Such requests must be received by the Board within 30 calendar days after the date the decision was issued (or within 60 calendar days after the date the decision was issued, if the agency or the affected employee making the request is located outside the 50 states and the District of Columbia). The request for reconsideration should state the reasons why the Board should consider the request. Mere disagreement with a decision or re-argument of points already made is not a sufficient ground for seeking reconsideration.

# CHAPTER 63—DEPARTMENT OF TRANSPORTATION BOARD OF CONTRACT APPEALS


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# PART 6301—BOARD OF CONTRACT APPEALS

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AUTHORITY: Contract Disputes Act of 1978 (41 U.S.C. 600, et seq.).

SOURCE: 52 FR 48630, Dec. 23, 1987, unless otherwise noted.

### 6301.0 Foreword.

A Department of Transportation Board of Contract Appeals has been established pursuant to Pub. L. 95–563. The Secretary appoints the members of the Board and designates the Chair and Vice-Chair of the Board.

### 6301.1 Scope of part.

(a) *Scope.* This part prescribes the functions and procedures of the Department of Transportation Board of Contract Appeals and provides for the appointment of a Chair, a Vice-Chair, and Members of the Board, and sets forth their duties.

(b) *Definitions.* For the purposes of this part—

*Administrative Judge* means a member of the Board selected and appointed to serve pursuant to the Contract Disputes Act of 1978;

*Appellant* means the contractor who appeals;

*Board* means the Department of Transportation Board of Contract Appeals;

*Contracting officer* means the Government's contracting officer whose decision is appealed, or the successor contracting officer;

*Parties* means the appellant and the contracting officer, and

*Secretary* means the Secretary of Transportation.

### 6301.2 Qualifications of members.

Each member of the Board must be a qualified attorney who is admitted to practice before the highest court of a State or the District of Columbia. Members of the Board are selected and appointed to serve in the same manner as administrative law judges appointed pursuant to section 3105 of title 5 of the United States Code, with the additional requirement that each member shall have had not fewer than five years experience in public contract law.

### 6301.3 Jurisdiction and authority of the Board and its members.

(a) The Board hears and decides:

(1) Appeals from decisions made by contracting officers relating to contracts of the Department of Transportation and its constituent administrations;

(2) Appeals from decisions of contracting officers relating to contracts of any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal;

(3) Matters within jurisdiction of the Board in accordance with the provisions of the Contract Disputes Act, 41 U.S.C. 600 et seq.; and

(4) Other matters as directed by the Secretary which are not inconsistent with statutory duties.

In each case, the Board shall make a final decision which is impartial, fair, and just to the parties and is supported by the record of the case and the law. The Administrative Judge assigned to hear an appeal has authority to act for the Board in all matters with respect to such appeal. Included in such authority is the authority to sign subpoenas and the power to authorize the Recorder of the Board to issue subpoenas pursuant to section 11 of the Contract Disputes Act of 1978. (41 U.S.C. 610)

(b) An Administrative Judge may not act for the Board or participate in a decision if that Judge has participated directly in any aspect of the award or administration of the contract involved.

(c) Except for appeals considered under the expedited small claims or accelerated procedures, appeals are assigned to a panel of three Administrative Judges of the Board. The decision of a majority of the panel shall constitute the decision of the Board.

### 6301.4 Ex parte communications.

Ex parte communications, that is, written or oral communications with the Board by or for one party only without notice to the other, are not permitted. No member of the Board or of the Board's staff shall consider, nor shall any person directly or indirectly involved in an appeal submit to the Board or to the Board's staff, off-the-record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation between Board members nor to ex parte communications concerning the Board's administrative functions or procedures.

### 6301.5 Contract appeals procedures (general).

(a) It is the intent of these rules to provide for the just and inexpensive determination of appeals without unnecessary delay. It is the objective of the Board's preliminary procedures to encourage full disclosure of relevant and material facts, and to discourage surprise. Each specified time limitation is a maximum, and should not be fully used if the action described can be accomplished in a shorter period. The Board may extend any time limitation for good cause and in accordance with legal precedent.

(b) Ordinarily, the appellant has the burden of proof.

(c) The rules of procedure at 6302 shall govern the procedures in all contract disputes appealed to the Board.

### 6301.6 Effective date.

This chapter shall apply to all appeals relating to contracts entered into on or after March 1, 1979, and upon the contractor's election of Contract Disputes Act procedures, to appeals relating to earlier contracts with respect to claims pending before the contracting officer on March 1, 1979, or initiated thereafter.

## PART 6302—RULES OF PROCEDURE

Sec.

6302.1 How to appeal a contracting officer's decision (Rule 1).
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6302.5 Service of documents (Rule 5).
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AUTHORITY: Contract Disputes Act of 1978 (41 U.S.C. 600, et seq.).

SOURCE: 52 FR 48631, Dec. 23, 1987, unless otherwise noted.

### 6302.1 How to appeal a contracting officer's decision (Rule 1).

(a) Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. A copy of the notice shall be furnished to the

contracting officer from whose decision the appeal is taken.

(b) Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in paragraph (a) of this section citing the failure of the contracting officer to issue a decision.

(c) Where the contractor has submitted a claim in excess of $50,000 to the contracting officer and the contracting officer has failed to issue a decision within a reasonable time, the contractor may file a notice of appeal as provided in paragraph (a) of this section, citing the failure to issue a decision.

(d) Upon docketing of appeals filed pursuant to paragraph (b) or (c) of this section, the Board, at its option, may stay further proceedings pending issuance of a final decision by the contracting officer within the time fixed by the Board or order the appeal to proceed without the contracting officer's decision.

### 6302.2 Contents of notice of appeal (Rule 2).

A notice of appeal must indicate that an appeal is intended and identify the contract number, the administration, bureau, or office concerned with the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal shall be signed by the appellant, or by an officer of an appellant corporation or member of an appellant firm, or by an appellant's authorized representative or attorney.

### 6302.3 Docketing of appeals (Rule 3).

Following receipt by the Board of the original notice of appeal, the appellant and the contracting officer are promptly notified of its receipt and docketing by the Board, and the Board furnishes a copy of these rules to the appellant.

### 6302.4 Preparation, contents, organization, forwarding, and status of appeal file (Rule 4).

(a) *Duties of contracting officer.* Within 30 days after receipt of notice that an appeal has been docketed, the contracting officer shall assemble and transmit to the Board, with a copy to the appellant and the Government attorney, an appeal file consisting of all documents pertinent of the appeal, including:

(1) The contracting officer's decision and finding of fact from which the appeal is taken;

(2) The contract, including pertinent specifications, modifications, plans, and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

(b) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant may supplement the file by transmitting to the Board any additional documents which it considers pertinent to the appeal and shall furnish two copies of such documents to the Government attorney.

(c) *Organization of appeal file.* Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file. The contracting officer's final decision and the contract shall be conveniently placed in the file for ready reference.

(d) *Lengthy documents.* The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when a party has shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, the other party shall be notified that the document or a copy is available for inspection at the offices of the Board or of the party filing the document.

(e) *Status documents in appeal file.* Documents contained in the appeal file are, without further action by the parties, a part of the record upon which the Board renders its decision, unless a party objects to the consideration of a particular document at or before the hearing or, if there is no hearing on the appeal, before closing the record. If objection to a document is made, the Board rules upon its admissibility into the record as evidence in accordance with Rules 17 and 23.

### 6302.5 Service of documents (Rule 5).

A copy of every written communication submitted to the Board shall be sent to every party to the dispute. Such communications shall be sent by delivering in person or by mailing, properly addressed with postage prepaid, to the opposing party or, where the party is represented by counsel, to its counsel. Each communication with the Board shall be accompanied by a statement, signed by the originating party, saying when, how, and to whom a copy was sent.

### 6302.6 Computation and extension of time limits (Rule 6).

(a) *Computation.* Except as otherwise provided by law, in computing any period of time prescribed by these rules, or by any order of the Board, the day of the event from which the designated period of time begins to run is not included, but the last day of the period is included unless it is a Saturday, Sunday, or a legal holiday, in which case the period runs to the end of the next business day.

(b) *Extensions.* All requests for extensions of time shall be submitted to the Board in writing and shall state good cause for the request.

### 6302.7 Motions (Rule 7).

(a) Motions are made by filing an original and two copies, together with any supporting papers, with the Board. Motions may also be made upon the record, in the presence of the other party, at a prehearing conference or a hearing. The Board considers any timely motion:

(1) For extensions of time (Rule 6) or to cure defaults;

(2) To require that a pleading be made more definite and certain, or for leave to amend a pleading (Rule 14);

(3) To dismiss for lack of jurisdiction (Rule 34); to dismiss for failure to prosecute (Rule 36); or to grant summary relief because a pleading does not raise a justifiable issue;

(4) For discovery, for interrogatories to a party, or for the taking of depositions (Rules 18 and 19);

(5) To reopen a hearing; or to reconsider a decision (Rule 33), or

(6) For any other appropriate order.

(b) The Board may, on its own motion, initiate any such action by notice to the parties. Unless a longer time is allowed by the Board, a party who receives a motion shall file any answering material within 20 days after the date of receipt. The Board makes an order on each motion that is appropriate and just to the parties, and upon conditions that will promote efficiency in disposing of the appeal.

(c) The Board may permit oral hearing or argument on motions, and may require the presentation of briefs.

### 6302.8 Appellant's election of procedures (Rule 8).

(a) In every appeal the appellant is required to elect one of the following procedures:

(1) A hearing under the Board's regular procedure (Rule 12);

(2) A hearing under the SMALL CLAIMS (EXPEDITED) procedure, if applicable (Rule 9);

(3) A hearing under the Board's ACCELERATED procedure, if applicable (Rule 10), or

(4) Submission on the written record or without a hearing (Rule 11). Also see Rule 11 with respect to the Government's right to waive a hearing.

(b) The SMALL CLAIMS (EXPEDITED) procedure is available where the amount in dispute is $10,000 or less (Rule 9). The ACCELERATED procedure is available where the amount in dispute is $50,000 or less (Rule 10). In deciding whether the SMALL CLAIMS (EXPEDITED) or ACCELERATED procedure is applicable to an appeal, any question regarding the amount in dispute shall be determined by the Board.

(c) The appellant's election of one of the above procedures shall be made in

writing within 30 days after receipt of the appeal file unless such period is extended by the Board for good cause shown. The election may not be withdrawn except with permission of the Board and for good cause shown.

**6302.9 The SMALL CLAIMS (EXPEDITED) procedure (Rule 9).**

(a) The SMALL CLAIMS (EXPEDITED) procedure provides for simplified rules of procedure to facilitate the decision of an appeal, whenever possible, within 120 days from the date such procedure is elected.

(b) Promptly upon receipt of an appellant's election of the SMALL CLAIMS (EXPEDITED) procedure, the assigned Administrative Judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties:

(1) Identify and simplify the issues in dispute;

(2) Establish a simplified procedure appropriate to the particular appeal;

(3) Determine whether the appellant desires a hearing and, if so, fix a time and place for the hearing, and

(4) Establish a schedule for the expedited resolution of the appeal.

(c) The subpoena power set forth in Rule 24 is available for use under the SMALL CLAIMS (EXPEDITED) procedure.

(d) The filing of pleadings, motions, discovery proceedings or prehearing procedures will be permitted only to the extent consistent with the requirement of conducting the hearing at the scheduled time and place or, if no hearing is scheduled, of closing the record at an early time so as to permit a decision of the appeal within the 120-day time limit. The Board, in its discretion, may impose shortened time periods for any actions required or permitted under these rules, necessary to enable the Board to decide the appeal within the 120-day time limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(e) Decisions in appeals considered under the SMALL CLAIMS (EXPEDITED) procedure are rendered by a single Administrative Judge. Written decisions of appeals considered under this procedure are short and contain only summary findings of fact and conclusions. If there has been a hearing on the appeal, the presiding Administrative Judge may, in his or her discretion, hear closing oral arguments of the parties and then render an oral decision on the appeal. Such decision will include summary findings of fact and conclusions. Whenever such an oral decision is rendered, the Board subsequently furnishes the parties with a written transcript of the oral decision for record and payment purposes and to commence the time period for the filing of a motion for reconsideration under Rule 33.

(f) Decisions of the Board under the SMALL CLAIMS (EXPEDITED) procedure shall have no value as precedent. Except in cases of fraud, decisions rendered under the SMALL CLAIMS (EXPEDITED) procedure may not be appealed by either party.

**6302.10 The ACCELERATED procedure (Rule 10).**

(a) The ACCELERATED procedure makes available a procedure where the appeal is resolved, whenever possible, within 180 days from the date such procedure is elected.

(b) Promptly upon receipt of appellant's election of the ACCELERATED procedure, the assigned Administrative Judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties:

(1) Identify and simplify the issues in dispute;

(2) Establish a simplified procedure appropriate to the particular appeal;

(3) Determine whether a hearing is desired and, if so, fix a time and place for a hearing; and

(4) Establish a schedule for the accelerated resolution of the appeal.

(c) The subpoena power set forth in Rule 24 is available for use under the ACCELERATED procedure.

(d) The filing of pleadings, motions, discovery proceedings or prehearing procedures will be permitted only to the extent consistent with the requirement of conducting the hearing at the scheduled time and place or, if no hearing is scheduled, the closing of the record at an early time so as to permit decision of the appeal with the 180-day

limit. The Board, in its discretion, may impose shortened time periods for any actions required or permitted under these rules, necessary to enable the Board to decide the appeal within the 180-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(e) Decisions in appeals considered under the ACCELERATED procedure are rendered by a single Administrative Judge, subject to the concurrence of the Vice-Chair or another assigned Administrative Judge. In the event of an even division on an appeal, the Chair participates in the decision of the appeal. Written decisions of appeals considered under this procedure are short and contain only summary findings of fact and conclusions. In cases where the amount in dispute is $10,000 or less and there has been a hearing under the ACCELERATED procedure the presiding Administrative Judge may, in his or her discretion, hear closing oral arguments of the parties and then render an oral decision on the appeal. Such decision will include summary findings of fact and conclusions. Whenever such an oral decision is rendered the Board subsequently furnishes the parties with a written transcript of the oral decision for record and payment purposes and to commence the time period for the filing of a motion for reconsideration under Rule 33.

(f) Decisions of the Board under the ACCELERATED procedure are published and have precedential value. Such decisions may be appealed by either party.

### 6302.11 Submission of appeal without a hearing (Rule 11).

Either party may elect to waive a hearing and to submit its case upon the record before the Board pursuant to Rule 17. Submission of a case without hearing does not relieve a party from the necessity of proving the facts supporting that party's allegation or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested) and by briefs in accordance with Rule 26.

### 6302.12 Regular procedure (Rule 12).

Under the regular procedure the parties are required to file pleadings with the Board (Rule 13). The regular procedure affords the parties an opportunity to make full use of prehearing and discovery procedures. Hearings under the regular procedure are conducted in the same manner as before courts of the United States in non-jury trials.

### 6302.13 Pleadings (Rule 13).

(a) *Complaint.* Under the regular procedure the appellant, within 30 days after receipt of the appeal file, shall file with the Board an original and two copies of a complaint setting forth simple, concise, and direct statements of each of its claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. If the complaint is not filed within 30 days and, in the opinion of the Board, the issues before the Board are sufficiently defined, the appellant's claim and notice of appeal may be deemed to be its complaint, and the parties are so notified.

(b) *Answer.* Within 30 days from receipt of said complaint or a Rule 13(a) notice from the Board, the Government shall file with the Board an original and two copies of an answer, setting forth simple, concise, and direct statements of the Government's defense to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer and shall set forth any affirmative defenses as appropriate. Should the answer not be filed within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the parties are so notified.

### 6302.14 Amendments of pleadings or record (Rule 14).

(a) *Pleadings.* The Board upon its own initiative or upon application by a party may, in its discretion, order a

party to make a more definite statement of the complaint or answer, or to reply to an answer. The application for such an order suspends the time for responsive pleading. The Board may, in its discretion and within the proper scope of the appeal, permit either party to amend its pleadings upon conditions just to both parties.

(b) *Record.* When an issue within the proper scope of the appeal, but not raised by the pleadings, is tried by consent of the parties or by permission of the Board, the issue is treated in all respects as if it had been raised. A motion to amend the pleadings to conform to the proof may be made but is not required. If evidence is objected to at a hearing on the ground that it is not within an issue raised by the pleadings, it may be admitted in evidence, but the objecting party may be granted a continuance if necessary to enable him to meet such evidence.

### 6302.15 Prehearing briefs (Rule 15).

The Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected under the regular procedure. (Rule 8(a)(1)). If the Board does not ask for briefs, either party may, upon notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall be furnished simultaneously to the other party.

### 6302.16 Prehearing conference (Rule 16).

(a) Whether the case is to be submitted on the written record or be heard under any hearing procedure, the Board, upon its own initiative or upon the application of any party, may call upon the parties to appear before the Board for a conference to consider:

(1) The simplification, clarification, or severing of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(3) The limitation of the number of expert witnesses and the avoidance of similar cumulative evidence;

(4) The possibility of agreement disposing of all or any of the issues in dispute, and

(5) Such other matters as may aid in the disposition of the appeal. The result of the conference is set forth in an appropriate memorandum or order which becomes part of the record.

(b) In addition to the procedures provided in paragraph (a) of this section, the Board may direct any party whose claim is based in whole or in part on books of account or other records to furnish to the other party a statement showing the items and figures intended to be proved, with adequate reference to the books and records from which such figures were taken, and to make all such books and records available for examination by the other party. The Board may also direct any party to whom such a statement of items and figures has been submitted:

(1) To make an examination of such books or records or waive challenge of the accuracy of the statement submitted as reflecting the contents of such books and records; and

(2) To furnish the submitting party a schedule or schedules showing the results of such examination, with specific references to the books and records from which such figures were taken, where the examining party's results and figures are different from those contained in the statement submitted.

### 6302.17 The record of the appeal (Rule 17).

(a) *Contents.* The record upon which the Board's decision is rendered consists of the appeal file, (Rule 4) and, if filed, the pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions and interrogatories and answers to interrogatories received in evidence, admissions, stipulations, transcripts of hearings, hearing exhibits, post-hearing briefs, and documents which the Board has specifically made a part of the record. The record is available for inspection at the offices of the Board at all reasonable times.

(b) *Time of closing the record.* Except as the Board, in its discretion, may

otherwise order, no proof is received in evidence after completion of the hearing of the appeal or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) *Weight of the evidence.* The weight to be attached to any evidence of record rests within the sound discretion of the Board. The Board may require any party to submit additional evidence on any matter relevant to the appeal.

### 6302.18 Discovery-depositions (Rule 18).

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, undue burden or expense. Such orders may include limitations on the scope, method, time and place for discovery, or provisions for protecting the secrecy of confidential information or documents.

(b) *Obtaining a deposition.* After an appeal has been docketed, the parties may voluntarily agree to take, or the Board may, upon application of either party and for good cause shown, order the taking of, testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purposes of discovery. The application for such order shall specify whether the purpose of the deposition is for discovery or for use as evidence.

(c) *Orders on depositions.* The time, place, and manner of taking depositions are as mutually agreed upon by the parties, or failing such agreement, as ordered by the Board.

(d) *Use of evidence.* No testimony taken by deposition is considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at the hearing. Testimony by deposition is not ordinarily received in evidence if the deponent is present and can testify at the hearing. However, any deposition may be used to contradict or impeach the testimony of a witness at the hearing. In cases submitted on the record, the Board, in its discretion, may receive depositions as evidence to supplement the record.

(e) *Expenses.* Each party bears its own expenses associated with discovery, unless, in the discretion of the Board, the expenses are apportioned otherwise.

(f) *Subpoenas.* Where appropriate, any party may request that a subpoena be issued under the provisions of Rule 24.

[52 FR 48631, Dec. 23, 1987, as amended at 53 FR 34106, Sept. 2, 1988]

### 6302.19 Interrogatories to parties, admission of facts, and inspection of documents (Rule 19).

(a) *Interrogatories to parties.* After an appeal has been filed with the Board, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath, and returned within 30 days of receipt by the answering party. Within 30 days after service the answering party may object to any interrogatory and the Board determines the extent to which the interrogatory is permitted.

(b) *Admission of facts.* After an appeal has been filed with the Board, a party may serve upon the other party a written request for the admission of specified facts. If the request is to admit the genuineness of any document or the truth of any facts stated in a document, a copy of such document shall be served with the request. Within 30 days after receipt of the request, the party served shall answer each requested admission of facts or file objections thereto in writing. The factual propositions set out in the request are deemed admitted, if the answering party, willfully and without good cause, fails to respond to the request for admissions.

(c) *Production and inspection of documents.* After an appeal has been filed with the Board, a party may serve upon the other party a written request to produce and permit the inspection and copying or photographing of any designated documents, not privileged, regarding any matter which is relevant to the appeal.

(d) Any discovery under this rule shall be subject to the provisions of

Rule 18(a) with respect to general policy and protective orders.

### 6302.20 Time and place of hearing (Rule 20).

Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, the requirements for accelerated or expedited procedures and other pertinent factors. On request of any party and for good cause, the Board, may, in its discretion, change the date of hearing.

### 6302.21 Notice of hearing (Rule 21).

The parties are given at least 15 days notice of the time and place set for hearing. In scheduling hearings, the Board gives due regard to the desires of the parties and the requirement for the just and inexpensive determination of appeals without unnecessary delay. Notices of hearings shall be promptly acknowledged by the parties.

### 6302.22 Unexcused absence of a party (Rule 22).

The unexcused absence of a party at the time and place set for hearing is not an occasion for delay. In the event of such absence, the presiding Administrative Judge may order the hearing to proceed or, in his or her discretion, may invoke the provisions of Rule 36.

### 6302.23 Nature of hearings (Rule 23).

(a) Hearings are as informal as may be reasonable and appropriate under the circumstances. At the hearing the parties may offer such relevant evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence, subject, however, to the sound discretion of the presiding Administrative Judge in supervising the extent and manner of presenting the evidence. In general, admissibility is governed by relevancy and materiality. Copies of documents, affidavits, or other evidence not ordinarily admissible under judicial rules or evidence, may be admitted in the discretion of the presiding Administrative Judge. The weight to be attached to evidence presented in any particular form is within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. In any case, the Board may require evidence in addition to that offered by the parties.

(b) Witnesses before the Board are examined orally under oath or affirmation, unless the facts are stipulated, or the Board otherwise orders.

### 6302.24 Subpoenas (Rule 24).

(a) *General.* Every subpoena shall state the name of the Board and the title of the appeal and shall command each person to whom it is directed to attend and give testimony, and, if appropriate, to produce books, papers, documents, or tangible things, at a time and place therein specified. Subpoenas (including those calling for the production of documentary evidence) are signed by an Administrative Judge or by the Recorder of the Board but otherwise left blank when furnished to the party requesting the subpoena. The party to whom the subpoena is issued shall fill it in before service.

(b) *Subpoenas for attendance at hearing.* At the request of any party, subpoenas for the attendance of witnesses at a hearing are issued. A subpoena requiring the attendance of a witness at a hearing may be served at any place within 100 miles of the place of hearing specified in the subpoena; but the Board, upon proper application and for good cause shown by the requesting party, may authorize the service of a subpoena at any other place.

(c) *Subpoenas for production of documentary evidence.* A subpoena, in addition to requiring attendance to testify, may also command any person to whom it is directed to produce books, papers, documents, or tangible things designated therein. A subpoena calling for such production shall show the general relevance and reasonable scope of the evidence sought.

(d) *Subpoenas for taking depositions.* Subpoenas in aid of depositions (including those for the production of books, papers, documents, or tangible

things) may be issued by the Recorder of the Board upon a showing that the parties have agreed to, or the Board has ordered, the taking of depositions under Rule 18. The service of subpoenas in aid of depositions shall be limited to the city or county wherein the witness resides or is employed or transacts business in person. If a subpoena is desired at other locations, a specific ruling of the Board is required.

(e) *Request to quash or modify.* Upon written request by a person under subpoena or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable costs of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(f) *Foreign country.* A subpoena directed to a witness in a foreign country shall issue under the circumstances and in the manner, and be served as provided in 28 U.S.C. 1781–1784.

(g) *Service.* A subpoena may be served by a United States Marshal or a deputy, or by any person not a party who is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by tendering the subpoena to that person with the fees for one day's attendance and the mileage allowed by law (28 U.S.C. 1821). When the subpoena is issued on behalf of the United States or an officer or agency of the United States, fees and mileage need not be tendered.

(h) *Fees.* The party at whose instance a subpoena is issued shall be responsible for the payment of witness fees and mileage, as well as the fees and mileage of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the books, papers, documents, or tangible things produced.

(i) *Contumacy or refusal to obey a subpoena.* In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the court may be punished by the court as a contempt thereof.

### 6302.25 Copies of papers (Rule 25).

When books, records, papers, or documents have been received in evidence, a true copy or any material or relevant part may be substituted during or at the conclusion of the hearing.

### 6302.26 Posthearing briefs (Rule 26).

Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding Administrative Judge at the conclusion of the hearing.

### 6302.27 Transcript of proceedings (Rule 27).

Testimony and argument at hearings are reported verbatim, unless the Board otherwise orders. Transcripts or copies of the proceedings are supplied to the parties and others at such rates as may be fixed by the Board.

### 6302.28 Withdrawal of exhibits (Rule 28).

After a decision has become final, the Board, in its discretion, upon request and after notice to the other party, may direct or permit the withdrawal of all or part of original exhibits. The substitution of true copies of exhibits or photographs of physical objects may be required by the Board as a condition of withdrawal.

### 6302.29 Representation of the parties (Rule 29).

(a) *The Appellant.* An individual appellant may appear before the Board in person, a corporation by an officer, a partnership or joint venture by a member, or any of these by an attorney-at-law admitted to practice before the highest court of the District of Columbia or any state, commonwealth, or

territory of the United States. An attorney representing an appellant shall file a written notice of appearance with the Board.

(b) *The Government.* Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board.

**6302.30 Alternative dispute resolution methods (Rule 30).**

(a) To facilitate settlements in cases which might involve lengthy hearings (in excess of one week) of complex factual disputes and settled legal principles, the Board has adopted two methods of Alternative Dispute Resolution (ADR): Settlement Judges and Mini-Trials. These procedures are designed to supplement existing settlement techniques and not to replace them. Procedures regarding implementation of these ADR methods will be distributed to the parties, in appropriate cases, but may be obtained from the Board upon request.

(b) To employ ADR both parties must initially agree to use an ADR method. The parties must communicate that agreement in writing to the presiding judge as early as possible, preferably before commencement of voluntary discovery. The presiding judge shall promptly decide the appropriateness of the ADR method requested and so advise the parties. Where, after application of an ADR method, the parties are unable to resolve a dispute, the matter shall be restored to the docket of the presiding judge for hearing.

[53 FR 34106, Sept. 2, 1988]

**6302.31 Settlement (Rule 31).**

A dispute may be settled at any time before the Board renders its decision by the appellant filing a written notice withdrawing the appeal or by written stipulation of the parties settling the dispute. Proceedings may be suspended while the parties are considering settlement.

**6302.32 Decisions (Rule 32).**

Decisions of the Board are rendered in writing. Copies are forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions are open for public inspection at the offices of the Board in Washington, DC. Decisions of the Board are made solely upon the record, as described in Rule 17.

**6302.33 Motion for reconsideration (Rule 33).**

A motion for reconsideration shall set forth specifically the grounds relied upon to sustain the motion and shall be *mailed or otherwise furnished* within 30 days from the date of receipt of a copy of the Board's decision.

**6302.34 Dismissal for lack of jurisdiction (Rule 34).**

Any motion addressed to the jurisdiction of the Board shall be promptly filed. A hearing on the motion may be afforded on application of either party. The Board has the right at any time on its own motion to raise the issue of its jurisdiction to proceed with a particular case and do so by an appropriate order, affording the parties an opportunity to be heard.

**6302.35 Dismissal without prejudice (Rule 35).**

When the Board is unable to proceed with disposition of an appeal for reasons not within its control, such appeal is placed in a suspense status. In any case where such suspension has continued, or it appears that it may continue for a period in excess of one year, the Board may dismiss the appeal without prejudice to its restoration to the Board's docket when the cause of suspension has been eliminated. Unless either party or the Board acts to reinstate any appeal so dismissed within three years from the date of dismissal, the dismissal is automatically converted to a dismissal with prejudice without further action by the parties or the Board.

**6302.36 Dismissal for failure to prosecute or defend (Rule 36).**

Whenever a record discloses the failure of any party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates a party's intention not to continue the prosecution or defense of an appeal, the Board

may issue an order requiring the offending party to show cause why the appeal should not be dismissed or granted, as appropriate.

**6302.37 Sanctions (Rule 37).**

If any party fails or refuses to obey an order issued by the Board, the Board may make such order in regard to the failure as it considers necessary to the just and expeditious conduct of the appeal, including dismissal with prejudice.

**6302.38 Remand from court (Rule 38).**

Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board considers the reports and enters special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, such orders conform to these rules.

# CHAPTER 99—COST ACCOUNTING STANDARDS BOARD, OFFICE OF FEDERAL PROCUREMENT POLICY, OFFICE OF MANAGEMENT AND BUDGET


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# PART 9900—SCOPE OF CHAPTER

AUTHORITY: Pub. L. 100–679, 102 Stat. 4056, 41 U.S.C. 422.

**9900.000 Scope of chapter.**

This chapter describes policies and procedures for applying the Cost Accounting Standards (CAS) to negotiated contracts and subcontracts. This chapter does not apply to sealed bid contracts or to any contract with a small business concern (see 9903.201–1(b) for these and other exemptions).

[57 FR 14153, Apr. 17, 1992]

# SUBCHAPTER A—ADMINISTRATION

## PART 9901—RULES AND PROCEDURES

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AUTHORITY: Pub. L. 100–679, 102 Stat. 4056, 41 U.S.C. 422.

SOURCE: 56 FR 19304, Apr. 26, 1991, unless otherwise noted.

### 9901.301 Purpose.

This part is published in compliance with Public Law 100–679, section 5(f)(3), 41 U.S.C. 422(f)(3), and constitutes the rules and procedures governing actions and the administration of the Cost Accounting Standards Board.

### 9901.302 Authority.

(a) The Cost Accounting Standards Board (hereinafter referred to as the ''Board'') is established by and operates in compliance with Public Law 100–679.

(b) The Board has the exclusive authority to make, promulgate, amend, and rescind cost accounting standards and regulations, including interpretations thereof, designed to achieve uniformity and consistency in the cost accounting practices governing measurement, assignment, and allocation of costs to contracts with the United States Government.

(c) All cost accounting standards, waivers, exemptions, interpretations, modifications, rules, and regulations promulgated under section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168) shall remain in effect unless and until amended, superseded, or rescinded by the Board pursuant to Public Law 100–679.

### 9901.303 Offices.

The Cost Accounting Standards Board's offices are located in the New Executive Office Building, 725 17th Street, NW., Washington, DC 20503. The hours of business for the Board are 9 a.m. to 5:30 p.m., local time, Monday through Friday, excluding holidays observed by the Federal Government in Washington, DC.

### 9901.304 Membership.

The Board consists of five members, including the Administrator of the Office of Federal Procurement Policy (hereinafter referred to as the ''Administrator'') who shall serve as Chairman, and four other members with experience in Government contract cost accounting who are to be appointed as follows:

(a) A representative of the Department of Defense appointed by the Secretary of Defense.

(b) An officer or employee of the General Services Administration appointed by the Administrator of the General Services Administration or his/her designee.

(c) A representative of industry appointed from the private sector by the Administrator.

(d) An individual who is particularly knowledgeable about cost accounting problems and systems appointed from the private sector by the Administrator.

(e) The term of office of each of the members of the Board, other than the Administrator, shall be four years, with the exception of the initial appointment of members. Of the initial appointments to the Board, two members shall hold appointment for a term of two years, one shall hold appointment for a term of three years, and one shall hold appointment for a term of four years.

(f) The members from the Department of Defense and the General Services Administration shall not be permitted to continue to serve on the Board after ceasing to be an officer or

employee of their respective appointing agency. A vacancy on the Board shall be filled in the same manner in which the original appointment was made. A member may be reappointed for a subsequent term(s). Any member appointed to fill an interim vacancy on the Board shall serve for the remainder of the term for which his or her predecessor was appointed.

(g) In the event of the absence or incapacity of the Administrator or during a vacancy in the office, the official of the Office of Federal Procurement Policy, acting as Administrator, shall serve as the Chairman of the Board.

(h) In the event of the absence of any of the other Board members, a representative of that Board member may attend the Board meeting, but shall have no vote, and his or her attendance shall not be counted to establish a quorum.

### 9901.305 Requirements for standards and interpretive rulings.

Prior to the promulgation of cost accounting standards and interpretations thereof, the Board shall:

(a) Take into account, after consultation and discussion with the Comptroller General, professional accounting organizations, contractors, government agencies and other interested parties:

(1) The probable costs of implementation, including inflationary effects, if any, compared to the probable benefits;

(2) The advantages, disadvantages, and improvements anticipated in the pricing and administration of, and settlement of disputes concerning, contacts; and

(3) The scope of, and alternatives available to, the action proposed to be taken.

(b) Prepare and publish a report in the FEDERAL REGISTER on issues reviewed under paragraph (a) of this section.

(c) Publish an advance notice of proposed rulemaking in the FEDERAL REGISTER in order to solicit comments on the report prepared pursuant to paragraph (b) of this section, and provide all parties affected a period of not less than 60 days after such publication to submit their views and comments. During this 60-day period, consult with the Comptroller General and consider any recommendation the Comptroller General may make.

(d) Publish a notice of such proposed rulemaking in the FEDERAL REGISTER and provide all parties affected a period of not less than 60 days after such publication to submit their views and comments.

(e) Rules, regulations, cost accounting standards, and modifications thereof promulgated or amended by the Board, shall have the full force and effect of law and shall become effective within 120 days after publication in the FEDERAL REGISTER in final form, unless the Board determines a longer period is necessary. Implementation dates for contractors and subcontractors shall be determined by the Board, but in no event shall such dates be later than the beginning of the second fiscal year of affected contractors or subcontractors after the standard becomes effective. Rules, regulations, cost accounting standards, and modifications thereof promulgated or amended by the Board shall be accompanied by prefatory comments and by illustrations, if necessary.

(f) The above functions exercised by the Board are excluded from the operations of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

### 9901.306 Standards applicability.

Cost Accounting Standards promulgated by the Board shall be mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the United States Government in excess of the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B)), other than contracts or subcontracts that have been exempted by the Board's regulations.

[76 FR 40819, July 12, 2011]

### 9901.307 Exemptions and waivers.

The Board may exempt classes or categories of contractors and subcontractors from cost accounting

standards requirements, and establish procedures for waiver of the requirements with respect to individual contracts and subcontracts. The official records of the Board shall be documented with supporting justification for class or category exemptions and individual waivers.

**9901.308 Meetings.**

The Board shall meet at the call of the Chairman. Agenda for Board meetings shall be proposed by the Chairman, but any Board member may request any item to be placed on the agenda.

**9901.309 Quorum.**

Three Board members, at least one of whom is appointed by the Administrator from the private sector, shall constitute a quorum of the Board.

**9901.310 Board action.**

Board action shall be by majority vote of the members present and voting, except that any vote to publish a proposed standard, rule or regulation in the FEDERAL REGISTER for comment or any vote to promulgate, amend or rescind a standard, rule or regulation, or any interpretation thereof, shall require at least three affirmative votes for the five Board members. The Chairman may vote on all matters presented for a vote, not merely to resolve tie votes. The results of final votes shall be reported in the minutes of the meeting, and the vote of a Board member may be recorded at his/her request.

**9901.311 Executive sessions.**

During the course of a Board meeting, any Board Member may request that for any portion of the meeting, the Board meet in executive session. The Chairman shall thereupon order such a session.

**9901.312 Minutes.**

The Executive Secretary of the Board shall be responsible for keeping accurate minutes of Board meetings and maintaining Board files.

**9901.313 Public hearings.**

Public hearings to assist the Board in the development and explanation of cost accounting standards and interpretive rulings may be held to the extent the Board in its sole discretion deems desirable. Notice of such hearings shall be given by publication in the FEDERAL REGISTER.

**9901.314 Informal actions.**

The Chairman may take actions on behalf of the Board on administrative issues, as determined by the Chairman, without holding an official meeting of the members. However, details of the actions so taken shall be provided to all of the members at the next Board meeting following such actions. Board members may be polled by telephone on other issues that must be processed on a timely basis when such matters cannot be deferred until the next formal meeting of the Board.

**9901.315 Executive Secretary.**

The Board's staff of professional, technical and supporting personnel is directed and supervised by the Executive Secretary.

**9901.316 Files and records.**

The files and records of the Board shall be maintained in accordance with the *Federal Records Creation, Maintenance, and Disposition Manual* of the Executive Office of The President, Office of Administration. As a minimum, the files and records shall include:

(a) A record of every Board meeting, including the minutes of Board proceedings and public hearings.

(b) Cost accounting standards promulgated, amended, or rescinded and interpretations thereof along with the supporting documentation and applicable research material.

(c) Applicable working papers, memoranda, research material, etc. related to issues under consideration by the Board and/or previously considered by the Board.

(d) Substantive regulations and statutes of general applicability and general policy and interpretations thereof.

(e) Any other file or record deemed important and relevant to the duties and responsibilities of the Board.

**9901.317 Amendments.**

This Part 9901, Rules and Procedures, may be amended by the Chairman, after consultation with the Board.

## PART 9902 [RESERVED]

# SUBCHAPTER B—PROCUREMENT PRACTICES AND COST ACCOUNTING STANDARDS

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SOURCE: 57 FR 14153, Apr. 17, 1992, unless otherwise noted.

## Subpart 9903.1—General

### 9903.101 Cost Accounting Standards.

Public Law 100–679 (41 U.S.C. 422) requires certain contractors and subcontractors to comply with Cost Accounting Standards (CAS) and to disclose in writing and follow consistently their cost accounting practices.

### 9903.102 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from ten or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by OMB. OMB has assigned Control Numbers 0348–0051 and 0348–0055 to the paperwork, recordkeeping and forms associated with this regulation.

[57 FR 14153, Apr. 17, 1992, as amended at 59 FR 55753, Nov. 8, 1994]

## Subpart 9903.2—CAS Program Requirements

### 9903.201 Contract requirements.

### 9903.201–1 CAS applicability.

(a) This subsection describes the rules for determining whether a proposed contract or subcontract is exempt from CAS. (See 9904 or 9905, as applicable.) Negotiated contracts not exempt in accordance with 9903.201–1(b) shall be subject to CAS. A CAS-covered contract may be subject to full, modified or other types of CAS coverage.

The rules for determining the applicable type of CAS coverage are in 9903.201–2.

(b) The following categories of contracts and subcontracts are exempt from all CAS requirements:

(1) Sealed bid contracts.

(2) Negotiated contracts and subcontracts not in excess of the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B)). For purposes of this paragraph (b)(2), an order issued by one segment to another segment shall be treated as a subcontract.

(3) Contracts and subcontracts with small businesses.

(4) Contracts and subcontracts with foreign governments or their agents or instrumentalities or, insofar as the requirements of CAS other than 9904.401 and 9904.402 are concerned, any contract or subcontract awarded to a foreign concern.

(5) Contracts and subcontracts in which the price is set by law or regulation.

(6) Firm fixed-priced, fixed-priced with economic price adjustment (provided that price adjustment is not based on actual costs incurred), time-and-materials, and labor-hour contracts and subcontracts for the acquisition of commercial items.

(7) Contracts or subcontracts of less than $7.5 million, provided that, at the time of award, the business unit of the contractor or subcontractor is not currently performing any CAS-covered contracts or subcontracts valued at $7.5 million or greater.

(8)–(12) [Reserved]

(13) Subcontractors under the NATO PHM Ship program to be performed outside the United States by a foreign concern.

(14) [Reserved]

(15) Firm-fixed-price contracts or subcontracts awarded on the basis of adequate price competition without submission of cost or pricing data.

[57 FR 14153, Apr. 17, 1992; 57 FR 34167, Aug. 3, 1992, as amended at 58 FR 58801, Nov. 4, 1993; 59 FR 55753, Nov. 8, 1994; 60 FR 16540, Mar. 30, 1995; 61 FR 39361, July 29, 1996; 62 FR 31295, June 6, 1997; 65 FR 36769, June 9, 2000; 70 FR 29458, May 23, 2005; 72 FR 32810, June 14, 2007; 72 FR 36369, July 3, 2007; 76 FR 40819, July 12, 2011; 76 FR 49368, Aug. 10, 2011]

**9903.201–2 Types of CAS coverage.**

(a) *Full coverage.* Full coverage requires that the business unit comply with all of the CAS specified in part 9904 that are in effect on the date of the contract award and with any CAS that become applicable because of later award of a CAS-covered contract. Full coverage applies to contractor business units that—

(1) Receive a single CAS-covered contract award of $50 million or more; or

(2) Received $50 million or more in net CAS-covered awards during its preceding cost accounting period.

(b) *Modified coverage.* (1) Modified CAS coverage requires only that the contractor comply with Standard 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs, Standard 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose, Standard 9904.405, Accounting for Unallowable Costs and Standard 9904.406, Cost Accounting Standard—Cost Accounting Period. Modified, rather, than full, CAS coverage may be applied to a covered contract of less than $50 million awarded to a business unit that received less than $50 million in net CAS-covered awards in the immediately preceding cost accounting period.

(2) If any one contract is awarded with modified CAS coverage, all CAS-covered contracts awarded to that business unit during that cost accounting period must also have modified coverage with the following exception: if the business unit receives a single CAS-covered contract award of $50 million or more, that contract must be subject to full CAS coverage. Thereafter, any covered contract awarded in the same cost accounting period must also be subject to full CAS coverage.

(3) A contract awarded with modified CAS coverage shall remain subject to such coverage throughout its life regardless of changes in the business unit's CAS status during subsequent cost accounting periods.

(c) *Coverage for educational institutions*—(1) *Regulatory requirements.* Parts 9903 and 9905 apply to educational institutions except as otherwise provided in this paragraph (c) and at 9903.202–1(f).

(2) *Definitions.* (i) The following term is prominent in parts 9903 and 9905.

Other terms defined elsewhere in this chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (c)(2)(ii) of this subsection below requires otherwise.

*Educational institution* means a public or nonprofit institution of higher education, e.g., an accredited college or university, as defined in section 1201(a) of Public Law 89–329, November 8, 1965, Higher Education Act of 1965; (20 U.S.C. 1141(a)).

(ii) The following modifications of terms defined elsewhere in this chapter 99 are applicable to educational institutions:

*Business unit* means any segment of an educational institution, or an entire educational institution which is not divided into segments.

*Segment* means one of two or more divisions, campus locations, or other subdivisions of an educational institution that operate as independent organizational entities under the auspices of the parent educational institution and report directly to an intermediary group office or the governing central system office of the parent educational institution. Two schools of instruction operating under one division, campus location or other subdivision would not be separate segments unless they follow different cost accounting practices, for example, the School of Engineering should not be treated as a separate segment from the School of Humanities if they both are part of the same division's cost accounting system and are subject to the same cost accounting practices. The term includes Government-owned contractor-operated (GOCO) facilities, Federally Funded Research and Developments Centers (FFRDCs), and joint ventures and subsidiaries (domestic and foreign) in which the institution has a majority ownership. The term also includes those joint ventures and subsidiaries (domestic and foreign) in which the institution has less than a majority of ownership, but over which it exercises control.

(3) *Applicable standards.* Coverage for educational institutions requires that the business unit comply with all of the CAS specified in part 9905 that are in effect on the date of the contract award and with any CAS that become applicable because of later award of a CAS-covered contract. This coverage applies to business units that receive negotiated contracts in excess of the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B)), except for CAS-covered contracts awarded to FFRDCs operated by an educational institution.

(4) *FFRDCs.* Negotiated contracts awarded to an FFRDC operated by an educational institution are subject to the full or modified CAS coverage prescribed in paragraphs (a) and (b) of this subsection. CAS-covered FFRDC contracts shall be excluded from the institution's universe of contracts when determining CAS applicability and disclosure requirements for contracts other than those to be performed by the FFRDC.

(5) *Contract clauses.* The contract clause at 9903.201–4(e) shall be incorporated in each negotiated contract and subcontract awarded to an educational institution when the negotiated contract or subcontract price exceeds the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B)). For CAS-covered contracts awarded to an FFRDC operated by an educational institution, however, the full or modified CAS contract clause specified at 9903.201–4(a) or (c), as applicable, shall be incorporated.

(6) *Continuity in fully CAS-covered contracts.* Where existing contracts awarded to an educational institution incorporate full CAS coverage, the contracting officer may continue to apply full CAS coverage, as prescribed at 9903.201–2(a), in future awards made to that educational institution.

(d) *Subcontracts.* Subcontract awards subject to CAS require the same type of CAS coverage as would prime contracts awarded to the same business unit. In measuring total net CAS-covered awards for a year, a transfer by one segment to another shall be deemed to be a subcontract award by the transferor.

(e) *Foreign concerns.* Contracts with foreign concerns subject to CAS shall only be subject to Standard 9904.401,

Consistency in Estimating, Accumulating, and Reporting Costs, and Standard 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose.

[57 FR 14153, Apr. 17, 1992, as amended at 58 FR 58801, Nov. 4, 1993; 58 FR 65556, Dec. 15, 1993; 59 FR 48569, Sept. 22, 1994; 59 FR 55753, Nov. 8, 1994; 65 FR 36769, June 9, 2000; 72 FR 32810, June 14, 2007; 76 FR 40819, July 12, 2011]

### 9903.201–3 Solicitation provisions.

(a) *Cost Accounting Standards Notices and Certification.* (1) The contracting officer shall insert the provision set forth below, Cost Accounting Standards Notices and Certification, in solicitations for proposed contracts subject to CAS as specified in 9903.201. The provision allows offerors to—

(i) Certify their Disclosure Statement status;

(ii) [Reserved]

(iii) Claim exemption from full CAS coverage and elect modified CAS coverage when appropriate; and

(iv) Certify whether award of the contemplated contract would require a change to existing cost accounting practices.

(2) If an award to an educational institution is contemplated prior to July 1, 1997, the contracting officer shall use the basic provision set forth below with its Alternate I, unless the contract is to be performed by an FFRDC (see 9903.201(c)(5)), or the provision at 9903.201(c)(6) applies.

COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (JUL 2011)

NOTE: This notice does not apply to small businesses or foreign governments.

This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS-coverage pursuant to 9903.201–2(c)(5) or 9903.201–2(c)(6).

*I. Disclosure Statement—Cost Accounting Practices and Certifications*

(a) Any contract in excess of the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B)), resulting from this solicitation, except for those contracts which are exempt as specified in 9903.201–1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR, chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

CAUTION: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to-practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

☐ (1) Certificate of Concurrent Submission of Disclosure Statement.

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) Original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity, as applicable, and (ii) one copy to the cognizant Federal auditor.

(Disclosure must be on Form No. CASB DS–1 or CASB DS–2, as applicable. Forms may be obtained from the cognizant ACO or cognizant Federal agency official acting in that capacity and/or from the looseleaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement: _____

Name and Address of Cognizant ACO or Federal Official where filed: _____

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

☐ (2) Certificate of Previously Submitted Disclosure Statement. The offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement: _____

Name and Address of Cognizant ACO or Federal Official where filed: _____

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

☐ (3) Certificate of Monetary Exemption.

The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling $50 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted.

The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

☐ (4) Certificate of Interim Exemption.

The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) above, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 9903.202–1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under subparagraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

CAUTION: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of $50 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

*II. Cost Accounting Standards—Eligibility for Modified Contact Coverage*

If the offeror is eligible to use the modified provisions of 9903.201–2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

☐ The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 9903.201–2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than $50 million in awards of CAS-covered prime contracts and subcontracts. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

CAUTION: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of $50 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of $50 million or more.

*III. Additional Cost Accounting Standards Applicable to Existing Contracts*

The offeror shall indicate below whether award of the contemplated contract would, in accordance with subparagraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

☐ Yes ☐ No

(End of provision)

*Alternate I* (OCT 1994). Insert the following subparagraph (5) at the end of Part I of the basic clause:

☐ (5) Certificate of Disclosure Statement Due Date by Educational Institution. If the offeror is an educational institution that, under the transition provisions of 9903.202–1(f), is or will be required to submit a Disclosure Statement after receipt of this award, the offeror hereby certifies that (check one and complete):

☐ (a) A Disclosure Statement filing Due Date of _____ has been established with the cognizant Federal agency.

☐ (b) The Disclosure Statement will be submitted within the six month period ending _____ months after receipt of this award.

Name and Address of Cognizant ACO or Federal Official where Disclosure Statement is to be filed: _____

(End of Alternate I)

[57 FR 14153, Apr. 17, 1992; 57 FR 34079, Aug. 3, 1992, as amended at 58 FR 58802, Nov. 4, 1993; 58 FR 61844, Nov. 23, 1993; 58 FR 65556, Dec. 15, 1993; 59 FR 55754, Nov. 8, 1994; 61 FR 39361, July 29, 1996; 65 FR 36769, June 9, 2000; 72 FR 32810, June 14, 2007; 76 FR 40819, July 12, 2011]

### 9903.201–4 Contract clauses.

(a) *Cost Accounting Standards.* (1) The contracting officer shall insert the clause set forth below, Cost Accounting Standards, in negotiated contracts, unless the contract is exempted (see 9903.201–1), the contract is subject to modified coverage (see 9903.201–2), or

the clause prescribed in paragraph (e) of this section is used.

(2) The clause below requires the contractor to comply with all CAS specified in part 9904, to disclose actual cost accounting practices (applicable to CAS-covered contracts only), and to follow disclosed and established cost accounting practices consistently.

COST ACCOUNTING STANDARDS (JUL 2011)

(a) Unless the contract is exempt under 9903.201–1 and 9903.201–2, the provisions of 9903 are incorporated herein by reference and the Contractor in connection with this contract, shall—

(1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclosed in writing the Contractor's cost accounting practices as required by 9903.202–1 through 9903.202–5 including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in part 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability of such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in part 9904 or a CAS rule or regulation in part 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted

cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B)), except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of clause)

(b) [Reserved]

(c) *Disclosure and Consistency of Cost Accounting Practices.* (1) The contracting officer shall insert the clause set forth below, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B)), but less than $50 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (*see* 9903.201–2, unless the clause prescribed in paragraph (d) of this subsection is used).

(2) The clause below requires the contractor to comply with CAS 9904.401, 9904.402, 9904.405, and 9904.406, to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently disclosed and established cost accounting practices.

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (JUL 2011)

(a) The Contractor, in connection with this contract, shall—

(1) Comply with the requirements of 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 9904.405, Accounting for Unallowable Costs; and 9904.406, Cost Accounting Standard—Cost Accounting Period, in effect on the date of award of this contract, as indicated in part 9904.

(2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 9903.202–1 through 9903.202–5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 9903.201–6(c) that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS rule, or regulation as specified in parts 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B)).

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of clause)

(d) [Reserved]

(e) *Cost Accounting Standards—Educational Institutions.* (1) The contracting officer shall insert the clause set forth below, Cost Accounting Standards—Educational Institution, in negotiated contracts awarded to educational institutions, unless the contract is exempted (see 9903.201–1), the contract is to be performed by an FFRDC (see 9903.201–2(c)(5)), or the provision at 9903.201–2(c)(6) applies.

(2) The clause below requires the educational institution to comply with all CAS specified in part 9905, to disclose actual cost accounting practices as required by 9903.202–1(f), and to follow disclosed and established cost accounting practices consistently.

COST ACCOUNTING STANDARDS—EDUCATIONAL INSTITUTIONS (JUL 2011)

(a) Unless the contract is exempt under 9903.201–1 and 9903.201–2, the provisions of part 9903 are incorporated herein by reference and the Contractor in connection with this contract, shall—

(1) (CAS-covered Contracts Only) If a business unit of an educational institution required to submit a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 9903.202–1 through 9903.202–5 including methods of distinguishing direct costs from indirect costs and the basis used for accumulating and allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If an accounting principle change mandated under Office of Management and Budget (OMB) Circular A–21, Cost Principles for Educational Institutions, requires that a change in the Contractor's cost accounting practices be made after the date of this contract award, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR part 9905, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) or (a)(4)(iv) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(iv) Agree to an equitable adjustment as provided in the Changes clause of this contract, if the contract cost is materially affected by an OMB Circular A–21 accounting principle amendment which, on becoming effective after the date of contract award, requires the Contractor to make a change to the Contractor's established cost accounting practices.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the

Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS or a CAS rule or regulation in 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted; and

(2) This requirement shall apply only to negotiated subcontracts in excess of the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C 1502(b)(1)B)).

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of clause)

(f) *Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns.* (1) The contracting officer shall insert the clause set forth below, Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns, in negotiated contracts when the contract is with a foreign concern and the contract is not otherwise exempt under 9903.201–1 (see 9903.201–2(e)).

(2) The clause below requires the contractor to comply with 9904.401 and 9904.402, to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently disclosed and established cost accounting practices.

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES—FOREIGN CONCERNS (JUL 2011)

(a) The Contractor, in connection with this contract, shall—

(1) Comply with the requirements of 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; and 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose, in effect on the date of award of this contract, as indicated in Part 9904.

(2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 9903.202–1 through 9903.202–5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 9903.201–6(c) that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the

Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS rule, or regulation as specified in Parts 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of clause)

[73 FR 15940, Mar. 26, 2008, as amended at 76 FR 40819, July 12, 2011]

### 9903.201–5 Waiver

(a) The head of an executive agency may waive the applicability of the Cost Accounting Standards for a contract or subcontract with a value of less than $15 million, if that official determines, in writing, that the business unit of the contractor or subcontractor that will perform the work—

(1) Is primarily engaged in the sale of commercial items; and

(2) Would not otherwise be subject to the Cost Accounting Standards under this Chapter.

(b) The head of an executive agency may waive the applicability of the Cost Accounting Standards for a contract or subcontract under exceptional circumstances when necessary to meet the needs of the agency. A determination to waive the applicability of the Cost Accounting Standards by the agency head shall be set forth in writing, and shall include a statement of the circumstances justifying the waiver.

(c) The head of an executive agency may not delegate the authority under paragraphs (a) and (b) of this section, to any official below the senior policy-making level in the agency.

(d) The head of each executive agency shall report the waivers granted under paragraphs (a) and (b) of this section, for that agency, to the Cost Accounting Standards Board, on an annual basis, not later than 90 days after the close of the Government's fiscal year.

(e) Upon request of an agency head or his designee, the Cost Accounting Standards Board may waive all or any part of the requirements of 9903.201–4(a), Cost Accounting Standards, or 9903.201–4(c), Disclosure and Consistency of Cost Accounting Practices, with respect to a contract subject to the Cost Accounting Standards. Any request for a waiver shall describe the proposed contract or subcontract for which the waiver is sought and shall contain—

(1) An unequivocal statement that the proposed contractor or subcontractor refuses to accept a contract containing all or a specified part of a CAS clause and the specific reason for that refusal;

(2) A statement as to whether the proposed contractor or subcontractor has accepted any prime contract or subcontract containing a CAS clause;

(3) The amount of the proposed award and the sum of all awards by the agency requesting the waiver to the proposed contractor or subcontractor in each of the preceding 3 years;

(4) A statement that no other source is available to satisfy the agency's needs on a timely basis;

(5) A statement of alternative methods considered for fulfilling the need

and the agency's reasons for rejecting them;

(6) A statement of steps being taken by the agency to establish other sources of supply for future contracts for the products or services for which a waiver is being requested; and

(7) Any other information that may be useful in evaluating the request.

(f) Except as provided by the Cost Accounting Standards Board, the authority in paragraph (e) of this section shall not be delegated.

[65 FR 36770, June 9, 2000]

**9903.201–6 Findings.**

(a) *Required change*—(1) *Finding.* Prior to making any equitable adjustment under the provisions of paragraph (a)(4)(i) of the contract clause set forth in 9903.201–4(a) or 9903.201–4(e), or paragraph (a)(3)(i) of the contract clause set forth in 9903.201–4(c), the Contracting Officer shall make a finding that the practice change was required to comply with a CAS, modification or interpretation thereof, that subsequently became applicable to the contract; or, for planned changes being made in order to remain CAS compliant, that the former practice was in compliance with applicable CAS and the planned change is necessary for the contractor to remain in compliance.

(2) *Required change* means a change in cost accounting practice that a contractor is required to make in order to comply with applicable Standards, modifications, or interpretations thereto, that subsequently become applicable to an existing CAS-covered contract due to the receipt of another CAS-covered contract or subcontract. It also includes a prospective change to a disclosed or established cost accounting practice when the cognizant Federal agency official determines that the former practice was in compliance with applicable CAS and the change is necessary for the contractor to remain in compliance.

(b) *Unilateral change*—(1) *Findings.* Prior to making any contract price or cost adjustment(s) under the change provisions of paragraph (a)(4)(ii) of the contract clause set forth in 9903.201–4(a) or 9903.201–4(e), or paragraph (a)(3)(ii) of the contract clause set forth in 9903.201–4(c), the Contracting Officer shall make a finding that the contemplated contract price and cost adjustments will protect the United States from payment of increased costs, in the aggregate; and that the net effect of the adjustments being made does not result in the recovery of more than the estimated amount of such increased costs.

(2) *Unilateral change by a contractor* means a change in cost accounting practice from one compliant practice to another compliant practice that a contractor with a CAS-covered contract(s) elects to make that has not been deemed desirable by the cognizant Federal agency official and for which the Government will pay no aggregate increased costs.

(3) *Action to preclude the payment of aggregate increased costs by the Government.* In the absence of a finding pursuant to paragraph (c) of this subsection that a compliant change is desirable, no agreement may be made with regard to a change to a cost accounting practice that will result in the payment of aggregate increased costs by the United States. For these changes, the cognizant Federal agency official shall limit upward contract price adjustments to affected contracts to the amount of downward contract price adjustments of other affected contracts, i.e., no net upward contract price adjustment shall be permitted.

(c) *Desirable change*—(1) *Finding.* Prior to making any equitable adjustment under the provisions of paragraph (a)(4)(iii) of the contract clause set forth in 9903.201–4(a) or 9903.201–4(e), or paragraph (a)(3)(ii) of the contract clause set forth in 9903.201–4(c), the cognizant Federal agency official shall make a finding that the change to a cost accounting practice is desirable and not detrimental to the interests of the Government.

(2) *Desirable change* means a compliant change to a contractor's established or disclosed cost accounting practices that the cognizant Federal agency official finds is desirable and not detrimental to the Government and is therefore not subject to the no increased cost prohibition provisions of CAS-covered contracts affected by the change. The cognizant Federal agency official's finding need not be based

solely on the cost impact that a proposed practice change will have on a contractor's or subcontractor's current CAS-covered contracts. The change to a cost accounting practice may be determined to be desirable even though existing contract prices and/or cost allowances may increase. The determination that the change to a cost accounting practice is desirable, should be made on a case-by-case basis.

(3) Once a determination has been made that a compliant change to a cost accounting practice is a desirable change, associated management actions that also have an impact on contract costs should be considered when negotiating contract price or cost adjustments that may be needed to equitably resolve the overall cost impact of the aggregated actions.

(4) Until the cognizant Federal agency official has determined that a change to a cost accounting practice is deemed to be a desirable change, the change shall be considered to be a change for which the Government will not pay increased costs, in the aggregate.

(d) *Noncompliant cost accounting practices*—(1) *Findings.* Prior to making any contract price or cost adjustment(s) under the provisions of paragraph (a)(5) of the contract clause set forth in 9903.201–4(a) or 9903.201–4(e), or paragraph (a)(4) of the contract clause set forth in 9903.201–4(c), the Contracting Officer shall make a finding that the contemplated contract price and cost adjustments will protect the United States from payment of increased costs, in the aggregate; and that the net effect of the adjustments being made does not result in the recovery of more than the estimated amount of such increased costs. While individual contract prices, including cost ceilings or target costs, as applicable, may be increased as well as decreased to resolve an estimating noncompliance, the aggregate value of all contracts affected by the estimating noncompliance shall not be increased.

[65 FR 37571, June 14, 2000]

### 9903.201–7 Cognizant Federal agency responsibilities.

(a) The requirements of part 9903 shall, to the maximum extent practicable, be administered by the cognizant Federal agency responsible for a particular contractor organization or location, usually the Federal agency responsible for negotiating indirect cost rates on behalf of the Government. The cognizant Federal agency should take the lead role in administering the requirements of part 9903 and coordinating CAS administrative actions with all affected Federal agencies. When multiple CAS-covered contracts or more than one Federal agency are involved, agencies should discourage Contracting Officers from individually administering CAS on a contract-by-contract basis. Coordinated administrative actions will provide greater assurances that individual contractors follow their cost accounting practices consistently under all their CAS-covered contracts and that changes in cost accounting practices or CAS noncompliance issues are resolved, equitably, in a uniform overall manner.

(b) Federal agencies shall prescribe regulations and establish internal policies and procedures governing how agencies will administer the requirements of CAS-covered contracts, with particular emphasis on inter-agency coordination activities. Procedures to be followed when an agency is and is not the cognizant Federal agency should be clearly delineated. Internal agency policies and procedures shall provide for the designation of the agency office(s) or officials responsible for administering CAS under the agency's CAS-covered contracts at each contractor business unit and the delegation of necessary contracting authority to agency individuals authorized to administer the terms and conditions of CAS-covered contracts, e.g., Administrative Contracting Officers (ACOs) or other agency officials authorized to perform in that capacity. Agencies are urged to coordinate on the development of such regulations.

[59 FR 55756, Nov. 8, 1994]

### 9903.201–8 Compliant accounting changes due to external restructuring activities.

The contract price and cost adjustment requirements of this part 9903 are

not applicable to compliant cost accounting practice changes directly associated with external restructuring activities that are subject to and meet the requirements of 10 U.S.C. 2325.

[65 FR 37472, June 14, 2000]

### 9903.202 Disclosure requirements.

### 9903.202–1 General requirements.

(a) A Disclosure Statement is a written description of a contractor's cost accounting practices and procedures. The submission of a new or revised Disclosure Statement is not required for any non-CAS-covered contract or from any small business concern.

(b) Completed Disclosure Statements are required in the following circumstances:

(1) Any business unit that is selected to receive a CAS-covered contract or subcontract of $50 million or more shall submit a Disclosure Statement before award.

(2) Any company which, together with its segments, received net awards of negotiated prime contracts and subcontracts subject to CAS totaling $50 million or more in its most recent cost accounting period, must submit a Disclosure Statement before award of its first CAS-covered contract in the immediately following cost accounting period. However, if the first CAS-covered contract is received within 90 days of the start of the cost accounting period, the contractor is not required to file until the end of 90 days.

(c) When a Disclosure Statement is required, a separate Disclosure Statement must be submitted for each segment whose costs included in the total price of any CAS-covered contract or subcontract exceed the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B)) unless

(i) The contract or subcontract is of the type or value exempted by 9903.201–1 or

(ii) In the most recently completed cost accounting period the segment's CAS-covered awards are less than 30 percent of total segment sales for the period and less than $10 million.

(d) Each corporate or other home office that allocates costs to one or more disclosing segments performing CAS-covered contracts must submit a Part VIII of the Disclosure Statement.

(e) Foreign contractors and subcontractors who are required to submit a Disclosure Statement may, in lieu of filing a Form No CASB–DS–1, make disclosure by using a disclosure form prescribed by an agency of its Government, provided that the Cost Accounting Standards Board determines that the information disclosed by that means will satisfy the objectives of Public Law 100–679. The use of alternative forms has been approved for the contractors of the following countries:

(1) Canada.

(2) Federal Republic of Germany.

(3) United Kingdom.

(f) *Educational institutions—disclosure requirements.* (1) Educational institutions receiving contracts subject to the CAS specified in part 9905 are subject to the requirements of 9903.202, except that completed Disclosure Statements are required in the following circumstances.

(2) *Basic requirement.* For CAS-covered contracts placed on or after January 1, 1996, completed Disclosure Statements are required as follows:

(i) Any business unit of an educational institution that is selected to receive a CAS-covered contract or subcontract in excess of the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B)), and is part of a college or university location listed in Exhibit A of Office of Management and Budget (OMB) Circular A–21 shall submit a Disclosure Statement before award. A Disclosure Statement is not required; however, if the listed entity can demonstrate that the net amount of Federal contract and financial assistance awards received during its immediately preceding cost accounting period was less than $25 million.

(ii) Any business unit that is selected to receive a CAS-covered contract or subcontract of $25 million or more shall submit a Disclosure Statement before award.

(iii) Any educational institution which, together with its segments, received net awards of negotiated prime contracts and subcontracts subject to CAS totaling $25 million or more in its most recent cost accounting period, of

which, at least one award exceeded $1 million, must submit a Disclosure Statement before award of its first CAS-covered contract in the immediately following cost accounting period. However, if the first CAS-covered contract is received within 90 days of the start of the cost accounting period, the institution is not required to file until the end of 90 days.

(3) *Transition period requirement.* For CAS-covered contracts placed on or before December 31, 1995, completed Disclosure Statements are required as follows:

(i) For business units that are selected to receive a CAS-covered contract or subcontract in excess of the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B)), and are part of the first 20 college or university locations (*i.e.*, numbers 1 through 20) listed in Exhibit A of OMB Circular A–21, Disclosure Statements shall be submitted within six months after the date of contract award.

(ii) For business units that are selected to receive a CAS-covered contract or subcontract in excess of the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B)), and are part of a college or university location that is listed as one of the institutions numbered 21 through 50, in Exhibit A of OMB Circular A–21, Disclosure Statements shall be submitted during the six month period ending twelve months after the date of contract award.

(iii) For business units that are selected to receive a CAS-covered contract or subcontract in excess of the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B)), and are part of a college or university location that is listed as one of the institutions numbered 51 through 99, in Exhibit A of OMB Circular A–21, Disclosure Statements shall be submitted during the six month period ending eighteen months after the date of contract award.

(iv) For any other business unit that is selected to receive a CAS-covered contract or subcontract of $25 million or more, a Disclosure Statement shall be submitted within six months after the date of contract award.

(4) *Transition period due dates.* The educational institution and cognizant Federal agency should establish a specific due date within the periods prescribed in 9903.202–1(f)(3) when a Disclosure Statement is required under a CAS-covered contract placed on or before December 31, 1995.

(5) *Transition period waiver authority.* For a CAS-covered contract to be awarded during the period January 1, 1996, through June 30, 1997, the awarding agency may waive the preaward Disclosure Statement submission requirement specified in 9903.202–1(f)(2) when a due date for the submission of a Disclosure Statement has previously been established by the cognizant Federal agency and the educational institution under the provisions of 9903.202–1(f) (3) and (4).

CAUTION: This waiver authority is not available unless the cognizant Federal agency and the educational institution have established a disclosure statement due date pursuant to a written agreement executed prior to January 1, 1996, and award is made prior to the established disclosure statement due date.

[57 FR 14153, Apr. 17, 1992; 57 FR 34167, Aug. 3, 1992, as amended at 58 FR 58802, Nov. 4, 1993; 59 FR 55756, Nov. 8, 1994; 65 FR 36770, June 9, 2000; 70 29458, May 23, 2005; 72 FR 32812, June 14, 2007; 72 FR 35307, June 27, 2007; 76 FR 40820, July 12, 2011]

### 9903.202–2 Impracticality of submission.

The agency head may determine that it is impractical to secure the Disclosure Statement, although submission is required, and authorize contract award without obtaining the Statement. He shall, within 30 days of having done so, submit a report to the Cost Accounting Standards Board setting forth all material facts. This authority may not be delegated.

### 9903.202–3 Amendments and revisions.

Contractors and subcontractors are responsible for maintaining accurate Disclosure Statements and complying with disclosed practices. Amendments and revisions to Disclosure Statements may be submitted at any time and may be proposed by either the contractor or

the Government. Resubmission of complete, updated, Disclosure Statements is discouraged except when extensive changes require it to assist the review process.

**9903.202–4 Privileged and confidential information.**

If the offeror or contractor notifies the contracting officer that the Disclosure Statement contains trade secrets and commercial or financial information, which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside the Government.

**9903.202–5 Filing Disclosure Statements.**

(a) Disclosure must be on Form Number CASB DS–1 or CASB DS–2, as applicable. Forms may be obtained from the cognizant Federal agency (cognizant ACO or cognizant Federal agency official authorized to act in that capacity) or from the looseleaf version of the Federal Acquisition Regulation. When requested in advance by a contractor, the cognizant Federal agency may authorize contractor disclosure based on computer generated reproductions of the applicable Disclosure Statement Form.

(b) Offerors are required to file Disclosure Statements as follows:

(1) Original and one copy with the cognizant ACO or cognizant Federal agency official acting in that capacity, as applicable; and

(2) One copy with the cognizant Federal auditor.

(c) Amendments and revisions shall be submitted to the ACO or agency official acting in that capacity, as applicable, and the Federal auditor of the currently cognizant Federal agency.

[59 FR 55757, Nov. 8, 1994]

**9903.202–6 Adequacy of Disclosure Statement.**

Federal agencies shall prescribe regulations and establish internal procedures by which each will promptly determine on behalf of the Government, when serving as the cognizant Federal agency for a particular contractor location, that a Disclosure Statement has adequately disclosed the practices required to be disclosed by the Cost Accounting Standards Board's rules, regulations and Standards. The determination of adequacy shall be distributed to all affected agencies. Agencies are urged to coordinate on the development of such regulations.

[59 FR 55757, Nov. 8, 1994]

**9903.202–7 [Reserved]**

**9903.202–8 Subcontractor Disclosure Statements.**

(a) The contractor or higher tier subcontractor is responsible for administering the CAS requirements contained in subcontracts.

(b) If the subcontractor has previously furnished a Disclosure Statement to an ACO, the subcontractor may satisfy the submission requirement by identifying to the contractor or higher tier subcontractor the ACO to whom it was submitted.

(c)(1) If the subcontractor considers the Disclosure Statement (or other similar information) privileged or confidential, the subcontractor may submit it directly to the ACO and auditor cognizant of the subcontractor, notifying the contractor or higher tier subcontractor. A preaward determination of adequacy is not required in such cases. Instead, the ACO cognizant of the subcontractor shall

(i) Notify the auditor that the adequacy review will be performed during the postaward compliance review and, upon completion,

(ii) Notify the subcontractor, the contractor or higher tier subcontractor, and the cognizant ACOs of the findings.

(2) Even though a Disclosure Statement is not required, a subcontractor may

(i) Claim that CAS-related reviews by contractors or higher tier subcontractors would reveal proprietary data or jeopardize the subcontractor's competitive position and

(ii) Request that the Government perform the required reviews.

(d) When the Government requires determinations of adequacy or inadequacy, the ACO cognizant of the subcontractor shall make such recommendation to the ACO cognizant of the prime contractor or next higher tier subcontractor. ACOs cognizant of

higher tier subcontractors or prime contractors shall not reverse the determination of the ACO cognizant of the subcontractor.

**9903.202–9 Illustration of Disclosure Statement Form, CASB-DS-1.**

The data which are required to be disclosed are set forth in detail in the Disclosure Statement Form, CASB-DS-1, which is illustrated below:

FORM APPROVED OMB NUMBER
0348-0051

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | INDEX |
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FORM CASB DS-1 (REV 2/96)

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | GENERAL INSTRUCTIONS |
|---|---|

1. This Disclosure Statement has been designed to meet the requirements of Public Law 100-679, and persons completing it are to describe the contractor and its contract cost accounting practices. For complete regulations, instructions and timing requirements concerning submission of the Disclosure Statement, refer to Section 9903.202 of Chapter 99 Of Title 48 CFR (48 CFR 9903.202).

2. Part I of the Statement provides general information concerning each reporting unit (e.g., segment, Corporate or other intermediate level home office, or a business unit). Parts II through VII pertain to the types of costs generally incurred by the segment or business unit directly performing Federal contracts or similar cost objectives. Part VIII pertains to the types of costs that are generally incurred by a Home office and are allocated to one or more segments performing Federal contracts. For a definition of the term "home office", see 48 CFR 9904.403.

3. Each segment or business unit required to disclose its cost accounting practices should complete the Cover Sheet, the Certification, and Parts I through VII.

4. Each home office required to disclose its cost accounting practices for measuring, assigning and allocating its costs to segments performing Federal contracts or similar cost objectives shall complete the Cover Sheet, the Certification, Part I and Part VIII of the Disclosure Statement. Where a home office either establishes practices or procedures for the types of costs covered by Parts V, VI and VII,or incurs and then allocates these types of cost to its segments, the home office may complete Parts V, VI and VII to be included in the Disclosure Statement submitted by its segments. While a home office may have more than one segment submitting Disclosure Statements, only one Statement needs to be submitted to cover the home office operations.

5. The Statement must be signed by an authorized signatory of the reporting unit.

6. The Disclosure Statement should be answered by marking the appropriate line or inserting the applicable letter code which describes the segment's (reporting unit's) cost accounting practices.

7. A number of questions in this Statement may need narrative answers requiring more space than is provided. In such instances, the reporting unit should use the attached continuation sheet provided. The continuation sheet may be reproduced locally as needed. The number of the question involved should be indicated and the same coding required to answer the questions in the Statement should be used in presenting the answer on the continuation sheet. Continuation sheets should be inserted at the end of the pertinent Part of the Statement. On each continuation sheet, the reporting unit should enter the next sequential page number for that Part and, on the last continuation sheet used, the words "End of Part" should be inserted after the last entry.

8. Where the cost accounting practice being disclosed is clearly set forth in the contractor's existing written accounting policies and procedures, such documents may be cited on a continuation sheet and incorporated by reference at the option of the contractor. In such cases, the contractor should provide the date of issuance and effective date for each accounting policy and/or procedures document cited. Alternatively, copies of the relevant parts of such documents may be attached as appendices to the pertinent Disclosure Statement Part. Such continuation sheets and appendices should be labeled and cross-referenced with the applicable Disclosure Statement number and follow the page number specified in paragraph 7. Any supplementary comments needed to adequately describe the cost accounting practice being disclosed should also be provided.

9. Disclosure Statements must be amended when cost accounting practices are changed to comply with a new CAS or when practices are changed with or without knowledge of the Government (Also see 48 CFR 9903.202-3).

| COST ACCOUNTING STANDARDS BOARD<br>DISCLOSURE STATEMENT<br>REQUIRED BY PUBLIC LAW 100-679 | GENERAL INSTRUCTIONS |
|---|---|

10. Amendments shall be submitted to the same offices to which submission would have been made were an original Disclosure Statement filed.

11. Each amendment, or set of amendments should be accompanied by an amended cover sheet (indicating revision number and effective date of the change) and a signed certification. For all resubmissions, on each page, insert "Revision Number ____" and "Effective Date _____" in the Item Description block; and, insert a revision mark (e.g., "R") in the right hand margin of any line that is revised. Completely resubmitted Disclosure Statements must be accompanied by similar notations identifying the items which have been changed.

12. Use of this Disclosure Statement, amended February 1996, shall be phased in as follows:

A. New Contractors. This form shall be used by new contractors when they are initially required to disclose their cost accounting practices pursuant to 9903.202-1.

B. Existing Contractors. If a contractor has disclosed its cost accounting practices on a prior edition of the Disclosure Statement (CASB DS-1), such disclosure shall remain in effect until the contractor amends or revises a significant portion of the Disclosure Statement in accordance with CAS 9903.202-3. Minor amendments to an existing DS-1 may continue to be made using the prior form. However, when a substantive change is made, a complete Disclosure Statement must be filed using this form. In any event, all contractors and subcontractors must submit a new Disclosure Statement (this version of the CASB DS-1) not later than the beginning of the contractor's next full fiscal year after December 31, 1998.

ATTACHMENT - Blank Continuation Sheet

| COST ACCOUNTING STANDARDS BOARD<br>DISCLOSURE STATEMENT<br>REQUIRED BY PUBLIC LAW 100-679 | CONTINUATION SHEET |
|---|---|
| | NAME OF REPORTING UNIT |

| Item No. | Item description |
|---|---|
| | |

FORM CASB DS-1 (REV 2/96)

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | COVER SHEET AND CERTIFICATION |
|---|---|

0.1 Company or Reporting Unit.

Name

Street Address

City, State, & Zip Code

Division or Subsidiary of (if applicable)

0.2 Reporting Unit: (Mark one.)

A. _____ Business Unit comprising an entire business organization which is not divided into segments.
B.1. _____ Corporate Home Office
2. _____ Intermediate Level Home Office
3. _____ Segment or business unit reporting directly to a home office.

0.3 Official to Contact Concerning this Statement.

Name and Title

Phone number (including area code and extension)

0.4 Statement Type and Effective Date:

A. (Mark type of submission. If a revision, enter number)
(a)_____ Original Statement
(b)_____ Revised Statement; Revision No._____

B. Effective Date of this Statement/Revision:_____

0.5 Statement Submitted To (Provide office name, location and telephone number, include area code and extension):

(a) Cognizant Federal Agency: _____
(b) Cognizant Federal Auditor:_____

CERTIFICATION

I certify that to the best of my knowledge and belief this Statement, as amended in the case of a revision, is the complete and accurate disclosure as of the above date by the above-named organization of its cost accounting practices, as required by the Disclosure Regulation (48 CFR 9903.202) of the Cost Accounting Standards Board under P.L. 100-679.

_____
(Name)

_____
(Title)

THE PENALTY FOR MAKING A FALSE STATEMENT IN THIS DISCLOSURE IS PRESCRIBED IN 18 U.S.C. § 1001

FORM CASB DS-1 (REV 2/96) C - 1

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART I - GENERAL INFORMATION<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item description |
|---|---|
| | Part I Instructions<br><br>Sales data for this part should cover the most recently completed fiscal year of the reporting unit. "Government CAS Covered Sales" includes sales under both prime contracts and subcontracts. "Annual CAS Covered Sales" includes intracorporate transactions. |
| 1.1.0 | Type of Business Entity of Which the Reporting Unit is a Part. (Mark one.)<br><br>A. ____ Corporation<br>B. ____ Partnership<br>C. ____ Proprietorship<br>D. ____ Not-for-profit organization<br>E. ____ Joint Venture<br>F. ____ Federally Funded Research and Development Center (FFRDC)<br>Y. ____ Other (Specify) _____ |
| 1.2.0 | Predominant Type of Government Sales. (Mark one.) 1/<br><br>A. ____ Manufacturing<br>B. ____ Research and Development<br>C. ____ Construction<br>D. ____ Services<br>Y. ____ Other (Specify)_____ |
| 1.3.0 | Annual CAS Covered Government Sales as Percentage of Total Sales (Government and Commercial). (Mark one. An estimate is permitted for this section.) 1/<br><br>A. ____ Less than 10%<br>B. ____ 10%-50%<br>C. ____ 51%-80%<br>D. ____ 81% - 95%<br>E. ____ Over 95% |
| 1.4.0 | Description of Your Cost Accounting System for Government Contracts and Subcontracts. (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.) 1/<br><br>A. ____ Standard costs - Job order<br>B. ____ Standard costs - Process<br>C. ____ Actual costs - Job order<br>D. ____ Actual costs - Process<br>Y. ____ Other(s) 2/ |
| | 1/ Do not complete when Part I is filed in conjunction with Part VIII.<br>2/ Describe on a Continuation Sheet. |

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART I - GENERAL INFORMATION<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item description |
|---|---|
| 1.5.0 | Identification of Differences Between Contract Cost Accounting and Financial Accounting Records.<br><br>List on a continuation sheet, the types of costs charged to Federal contracts that are supported by memorandum records and identify the method used to reconcile with the entity's financial accounting records. |
| 1.6.0 | Unallowable Costs. Costs that are not reimbursable as allowable costs under the terms and conditions of Federal awards are identified as follows: (Mark all that apply and if more than one is marked, describe on a continuation sheet the major cost groupings, organizations, or other criteria for using each marked technique.) |
| 1.6.1 | Incurred costs.<br><br>A. ____ Specifically identified and recorded separately in the formal financial accounting records.<br><br>B. ____ Identified in separately maintained accounting records or workpapers.<br><br>C. ____ Identifiable through use of less formal accounting techniques that permit audit verification.<br><br>D. ____ Determinable by other means. 1/ |
| 1.6.2 | Estimated costs.<br><br>A. _____ By designation and description (in backup data, workpapers, etc) which have specifically been identified and recognized in making estimates.<br><br>B. _____ By description of any other estimating technique employed to provide appropriate recognition of any unallowable amounts pertinent to the estimates.<br><br>C. _____ Other. 1/ |
| 1.7.0 | Fiscal Year: _____ (Specify twelve month period used for financial accounting and reporting purposes, e.g., 1/1 to 12/31.) |
| 1.7.1 | Cost Accounting Period: _____ (Specify period. If the cost accounting period used for the accumulation and reporting of costs under Federal contracts is other than the fiscal year identified in Item 1.7.0, explain circumstances on a continuation sheet.)<br><br>1/ Describe on a Continuation Sheet. |

FORM CASB DS-1 (REV 2/96) I - 2

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART II - DIRECT COSTS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item description |
|---|---|
| | Part II Instructions<br><br>This part covers the three major categories of direct costs, i.e., Direct Material, Direct Labor, and Other Direct Costs.<br><br>It is not the intent here to spell out or define the three elements of direct costs. Rather, each contractor should disclose practices based on its own definitions of what costs are, or will be, charged directly to Federal contracts or similar cost objectives as Direct Material, Direct Labor, or Other Direct Costs. For example, a contractor may charge or classify purchased labor of a direct nature as "Direct Material" for purposes of pricing proposals, requests for progress payments, claims for cost reimbursement, etc.; some other contractor may classify the same cost as "Direct Labor," and still another as "Other Direct Costs." In these circumstances, it is expected that each contractor will disclose practices consistent with its own classifications of Direct Material, Direct Labor, and Other Direct Costs. |
| 2.1.0 | Description of Direct Material. Direct material as used here is not limited to those items of material actually incorporated into the end product; they also include material, consumable supplies, and other costs when charged to Federal contracts or similar cost objectives as Direct Material. (Describe on a continuation sheet the principal classes or types of material and services which are charged as direct material; group the material and service costs by those which are incorporated in an end product and those which are not.) |
| 2.2.0 | Method of Charging Direct Material. |
| 2.2.1 | Direct Charge Not Through an Inventory Account at: (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.)<br><br>A. ____ Standard costs (Describe the type of standards used.) 1/<br>B. ____ Actual Costs<br>Y. ____ Other(s) 1/<br>Z. ____ Not applicable |
| 2.2.2 | Charged Direct from a Contractor-owned Inventory Account at: (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.)<br><br>A. ____ Standard costs 1/<br>B. ____ Average Costs 1/<br>C. ____ First in, first out<br>D. ____ Last in, first out<br>Y. ____ Other(s) 1/<br>Z. ____ Not applicable |
| | 1/ Describe on a Continuation Sheet. |

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART II - DIRECT COSTS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item description |
|---|---|
| 2.3.0 | Timing of Charging Direct Material. (Mark the appropriate line(s) to indicate the point in time at which direct material are charged to Federal contracts or similar cost objectives, and if more than one line is marked, explain on a continuation sheet.)<br><br>A. _____ When orders are placed<br>B. _____ When both the material and invoice are received<br>C. _____ When material is issued or released to a process, batch, or similar intermediate cost objective<br>D. _____ When material is issued or released to a final cost objective<br>E. _____ When invoices are paid<br>Y. _____ Other(s) 1/<br>Z. _____ Not applicable |
| 2.4.0 | Variances from Standard Costs for Direct Material. (Do not complete this item unless you use a standard cost method, i.e., you have marked Line A of Item 2.2.1, or 2.2.2. Mark the appropriate line(s) in Items 2.4.1, 2.4.2, and 2.4.4, and if more than one line is marked, explain on a continuation sheet.) |
| 2.4.1 | Type of Variance.<br><br>A. _____ Price<br>B. _____ Usage<br>C. _____ Combined (A and B)<br>Y. _____ Other(s) 1/ |
| 2.4.2 | Level of Production Unit used to Accumulate Variance. Indicate which level of production unit is used as a basis for accumulating material variances.<br><br>A. _____ Plant-wide Basis<br>B. _____ By Department<br>C. _____ By Product or Product Line<br>Y. _____ Other(s) 1/ |
| 2.4.3 | Method of Disposing of Variance. Describe on a continuation sheet the basis for, and the frequency of, the disposition of the variance. |
| 2.4.4 | Revisions. Standard costs for direct materials are revised:<br><br>A. _____ Semiannually<br>B. _____ Annually<br>C. _____ Revised as needed, but at least once annually<br>Y. _____ Other(s) 1/ |
| | 1/ Describe on a Continuation Sheet. |

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART II - DIRECT COSTS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item description |
|---|---|
| 2.5.0 | Method of Charging Direct Labor: (Mark the appropriate line(s) for each Direct Labor Category to show how such labor is charged to Federal contracts or similar cost objectives, and if more than one line is marked, explain on a continuation sheet. Also describe on a continuation sheet the principal classes of labor rates that are, or will be applied to Manufacturing Labor, Engineering Labor, and Other Direct Labor, in order to develop direct labor costs. |

| | Direct Labor Category | | |
|---|---|---|---|
| | Manufacturing | Engineering | Other Direct |
| A. Individual/actual rates | ____ | ____ | ____ |
| B. Average rates – uncompensated overtime hours included in computation 1/ | ____ | ____ | ____ |
| C. Average rates – uncompensated overtime hours excluded from computation | ____ | ____ | ____ |
| D. Standard costs/rates 1/ | ____ | ____ | ____ |
| Y. Other(s) 1/ | ____ | ____ | ____ |
| Z. Labor category is not applicable | ____ | ____ | ____ |

| | |
|---|---|
| 2.6.0 | Variances from Standard Costs for Direct Labor. (Do not complete this item unless you use a standard costs/rate method, i.e., you have marked Line D of Item 2.5.0 for any direct labor category. Mark the appropriate line(s) in each column of Items 2.6.1, 2.6.2, and 2.6.4. If more than one is marked, explain on a continuation sheet.) |
| 2.6.1 | Type of Variance. |

| | Direct Labor Category | | |
|---|---|---|---|
| | Manufacturing | Engineering | Other Direct |
| A. Rate | ____ | ____ | ____ |
| B. Efficiency | ____ | ____ | ____ |
| C. Combined (A and B) | ____ | ____ | ____ |
| Y. Other(s) 1/ | ____ | ____ | ____ |
| Z. Labor category is not applicable | ____ | ____ | ____ |

1/ Describe on a Continuation Sheet.

| COST ACCOUNTING STANDARDS BOARD<br>DISCLOSURE STATEMENT<br>REQUIRED BY PUBLIC LAW 100-679 | PART II - DIRECT COSTS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item description |
|---|---|
| 2.6.2 | Level of Production Unit used to Accumulate Variance. Indicate which level of production unit is used as a basis for accumulating the labor variances. |

| | Direct Labor Category | | |
|---|---|---|---|
| | Manufacturing | Engineering | Other Direct |
| A. Plant-wide basis | ____ | ____ | ____ |
| B. By department | ____ | ____ | ____ |
| C. By product or product line | ____ | ____ | ____ |
| Y. Other(s) 1/ | ____ | ____ | ____ |
| Z. Labor category is not applicable | ____ | ____ | ____ |

| | |
|---|---|
| 2.6.3 | Method of Disposing of Variance. Describe on a continuation sheet the basis for, and the frequency of, the disposition of the variance. |
| 2.6.4 | Revisions. Standard costs for direct labor are revised: |

A. ____ Semiannually
B. ____ Annually
C. ____ Revised as needed, but at least once annually
Y. ____ Other(s) 1/

| | |
|---|---|
| 2.7.0 | Description of Other Direct Costs. Other significant items of cost directly identified with Federal contracts or other final cost objectives. Describe on a continuation sheet the principal classes of other costs that are always charged directly, that is, identified specifically with final cost objectives, e.g., fringe benefits, travel costs, services, subcontracts, etc. |
| 2.7.1 | When Employee Travel Expenses for lodging and subsistence are charged direct to Federal contracts or similar cost objectives the charge is based on: |

A. ____ Actual Costs
B. ____ Per Diem Rates
C. ____ Lodging at actual costs and subsistence at per diem
Y. ____ Other Method 1/
Z. ____ Not Applicable

2.8.0 Credits to Contract Costs. When Federal contracts or similar cost objectives are credited for the following circumstances, are the rates of direct labor, direct materials, other direct costs and applicable indirect costs always the same as those for the original charges? (Mark one line for each circumstance, and for each "No" answer, explain on a continuation sheet how the credit differs from the original charge.)

| Circumstance | A. Yes | B. No | Z. Not Applicable |
|---|---|---|---|
| (a) Transfers to other jobs/contracts | ____ | ____ | ____ |
| (b) Unused or excess materials remaining upon completion of contract | ____ | ____ | ____ |

1/ Describe on a Continuation Sheet.

FORM CASB DS-1 (REV 2/96) II - 4

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART III - DIRECT VS. INDIRECT COSTS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item description |
|---|---|
| 3.1.0 | Criteria for Determining How Costs are Charged to Federal Contracts Or Similar Cost Objectives. Describe on a continuation sheet your criteria for determining when costs incurred for the same purpose, in like circumstances, are treated either as direct costs only or as indirect costs only with respect to final cost objectives. |
| 3.2.0 | Treatment of Costs of Specified Functions, Elements of Cost, or Transactions. (For each of the functions, elements of cost or transactions listed in Items 3.2.1, 3.2.2, and 3.2.3, enter one of the Codes A through F, or Y, to indicate how the item is treated. Enter Code Z in those lines that are not applicable to you. Also, specify the name(s) of the indirect pool(s) (as listed in 4.1.0, 4.2.0 and 4.3.0) for each function, element of cost, or transaction coded E or F. If Code E, Sometimes direct/Sometimes indirect, is used, explain on a continuation sheet the circumstances under which both direct and indirect allocations are made.)<br><br>Treatment Code<br><br>A. Direct material<br>B. Direct labor<br>C. Direct material and labor<br>D. Other direct costs<br>E. Sometimes direct/Sometimes indirect<br>F. Indirect only<br>Y. Other(s) 1/<br>Z. Not applicable |
| 3.2.1 | Functions, Elements of Cost, or Transactions Related to Direct Material — Treatment Code — Name of Pool(s)<br><br>(a) Cash Discounts on Purchases ____ _____<br>(b) Freight in ____ _____<br>(c) Income from Sale of Scrap ____ _____<br>(d) Income from Sale of Salvage ____ _____<br>(e) Incoming Material Inspection (receiving) ____ _____<br>(f) Inventory adjustment ____ _____<br>(g) Purchasing ____ _____<br>(h) Trade Discounts, Refunds, Rebates, and Allowances on Purchases ____ _____ |
| | 1/ Describe on a Continuation Sheet. |

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART III - DIRECT VS. INDIRECT COSTS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item description | | |
|---|---|---|---|
| 3.2.2 | Functions, Elements of Cost, or Transactions Related to Direct Labor | Treatment Code | Name of Pool(s) |
| | (a) Incentive Compensation | ___ | _____ |
| | (b) Holiday Differential (Priemium Pay) | ___ | _____ |
| | (c) Vacation Pay | ___ | _____ |
| | (d) Overtime Premium Pay | ___ | _____ |
| | (e) Shift Premium Pay | ___ | _____ |
| | (f) Pension Costs | ___ | _____ |
| | (g) Post Retirement Benefits Other Than Pensions | ___ | _____ |
| | (h) Health Insurance | ___ | _____ |
| | (i) Life Insurance | ___ | _____ |
| | (j) Other Deferred Compensation 1/ | ___ | _____ |
| | (k) Training | ___ | _____ |
| | (l) Sick Leave | ___ | _____ |
| | 1/ Describe on a Continuation Sheet. | | |

FORM CASB DS-1 (REV 2/96) III - 2

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART III - DIRECT VS. INDIRECT COSTS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item description | | | |
|---|---|---|---|---|
| 3.2.3 | Functions, Elements of Cost, or Transactions - Miscellaneous | | Treatment Code | Name of Pool(s) |
| | (a) | Design Engineering (in-house) | ____ | _____ |
| | (b) | Drafting (in-house) | ____ | _____ |
| | (c) | Computer Operations (in-house) | ____ | _____ |
| | (d) | Contract Administration | ____ | _____ |
| | (e) | Subcontract Administration Costs | ____ | _____ |
| | (f) | Freight Out (finished product) | ____ | _____ |
| | (g) | Line (or production) Inspection | ____ | _____ |
| | (h) | Packaging and Preservation | ____ | _____ |
| | (i) | Preproduction Costs and Start-up Costs | ____ | _____ |
| | (j) | Departmental Supervision | ____ | _____ |
| | (k) | Professional Services (consultant fees) | ____ | _____ |
| | (l) | Purchased Labor of Direct Nature (on premises) | ____ | _____ |
| | (m) | Purchased Labor of Direct Nature (off premises) | ____ | _____ |
| | (n) | Rearrangement Costs | ____ | _____ |
| | (o) | Rework Costs | ____ | _____ |
| | (p) | Royalties | ____ | _____ |
| | (q) | Scrap Work | ____ | _____ |
| | (r) | Special Test Equipment | ____ | _____ |
| | (s) | Special Tooling | ____ | _____ |
| | (t) | Warranty Costs | ____ | _____ |
| | (u) | Rental Costs | ____ | _____ |
| | (v) | Travel and Subsistence | ____ | _____ |
| | (w) | Employee Severance Pay | ____ | _____ |
| | (x) | Security Guards | ____ | _____ |

| COST ACCOUNTING STANDARDS BOARD<br>DISCLOSURE STATEMENT<br>REQUIRED BY PUBLIC LAW 100-679 | PART IV - INDIRECT COSTS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item description |
|---|---|

Part IV Instructions

For the purpose of this part, indirect costs have been divided into three categories: (i) manufacturing, engineering, and comparable indirect costs, (ii) general and administrative (G&A) expenses, and (iii) service center and expense pool costs, as defined in Item 4.3.0. The term "overhead," as used in this part, refers only to the first category of indirect costs.

The following Allocation Base Codes are provided for use in connection with Items 4.1.0, 4.2.0 and 4.3.0.

| | | | |
|---|---|---|---|
| A. | Sales | H. | Direct labor dollars |
| B. | Cost of sales | I. | Direct labor hours |
| C. | Total Cost input (direct material, direct labor, other direct costs and applicable overhead) | J. | Machine hours |
| | | K. | Usage |
| | | L. | Unit of production |
| D. | Value-added cost input (total cost input less direct material and subcontract costs) | M. | Direct material cost |
| | | N. | Total payroll dollars (direct and indirect employees) |
| E. | Total cost incurred (total cost input plus G&A expenses) | O. | Headcount or number of employees (direct and indirect employees) |
| F. | Prime cost (direct material, direct labor and other direct cost) | P. | Square feet |
| | | Y. | Other(s), or more than one basis (Describe on a continuation sheet.) |
| G. | Processing or conversion cost (direct labor and applicable overhead) | Z. | Pool not applicable |

4.1.0 Overhead Pools. List all the overhead pools, i.e., pools of indirect costs, other than general and administrative (G&A) expenses, that are allocated to final cost objectives without any intermediate allocations. A segment or business unit may have only a single pool encompassing all of its overhead costs or alternatively it may have several pools such as manufacturing overhead, engineering overhead, material handling overhead, etc. For each pool listed indicate the base used for allocating such pooled expenses to Federal contracts or similar cost objectives. Also, for each of the pools indicate (a) the major functions, activities, and elements of cost included, and (b) the make up of the allocation base. Use a continuation sheet if additional space is required.

| | | Allocation Base Code |
|---|---|---|
| 1. | _____ | ____ |

(a) Major functions, activities, and elements of cost included:

_____

_____

(b) Description/Make up of the allocation base:

_____

_____

FORM CASB DS-1 (REV 2/96) IV - 1

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART IV - INDIRECT COSTS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item description |
|---|---|
| 4.1.0 | Continued.<br><br>Allocation Base Code<br><br>2. _____ ____<br><br>(a) Major functions, activities, and elements of cost included:<br><br>_____<br><br>_____<br><br>(b) Description/Make up of the allocation base:<br><br>_____<br><br>_____ |
| 4.2.0 | General and Administrative (G&A) Expense Pool(s). Select among the three categories of pools below that describe(s) the manner in which G&A expenses are allocated. For each category of pool(s) selected indicate the base(s) used for allocating such pooled expenses to Federal contracts or similar cost objectives. Also, for each category of pool(s) selected, indicate (a) the major functions, activities, and elements of cost included, and (b) the make up of the allocation base(s). For example, if direct labor dollars are used, are fringe benefits included? If a total cost input base is used, is the imputed cost of capital included? Use a continuation sheet if additional space is required.<br><br>Single Pool Containing G&A Expenses Only — Allocation Base Code<br><br>_____ ____<br><br>(a) Major functions, activities, and elements of cost included:<br><br>_____<br><br>_____<br><br>(b) Description/Make up of the allocation base:<br><br>_____<br><br>_____ |

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART IV - INDIRECT COSTS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item description |
|---|---|
| 4.2.0 | Continued.<br><br>Single Pool Containing Both G&A and Non-G&A Expenses — Allocation Base Code: ____<br><br>_____<br><br>(a) Major functions, activities, and elements of cost included:<br><br>_____<br><br>_____<br><br>(b) Description/Make up of the allocation base:<br><br>_____<br><br>_____<br><br>Special Allocations — Allocation Base Code<br><br>1. _____ ____<br><br>(a) Major functions, activities, and elements of cost included:<br><br>_____<br><br>_____<br><br>(b) Description/Make up of the allocation base:<br><br>_____<br><br>_____<br><br>2. _____ ____<br><br>(a) Major functions, activities, and elements of cost included:<br><br>_____<br><br>_____<br><br>(b) Description/Make up of the allocation base:<br><br>_____<br><br>_____ |

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART IV - INDIRECT COSTS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item description |
|---|---|
| 4.3.0 | Service Center and Expense Pool Allocation Bases. |

Service centers are departments or other functional units which perform specific technical and/or administrative services primarily for the benefit of other units within a reporting unit. Expense pools are pools of indirect costs that are allocated primarily to other units within a reporting unit. Examples of service centers are data processing centers, reproduction services and communications services. Examples of expense pools are use and occupancy pools and fringe benefit pools.

Category Code

Generally, costs incurred by such centers or pools are, or can be, charged or allocated (i) partially to specific final cost objectives as direct costs and partially to other indirect cost pools (such as a manufacturing overhead pool) for subsequent reallocation to several final cost objectives, referred to herein as Category "A", and (ii) only to several other indirect cost pools (such as a manufacturing overhead pool, engineering overhead pool and G&A expense pool) for subsequent reallocation to several final cost objectives, referred to herein as Category "B".

Rate Code

Some service centers or expense pools may use predetermined billing or costing rates to charge or allocate the costs (Rate Code A) while others may charge or allocate on an actual basis (Rate Code B).

List all the service centers and expense pools and enter in column (1) Code A or B to indicate the category of pool. Enter in Column (2) one of the Allocation Base Codes A through P, or Y, listed on Page ___, to indicate the base used for charging or allocating service center or expense pool costs. Enter in Column (3) Rate Code A or B to describe the costing method used. Also, for each of the centers and pools indicate (a) the major functions, activities, and elements of cost included, and (b) the make up of the allocation base. Use a continuation sheet if additional space is required.

| Service Center or Expense Pool | Category Code (1) | Allocation Base Code (2) | Rate Code (3) |
|---|---|---|---|
| 1. _____ | ___ | ___ | ___ |
| (a) Major functions, activities, and elements of cost included: _____ _____ | | | |
| (b) Description/Make up of the allocation base: _____ _____ | | | |
| 2. _____ | ___ | ___ | ___ |
| (a) Major functions, activities, and elements of cost included: _____ _____ | | | |
| (b) Description/Make up of the allocation base: _____ _____ | | | |

| COST ACCOUNTING STANDARDS BOARD<br>DISCLOSURE STATEMENT<br>REQUIRED BY PUBLIC LAW 100-679 | PART IV - INDIRECT COSTS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item description |
|---|---|
| 4.4.0 | Treatment of Variances from Actual Cost (Underabsorption or Overabsorption). Where predetermined billing or costing rates are used to charge costs of service centers and expense pools to Federal contracts or other indirect cost pools (Rate Code A in Column (3) of Item 4.3.0), variances from actual costs are: (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.)<br><br>A. ____ Prorated to users on the basis of charges made, at least once annually<br>B. ____ All charged or credited to indirect cost pool(s) at least once annually<br>Y. ____ Other(s) 1/<br>Z. ____ Service center is not applicable to reporting unit |
| 4.5.0 | Application of Overhead and G&A Rates to Specified Transactions or Costs.<br><br>This item is directed to ascertaining your practice in special situations where, in lieu of establishing a separate indirect cost pool, allocation is made from an established overhead or G&A pool at a rate other than the normal full rate for that pool. In the case of such a special allocation, the terms "less than full rate" or "more than full rate" should be used to describe the practice. The terms do not apply to situations where, as in some cases of off-site activities, etc., a separate indirect cost pool and base are used and the rate for such activities is lower than the "in-house" rate.<br><br>For each of the transactions or costs listed below, enter one of the following codes to indicate your indirect cost allocation practice with respect to that transaction or cost. If Code A, full rate, is entered, identify on a continuation sheet the pool(s) reported under items 4.1.0, 4.2.0, and 4.3.0, which are applicable. If Codes B or C, less than or more than the full rate, is entered, describe on a continuation sheet the major types of expenses that are covered by such a rate.<br><br>Rate Code<br><br>A. Full rate<br>B. Special allocation at less than full rate<br>C. Special allocation at more than full rate<br>D. No overhead or G&A is applied<br>Z. Transaction or cost is not applicable to reporting unit<br><br>Transaction or Cost to Which Indirect Costs May be Allocated — Rate Code<br><br>(a) Subcontract costs ____<br>(b) Purchased Labor ____<br>(c) Government-furnished materials ____<br>(d) Self-constructed depreciable assets ____<br>(e) Labor on installation of assets ____<br>(f) Off-site work ____<br>(g) Interorganizational transfers out ____<br>(h) Interorganizational transfers in (Also indicate on a continuation sheet the basis used by you as transferee to charge the cost or price of interogranizational transfers to Federal contracts or similar cost objectives. If the charge is based on cost, indicate whether the transferor's G&A expenses are included.) ____<br>(i) Other transactions or costs (Enter Code B or C on this line if there are other transactions or costs to which either less than full rate or more than full rate is applied. List such transactions or costs on a continuation sheet, and for each describe the major types of expenses covered by such a rate. If there are no other such transactions or costs, enter code Z.) ____<br><br>1/ Describe on a Continuation Sheet. |

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART IV - INDIRECT COSTS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item description |
|---|---|
| 4.6.0 | Independent Research and Development (IR&D) and Bid and Proposal (B&P) Costs. Definitions of and requirements for the allocation of IR&D and B&P costs are contained in 48 CFR 9904.420. The full rate of all allocable manufacturing, engineering, and/or other overhead is applied to IR&D and B&P costs as if IR&D and B&P projects were under contract, and the "burdened" IR&D and B&P costs are: (Mark appropriate line(s).)<br><br>A. ____ Allocated to Federal contracts or similar cost objectives by means of a composite pool with G&A expenses.<br><br>B. ____ Allocated to Federal contracts or similar cost objectives by means of a separate pool.<br><br>C. ____ Transferred to the corporate or home office level for reallocation to the benefiting segments.<br><br>Y. ____ Other 1/<br><br>Z. ____ Not applicable |
| 4.7.0 | Cost of Capital Committed to Facilities. In accordance with instructions for Form CASB-CMF, undistributed facilities capital items are allocated to overhead and G&A expense pools: (Mark one.)<br><br>A. ____ On a basis identical to that used to absorb the actual depreciation or amortization from these facilities; land is assigned in the same manner as the facilities to which it relates.<br><br>B. ____ On a basis not identical to that used to absorb the actual depreciation or amortization from these facilities. (Describe on a continuation sheet the difference for each step of the allocation process.)<br><br>C. ____ By the "alternative allocation process" described in instructions for Form CASB-CMF.<br><br>Z. ____ Not applicable. |
| | 1/ Describe on a Continuation Sheet. |

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART V - DEPRECIATION AND CAPITALIZATION PRACTICES |
|---|---|
| | NAME OF REPORTING UNIT |

| Item No. | Item description |
|---|---|
| | Part V Instructions<br><br>Where a home office either establishes practices or procedures for the types of costs covered in this Part or incurs and then allocates these costs to its segments, the home office may complete this Part to be included in the submission by the segment as indicated on page (i) 4., General Instructions. |
| 5.1.0 | Depreciating Tangible Assets for Government Contract Costing. (For each of the asset categories listed on Page ___, enter a code from A through H in Column (1) describing the method of depreciation (Code F for assets that are expensed); a code from A through C in Column (2) describing the basis for determining useful life; a code from A through C in Column (3) describing how depreciation methods or use charges are applied to property units; and a Code A, B or C in Column (4) indicating whether or not residual value is deducted from the total cost of depreciable assets. Enter Code Y in each column of an asset category where another or more than one method applies. Enter Code Z in Column (1) only, if an asset category is not applicable.)<br><br>Column (1)–Depreciation Method Code<br><br>A. Straight Line<br>B. Declining balance<br>C. Sum-of-the years digits<br>D. Machine hours<br>E. Unit of production<br>F. Expensed at acquisition<br>G. Use charge<br>H. Method of depreciation used under the applicable Internal Revenue Procedures<br>Y. Other or more than one method 1/<br>Z. Asset category is not applicable<br><br>Column (2)–Useful Life Code<br><br>A. Replacement experience adjusted by expected changes in periods of usefulness<br>B. Term of Lease<br>C. Estimated on the basis of Asset Guidelines under Internal Revenue Procedures<br>Y. Other, or more than one method 1/<br><br>Column (3)–Property Units Code<br><br>A. Individual units are accounted for separately<br>B. Applied to groups of assets with similar service lives<br>C. Applied to groups of assets with varying service lives<br>Y. Other or more than one method 1/<br><br>Column (4)–Residual Value Code<br><br>A. Residual value is estimated and deducted<br>B. Residual value is covered by the depreciation method (e.g., declining balance)<br>C. Residual value is estimated but not deducted in accordance with the provisions of 48 CFR 9904.409 1/<br>Y. Other or more than one method 1/<br><br>1/ Describe on a Continuation Sheet. |

FORM CASB DS-1 (REV 2/96) V - 1

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART V - DEPRECIATION AND CAPITALIZATION PRACTICES |
|---|---|
| | NAME OF REPORTING UNIT |

| Item No. | Item description |
|---|---|

**5.1.0** Continued.

| Asset Category | Depreciation Method Code (1) | Useful Life Code (2) | Property Units Code (3) | Residual Value Code (4) |
|---|---|---|---|---|
| (a) Land improvements | ___ | ___ | ___ | ___ |
| (b) Building | ___ | ___ | ___ | ___ |
| (c) Building improvements | ___ | ___ | ___ | ___ |
| (d) Leasehold improvements | ___ | ___ | ___ | ___ |
| (e) Machinery and equipment | ___ | ___ | ___ | ___ |
| (f) Furniture and fixtures | ___ | ___ | ___ | ___ |
| (g) Automobiles and trucks | ___ | ___ | ___ | ___ |
| (h) Data processing equipment | ___ | ___ | ___ | ___ |
| (i) Programming/reprogramming costs | ___ | ___ | ___ | ___ |
| (j) Patterns and dies | ___ | ___ | ___ | ___ |
| (k) Tools | ___ | ___ | ___ | ___ |
| (l) Other depreciable asset categories (Enter Code Y on this line if other asset categories are used and enumerate on a continuation sheet each such asset category and the applicable codes. Otherwise enter Code Z.) | ___ | ___ | ___ | ___ |

**5.2.0** Depreciation Practices for Costing, Financial Accounting, and Income Tax. Are depreciation practices the same for costing Federal contracts as for financial accounting and income tax? (Mark either (A) or (B) on each line under Financial Accounting and Income Tax. Not-for-profit organizations need not complete this item.)

| Financial Accounting | A. Yes | B. No |
|---|---|---|
| (a) Methods | ___ | ___ |
| (b) Useful lives | ___ | ___ |
| (c) Property units | ___ | ___ |
| (d) Residual values | ___ | ___ |

| Income Tax | A. Yes | B. No |
|---|---|---|
| (e) Methods | ___ | ___ |
| (f) Useful lives | ___ | ___ |
| (g) Property units | ___ | ___ |
| (h) Residual values | ___ | ___ |

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART V - DEPRECIATION AND CAPITALIZATION PRACTICES |
|---|---|
| | NAME OF REPORTING UNIT |

| Item No. | Item description |
|---|---|
| 5.3.0 | Fully Depreciated Assets. Is a usage charge for fully depreciated assets charged to Federal contracts? (Mark one.)<br>A. ____ Yes 1/<br>B. ____ No<br>Z. ____ Not applicable |
| 5.4.0 | Treatment of Gains and Losses on Disposition of Depreciable Property. Gains and losses are: (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.)<br>A. ____ Credited or charged currently to the same overhead or G&A pools to which the depreciation of the assets was charged<br>B. ____ Taken into consideration in the depreciation cost basis of the new items, where trade-in is involved<br>C. ____ Not accounted for separately, but reflected in the depreciation reserve account<br>Y. ____ Other(s) 1/<br>Z. ____ Not applicable |
| 5.5.0 | Capitalization or Expensing of Specified Costs. (Mark one line on each item to indicate your practices regarding capitalization or expensing of specified costs incurred in connection with capital assets. If the same specified cost is sometimes expensed and sometimes capitalized, mark both lines and describe on a continuation sheet the circumstances when each method is used.) |

| Cost | | A. Expensed | B. Capitalized |
|---|---|---|---|
| (a) | Freight-in | ____ | ____ |
| (b) | Sales taxes | ____ | ____ |
| (c) | Excise taxes | ____ | ____ |
| (d) | Architect-engineer fees | ____ | ____ |
| (e) | Overhauls (extraordinary repairs) | ____ | ____ |

1/ Describe on a Continuation Sheet.

FORM CASB DS-1 (REV 2/96) V - 3

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART V - DEPRECIATION AND CAPITALIZATION PRACTICES |
|---|---|
| | NAME OF REPORTING UNIT |

| Item No. | Item description |
|---|---|
| 5.6.0 | Criteria for Capitalization. Enter (a) the minimum dollar amount of acquisition cost or expenditures for addition, alteration and improvement of depreciable assets capitalized, and (b) the minimum number of expected life years of capitalized assets.<br><br>If more than one dollar amount or number applies, show the information for the majority of your depreciable assets, and enumerate on a continuation sheet the dollar amounts and/or number of years for each category or subcategory of assets involved which differ from those for the majority of assets.<br><br>(a) Minimum dollar amount capitalized _____<br><br>(b) Minimum service life years _____ |
| 5.7.0 | Group or Mass Purchase. Are group or mass purchases (original complement) of low cost equipment, which individually are less than the capitalization amount indicated above, capitalized? (Mark one. If Yes is marked, provide the minimum aggregate dollar amount capitalized.)<br><br>A. ____ Yes<br><br>_____Minimum aggregate dollar amount capitalized<br><br>B. ____ No |

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART VI - OTHER COSTS AND CREDITS |
|---|---|
| | NAME OF REPORTING UNIT |

| Item No. | Item description | | | |
|---|---|---|---|---|
| | Part VI Instructions<br><br>Where a home office either establishes practices or procedures for the types of costs covered in this Part or incurs and then allocates these costs to its segments, the home office may complete this Part to be included in the submission by the segment as indicated on page (ii) 4., General Instructions. | | | |
| 6.1.0 | Method of Charging and Crediting Vacation, Holiday, and Sick Pay. (Mark the appropriate line(s) in each column of Items 6.1.1, 6.1.2, 6.1.3 and 6.1.4 to indicate the method used to charge, or credit any unused or unpaid vacation, holiday, or sick pay. If more than one method is marked, explain on a continuation sheet.) | | | |
| | | | Salaried | |
| 6.1.1 | Charges for Vacation Pay | Hourly (1) | Non-exempt 1/ (2) | Exempt 1/ (3) |
| | A. When Accrued (earned) | ___ | ___ | ___ |
| | B. When Taken | ___ | ___ | ___ |
| | Y. Other(s) 2/ | ___ | ___ | ___ |
| 6.1.2 | Charges for Holiday Pay | | | |
| | A. When Accrued (earned) | ___ | ___ | ___ |
| | B. When Taken | ___ | ___ | ___ |
| | Y. Other(s) 2/ | ___ | ___ | ___ |
| 6.1.3 | Charges for Sick Pay | | | |
| | A. When Accrued (earned) | ___ | ___ | ___ |
| | B. When Taken | ___ | ___ | ___ |
| | Y. Other(s) 2/ | ___ | ___ | ___ |
| 6.1.4 | Credits for Unused or Unpaid Vacation, Holiday, or Sick Pay | | | |
| | A. Credited to Accounts Originally charged at Least Once Annually | ___ | ___ | ___ |
| | B. Credited to Indirect Cost Pools at Least Once Annually | ___ | ___ | ___ |
| | C. Carried Over to Future Cost Accounting Periods 2/ | ___ | ___ | ___ |
| | Y. Other(s) 2/ | ___ | ___ | ___ |
| | Z. Not Applicable | ___ | ___ | ___ |
| | 1/ For the definition of Non-exempt and Exempt salaries, see the Fair Labor Standards Act, 29 U.S.C. 206. | | | |
| | 2/ Describe on a Continuation Sheet. | | | |

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART VI - OTHER COSTS AND CREDITS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item description |
|---|---|
| 6.2.0 | Supplemental Unemployment (Extended Layoff) Benefit Plans. Costs of such plans are charged to Federal contracts: (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.)<br>A. ___ When actual payments are made directly to employees<br>B. ___ When accrued (book accrual or funds set aside but no trust fund involved)<br>C. ___ When contributions are made to a nonforfeitable trust fund<br>D. ___ Not charged<br>Y. ___ Other(s) 1/<br>Z. ___ Not applicable |
| 6.3.0 | Severance Pay and Early Retirement. Costs of normal turnover severance pay and early retirement incentive plans, as defined in FAR 31.2 or other pertinent procurement regulations, which are charged directly or indirectly to Federal contracts, are based on: (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.)<br>A. ___ Actual payments made<br>B. ___ Accrued amounts on the basis of past experience<br>C. ___ Not charged<br>Y. ___ Other(s) 1/<br>Z. ___ Not applicable |
| 6.4.0 | Incidental Receipts. (Mark the appropriate line(s) to indicate the method used to account for incidental or miscellaneous receipts, such as revenues from renting real and personal property or selling services, when related costs have been allocated to Federal contracts. If more than one is marked, explain on a continuation sheet.)<br>A. ___ The entire amount of the receipt is credited to the same indirect cost pools to which related costs have been charged<br>B. ___ Where the amount of the receipt includes an allowance for profit, the cost-related part of the receipt is credited to the same indirect cost pools to which related costs have been charged; the profits are credited to Other (Miscellaneous) Income<br>C. ___ The entire amount of the receipt is credited directly to Other (Miscellaneous) Income<br>Y. ___ Other(s) 1/<br>Z. ___ Not applicable |
| | 1/ Describe on a Continuation Sheet. |

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART VI - OTHER COSTS AND CREDITS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item description |
|---|---|
| 6.5.0 | Proceeds from Employee Welfare Activities. Employee welfare activities include all of those activities set forth in FAR 31.2 . (Mark the appropriate line(s) to indicate the practice followed in accounting for the proceeds from such activities. If more than one is marked, explain on a continuation sheet.)<br><br>A. ____ Proceeds are turned over to an employee-welfare organization or fund; such proceeds are reduced by all applicable costs such as depreciation, heat, light and power<br><br>B. ____ Same as above, except the proceeds are not reduced by all applicable costs<br><br>C. ____ Proceeds are credited at least once annually to the appropriate cost pools to which costs have been charged<br><br>D. ____ Proceeds are credited to Other (Miscellaneous) Income<br><br>Y. ____ Other(s) 1/<br><br>Z. ____ Not applicable<br><br>1/ Describe on a Continuation Sheet. |

FORM CASB DS-1 (REV 2/96) VI - 3

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART VII - DEFERRED COMPENSATION AND INSURANCE COST |
|---|---|
| | NAME OF REPORTING UNIT |

| Item No. | Item description |
|---|---|

Part VII Instructions

This part covers the measurement and assignment of costs for employee pensions, post retirement benefits other than pensions (including post retirement health benefits), certain other types of deferred compensation, and insurance. Some organizations may incur all of these costs at the corporate or home office level, while others may incur them at subordinate organizational levels. Still others may incur a portion of these costs at the corporate level and the balance at subordinate organizational levels.

Where the segment (reporting unit) does not directly incur such costs, the segment should, on a continuation sheet, identify the organizational entity that incurs and records such costs, and should require that entity to complete the applicable portions of this Part VII. Each such entity is to fully disclose the methods and techniques used to measure, assign, and allocate such costs to the segment(s) performing Federal contracts or similar cost objectives. Necessary explanations required to achieve that objective should be provided by the entity on a continuation sheet.

Where a home office either establishes practices or procedures for the types of costs covered in this Part VII or incurs and then allocates those costs to its segments, the home office may complete this Part to be included in the submission by the segment as indicated on page (i) 4., General Instructions.

7.1.0 Pension Plans with Costs Charged to Federal Contracts. Identify the types and number of pension plans whose costs are charged to Federal contracts or similar cost objectives: (Mark applicable line(s) and enter number of plans.)

| Type of Pension Plan | Number of Plans |
|---|---|
| A. Defined-Contribution Plan (Other than ESOPs (see 7.5.0)) | |
| 1. Non-Qualified | ___ |
| 2. Qualified | ___ |
| B. Defined-Benefit Plan | |
| 1. Non-Qualified | |
| a. Costs are measured and assigned on accrual basis | ___ |
| b. Costs are measured and assigned on cash (pay-as-you-go) basis | ___ |
| 2. Qualified | |
| a. Trusteed (Subject to ERISA's minimum funding requirements) | ___ |
| b. Fully-insured plan (Exempt from ERISA's minimum funding requirements) treated as a defined-contribution plan | ___ |
| c. Collectively bargained plan treated as a defined-contribution plan | ___ |
| Y. ___ Other 1/ | ___ |
| Z. ___ Not Applicable (Proceed to Item 7.2.0) | |

1/ Describe on a Continuation Sheet.

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART VII - DEFERRED COMPENSATION AND INSURANCE COST |
|---|---|
| | NAME OF REPORTING UNIT |

| Item No. | Item description |
|---|---|
| 7.1.1 | General Plan Information. On a continuation sheet for each plan identified in item 7.1.0, provide the following information:<br>A. The plan name<br>B. The Employer Identification Number (EIN) of the plan sponsor as reported on IRS Form 5500, if any<br>C. The plan number as reported on IRS Form 5500, if any<br>D. Is there a funding agency established for the plan?<br>E. Indicate where costs are accumulated:<br>(1) Home Office<br>(2) Segment<br>F. If the plan provides supplemental benefits to any other plan, identify the other plan(s). |
| 7.1.2 | Defined-Contribution Plan(s) and Certain Defined-Benefit Plans treated as Defined-Contribution Plans. Where numerous plans are listed under 7.1.0.A., 7.1.0.B.2.b., or 7.1.0.B.2.c., for those plans which represent the largest dollar amounts of costs charged to Federal contracts, or similar cost objectives, describe on a continuation sheet the basis for the contribution (including treatment of dividends, credits, and forfeitures) required for each fiscal year. (If there are not more than three plans, provide information for all the plans. If there are more than three plans, information should be provided for those plans that in the aggregate account for at least 80 percent of those defined-contribution plan costs allocable to this segment or business unit.)<br>Z. ____ Not applicable. (Proceed to Item 7.1.3) |
| 7.1.3 | Defined-Benefit Plan(s). Where numerous plans are listed under 7.1.0.B. (excluding certain defined-benefit plans treated as defined-contribution plans reported under 7.1.0.B.2.b. and 7.1.0.B.2.c.), for those plans which represent the largest dollar amounts of costs charged to Federal contracts, provide the information requested below on a continuation sheet. (If there are not more than three plans, provide information for all the plans. If there are more than three plans, information should be provided for those plans that in the aggregate account for at least 80 percent of those defined-benefit plan costs allocable to this segment or business unit.):<br>A. Actuarial Cost Method. Identify the actuarial cost method used, including the cost method(s) used to value ancillary benefits, for each plan. Include the method used to determine the actuarial value of assets. Also, if applicable, include whether normal cost is developed as a level dollar amount or as a level percent of salary. For plans listed under 7.1.0.B.1.b., enter "pay-as-you-go".<br>B. Actuarial Assumptions. Describe the events or conditions for which significant actuarial assumptions are made for each plan. Do not include the current numeric values of the assumptions, but provide a description of the basis used for determining these numeric values. Also, describe the criteria used to evaluate the validity of an actuarial assumption. For plans listed under 7.1.0.B.1.b., enter "not applicable".<br>C. Market Value of Funding Agency Assets. Indicate if all assets of the funding agency are valued on the basis of a readily determinable market price. If yes, indicate the basis for the market value. If no, describe how the market values are determined for those assets that do not have a readily determinable market price. For plans listed under 7.1.0.B.1.b., enter "not applicable".<br>D. Basis for Cost Computation. Indicate whether the cost for the segment is determined as:<br>1. An allocated portion of the total pension plan cost.<br>2. A separately computed pension cost for one or more segments. If so, identify these segments.<br>Z. ____ Not applicable, proceed to Item 7.2.0. |

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART VII - DEFERRED COMPENSATION AND INSURANCE COST |
|---|---|
| | NAME OF REPORTING UNIT |

| Item No. | Item description |
|---|---|
| 7.2.0 | Post-retirement Benefits (PRBs) Other than Pensions (including post-retirement health care benefits) Charged to Federal Contracts. Identify the accounting method used to determine the costs and the number of PRB plans whose costs are charged to Federal contracts or similar cost objectives. Where retiree benefits are provided as an integral part of an employee group insurance plan that covers active employees, report that plan under 7.3.0. (Mark applicable line(s) and enter number of plans.) |
| | Method Used to Determine Costs — Number of Plans<br>A. Accrual Accounting ____<br>B. Cash (pay-as-you-go) Accounting ____<br>C. Purchased Insurance from unrelated Insurer ____<br>D. Purchased Insurance from Captive Insurer ____<br>E. Self-Insurance (including insurance obtained through Captive Insurer) ____<br>F. Terminal Funding ____<br>Y. Other 1/ ____<br>Z. ____ Not Applicable (Proceed to Item 7.3.0) |
| 7.2.1 | General PRB Plan Information. On a continuation sheet for each plan identified in item 7.2.0, provide the following information grouped by method used to determine costs:<br>A. The plan name<br>B. The Employer Identification Number (EIN) of the plan sponsor as reported on IRS Form 5500, if any<br>C. The plan number as reported on IRS Form 5500, if any<br>D. Is there a funding agency or funded reserve established for the plan?<br>E. Indicate where costs are accumulated:<br>(1) Home Office<br>(2) Segment<br>F. Are benefits provided pursuant to a written plan or an established practice? If established practice, briefly describe.<br>G. If this PRB plan is listed under 7.2.0.C., 7.2.0.D., or 7.2.0.E., indicate whether the plan is operated as an employee group insurance program. If this PRB plan is listed under 7.2.0.Y., indicate whether the plan is operated as a group insurance program. If the plan is operated as an employee group insurance program, report this plan under 7.3.0. and 7.3.1., as appropriate. If no, report the plan under 7.2.2. |
| | 1/ Describe on a Continuation Sheet. |

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART VII - DEFERRED COMPENSATION AND INSURANCE COST |
|---|---|
| | NAME OF REPORTING UNIT |

| Item No. | Item description |
|---|---|
| 7.2.2 | PRB Plan(s). Where numerous plans are listed under 7.2.0, for those plans which represent the largest dollar amounts of costs charged to Federal contracts, or other similar cost objectives, provide the information below on a continuation sheet. (If there are not more than three plans, provide information for all the plans. If there are more than three plans, information should be provided for those plans that in the aggregate account for at least 80 percent of those PRB costs allocable to this segment or business unit.)<br><br>A. Actuarial Cost Method. Identify the actuarial cost method used for each plan or each benefit, as appropriate. Include the method used to determine the actuarial value of assets. Identify the amortization methods and periods used, if any. For plans listed under 7.2.0.B., enter "cash accounting". For plans listed under 7.2.0.F., enter "terminal funding" and identify the amortization methods and periods used, if any.<br><br>B. Actuarial Assumptions. Describe the events or conditions for which significant actuarial assumptions are made for each plan. Do not include the current numeric values of the assumptions, but provide a description of the basis used for determining these numeric values. Also, describe the criteria used to evaluate the validity of an actuarial assumption. For plans under 7.2.0.B. or 7.2.0.F., enter "not applicable".<br><br>C. Funding. Provide the following information on the funding practice for the costs of the plan: (For plans under 7.2.0.B. or 7.2.0.F., enter "not applicable".)<br>1. Describe the criteria for or practice of funding the measured and assigned cost; e.g., full funding of the accrual, funding is made pursuant to VEBA or 401(h) rules.<br>2. Briefly describe the funding arrangement.<br>3. Are all assets valued on the basis of a readily determinable market price? If yes, indicate the basis used for the market value. If no, describe how the market value is determined for those assets that are not valued on the basis of a readily determinable market price.<br><br>D. Basis for Cost Computation. Indicate whether the cost for the segment is determined as:<br>1. An allocated portion of the total PRB plan cost<br>2. A separately computed PRB cost for one or more segments. If so, identify those segments.<br><br>E. Forfeitability. Does each participant have a non-forfeitable contractual right to their benefit or account balance? If no, explain.<br><br>Z. ____ Not applicable, proceed to item 7.3.0. |

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART VII - DEFERRED COMPENSATION AND INSURANCE COST |
|---|---|
| | NAME OF REPORTING UNIT |

| Item No. | Item description |
|---|---|
| 7.3.0 | Employee Group Insurance Charged to Federal Contracts or Similar Cost Objectives. Does your organization provide group insurance coverage to its employees? (Includes coverage for life, hospital, surgical, medical, disability, accident, and similar plans for both active and retired employees, even if the coverage was previously described in 7.2.0.)<br><br>A. ____ Yes (Complete Item 7.3.1)<br><br>B. ____ No (Proceed to Item 7.4.0) |
| 7.3.1 | Employee Group Insurance Programs. For each program that covers a category of insured risk (e.g., life, hospital, surgical, medical, disability, accident, and similar programs for both active and retired employees), provide the information below on a continuation sheet, using the codes described below: (If there are not more than three policies or self-insurance plans that comprise the program, provide information for all the policies and self-insurance plans. If there are more that three policies or self-insurance plans, information should be provided for those policies and self-insurance plans that in the aggregate account for at least 80 percent of the costs allocable to this segment or business unit for the program that covers each category of insured risk identified.) |

Description of Employee Group Insurance Program: _____

| Policy or Self-Insurance Plan | Cost Accumulation (1) | Cost Basis (2) | Includes Retirees (3) | Purchased Insurance Rating Basis (4) | Self-Insurance: Projected Average Loss (5) | Self-Insurance: Insurance Administrative Expenses (6) |
|---|---|---|---|---|---|---|
| | | | | | | |

Column (1) – Cost Accumulation

Enter Code A, B, or Y, as appropriate.

A. Costs are accumulated at the Home Office.
B. Costs are accumulated at Segment
Y. Other 1/

Column (2) – Cost Basis

Enter code A, B, C, or Y, as appropriate.

A. Purchased Insurance from unrelated third party
B. Self-insurance
C. Purchased Insurance from a captive insurer
Y. Other 1/

1/ Describe on a Continuation Sheet.

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART VII - DEFERRED COMPENSATION AND INSURANCE COST |
|---|---|
| | NAME OF REPORTING UNIT |

| Item No. | Item description |
|---|---|
| 7.3.1 | Continued.<br><br>Column (3) – Includes Retirees<br><br>Enter code A, B, C, or Y, as appropriate.<br><br>A. No, does not include benefits for retirees.<br>B. Yes, PRB benefits for retirees that are a part of a policy or coverage for both active employees and retirees are reported here instead of 7.2.0.<br>C. Yes, PRB benefits for retirees are a part of a PRB plan previously reported under 7.2.0.<br>Y. Other 1/<br><br>Column (4) – Purchased Insurance Rating Basis<br><br>For each plan listed enter code A, B, C, Y, or Z, as appropriate.<br><br>A. Retrospective Rating (also called experience rating plan or retention plan).<br>B. Manually Rated<br>C. Community Rated<br>Y. Other, or more than one type 1/<br>Z. Not applicable<br><br>Column (5) – Projected Average Loss<br><br>For each self-insured group plan, or the self-insured portion of purchased insurance, enter code A, B, C, Y, or Z, as appropriate.<br><br>A. Self-insurance costs represent the projected average loss for the period estimated on the basis of the cost of comparable purchased insurance.<br>B. Self-insurance costs are based on the contractor's experience, relevant industry experience, and anticipated conditions in accordance with accepted actuarial principles.<br>C. Actual payments are considered to represent the projected average loss for the period.<br>Y. Other, or more than one method 1/<br>Z. Not applicable<br><br>Column (6) – Insurance Administration Expenses<br><br>For each self-insured group plan, or the self-insured portion of purchased insurance, enter code A, B, C, D, Y, or Z, as appropriate, to indicate how administrative costs are treated.<br><br>A. Separately identified and accumulated in indirect cost pool(s).<br>B. Separately identified, accumulated, and allocated to cost objectives either at the segment and/or home office level (Describe allocation method on a Continuation Sheet).<br>C. Not separately identified, but included in indirect cost pool(s). (Describe pool(s) on a Continuation Sheet)<br>D. Incurred by an insurance carrier or third party (Describe accumulation and allocation process on a Continuation Sheet).<br>Y. Other 1/<br>Z. Not applicable<br><br>1/ Describe on a Continuation Sheet. |

FORM CASB DS-1 (REV 2/96) VII - 6

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART VII - DEFERRED COMPENSATION AND INSURANCE COST |
|---|---|
| | NAME OF REPORTING UNIT |

| Item No. | Item description |
|---|---|
| 7.4.0 | Deferred Compensation, as defined in CAS 9904.415. Does your organization award deferred compensation, other than ESOPs, which is charged to Federal contracts or similar cost objectives? (Mark one.)<br><br>A. ____ Yes (Complete Item 7.4.1.)<br><br>B. ____ No (Proceed to Item 7.5.0.) |
| 7.4.1 | General Plan Information. On a continuation sheet for all deferred compensation plans, as defined by CAS 9904.415, provide the following information:<br><br>A. The plan name<br><br>B. The Employer Identification Number (EIN) of the plan sponsor as reported on IRS Form 5500, if any<br><br>C. The plan number as reported on IRS Form 5500, if any<br><br>D. Indicate where costs are accumulated:<br>(1) Home office<br>(2) Segment<br><br>E. Are benefits provided pursuant to a written plan or an established practice? If established practice, briefly describe . |
| 7.4.2 | Deferred Compensation Plans. Where numerous plans are listed under 7.4.1, for those plans which represent the largest dollar amounts of costs charged to Federal contracts, or other similar cost objectives, provide the information below on a continuation sheet. (If there are not more than three plans, provide information for all the plans. If there are more than three plans, information should be provided for those plans that in the aggregate account for at least 80% of these deferred compensation costs allocable to this segment or business unit):<br><br>A. Description of Plan.<br>1. Stock Options<br>2. Stock Appreciation Rights<br>3. Cash Incentive<br>4. Other (explain)<br><br>B. Method of Charging Costs to Federal Contracts or Similar Cost Objectives.<br>1. Costs charged when accrued and the accrual is fully funded<br>2. Costs charged when accrued and the accrual is partially funded or not funded<br>3. Costs charged when paid to employee (pay-as-you-go)<br>4. Other (explain) |

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART VII - DEFERRED COMPENSATION AND INSURANCE COST |
|---|---|
| | NAME OF REPORTING UNIT |

| Item No. | Item description |
|---|---|
| 7.5.0 | Employee Stock Ownership Plans (ESOPs). Does your organization make contributions to fund ESOPs that are charged directly or indirectly to Federal contracts or similar cost objectives? (Mark one)<br>A. ____ Yes (Proceed to Item 7.5.1)<br>B. ____ No (Proceed to Item 7.6.0) |
| 7.5.1 | General Plan Information. On a continuation sheet, for all ESOPs provide the following information:<br>A. The plan name<br>B. The Employer Identification Number (EIN) of the plan sponsor as reported on IRS Form 5500, if any<br>C. The plan number as reported on IRS Form 5500, if any<br>D. Indicate where costs are accumulated:<br>(1) Home office<br>(2) Segment<br>E. Are benefits provided pursuant to a written plan or an established practice? If established practice, briefly describe.<br>F. Indicate whether the ESOP plan is a defined-contribution plan subject to CAS 9904.412. (Answer Yes or No).<br>G. Indicate whether the ESOP is leveraged or nonleveraged.<br>H. Valuation of Stock or Non-Cash Assets. Are the plan assets valued on the basis of a readily determinable market price? If yes, indicate the basis for the market value. If no, indicate how the market value is determined for those assets that do not have a readily determinable market price.<br>I. Forfeitures and Dividends. Describe the accounting treatment for forfeitures and dividends, on both allocated and unallocated shares, in the measurement of ESOP costs charged directly or indirectly to Federal contracts or similar cost objectives for each plan identified.<br>J. Administrative Costs. Describe how the costs of administration of each plan listed are identified, grouped, and accumulated. |

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART VII - DEFERRED COMPENSATION AND INSURANCE COST |
|---|---|
| | NAME OF REPORTING UNIT |

| Item No. | Item description |
|---|---|
| 7.6.0 | Worker's Compensation, Liability, and Property Insurance. Does your organization have insurance coverage regarding worker's compensation, liability and property insurance?<br><br>A. ____ Yes (Complete Item 7.6.1.)<br><br>B. ____ No (Proceed to Part VIII) |
| 7.6.1 | Worker's Compensation, Liability and Property Insurance Coverage.<br><br>For each line of insurance that covers a category of insured risk (e.g., worker's compensation, fire and similar perils, automobile liability and property damage, general liability), provide the information below on a continuation sheet using the codes described below: (If there are not more than three policies or self-insurance plans that are applicable to the line of insurance, provide information for all the policies and self-insurance plans. If there are more than three policies or insurance plans, information should be provided for those policies and self-insurance plans that in the aggregate account for at least 80 percent of the costs allocable to this segment or business unit for each line of insurance identified.)<br><br>Description of Line of Insurance Coverage: _____<br><br>Policy or Self-Insurance Plan \| Cost Accumulation (1) \| Cost Basis (2) \| Crediting of Dividends and Earned Refunds (3) \| Self-Insurance: Projected Average Loss (4) \| Self-Insurance: Insurance Administrative Expenses (5)<br><br>Column (1) – Cost Accumulation<br><br>Enter code A, B, or Y, as appropriate.<br><br>A. Costs are accumulated at the Home Office.<br>B. Costs are accumulated at Segment<br>Y. Other 1/<br><br>Column (2) – Cost Basis<br><br>Enter code A, B, C, or Y, as appropriate.<br><br>A. Purchased Insurance from unrelated third party<br>B. Self-insurance<br>C. Purchased Insurance from a captive insurer<br>Y. Other 1/<br><br>1/ Describe on a Continuation Sheet. |

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART VII - DEFERRED COMPENSATION AND INSURANCE COST |
|---|---|
| | NAME OF REPORTING UNIT |

| Item No. | Item description |
|---|---|
| 7.6.1 | Continued.<br><br>Column (3) – Crediting of Dividends and Earned Refunds<br><br>For each line of coverage listed, enter code A, B, C, D, E, Y, or Z, as appropriate.<br><br>A. Credited directly or indirectly to Federal contracts or similar cost objectives in the year earned<br>B. Credited directly or indirectly to Federal contracts or similar cost objectives in the year received, not necessarily in the year earned<br>C. Accrued each year, as applicable, to currently reflect the net annual cost of the insurance<br>D. Not credited or refunded to the contractor but retained by the carriers as reserves in accordance with 48 CFR 9904.416-50(a)(1)(iv)<br>E. Manually Rated - not applicable<br>Y. Other, or more than one 1/<br>Z. Not applicable<br><br>Column (4) – Projected Average Loss<br><br>For each self-insured group plan, or the self-insured portion of purchased insurance, enter code A, B, C, Y, or Z, as appropriate.<br><br>A. Costs that represent the projected average loss for the period estimated on the basis of the cost of comparable purchased insurance.<br>B. Costs that are based on the contractor's experience, relevant industry experience, and anticipated conditions in accordance with generally accepted actuarial principles and practices.<br>C. The actual amount of losses are considered to represent the projected average loss for the period.<br>Y. Other, or more than one method. 1/<br>Z. Not applicable<br><br>Column (5) – Insurance Administration Expenses<br><br>For each self-insured group plan, or the self-insured portion of purchased insurance, enter code A, B, C, D, Y, or Z, as appropriate, to indicate how administrative costs are treated.<br><br>A. Separately identified and accumulated in indirect cost pool(s).<br>B. Separately identified, accumulated, and allocated to cost objectives either at the segment and/or home office level (Describe allocation method on a Continuation Sheet).<br>C. Not separately identified, but included in indirect cost pool(s). (Describe pool(s) on a Continuation Sheet).<br>D. Incurred by an insurance carrier or third party. (Describe accumulation and allocation process on a Continuation Sheet).<br>Y. Other 1/<br>Z. Not applicable<br><br>1/ Describe on a Continuation Sheet. |

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART VIII - HOME OFFICE EXPENSES<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item description |
|---|---|
| | **Part VIII Instructions**<br><br>FOR HOME OFFICE, AS APPLICABLE (Includes home office type operations of subsidiaries, joint ventures, partnerships, etc.). 1/<br><br>This part should be completed only by the office of a corporation or other business entity where such an office is responsible for administering two or more segments, where it allocates its costs to such segments and where at least one of the segments is required to file Parts I through VII of the Disclosure Statement.<br><br>Data for this part should cover the reporting unit's (corporate or other intermediate level home office's) most recently completed fiscal year. For a corporate (home) office, such data should cover the entire corporation. For a intermediate level home office, they should cover the subordinate organizations administered by that group office. |
| 8.1.0 | Organizational Structure.<br><br>On a continuation sheet, provide the following information:<br><br>1. In column (1) list segments and other intermediate level home offices reporting to this home office,<br>2. In column (2) insert "yes" or "no" to indicate if reporting units have recorded any CAS-covered Government Sales, and<br>3. In column (3) provide the percentage of annual CAS-covered Government Sales as a Percentage of Total Sales (Government and Commercial), if applicable, as follows:<br><br>A. Less than 10%<br>B. 10%-50%<br>C. 51%-80%<br>D. 81%-95%<br>E. Over 95% |

| Segment or Other Intermediary Home Office (1) | CAS Covered Government Sales (2) | Government Sales as a Percentage of Total Sales (3) |
|---|---|---|
| | | |

| | |
|---|---|
| 8.2.0 | Other Applicable Disclosure Statement Parts. (Refer to page (i) 4., General Instructions, and Parts V, VI and VII of the Disclosure Statement. Indicate below the parts that the reporting unit has completed concurrently with Parts I and VIII.)<br><br>A. ____ Part V - Depreciation and Capitalization Practices<br>B. ____ Part VI - Other Costs and Credits<br>C. ____ Part VII - Deferred Compensation and Insurance Costs<br>Z. ____ Not Applicable |

1/ For definition of home office see 48 CFR 9904.403.

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART VIII - HOME OFFICE EXPENSES<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item description |
|---|---|
| 8.3.0 | Expenses or Pools of Expenses and Methods of Allocation.<br><br>For classification purposes, three methods of allocation, defined as follows are to be used:<br><br>(i) Directly Allocated–those expenses that are charged to specific corporate segments or other intermediate level home offices based on a specific identification of costs incurred, as described in 9904.403;<br>(ii) Homogeneous Expense Pools–those individual or groups of expenses which are allocated using a base which reflects beneficial or causal relationships, as described in 9904.403; and<br>(iii) Residual Expense–the remaining expenses which are allocated to all segments by means of a base representative of the total activity of such segments.<br><br>Allocation Base Codes<br><br>A. Sales<br>B. Cost of Sales<br>C. Total Cost Input (Direct Material, Direct Labor, Other Direct Costs, and Applicable Overhead)<br>D. Total Cost Incurred (Total Cost Input Plus G&A Expenses)<br>E. Prime Cost (Direct Material, Direct Labor, and Other Direct Costs<br>F. Three factor formula (CAS 9904.403-50(c))<br>G. Processing or Conversion Cost (Direct Labor and Applicable Overhead)<br>H. Direct Labor Dollars<br>I. Direct Labor Hours<br>J. Machine Hours<br>K. Usage<br>L. Unit of Production<br>M. Direct Material Cost<br>N. Total Payroll Dollars (Direct and Indirect Employees)<br>O. Headcount or Number of employees (Direct and Indirect Employees)<br>P. Square Feet<br>Q. Value Added<br>Y. Other, or More than One Basis 1/<br><br>(On a continuation sheet, under each of the headings 8.3.1, 8.3.2, and 8.3.3 enter the type of expenses or the name of the expense pool(s). For each of the types of expense or expense pools listed, also indicate as item (a) the major functions, activities, and elements of cost included. In addition, for items listed under 8.3.2 and 8.3.3 enter one of the Allocation Base Codes A through Q, or Y, to indicate the basis of allocation and describe as item (b) the make up of the base(s). For example, if direct labor dollars are used, are ovetime premiums, fringe benefits, etc. included? For items listed under 8.3.2 and 8.3.3, if a pool is not allocated to all reporting units listed under 8.1.0, then list those reporting units either receiving or not receiving an allocation. Also identify special allocations of residual expenses and/or fixed mangement charges (see 9904.403-40(c)(3)).<br><br>1/ Describe on a Continuation Sheet. |

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART VIII - HOME OFFICE EXPENSES<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item description | |
|---|---|---|
| | Type of Expenses or Name of Pool of Expenses | |
| 8.3.1 | Directly Allocated | |
| | 1. _____ | |
| | (a) Major functions, activities, and elements of cost include: | |
| | _____ | |
| | _____ | |
| | 2. _____ | |
| | (a) Major functions, activities, and elements of cost include: | |
| | _____ | |
| | _____ | |
| 8.3.2 | Homogeneous Expense Pools | Allocation Base Code |
| | 1. _____ | ____ |
| | (a) Major functions, activities, and elements of cost include: | |
| | _____ | |
| | _____ | |
| | (b) Description/Make up of the allocation base: | |
| | _____ | |
| | _____ | |
| | 2. _____ | ____ |
| | (a) Major functions, activities, and elements of cost include: | |
| | _____ | |
| | _____ | |
| | (b) Description/Make up of the allocation base: | |
| | _____ | |
| | _____ | |

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 | PART VIII - HOME OFFICE EXPENSES<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item description |
|---|---|
| 8.3.3 | Residual Expenses — Allocation Base Code<br>_____ ____<br>(a) Major functions, activities, and elements of cost include:<br>_____<br>_____<br>(b) Description/Make up of the allocation base:<br>_____<br>_____ |
| 8.4.0 | Transfer of Expenses. If there are normally transfers of expenses from reporting units to this home office, identify on a continuation sheet the classification of the expense and the name of the reporting unit incurring the expense. |

FORM CASB DS-1 (REV 2/96) VIII - 4

[61 FR 7621, Feb. 28, 1996]

**9903.202–10 Illustration of Disclosure Statement Form, CASB DS–2.**

The data which are required to be disclosed by educational institutions are set forth in detail in the Disclosure Statement Form, CASB DS–2, which is illustrated below:

FORM APPROVED OMB NUMBER
0348-0055

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS | INDEX |
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| | | |
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| GENERAL INSTRUCTIONS | | (i) |
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FORM CASB DS-2 (REV 10/94)

| COST ACCOUNTING STANDARDS BOARD<br>DISCLOSURE STATEMENT<br>REQUIRED BY PUBLIC LAW 100-679<br>EDUCATIONAL INSTITUTIONS | GENERAL INSTRUCTIONS |
|---|---|

1. This Disclosure Statement has been designed to meet the requirements of Public Law 100-679, and persons completing it are to describe the educational institution and its cost accounting practices. For complete regulations, instructions and timing requirements concerning submission of the Disclosure Statement, refer to Section 9903.202 of Chapter 99 of Title 48 CFR (48 CFR 9903).

2. Part I of the Statement provides general information concerning each reporting unit (e.g., segments, business units, and central system or group (intermediate administration) offices). Parts II through VI pertain to the types of costs generally incurred by the segment or business unit directly performing under Federally sponsored agreements (e.g., contracts, grants and cooperative agreements). Part VII pertains to the types of costs that are generally incurred by a central or group office and are allocated to one or more segments performing under Federally sponsored agreements.

3. Each segment or business unit required to disclose its cost accounting practices should complete the Cover Sheet, the Certification, and Parts I through VI.

4. Each central or group office required to disclose its cost accounting practices for measuring, assigning and allocating its costs to segments performing under Federally sponsored agreements should complete the Cover Sheet, the Certification, Part I and Part VII of the Disclosure Statement. Where a central or group office incurs the types of cost covered by Parts IV, V and VI, and the cost amounts allocated to segments performing under Federally sponsored agreements are material, such office(s) should complete Parts IV, V, or VI for such material elements of cost. While a central or group office may have more than one reporting unit submitting Disclosure Statements, only one Statement needs to be submitted to cover the central or group office operations.

5. The Statement must be signed by an authorized signatory of the reporting unit.

6. The Disclosure Statement should be answered by marking the appropriate line or inserting the applicable letter code which describes the segment's (reporting unit's) cost accounting practices.

7. A number of questions in this Statement may need narrative answers requiring more space than is provided. In such instances, the reporting unit should use the attached continuation sheet provided. The continuation sheet may be reproduced locally as needed. The number of the question involved should be indicated and the same coding required to answer the questions in the Statement should be used in presenting the answer on the continuation sheet. Continuation sheets should be inserted at the end of the pertinent Part of the Statement. On each continuation sheet, the reporting unit should enter the next sequential page number for that Part and, on the last continuation sheet used, the words "End of Part" should be inserted after the last entry.

FORM CASB DS-2 (REV 10/94) (i)

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS | GENERAL INSTRUCTIONS |
|---|---|

8. Where the cost accounting practice being disclosed is clearly set forth in the institution's existing written accounting policies and procedures, such documents may be cited on a continuation sheet and incorporated by reference. In such cases, the reporting unit should provide the date of issuance and effective date for each accounting policy and/or procedures document cited. Alternatively, copies of the relevant parts of such documents may be attached as appendices to the pertinent Disclosure Statement Part. Such continuation sheets and appendices should be labeled and cross-referenced with the applicable Disclosure Statement item number. Any supplementary comments needed to fully describe the cost accounting practice being disclosed should also be provided.

9. Disclosure Statements must be amended when disclosed practices are changed to comply with a new CAS or when practices are changed with or without agreement of the Government (Also see 48 CFR 9903.202-3).

10. Amendments shall be submitted to the same offices to which submission would have to be made were an original Disclosure Statement being filed.

11. Each amendment should be accompanied by an amended cover sheet (indicating revision number and effective date of the change) and a signed certification. For all resubmissions, on each page, insert "Revision Number ____" and "Effective Date _____" in the Item Description block; and, insert "Revised" under each Item Number amended. Resubmitted Disclosure Statements must be accompanied by similar notations identifying the items which have been changed.

ATTACHMENT - Blank Continuation Sheet

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS | CONTINUATION SHEET |
|---|---|
| | NAME OF REPORTING UNIT |

| Item No. | Item Description |
|---|---|
| | |

FORM CASB DS-2 (REV 10/94)

| COST ACCOUNTING STANDARDS BOARD<br>DISCLOSURE STATEMENT<br>REQUIRED BY PUBLIC LAW 100-679<br>EDUCATIONAL INSTITUTIONS | COVER SHEET AND CERTIFICATION |
|---|---|

0.1 Educational Institution

(a) Name

(b) Street Address

(c) City, State and ZIP Code

(d) Division or Campus of (if applicable)

0.2 Reporting Unit is: (Mark one.)

A. _____ Independently Administered Public Institution
B. _____ Independently Administered Nonprofit Institution
C. _____ Administered as Part of a Public System
D. _____ Administered as Part of a Nonprofit System
E. _____ Other (Specify) _____

0.3 Official to Contact Concerning this Statement:

(a) Name and Title

(b) Phone Number (include area code and extension)

0.4 Statement Type and Effective Date:

A. (Mark type of submission. If a revision, enter number)

(a) _____ Original Statement
(b) _____ Amended Statement; Revision No. _____

B. Effective Date of this Statement: (Specify) _____

0.5 Statement Submitted To (Provide office name, location and telephone number, include area code and extension):

A. Cognizant Federal Agency: _____
_____

B. Cognizant Federal Auditor: _____
_____

FORM CASB DS-2 (REV 10/94) C-1

| COST ACCOUNTING STANDARDS BOARD<br>DISCLOSURE STATEMENT<br>REQUIRED BY PUBLIC LAW 100-679<br>EDUCATIONAL INSTITUTIONS | COVER SHEET AND CERTIFICATION |
|---|---|

CERTIFICATION

I certify that to the best of my knowledge and belief this Statement, as amended in the case of a Revision, is the complete and accurate disclosure as of the date of certification shown below by the above-named organization of its cost accounting practices, as required by the Disclosure Regulations (48 CFR 9903.202) of the Cost Accounting Standards Board under 41 U.S.C. § 422.

Date of Certification: _____

_____
(Signature)

_____
(Print or Type Name)

_____
(Title)

THE PENALTY FOR MAKING A FALSE STATEMENT IN THIS DISCLOSURE IS PRESCRIBED IN 18 U.S.C. § 1001

FORM CASB DS-2 (REV 10/94) C-2

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS | PART I - GENERAL INFORMATION<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item Description |
|---|---|
| | Part I |
| 1.1.0 | Description of Your Cost Accounting System for recording expenses charged to Federally sponsored agreements (e.g., contracts, grants and cooperative agreements). (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.)<br>A. _____ Accrual<br>B. _____ Modified Accrual Basis 1/<br>C. _____ Cash Basis<br>Y. _____ Other 1/ |
| 1.2.0 | Integration of Cost Accounting with Financial Accounting. The cost accounting system is: (Mark one. If B or C is marked, describe on a continuation sheet the costs which are accumulated on memorandum records.)<br>A. _____ Integrated with financial accounting records (Subsidiary cost accounts are all controlled by general ledger control accounts.)<br>B. _____ Not integrated with financial accounting records (Cost data are accumulated on memorandum records.)<br>C. _____ Combination of A and B |
| 1.3.0 | Unallowable Costs. Costs that are not reimbursable as allowable costs under the terms and conditions of Federally sponsored agreements are: (Mark one)<br>A. _____ Specifically identified and recorded separately in the formal financial accounting records. 1/<br>B. _____ Identified in separately maintained accounting records or workpapers. 1/<br>C. _____ Identifiable through use of less formal accounting techniques that permit audit verification. 1/<br>D. _____ Combination of A, B or C 1/<br>E. _____ Determinable by other means. 1/<br><br>1/ Describe on a Continuation Sheet. |

FORM CASB DS-2 (REV 10/94) I-1

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS | PART I - GENERAL INFORMATION<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item Description |
|---|---|
| 1.3.1 | Treatment of Unallowable Costs. (Explain on a continuation sheet how unallowable costs and directly associated costs are treated in each allocation base and indirect expense pool, e.g., when allocating costs to a major function or activity; when determining indirect cost rates; or, when a central office or group office allocates costs to a segment.) |
| 1.4.0 | Cost Accounting Period: _____ (Specify the twelve month period used for the accumulation and reporting of costs under Federally sponsored agreements, e.g., 7/1 to 6/30. If the cost accounting period is other than the institution's fiscal year used for financial accounting and reporting purposes, explain circumstances on a continuation sheet.) |
| 1.5.0 | State Laws or Regulations. Identify on a continuation sheet any State laws or regulations which influence the institution's cost accounting practices, e.g., State administered pension plans, and any applicable statutory limitations or special agreements on allowance of costs. |

1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) I-2

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS | PART II- DIRECT COSTS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item Description |
|---|---|
| | Instructions for Part II<br><br>Institutions should disclose what costs are, or will be, charged directly to Federally sponsored agreements or similar cost objectives as Direct Costs. It is expected that the disclosed cost accounting practices (as defined at 48 CFR 9903.302-1) for classifying costs either as direct costs or indirect costs will be consistently applied to all costs incurred by the reporting unit. |
| 2.1.0 | Criteria for Determining How Costs are Charged to Federally Sponsored Agreements or Similar Cost Objectives. (For all major categories of cost under each major function or activity such, as instruction, organized research, other sponsored activities and other institutional activities, describe on a continuation sheet, your criteria for determining when costs incurred for the same purpose, in like circumstances, are treated either as direct costs only or as indirect costs only with respect to final cost objectives. Particular emphasis should be placed on items of cost that may be treated as either direct or indirect costs (e.g., Supplies, Materials, Salaries and Wages, Fringe Benefits, etc.) depending upon the purpose of the activity involved. Separate explanations on the criteria governing each direct cost category identified in this Part II are required. Also, list and explain if there are any deviations from the specified criteria.) |
| 2.2.0 | Description of Direct Materials. All materials and supplies directly identified with Federally sponsored agreements or similar cost objectives. (Describe on a continuation sheet the principal classes of materials which are charged as direct materials and supplies.) |
| 2.3.0 | Method of Charging Direct Materials and Supplies. (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.) |
| 2.3.1 | Direct Purchases for Projects are Charged to Projects at:<br><br>A. ____ Actual Invoiced Costs<br>B. ____ Actual Invoiced Costs Net of Discounts Taken<br>Y. ____ Other(s) 1/<br>Z. ____ Not Applicable |
| 2.3.2 | Inventory Requisitions from Central or Common, Institution-owned Inventory. (Identify the inventory valuation method used to charge projects):<br><br>A. ____ First In, First Out<br>B. ____ Last In, First Out<br>C. ____ Average Costs 1/<br>D. ____ Predetermined Costs 1/<br>Y. ____ Other(s) 1/<br>Z. ____ Not Applicable<br><br>1/ Describe on a Continuation Sheet. |

FORM CASB DS-2 (REV 10/94) II-1

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS | PART II- DIRECT COSTS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item Description |
|---|---|
| 2.4.0 | Description of Direct Personal Services. All personal services directly identified with Federally sponsored agreements or similar cost objectives. (Describe on a continuation sheet the personal services compensation costs, including applicable fringe benefits costs, if any, within each major institutional function or activity that are charged as direct personal services.) |
| 2.5.0 | Method of Charging Direct Salaries and Wages. (Mark the appropriate line(s) for each Direct Personal Services Category to identify the method(s) used to charge direct salary and wage costs to Federally sponsored agreements or similar cost objectives. If more than one line is marked in a column, fully describe on a continuation sheet, the applicable methods used.) |

| | Direct Personal Services Category | | | |
|---|---|---|---|---|
| | Faculty (1) | Staff (2) | Students (3) | Other 1/ (4) |
| A. Payroll Distribution Method (Individual time card/actual hours and rates) | ____ | ____ | ____ | ____ |
| B. Plan - Confirmation (Budgeted, planned or assigned work activity, updated to reflect significant changes) | ____ | ____ | ____ | ____ |
| C. After-the-fact Activity Records (Percentage Distribution of employee activity) | ____ | ____ | ____ | ____ |
| D. Multiple Confirmation Records (Employee Reports prepared each academic term, to account for employee's activities, direct and indirect charges are certified separately.) | ____ | ____ | ____ | ____ |
| Y. Other(s) 1/ | ____ | ____ | ____ | ____ |

1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) II-2

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS | PART II- DIRECT COSTS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item Description |
|---|---|
| 2.5.1 | Salary and Wage Cost Distribution Systems.<br><br>Within each major function or activity, are the methods marked in Item 2.5.0 used by all employees compensated by the reporting unit? (If "NO", describe on a continuation sheet, the types of employees not included and describe the methods used to identify and distribute their salary and wage costs to direct and indirect cost objectives.)<br><br>____ Yes<br>____ No |
| 2.5.2 | Salary and Wage Cost Accumulation System.<br><br>(Within each major function or activity, describe, on a continuation sheet, the specific accounting records or memorandum records used to accumulate and record the share of the total salary and wage costs attributable to each employee's direct (Federally sponsored projects, non-sponsored projects or similar cost objectives) and indirect activities. Indicate how the salary and wage cost distributions are reconciled with the payroll data recorded in the institution's financial accounting records.) |
| 2.6.0 | Description of Direct' Fringe Benefits Costs. All fringe benefits that are attributable to direct salaries and wages and are charged directly to Federally sponsored agreements or similar cost objectives. (Describe on a continuation sheet all of the different types of fringe benefits which are classified and charged as direct costs, e.g., actual or accrued costs of vacation, holidays, sick leave, sabbatical leave, premium pay, social security, pension plans, post-retirement benefits other than pensions, health insurance, training, tuition, tuition remission, etc.) |
| 2.6.1 | Method of Charging Direct Fringe Benefits. (Describe on a continuation sheet, how each type of fringe benefit cost identified in item 2.6.0. is measured, assigned and allocated (for definitions, See 9903.302-1); first, to the major functions (e.g., instruction, research); and, then to individual projects or direct cost objectives within each function.) |
| 2.7.0 | Description of Other Direct Costs. All other items of cost directly identified with Federally sponsored agreements or similar cost objectives. (List on a continuation sheet the principal classes of other costs which are charged directly, e.g., travel, consultants, services, subgrants, subcontracts, malpractice insurance, etc.) |

FORM CASB DS-2 (REV 10/94) II-3

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS | PART II- DIRECT COSTS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item Description |
|---|---|
| 2.8.0 | Cost Transfers. When Federally sponsored agreements or similar cost objectives are credited for cost transfers to other projects, grants or contracts, is the credit amount for direct personal services, materials, other direct charges and applicable indirect costs always based on the same amount(s) or rate(s) (e.g., direct labor rate, indirect costs) originally used to charge or allocate costs to the project (Consider transactions where the original charge and the credit occur in different cost accounting periods). (Mark one , if "No" , explain on a continuation sheet how the credit differs from original charge.)<br><br>____ Yes<br>____ No |
| 2.9.0 | Interorganizational Transfers. This item is directed only to those materials, supplies, and services which are, or will be transferred to you from other segments of the educational institution. (Mark the appropriate line(s) in each column to indicate the basis used by you as transferee to charge the cost or price of interorganizational transfers or materials, supplies, and services to Federally sponsored agreements or similar cost objectives. If more than one line is marked in a column, explain on a continuation sheet.) |

| | Materials (1) | Supplies (2) | Services (3) |
|---|---|---|---|
| A. At full cost excluding indirect costs attributable to group or central office expenses. | ____ | ____ | ____ |
| B. At full cost including indirect costs attributable to group or central office expenses. | ____ | ____ | ____ |
| C. At established catalog or market price or prices based on adequate competition. | ____ | ____ | ____ |
| Y. Other(s) 1/ | ____ | ____ | ____ |
| Z. Interorganizational transfers are not applicable | ____ | ____ | ____ |

1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) II-4

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS | PART III- INDIRECT COSTS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item Description |
|---|---|
| | Instructions for Part III<br><br>Institutions should disclose how the segment's total indirect costs are identified and accumulated in specific indirect cost categories and allocated to applicable indirect cost pools and service centers within each major function or activity, how service center costs are accumulated and "billed" to users, and the specific indirect cost pools and allocation bases used to calculate the indirect cost rates that are used to allocate accumulated indirect costs to Federally sponsored agreements or similar final cost objectives. A continuation sheet should be used wherever additional space is required or when a response requires further explanation to ensure clarity and understanding.<br><br>The following Allocation Base Codes are provided for use in connection with Items 3.1.0 and 3.3.0.<br><br>A. Direct Charge or Allocation<br>B. Total Expenditures<br>C. Modified Total Cost Basis<br>D. Modified Total Direct Cost Basis<br>E. Salaries and Wages<br>F. Salaries, Wages and Fringe Benefits<br>G. Number of Employees (head count)<br>H. Number of Employees (full-time equivalent basis)<br>I. Number of Students (head count)<br>J. Number of Students (full-time equivalent basis)<br>K. Student Hours -- classroom and work performed<br>L. Square Footage<br>M. Usage<br>N. Unit of Product<br>O. Total Production<br>P. More than one base (Separate Cost Groupings) 1/<br>Y. Other(s) 1/<br>Z. Category or Pool not applicable<br><br>1/ List on a continuation sheet, the category and subgrouping(s) of expense involved and the allocation base(s) used. |

FORM CASB DS-2 (REV 10/94) III-1

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS | PART III- INDIRECT COSTS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item Description |
|---|---|
| 3.1.0 | Indirect Cost Categories - Accumulation and Allocation. This item is directed at the identification, accumulation and allocation of all indirect costs of the institution. (Under the column heading, "Accumulation Method," insert "Yes" or "No" to indicate if the cost elements included in each indirect cost category are identified, recorded and accumulated in the institution's formal accounting system. If "No," describe on a continuation sheet, how the cost elements included in the indirect cost category are identified and accumulated. Under the column heading "Allocation Base," enter one of the allocation base codes A through P, Y, or Z, to indicate the basis used for allocating the accumulated costs of each indirect cost category to other applicable indirect cost categories, indirect cost pools, other institutional activities, specialized service facilities and other service centers. Under the column heading "Allocation Sequence," insert 1, 2, or 3 next to each of the first three indirect cost categories to indicate the sequence of the allocation process. If cross-allocation techniques are used, insert "CA." If an indirect cost category listed in this section is not used, insert "NA.") |

| Indirect Cost Category | Accumulation Method | Allocation Base Code | Allocation Sequence |
|---|---|---|---|
| (a) Depreciation/Use Allowances/Interest | | | ____ |
| Building | ____ | ____ | |
| Equipment | ____ | ____ | |
| Capital Improvements to Land 1/ | ____ | ____ | |
| Interest 1/ | ____ | ____ | |
| (b) Operation and Maintenance | ____ | ____ | ____ |
| (c) General Administration and General Expense | ____ | ____ | ____ |
| (d) Departmental Administration | ____ | ____ | |
| (e) Sponsored Projects Administration | ____ | ____ | |
| (f) Library | ____ | ____ | |
| (g) Student Administration and Services | ____ | ____ | |
| (h) Other 1/ | ____ | ____ | |

1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) III-2

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS | PART III- INDIRECT COSTS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item Description |
|---|---|
| 3.2.0 | Service Centers. Service centers are departments or functional units which perform specific technical or administrative services primarily for the benefit of other units within a reporting unit. Service Centers include "recharge centers" and the "specialized service facilities" defined in Section J of Circular A-21. (The codes identified below should be inserted on the appropriate line for each service center listed. The column numbers correspond to the paragraphs listed below that provide the codes. Explain on a Continuation Sheet if any of the services are charged to users on a basis other than usage of the services. Enter "Z" in Column 1, if not applicable.) |

| | | (1) | (2) | (3) | (4) | (5) | (6) |
|---|---|---|---|---|---|---|---|
| (a) | Scientific Computer Operations | ___ | ___ | ___ | ___ | ___ | ___ |
| (b) | Business Data Processing | ___ | ___ | ___ | ___ | ___ | ___ |
| (c) | Animal Care Facilities | ___ | ___ | ___ | ___ | ___ | ___ |
| (d) | Other Service Centers with Annual Operating Budgets exceeding $1,000,000 or that generate significant charges to Federally sponsored agreements either as a direct or indirect cost. (Specify below; use a Continuation Sheet, if necessary) | | | | | | |
| | _____ | ___ | ___ | ___ | ___ | ___ | ___ |
| | _____ | ___ | ___ | ___ | ___ | ___ | ___ |

(1) Category Code: Use code "A" if the service center costs are billed only as direct costs of final cost objectives; code "B" if billed only to indirect cost categories or indirect cost pools; code "C" if billed to both direct and indirect cost objectives.

(2) Burden Code: Code "A" – center receives an allocation of all applicable indirect costs; Code "B" – partial allocation of indirect costs; Code "C" – no allocation of indirect costs.

(3) Billing Rate Code: Code "A" – billing rates are based on historical costs; Code "B" – rates are based on projected costs; Code "C" – rates are based on a combination of historical and projected costs; Code "D" – billings are based on the actual costs of the billing period; Code "Y" – other (explain on a Continuation Sheet).

(4) User Charges Code: Code "A" – all users are charged at the same billing rates; Code "B" – some users are charged at different rates than other users (explain on a Continuation Sheet).

(5) Actual Costs vs. Revenues Code: Code "A" – billings (revenues) are compared to actual costs (expenditures) at least annually; Code "B" – billings are compared to actual costs less frequently than annually.

(6) Variance Code: Code "A" – Annual variances between billed and actual costs are prorated to users (as credits or charges); Code "B" – variances are carried forward as adjustments to billing rate of future periods; Code "C" – annual variances are charged or credited to indirect costs; Code "Y" – other (explain on a Continuation Sheet).

FORM CASB DS-2 (REV 10/94) III-3

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS | PART III- INDIRECT COSTS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item Description |
|---|---|
| 3.3.0 | Indirect Cost Pools and Allocation Bases<br><br>(Identify all of the indirect cost pools established for the accumulation of indirect costs, excluding service centers, and the allocation bases used to distribute accumulated indirect costs to Federally sponsored agreements or similar cost objectives within each major function or activity. For all applicable indirect cost pools, enter the applicable Allocation Base Code A through P, Y, or Z, to indicate the basis used for allocating accumulated pool costs to Federally sponsored agreements or similar cost objectives.) |

| Indirect Cost Pools | Allocation Base Code |
|---|---|
| A. Instruction | |
| ____ On-Campus | _____ |
| ____ Off-Campus | _____ |
| ____ Other 1/ | _____ |
| B. Organized Research | |
| ____ On-Campus | _____ |
| ____ Off-Campus | _____ |
| ____ Other 1/ | _____ |
| C. Other Sponsored Activities | |
| ____ On-Campus | _____ |
| ____ Off-Campus | _____ |
| ____ Other 1/ | _____ |
| D. Other Institutional Activities 1/ | _____ |

| | |
|---|---|
| 3.4.0 | Composition of Indirect Cost Pools. (For eacn pool identified under Items 3.1.0 and 3.2.0, describe on a continuation sheet the major organizational components, subgoupings of expenses, and elements of cost included.) |

1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) III-4

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS | PART III- INDIRECT COSTS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item Description |
|---|---|
| 3.5.0 | Composition of Allocation Bases. (For each allocation base code used in Items 3.1.0 and 3.3.0, describe on a continuation sheet the makeup of the base. For example, if a modified total direct cost base is used, specify which of the elements of direct cost identified in Part II, Direct Costs, that are included, e.g., materials, salaries and wages, fringe benefits, travel costs, and excluded, e.g., subcontract costs over first $25,000. Where applicable, explain if service centers are included or excluded. Specify the benefitting functions and activities included. If any cost objectives are excluded from the allocation base, such cost objectives and the alternate allocation method used should be identified. If an indirect cost allocation is based on Cost Analysis Studies, identify the study, and fully describe the study methods and techniques applied, the composition of the specific allocation base used, and the frequency of each recurring study . |
| 3.6.0 | Allocation of Indirect Costs to Programs That Pay Less Than Full Indirect Costs. Are appropriate direct costs of all programs and activites included in the indirect cost allocation bases, regardless of whether allocable indirect costs are fully reimbursed by the sponsoring organizations?<br><br>A. _____ Yes<br><br>B. _____ No 1/ |
| | 1/ Describe on a Continuation Sheet. |

FORM CASB DS-2 (REV 10/94) III-5

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS | PART IV- DEPRECIATION AND USE ALLOWANCES<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item Description |
|---|---|
| | Part IV |
| 4.1.0 | Depreciation Charged to Federally Sponsored Agreements or Similar Cost Objectives. (For each asset category listed below, enter a code from A through C in Column (1) describing the method of depreciation; a code from A through D in Column (2) describing the basis for determining useful life; a code from A through C in Column (3) describing how depreciation methods or use allowances are applied to property units; and Code A or B in Column (4) indicating whether or not the estimated residual value is deducted from the total cost of depreciable assets. Enter Code Y in each column of an asset category where another or more than one method applies. Enter Code Z in Column (1) only, if an asset category is not applicable.) |

| | Asset Category | Depreciation Method (1) | Useful Life (2) | Property Unit (3) | Residual Value (4) |
|---|---|---|---|---|---|
| (a) | Land Improvements | ____ | ____ | ____ | ____ |
| (b) | Buildings | ____ | ____ | ____ | ____ |
| (c) | Building Improvements | ____ | ____ | ____ | ____ |
| (d) | Leasehold Improvements | ____ | ____ | ____ | ____ |
| (e) | Equipment | ____ | ____ | ____ | ____ |
| (f) | Furniture and Fixtures | ____ | ____ | ____ | ____ |
| (g) | Automobiles and Trucks | ____ | ____ | ____ | ____ |
| (h) | Tools | ____ | ____ | ____ | ____ |
| (i) | Enter Code Y on this line if other asset categories are used and enumerate on a continuation sheet each such asset category and the applicable codes. (Otherwise enter Code Z.) | ____ | ____ | ____ | ____ |

Column (1)–Depreciation Method Code

A. Straight Line
B. Expensed at Acquisition
C. Use Allowance
Y. Other or more than one method 1/

Column (2)–Useful Life Code

A. Replacement Experience
B. Term of Lease
C. Estimated service life
D. As prescribed for use allowance by Office of Management and Budget Circular No. A-21
Y. Other or more than one method 1/

Column (3)–Property Unit Code

A. Individual units are accounted for separately
B. Applied to groups of assets with similar service lives
C. Applied to groups of assets with varying service lives
Y. Other or more than one method 1/

Column (4)–Residual Value Code

A. Residual value is deducted
B. Residual value is not deducted
Y. Other or more than one method 1/

1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) IV-1

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS | PART IV- DEPRECIATION AND USE ALLOWANCES<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item Description |
|---|---|
| 4.1.1 | Asset Valuations and Useful Lives. Are the asset valuations and useful lives used in your indirect cost proposal consistent with those used in the institution's financial statements? (Mark one.)<br><br>A. ____ Yes<br>B. ____ No 1/ |
| 4.2.0 | Fully Depreciated Assets. Is a usage charge for fully depreciated assets charged to Federally sponsored agreements or similar cost objectives? (Mark one. If yes, describe the basis for the charge on a continuation sheet.)<br><br>A. ____ Yes<br>B. ____ No |
| 4.3.0 | Treatment of Gains and Losses on Disposition of Depreciable Property. Gains and losses are: (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.)<br><br>A. ____ Excluded from determination of sponsored agreement costs<br>B. ____ Credited or charged currently to the same pools to which the depreciation of the assets was originally charged<br>C. ____ Taken into consideration in the depreciation cost basis of the new items, where trade-in is involved<br>D. ____ Not accounted for separately, but reflected in the depreciation reserve account<br>Y. ____ Other(s) 1/<br>Z. ____ Not applicable |
| 4.4.0 | Criteria for Capitalization. (Enter (a) the minimum dollar amount of expenditures which are capitalized for acquisition, addition, alteration, donation and improvement of capital assets, and (b) the minimum number of expected life years of assets which are capitalized. If more than one dollar amount or number applies, show the information for the majority of your capitalized assets, and enumerate on a continuation sheet the dollar amounts and/or number of years for each category or subcategory of assets involved which differs from those for the majority of assets.)<br><br>A. Minimum Dollar Amount _____<br>B. Minimum Life Years _____ |
| 4.5.0 | Group or Mass Purchase. Are group or mass purchases (initial complement) of similar items, which individually are less than the capitalization amount indicated above, capitalized? (Mark one.)<br><br>A. ____ Yes 1/<br>B. ____ No<br><br>1/ Describe on a Continuation Sheet. |

FORM CASB DS-2 (REV 10/94) IV-2

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS | PART V- OTHER COSTS AND CREDITS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item Description |
|---|---|
| | Part V |
| 5.1.0 | Method of Charging Leave Costs. Do you charge vacation, sick, holiday and sabbatical leave costs to sponsored agreements on the cash basis of accounting (i.e., when the leave is taken or paid), or on the accrual basis of accounting (when the leave is earned)? (Mark applicable line(s))<br>A. _____ Cash<br>B. _____ Accrual 1/ |
| 5.2.0 | Applicable Credits. This item is directed at the treatment of "applicable credits" as defined in Section C of OMB Circular A-21 and other incidental receipts (e.g., purchase discounts, insurance refunds, library fees and fines, parking fees, etc.). (Indicate how the principal types of credits and incidental receipts the institution receives are usually handled.)<br>A. _____ The credits/receipts are offset against the specific direct or indirect costs to which they relate.<br>B. _____ The credits/receipts are handled as a general adjustment to the indirect pool.<br>C. _____ The credits/receipts are treated as income and are not offset against costs.<br>D. _____ Combination of methods 1/<br>Y. _____ Other 1/ |
| | 1/ Describe on a Continuation Sheet. |

FORM CASB DS-2 (REV 10/94) V-1

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS | PART VI- DEFERRED COMPENSATION AND INSURANCE COSTS |
|---|---|
| | NAME OF REPORTING UNIT |

| Item No. | Item Description |
|---|---|
| | Instructions for Part VI<br><br>This part covers the measurement and assignment of costs for employee pensions, post retirement benefits other than pensions (including post retirement health benefits) and insurance. Some organizations may incur all of these costs at the main campus level or for public institutions at the governmental unit level, while others may incur them at subordinate organization levels. Still others may incur a portion of these costs at the main campus level and the balance at subordinate organization levels.<br><br>Where the segment (reporting unit) does not directly incur such costs, the segment should, on a continuation sheet, identify the organizational entity that incurs and records such costs. When the costs allocated to Federally sponsored agreements are material, and the reporting unit does not have access to the information needed to complete an item, the reporting unit should require that entity to complete the applicable portions of this Part VI. (See item 4, page (i), General Instructions) |
| 6.1.0 | Pension Plans. |
| 6.1.1 | Defined-Contribution Pension Plans. Identify the types and number of pension plans whose costs are charged to Federally sponsored agreements. (Mark applicable line(s) and enter number of plans.)<br><br>Type of Plan — Number of Plans<br><br>A. ____ Institution employees participate in State/Local Government Retirement Plan(s) ____<br><br>B. ____ Institution uses TIAA/CREF plan or other defined contribution plan that is managed by an organization not affiliated with the institution ____<br><br>C. ____ Institution has its own Defined-Contribution Plan(s) 1/ ____ |
| 6.1.2 | Defined-Benefit Pension Plan. (For each defined-benefit plan (other than plans that are part of a State or Local government pension plan) describe on a continuation sheet the actuarial cost method, the asset valuation method, the criteria for changing actuarial assumptions and computations, the amortization periods for prior service costs, the amortization periods for actuarial gains and losses, and the funding policy.) |
| | 1/ Describe on a Continuation Sheet. |

FORM CASB DS-2 (REV 10/94) VI-1

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS | PART VI- DEFERRED COMPENSATION AND INSURANCE COSTS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item Description |
|---|---|
| 6.2.0 | Post Retirement Benefits Other Than Pensions (including post retirement health care benefits) (PRBs). (Identify on a continuation sheet all PRB plans whose costs are charged to Federally sponsored agreements. For each plan listed, state the plan name and indicate the approximate number and type of employees covered by each plan.)<br><br>Z. [ ] Not Applicable |
| 6.2.1 | Determination of Annual PRB Costs. (On a continuation sheet, indicate whether PRB costs charged to Federally sponsored agreements are determined on the cash or accrual basis of accounting. If costs are accrued, describe the accounting practices used, including actuarial cost method, the asset valuation method, the criteria for changing actuarial assumptions and computations, the amortization periods for prior service costs, the amortization periods for actuarial gains and losses, and the funding policy.) |
| 6.3.0 | Self-Insurance Programs (Employee Group Insurance). Costs of the self-insurance programs are charged to Federally sponsored agreements or similar cost objectives: (Mark one.)<br><br>A. _____ When accrued (book accrual only)<br>B. _____ When contributions are made to a nonforfeitable fund<br>C. _____ When contributions are made to a forfeitable fund<br>D. _____ When the benefits are paid to an employee<br>E. _____ When amounts are paid to an employee welfare plan<br>Y. _____ Other or more than one method 1/<br>Z. _____ Not Applicable |
| 6.4.0 | Self-Insurance Programs (Worker's Compensation, Liability and Casualty Insurance.) |
| 6.4.1 | Worker's Compensation and Liability. Costs of such self-insurance programs are charged to Federally sponsored agreements or similar cost objectives: (Mark one.)<br><br>A. _____ When claims are paid or losses are incurred (no provision for reserves)<br>B. _____ When provisions for reserves are recorded based on the present value of the liability<br>C. _____ When provisions for reserves are recorded based on the full or undiscounted value, as contrasted with present value, of the liability<br>D. _____ When funds are set aside or contributions are made to a fund<br>Y. _____ Other or more than one method 1/<br>Z. _____ Not Applicable<br><br>1/ Describe on a Continuation Sheet. |

FORM CASB DS-2 (REV 10/94) VI-2

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS | PART VI- DEFERRED COMPENSATION AND INSURANCE COSTS<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item Description |
|---|---|
| 6.4.2 | Casualty Insurance. Costs of such self-insurance programs are charged to Federally sponsored agreements or similar cost objectives: (Mark one.)<br>A. _____ When losses are incurred (no provision for reserves)<br>B. _____ When provisions for reserves are recorded based on replacement costs<br>C. _____ When provisions for reserves are recorded based on reproduction costs new less observed depreciation (market value) excluding the value of land and other indestructibles.<br>D. _____ Losses are charged to fund balance with no charge to contracts and grants (no provision for reserves)<br>Y. _____ Other or more than one method 1/<br>Z. _____ Not Applicable<br>1/ Describe on a Continuation Sheet. |

FORM CASB DS-2 (REV 10/94) VI-3

| COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS | PART VII- CENTRAL SYSTEM OR GROUP EXPENSES<br>NAME OF REPORTING UNIT |
|---|---|

| Item No. | Item Description |
|---|---|
| | DISCLOSURE BY CENTRAL SYSTEM OFFICE, OR GROUP (INTERMEDIATE ADMINISTRATION) OFFICE, AS APPLICABLE.<br><br>Instructions for Part VII<br><br>This part should be completed only by the central system office or a group office of an educational system when that office is responsible for administering two or more segments, where it allocates its costs to such segments and where at least one of the segments is required to file Parts I through VI of the Disclosure Statement.<br><br>The reporting unit (central system or group office) should disclose how costs of services provided by the reporting unit are, or will be, accumulated and allocated to applicable segments of the institution. For a central system office, disclosure should cover the entire institution. For a group office, disclosure should cover all of the subordinate organizations administered by that group office. |
| 7.1.0 | Organizational Structure.<br><br>On a continuation sheet, list all segments of the university or university system, including hospitals, Federally Funded Research and Development Centers (FFRDC's), Government-owned Contractor-operated (GOCO) facilities, and lower-tier group offices serviced by the reporting unit. |
| 7.2.0 | Cost Accumulation and Allocation.<br><br>On a continuation sheet, provide a description of:<br><br>A. The services provided to segments of the university or university system (including hospitals, FFRDC's, GOCO facilities, etc.), in brief.<br><br>B. How the costs of the services are identified and accumulated.<br><br>C. The basis used to allocate the accumulated costs to the benefitting segments.<br><br>D. Any costs that are transferred from a segment to the central system office or the intermediate administrative office, and which are reallocated to another segment(s). If none, so state.<br><br>E. Any fixed management fees that are charged to a segment(s) in lieu of a prorata or allocation basis and the basis of such charges. If none, so state. |

FORM CASB DS-2 (REV 10/94) VII-1

[59 FR 55757, Nov. 8, 1994]

## Subpart 9903.3—CAS Rules and Regulations

**9903.301 Definitions.**

(a) The definitions set forth below apply to this chapter 99.

*Accrued benefit cost method*. See 9904.412–30.

*Accumulating costs*. See 9904.401–30.

*Actual cash value*. See 9904.416–30.

*Actual cost*. See 9904.401–30 for the broader definition and 9904.407–30 for a more restricted definition applicable only to the standard on the use of standard costs for direct material and direct labor.

*Actuarial assumption*. See 9904.412–30 or 9904.413–30.

*Actuarial cost method*. See 9904.412–30 or 9904.413–30.

*Actuarial gain and loss*. See 9904.412–30 or 9904.413–30.

*Actuarial liability*. See 9904.412–30 or 9904.413–30.

*Actuarial valuation*. See 9904.412–30 or 9904.413–30.

*Allocate*. See 9904.402–30, 9904.403–30, 9904.406–30, 9904.410–30, 9904.411–30, 9904.418–30 or 9904.420–30.

*Asset accountability unit*. See 9904.404–30.

*Assignment of cost to cost accounting periods*. See 9903.302–1(b).

*Bid and proposal (B&P) cost*. See 9904.420–30.

*Business unit*. See 9904.410–30, 9904.411–30 or 9904.414–30.

*CAS-covered contract*, as used in this part, means any negotiated contract or subcontract in which a CAS clause is required to be included.

*Category of material*. See 9904.411–30.

*Change to a cost accounting practice*. See 9903.302–2.

*Compensated personal absence*. See 9904.408–30.

*Cost accounting practice*. See 9903.302–1.

*Cost input*. See 9904.410–30.

*Cost objective*. See 9904.402–30, 9904.406–30, 9904.410–30 or 9904.411–30.

*Cost of capital committed to facilities*. See 9904.414–30.

*Currently performing*, as used in this part, means that a contractor has been awarded a contract, but has not yet received notification of final acceptance of all supplies, services, and data deliverable under the contract (including options).

*Deferred compensation*. See 9904.415–30.

*Defined-benefit pension plan*. See 9904.412–30.

*Defined-contribution pension plan*. See 9904.412–30.

*Direct cost*. See 9904.402–30 or 9904.418–30.

*Directly associated cost*. See 9904.405–30.

*Disclosure statement*, as used in this part, means the Disclosure Statement required by 9903.202–1.

*Entitlement*. See 9904.408–30.

*Estimating costs*. See 9904.401–30.

*Expressly unallowable cost*. See 9904.405–30.

*Facilities capital*. See 9904.414–30.

*Final cost objective*. See 9904.402–30 or 9904.410–30.

*Fiscal year*. See 9904.406–30.

*Funded pension cost*. See 9904.412–30.

*Funding agency*. See 9904.412–30.

*General and administrative (G&A) expense*. See 9904.410–30 or 9904.420–30.

*Home office*. See 9904.403–30 or 9904.420–30.

*Immediate-gain actuarial cost method*. See 9904.413–30.

*Independent research and development (IR&D) cost*. See 9904.420–30.

*Indirect cost*. See 9904.402–30, 9904.405–30, 9904.418–30 or 9904.420–30.

*Indirect cost pool*. See 9904.401–30, 9904.402–30, 9904.406–30 or 9904.418–30.

*Insurance administration expenses*. See 9904.416–30.

*Intangible capital asset*. See 9904.414–30 or 9904.417–30.

*Labor cost at standard*. See 9904.407–30.

*Labor-rate standard*. See 9904.407–30.

*Labor-time standard*. See 9904.407–30.

*Material cost at standard*. See 9904.407–30.

*Material inventory record*. See 9904.411–30.

*Material-price standard*. See 9904.407–30.

*Material-quantity standard*. See 9904.407–30.

*Measurement of cost*. See 9904.302–1(c).

*Moving average cost*. See 9904.411–30.

*Multiemployer pension plan*. See 9904.412–30.

*Negotiated subcontract*, as used in this part, means any subcontract except a firm fixed-price subcontract made by a contractor or subcontractor after receiving offers from at least two persons

not associated with each other or with such contractor or subcontractor, providing

(1) The solicitation to all competitors is identical,

(2) Price is the only consideration in selecting the subcontractor from among the competitors solicited, and

(3) The lowest offer received in compliance with the solicitation from among those solicited is accepted.

*Net awards*, as used in this chapter, means the total value of negotiated CAS-covered prime contract and subcontract awards, including the potential value of contract options, received during the reporting period minus cancellations, terminations, and other related credit transactions.

*Normal cost*. See 9904.412–30 or 9904.413–30.

*Operating revenue*. See 9904.403–30.

*Original complement of low cost equipment*. See 9904.404–30.

*Pay-as-you-go cost method*. See 9904.412–30.

*Pension plan*. See 9904.412–30 or 9904.413–30.

*Pension plan participant*. See 9904.413–30.

*Pricing*. See 9904.401–30.

*Production unit*. See 9904.407–30.

*Projected average loss*. See 9904.416–30.

*Projected benefit cost method*. See 9904.412–30 or 9904.413–30.

*Proposal*. See 9904.401–30.

*Repairs and maintenance*. See 9904.404–30.

*Reporting costs*. See 9904.401–30.

*Residual value*. See 9904.409–30.

*Segment*. See 9904.403–30, 9904.410–30, 9904.413–30 or 9904.420–30.

*Self-insurance*. See 9904.416–30.

*Self-insurance charge*. See 9904.416–30.

*Service life*. See 9904.409–30.

*Small business*, as used in this part, means any concern, firm, person, corporation, partnership, cooperative, or other business enterprise which, under 15 U.S.C. 637(b)(6) and the rules and regulations of the Small Business Administration in Part 121 of Title 13 of the Code of Federal Regulations, is determined to be a small business concern for the purpose of Government contracting.

*Spread-gain actuarial cost method*. See 9904.413–30.

*Standard cost*. See 9904.407–30.

*Tangible capital asset*. See 9904.403–30, 9904.404–30, 9904.409–30, 9904.414–30 or 9904.417–30.

*Termination gain or loss*. See 9904.413–30.

*Unallowable cost*. See 9904.405–30.

*Variance*. See 9904.407–30.

*Weighted average cost*. See 9904.411–30.

(b) The definitions set forth below are applicable exclusively to educational institutions and apply to this chapter 99.

*Business unit*. See 9903.201–2(c)(2)(ii).

*Educational institution*. See 9903.201–2(c)(2)(i).

*Intermediate cost objective*. See 9905.502–30(a)(7).

*Segment*. See 9903.201–2(c)(2)(ii).

[57 FR 14153, Apr. 17, 1992, as amended at 58 FR 58802, Nov. 4, 1993; 59 FR 55770, Nov. 8, 1994; 61 FR 39361, July 29, 1996]

### 9903.302 Definitions, explanations, and illustrations of the terms, "cost accounting practice" and "change to a cost accounting practice."

#### 9903.302–1 Cost accounting practice.

*Cost accounting practice*, as used in this part, means any disclosed or established accounting method or technique which is used for allocation of cost to cost objectives, assignment of cost to cost accounting periods, or measurement of cost.

(a) *Measurement of cost*, as used in this part, encompasses accounting methods and techniques used in defining the components of cost, determining the basis for cost measurement, and establishing criteria for use of alternative cost measurement techniques. The determination of the amount paid or a change in the amount paid for a unit of goods and services is not a cost accounting practice. Examples of cost accounting practices which involve measurement of costs are—

(1) The use of either historical cost, market value, or present value;

(2) The use of standard cost or actual cost; or

(3) The designation of those items of cost which must be included or excluded from tangible capital assets or pension cost.

(b) *Assignment of cost to cost accounting periods*, as used in this part, refers

to a method or technique used in determining the amount of cost to be assigned to individual cost accounting periods. Examples of cost accounting practices which involve the assignment of cost to cost accounting periods are requirements for the use of specified accrual basis accounting or cash basis accounting for a cost element.

(c) *Allocation of cost to cost objectives*, as used in this part, includes both direct and indirect allocation of cost. Examples of cost accounting practices involving allocation of cost to cost objectives are the accounting methods or techniques used to accumulate cost, to determine whether a cost is to be directly or indirectly allocated to determine the composition of cost pools, and to determine the selection and composition of the appropriate allocation base.

### 9903.302–2 Change to a cost accounting practice.

*Change to a cost accounting practice*, as used in this part, means any alteration in a cost accounting practice, as defined in 9903.302–1, whether or not such practices are covered by a Disclosure Statement, except for the following:

(a) The initial adoption of a cost accounting practice for the first time a cost is incurred, or a function is created, is not a change in cost accounting practice. The partial or total elimination of a cost or the cost of a function is not a change in cost accounting practice. As used here, function is an activity or group of activities that is identifiable in scope and has a purpose or end to be accomplished.

(b) The revision of a cost accounting practice for a cost which previously had been immaterial is not a change in cost accounting practice.

### 9903.302–3 Illustrations of changes which meet the definition of "change to a cost accounting practice."

(a) The method or technique used for measuring costs has been changed.

| Description | Accounting treatment |
|---|---|
| (1) Contractor changes its actuarial cost method for computing pension costs.. | (1)(i) Before change: The contractor computed pension costs using the aggregate cost method.<br>(ii) After change: The contractor computes pension cost using the unit credit method. |
| (2) Contractor uses standard costs to account for its direct labor. Labor cost at standard was computed by multiplying labor-time standard by actual labor rates. The contractor changes the computation by multiplying labor-time standard by labor-rate standard. | (2)(i) Before change: Contractor's direct labor cost was measured with only one component set at standard.<br>(ii) After change: Contractor's direct labor cost is measured with both the time and rate components set at standard. |

(b) The method or technique used for assignment of cost to cost accounting periods has been changed.

| Description | Accounting treatment |
|---|---|
| (1) Contractor changes his established criteria for capitalizing certain classes of tangible capital assets whose acquisition costs totaled $1 million per cost accounting period. | (1)(i) Before change: Items having acquisition costs of between $200 and $400 per unit were capitalized and depreciated over a number of cost accounting periods.<br>(ii) After change: The contractor charges the value of assets costing between $200 and $400 per unit to an indirect expense pool which is allocated to the cost objectives of the cost accounting period in which the cost was incurred. |
| (2) Contractor changes his methods for computing depreciation for a class of assets. | (2)(i) Before change: The contractor assigned depreciation costs to cost accounting periods using an accelerated method.<br>(ii) After change: The contractor assigns depreciation costs to cost accounting periods using the straight line method. |

| Description | Accounting treatment |
|---|---|
| (3) Contractor changes his general method of determining asset lives for classes of assets acquired prior to the effective date of CAS 409. | (3)(i) Before change: The contractor identified the cost accounting periods to which the cost of tangible capital assets would be assigned using guideline class lives provided in IRS Rev. Pro. 72–10.<br>(ii) After change: The contractor changes the method by which he identifies the cost accounting periods to which the costs of tangible capital assets will be assigned. He now uses the expected actual lives based on past usage. |

(c) The method or technique used for allocating costs has been changed.

| Description | Accounting treatment |
|---|---|
| (1) Contractor changes his method of allocating G&A expenses under the requirements of Cost Accounting Standard 410. | (1)(i) Before change: The contractor operating under Cost Accounting Standard 410 has been allocating his general and administrative expense pool to final cost objectives on a total cost input base in compliance with the Standard. The contractor's business changes substantially such that there are significant new projects which have only insignificant quantities of material.<br>(ii) After change: After the addition of the new work, an evaluation of the changed circumstances reveals that the continued use of a total cost input base would result in a significant distortion in the allocation of the G&A expense pool in relation to the benefits received. To remain in compliance with Standard 410, the contractor alters his G&A allocation base from a total cost input base to a value added base. |
| (2) The contractor changes the accounting for hardware common to all projects. | (2)(i) Before change: The contractor allocated the cost of purchased or requisitioned hardware directly to projects.<br>(ii) After change: The contractor charges the cost of purchased or requisitioned hardware to an indirect expense pool which is allocated to projects using an appropriate allocation base. |
| (3) The contractor merges operating segment A and B which use different cost accounting practices in accounting for manufacturing overhead costs. | (3)(i) Before change: In segment, A, the costs of the manufacturing overhead pool have been allocated to final cost objectives using a direct labor hours base; in segment B, the costs of the manufacturing overhead pool have been allocated to final cost objectives using a direct labor dollars base.<br>(ii) After change: As a result of the merger of operations, the combined segment decides to allocate the cost of the manufacturing overhead pool to all final cost objectives, using a direct labor dollars base. Thus, for those final cost objectives referred to in segment A, the cost of the manufacturing overhead pool will be allocated to the final cost objectives of segment A using a direct labor dollars base instead of a direct labor hours base. |

## 9903.302–4 Illustrations of changes which do not meet the definition of "Change to a cost accounting practice."

| Description | Accounting treatment |
|---|---|
| (a) Changes in the interest rate levels in the national economy have invalidated the prior actuarial assumption with respect to anticipated investment earnings. The pension plan administrators adopted an increased (decreased) interest rate actuarial assumption. The company allocated the resulting pension costs to all final cost objectives. | (a) Adopting the increase (decrease) in the interest rate actuarial assumption is not a change in cost accounting practice. |
| (b) The basic benefit amount for a company's pension plan is increased from $8 to $10 per year of credited service. The change increases the dollar amount of pension cost allocated to all final cost objectives. | (b) The increase in the amount of the benefits is not a change in cost accounting practice. |
| (c) A contractor who has never paid pensions establishes for the first time a pension plan. Pension costs for the first year amounted to $3.5 million. | (c) The initial adoption of an accounting practice for the first time incurrence of a cost is not a change in cost accounting practice. |
| (d) A contractor maintained a Deferred Incentive Compensation Plan. After several years' experience, the plan was determined not to be attaining its objective, so it was terminated, and no future entitlements were paid. | (d) There was a termination of the Deferred Incentive Compensation Plan. Elimination of a cost is not a change in cost accounting practice. |

| Description | Accounting treatment |
|---|---|
| (e) A contractor eliminates a segment that was operated for the purpose of doing research for development of products related to nuclear energy. | (e) The projects and expenses related to nuclear energy projects have been terminated. No transfer of these projects and no further work in this area is planned. This is an elimination of cost and not a change in cost accounting practice. |
| (f) For a particular class of assets for which technological changes have rarely affected asset lives, a contractor starts with a 5-year average of historical lives to estimate future lives. He then considers technological changes and likely use. For the past several years the process resulted in an estimated future life of 10 years for this class of assets. This year a technological change leads to a prediction of a useful life of 7 years for the assets acquired this year for the class of assets. | (f) The change in estimate (not in method) is not a change in cost accounting practice. The contractor has not changed the method or technique used to determine the estimate. The methodology applied has indicated a change in the estimated life, and this is not a change in cost accounting practice. |
| (g) The marketing department of a segment has reported directly to the general manager of the segment. The costs of the marketing department have been combined as part of the segment's G&A expense pool. The company reorganizes and requires the marketing department to report directly to a vice president at corporate headquarters. | (g) After the organization change in the company's reporting structure, the parties agree that the appropriate recognition of the beneficial or causal relationship between the costs of the marketing department and the segment is to continue to combine these costs as part of the segment's G&A expense pool. Thus, the organizational change has not resulted in a change in cost accounting practice. |

### 9903.303 Effect of filing Disclosure Statement.

(a) A disclosure of a cost accounting practice by a contractor does not determine the allowability of particular items of cost. Irrespective of the practices disclosed by a contractor, the question of whether or not, or the extent to which, a specific element of cost is allowed under a contract remains for consideration in each specific instance. Contractors are cautioned that the determination of the allowability of cost items will remain a responsibility of the contracting officers pursuant to the provisions of the applicable procurement regulations.

(b) The individual Disclosure Statement may be used in audits of contracts or in negotiation of prices leading to contracts. The authority of the audit agencies and the contracting officers is in no way abrogated by the material presented by the contractor in his Disclosure Statement. Contractors are cautioned that their disclosures must be complete and accurate; the practices disclosed may have a significant impact on ways in which contractors will be required to comply with Cost Accounting Standards.

### 9903.304 Concurrent full and modified coverage.

Contracts subject to full coverage may be performed during a period in which a previously awarded contract subject to modified coverage is being performed. Compliance with full coverage may compel the use of cost accounting practices that are not required under modified coverage. Under these circumstances the cost accounting practices applicable to contracts subject to modified coverage need not be changed. Any resulting differences in practices between contracts subject to full coverage and those subject to modified coverage shall not constitute a violation of 9904.401 and 9904.402. This principle also applies to contracts subject to modified coverage being performed during a period in which a previously awarded contract subject to full coverage is being performed.

### 9903.305 Materiality.

In determining whether amounts of cost are material or immaterial, the following criteria shall be considered where appropriate; no one criterion is necessarily determinative:

(a) The absolute dollar amount involved. The larger the dollar amount, the more likely that it will be material.

(b) The amount of contract cost compared with the amount under consideration. The larger the proportion of the amount under consideration to contract cost, the more likely it is to be material.

(c) The relationship between a cost item and a cost objective. Direct cost items, especially if the amounts are themselves part of a base for allocation of indirect costs, will normally have

more impact than the same amount of indirect costs.

(d) The impact on Government funding. Changes in accounting treatment will have more impact if they influence the distribution of costs between Government and non-Government cost objectives than if all cost objectives have Government financial support.

(e) The cumulative impact of individually immaterial items. It is appropriate to consider whether such impacts:

(1) Tend to offset one another, or

(2) Tend to be in the same direction and hence to accumulate into a material amount.

(f) The cost of administrative processing of the price adjustment modification shall be considered. If the cost to process exceeds the amount to be recovered, it is less likely the amount will be material.

**9903.306 Interpretations.**

In determining amounts of increased costs in the clauses at 9903.201–4(a), Cost Accounting Standards, 9903.201–4(c), Disclosure and Consistency of Cost Accounting Practices, and 9903.201–4(d), Consistency in Cost Accounting, the following considerations apply:

(a) Increased costs shall be deemed to have resulted whenever the cost paid by the Government results from a change in a contractor's cost accounting practices or from failure to comply with applicable Cost Accounting Standards, and such cost is higher than it would have been had the practices not been changed or applicable Cost Accounting Standards complied with.

(b) If the contractor under any fixed-price contract, including a firm fixed-price contract, fails during contract performance to follow its cost accounting practices or to comply with applicable Cost Accounting Standards, increased costs are measured by the difference between the contract price agreed to and the contract price that would have been agreed to had the contractor proposed in accordance with the cost accounting practices used during contract performance. The determination of the contract price that would have been agreed to will be left to the contracting parties and will depend on the circumstances of each case.

(c) The statutory requirement underlying this interpretation is that the United States not pay increased costs, including a profit enlarged beyond that in the contemplation of the parties to the contract when the contract costs, price, or profit is negotiated, by reason of a contractor's failure to use applicable Cost Accounting Standards, or to follow consistently its cost accounting practices. In making price adjustments under the Cost Accounting Standards clause at 9903.201–4(a) in fixed price or cost reimbursement incentive contracts, or contracts providing for prospective or retroactive price redetermination, the Federal agency shall apply this requirement appropriately in the circumstances.

(d) The contractor and the contracting officer may enter into an agreement as contemplated by subdivision (a)(4)(ii) of the Cost Accounting Standards clause at 9903.201–4(a), covering a change in practice proposed by the Government or the contractor for all of the contractor's contracts for which the contracting officer is responsible, provided that the agreement does not permit any increase in the cost paid by the Government. Such agreement may be made final and binding, notwithstanding the fact that experience may subsequently establish that the actual impact of the change differed from that agreed to.

(e) An adjustment to the contract price or of cost allowances pursuant to the Cost Accounting Standards clause at 9903.201–4(a) may not be required when a change in cost accounting practices or a failure to follow Standards or cost accounting practices is estimated to result in increased costs being paid under a particular contract by the United States. This circumstance may arise when a contractor is performing two or more covered contracts, and the change or failure affects all such contracts. The change or failure may increase the cost paid under one or more of the contracts, while decreasing the cost paid under one or more of the contracts. In such case, the Government will not require price adjustment for any increased costs paid by the United States, so long as the cost decreases

under one or more contracts are at least equal to the increased cost under the other affected contracts, provided that the contractor and the affected contracting officers agree on the method by which the price adjustments are to be made for all affected contracts. In this situation, the contracting agencies would, of course, require an adjustment of the contract price or cost allowances, as appropriate, to the extent that the increases under certain contracts were not offset by the decreases under the remaining contracts.

(f) Whether cost impact is recognized by modifying a single contract, several but not all contracts, or all contracts, or any other suitable technique, is a contract administration matter. The Cost Accounting Standards rules do not in any way restrict the capacity of the parties to select the method by which the cost impact attributable to a change in cost accounting practice is recognized.

### 9903.307 Cost Accounting Standards Preambles.

Preambles to the Cost Accounting Standards published by the original Cost Accounting Standards Board, as well as those preambles published by the signatories to the Federal Acquisition Regulation respecting changes made under their regulatory authorities, are available by writing to the: Publications Office, Office of Administration, Executive Office of the President, 725 17th Street NW., room 2200, Washington, DC 20500, or by calling (202) 395–7332.

## PART 9904—COST ACCOUNTING STANDARDS

Sec.

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9904.420–63 Effective date.

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SOURCE: 57 FR 14153, Apr. 17, 1992, unless otherwise noted.

### 9904.400 [Reserved]

### 9904.401 Cost accounting standard—consistency in estimating, accumulating and reporting costs.

### 9904.401–10 [Reserved]

### 9904.401–20 Purpose.

The purpose of this Cost Accounting Standard is to ensure that each contractor's practices used in estimating costs for a proposal are consistent with cost accounting practices used by him in accumulating and reporting costs. Consistency in the application of cost accounting practices is necessary to enhance the likelihood that comparable transactions are treated alike. With respect to individual contracts, the consistent application of cost accounting practices will facilitate the preparation of reliable cost estimates used in pricing a proposal and their comparison with the costs of performance of the resulting contract. Such comparisons provide one important basis for financial control over costs during contract performance and aid in establishing accountability for cost in the manner agreed to by both parties at the time of contracting. The comparisons also provide an improved basis for evaluating estimating capabilities.

### 9904.401–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

(1) *Accumulating costs* means the collecting of cost data in an organized manner, such as through a system of accounts.

(2) *Actual cost* means an amount determined on the basis of cost incurred (as distinguished from forecasted cost), including standard cost properly adjusted for applicable variance.

(3) *Estimating costs* means the process of forecasting a future result in terms of cost, based upon information available at the time.

(4) *Indirect cost pool* means a grouping of incurred costs identified with two or more objectives but not identified specifically with any final cost objective.

(5) *Pricing* means the process of establishing the amount or amounts to be paid in return for goods or services.

(6) *Proposal* means any offer or other submission used as a basis for pricing a contract, contract modification or termination settlement or for securing payments thereunder.

(7) *Reporting costs* means provision of cost information to others.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

### 9904.401–40 Fundamental requirement.

(a) A contractor's practices used in estimating costs in pricing a proposal shall be consistent with his cost accounting practices used in accumulating and reporting costs.

(b) A contractor's cost accounting practices used in accumulating and reporting actual costs for a contract shall be consistent with his practices used in estimating costs in pricing the related proposal.

(c) The grouping of homogeneous costs in estimates prepared for proposal purposes shall not per se be deemed an inconsistent application of cost accounting practices under paragraphs (a) and (b) of this section when such costs are accumulated and reported in greater detail on an actual cost basis during contract performance.

### 9904.401–50 Techniques for application.

(a) The standard allows grouping of homogeneous costs in order to cover those cases where it is not practicable

to estimate contract costs by individual cost element or function. However, costs estimated for proposal purposes shall be presented in such a manner and in such detail that any significant cost can be compared with the actual cost accumulated and reported therefor. In any event the cost accounting practices used in estimating costs in pricing a proposal and in accumulating and reporting costs on the resulting contract shall be consistent with respect to:

(1) The classification of elements or functions of cost as direct or indirect;

(2) The indirect cost pools to which each element or function of cost is charged or proposed to be charged; and

(3) The methods of allocating indirect costs to the contract.

(b) Adherence to the requirement of 9904.401–40(a) of this standard shall be determined as of the date of award of the contract, unless the contractor has submitted cost or pricing data pursuant to 10 U.S.C. 2306a or 41 U.S.C. 254(d) (Pub. L. 87–653), in which case adherence to the requirement of 9904.401–40(a) shall be determined as of the date of final agreement on price, as shown on the signed certificate of current cost or pricing data. Notwithstanding 9904.401–40(b), changes in established cost accounting practices during contract performance may be made in accordance with part 99.

**9904.401–60 Illustrations.**

(a) The following examples are illustrative of applications of cost accounting practices which are deemed to be consistent.

| Practices used in estimating costs for proposals | Practices used in accumulating and reporting costs of contract performance |
|---|---|
| 1. Contractor estimates an average direct labor rate for manufacturing direct labor by labor category or function. | 1. Contractor records manufacturing direct labor based on actual cost for each individual and collects such costs by labor category or function. |
| 2. Contract estimates an average cost for minor standard hardware items, including nuts, bolts, washers, etc. | 2. Contractor records actual cost for minor standard hardware items based upon invoices or material transfer slips. |
| 3. Contractor uses an estimated rate for manufacturing overhead to be applied to an estimated direct labor base. He identifies the items included in his estimate of manufacturing overhead and provides supporting data for the estimated direct labor base. | 3. Contractor accounts for manufacturing overhead by individual items of cost which are accumulated in a cost pool allocated to final cost objectives on a direct labor base. |

(b) The following examples are illustrative of application of cost accounting practices which are deemed not to be consistent.

| Practices used for estimating costs for proposals | Practices used in accumulating and reporting costs of contract performance |
|---|---|
| 4. Contractor estimates a total dollar amount for engineering labor which includes disparate and significant elements or functions of engineering labor. Contractor does not provide supporting data reconciling this amount to the estimates for the same engineering labor cost functions for which he will separately account in contract performance. | 4. Contractor accounts for engineering labor by cost function, i.e. drafting, designing, production, engineering, etc. |
| 5. Contractor estimates engineering labor by cost function, i.e. drafting, production engineering, etc. | 5. Contractor accumulates total engineering labor in one undifferentiated account. |
| 6. Contractor estimates a single dollar amount for machining cost to cover labor, material and overhead. | 6. Contractor records separately the actual costs of machining labor and material as direct costs, and factory overhead as indirect costs. |

**9904.401–61 Interpretation.**

(a) 9904.401, Cost Accounting Standard—Consistency in Estimating, Accumulating and Reporting Costs, requires in 9904.401–40 that a contractor's ''practices used in estimating costs in pricing a proposal shall be consistent with his cost accounting practices used in accumulating and reporting costs.''

(b) In estimating the cost of direct material requirements for a contract, it is a common practice to first estimate the cost of the actual quantities

to be incorporated in end items. Provisions are then made for additional direct material costs to cover expected material losses such as those which occur, for example, when items are scrapped, fail to meet specifications, are lost, consumed in the manufacturing process, or destroyed in testing and qualification processes. The cost of some or all of such additional direct material requirements is often estimated by the application of one or more percentage factors to the total cost of basic direct material requirements or to some other base.

(c) Questions have arisen as to whether the accumulation of direct material costs in an undifferentiated account where a contractor estimates a significant part of such costs by means of percentage factors is in compliance with 9904.401. The most serious questions pertain to such percentage factors which are not supported by the contractor with accounting, statistical, or other relevant data from past experience, nor by a program to accumulate actual costs for comparison with such percentage estimates. The accumulation of direct costs in an undifferentiated account in this circumstance is a cost accounting practice which is not consistent with the practice of estimating a significant part of costs by means of percentage factors. This situation is virtually identical with that described in Illustration 9904.401–60(b)(5), which deals with labor.

(d) 9904.401 does not, however, prescribe the amount of detail required in accumulating and reporting costs. The amount of detail required may vary considerably depending on the percentage factors used, the data presented in justification or lack thereof, and the significance of each situation. Accordingly, it is neither appropriate nor practical to prescribe a single set of accounting practices which would be consistent in all situations with the practices of estimating direct material costs by percentage factors. Therefore, the amount of accounting and statistical detail to be required and maintained in accounting for this portion of direct material costs has been and continues to be a matter to be decided by Government procurement authorities on the basis of the individual facts and circumstances.

**9904.401–62 Exemption.**

None for this Standard.

**9904.401–63 Effective date.**

This Standard is effective as of April 17, 1992.

[57 FR 14153, Apr. 17, 1992; 57 FR 34167, Aug. 3, 1992]

## 9904.402 Cost accounting standard—consistency in allocating costs incurred for the same purpose.

**9904.402–10 [Reserved]**

**9904.402–20 Purpose.**

The purpose of this standard is to require that each type of cost is allocated only once and on only one basis to any contract or other cost objective. The criteria for determining the allocation of costs to a product, contract, or other cost objective should be the same for all similar objectives. Adherence to these cost accounting concepts is necessary to guard against the overcharging of some cost objectives and to prevent double counting. Double counting occurs most commonly when cost items are allocated directly to a cost objective without eliminating like cost items from indirect cost pools which are allocated to that cost objective.

**9904.402–30 Definitions.**

(a) The following are definitions of terms which are prominent in this standard. Other terms defined elsewhere in this part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this section requires otherwise.

(1) *Allocate* means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

(2) *Cost objective* means a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost to processes, products, jobs, capitalized projects, etc.

(3) *Direct cost* means any cost which is identified specifically with a particular final cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified specifically with other final cost objectives of the contractor are direct costs of those cost objectives.

(4) *Final cost objective* means a cost objective which has allocated to it both direct and indirect costs, and in the contractor's accumulation system, is one of the final accumulation points.

(5) *Indirect cost* means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(6) *Indirect cost pool* means a grouping of incurred costs identified with two or more cost objectives but not specifically identified with any final cost objective.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

**9904.402–40 Fundamental requirement.**

All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to final cost objectives. No final cost objective shall have allocated to it as an indirect cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective. Further, no final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective.

**9904.402–50 Techniques for application.**

(a) The Fundamental Requirement is stated in terms of cost incurred and is equally applicable to estimates of costs to be incurred as used in contract proposals.

(b) The Disclosure Statement to be submitted by the contractor will require that he set forth his cost accounting practices with regard to the distinction between direct and indirect costs. In addition, for those types of cost which are sometimes accounted for as direct and sometimes accounted for as indirect, the contractor will set forth in his Disclosure Statement the specific criteria and circumstances for making such distinctions. In essence, the Disclosure Statement submitted by the contractor, by distinguishing between direct and indirect costs, and by describing the criteria and circumstances for allocating those items which are sometimes direct and sometimes indirect, will be determinative as to whether or not costs are incurred for the same purpose. Disclosure Statement as used herein refers to the statement required to be submitted by contractors as a condition of contracting as set forth in subpart 9903.2.

(c) In the event that a contractor has not submitted a Disclosure Statement, the determination of whether specific costs are directly allocable to contracts shall be based upon the contractor's cost accounting practices used at the time of contract proposal.

(d) Whenever costs which serve the same purpose cannot equitably be indirectly allocated to one or more final cost objectives in accordance with the contractor's disclosed accounting practices, the contractor may either:

(1) Use a method for reassigning all such costs which would provide an equitable distribution to all final cost objectives, or

(2) Directly assign all such costs to final cost objectives with which they are specifically identified.

In the event the contractor decides to make a change for either purpose, the Disclosure Statement shall be amended to reflect the revised accounting practices involved.

(e) Any direct cost of minor dollar amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives, provided that such treatment produces results which are substantially the same as the results

which would have been obtained if such cost had been treated as a direct cost.

**9904.402–60 Illustrations.**

(a) Illustrations of costs which are incurred for the same purpose:

(1) Contractor normally allocates all travel as an indirect cost and previously disclosed this accounting practice to the Government. For purposes of a new proposal, contractor intends to allocate the travel costs of personnel whose time is accounted for as direct labor directly to the contract. Since travel costs of personnel whose time is accounted for as direct labor working on other contracts are costs which are incurred for the same purpose, these costs may no longer be included within indirect cost pools for purposes of allocation to any covered Government contract. Contractor's Disclosure Statement must be amended for the proposed changes in accounting practices.

(2) Contractor normally allocates planning costs indirectly and allocates this cost to all contracts on the basis of direct labor. A proposal for a new contract requires a disproportionate amount of planning costs. The contractor prefers to continue to allocate planning costs indirectly. In order to equitably allocate the total planning costs, the contractor may use a method for allocating all such costs which would provide an equitable distribution to all final cost objectives. For example, he may use the number of planning documents processed rather than his former allocation base of direct labor. Contractor's Disclosure Statement must be amended for the proposed changes in accounting practices.

(b) Illustrations of costs which are not incurred for the same purpose:

(1) Contractor normally allocates special tooling costs directly to contracts. The costs of general purpose tooling are normally included in the indirect cost pool which is allocated to contracts. Both of these accounting practices were previously disclosed to the Government. Since both types of costs involved were not incurred for the same purpose in accordance with the criteria set forth in the Contractor's Disclosure Statement, the allocation of general purpose tooling costs from the indirect cost pool to the contract, in addition to the directly allocated special tooling costs, is not considered a violation of the standard.

(2) Contractor proposes to perform a contract which will require three firemen on 24-hour duty at a fixed-post to provide protection against damage to highly inflammable materials used on the contract. Contractor presently has a firefighting force of 10 employees for general protection of the plant. Contractor's costs for these latter firemen are treated as indirect costs and allocated to all contracts; however, he wants to allocate the three fixed-post firemen directly to the particular contract requiring them and also allocate a portion of the cost of the general firefighting force to the same contract. He may do so but only on condition that his disclosed practices indicate that the costs of the separate classes of firemen serve different purposes and that it is his practice to allocate the general firefighting force indirectly and to allocate fixed-post firemen directly.

**9904.402–61 Interpretation.**

(a) 9904.402, Cost Accounting Standard—Consistency in Allocating Costs Incurred for the Same Purpose, provides, in 9904.402–40, that '' * * * no final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective.''

(b) This interpretation deals with the way 9904.402 applies to the treatment of costs incurred in preparing, submitting, and supporting proposals. In essence, it is addressed to whether or not, under the Standard, all such costs are incurred for the same purpose, in like circumstances.

(c) Under 9904.402, costs incurred in preparing, submitting, and supporting proposals pursuant to a specific requirement of an existing contract are considered to have been incurred in different circumstances from the circumstances under which costs are incurred in preparing proposals which do not result from such specific requirement. The circumstances are different

because the costs of preparing proposals specifically required by the provisions of an existing contract relate only to that contract while other proposal costs relate to all work of the contractor.

(d) This interpretation does not preclude the allocation, as indirect costs, of costs incurred in preparing all proposals. The cost accounting practices used by the contractor, however, must be followed consistently and the method used to reallocate such costs, of course, must provide an equitable distribution to all final cost objectives.

**9904.402–62 Exemption.**

None for this Standard.

**9904.402–63 Effective date.**

This Standard is effective as of April 17, 1992.

**9904.403 Allocation of home office expenses to segments.**

**9904.403–10 [Reserved]**

**9904.403–20 Purpose.**

(a) The purpose of this Cost Accounting Standard is to establish criteria for allocation of the expenses of a home office to the segments of the organization based on the beneficial or causal relationship between such expenses and the receiving segments. It provides for:

(1) Identification of expenses for direct allocation to segments to the maximum extent practical;

(2) Accumulation of significant nondirectly allocated expenses into logical and relatively homogeneous pools to be allocated on bases reflecting the relationship of the expenses to the segments concerned; and

(3) Allocation of any remaining or residual home office expenses to all segments.

Appropriate implementation of this Standard will limit the amount of home office expenses classified as residual to the expenses of managing the organization as a whole.

(b) This Standard does not cover the reallocation of a segment's share of home office expenses to contracts and other cost objectives.

**9904.403–30 Definitions.**

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

(1) *Allocate* means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignments of cost and the reassignment of a share from an indirect cost pool.

(2) *Home office* means an office responsible for directing or managing two or more, but not necessarily all, segments of an organization. It typically establishes policy for, and provides guidance to the segments in their operations. It usually performs management, supervisory, or administrative functions, and may also perform service functions in support of the operations of the various segments. An organization which has intermediate levels, such as groups, may have several home offices which report to a common home office. An intermediate organization may be both a segment and a home office.

(3) *Operating revenue* means amounts accrued or charge to customers, clients, and tenants, for the sale of products manufactured or purchased for resale, for services, and for rentals of property held primarily for leasing to others. It includes both reimbursable costs and fees under cost-type contracts and percentage-of-completion sales accruals except that it includes only the fee for management contracts under which the contractor acts essentially as an agent of the Government in the erection or operation of Government-owned facilities. It excludes incidental interest, dividends, royalty, and rental income, and proceeds from the sale of assets used in the business.

(4) *Segment* means one of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service. The term includes Government-owned contractor-operated (GOCO) facilities, and joint ventures and subsidiaries (domestic and

foreign) in which the organization has a majority ownership. The term also includes those joint ventures and subsidiaries (domestic and foreign) in which the organization has less than a majority of ownership, but over which it exercises control.

(5) *Tangible capital asset* means an asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the services it yields.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard: None.

**9904.403–40 Fundamental requirement.**

(a)(1) Home office expenses shall be allocated on the basis of the beneficial or causal relationship between supporting and receiving activities. Such expenses shall be allocated directly to segments to the maximum extent practical. Expenses not directly allocated, if significant in amount and in relation to total home office expenses, shall be grouped in logical and homogeneous expense pools and allocated pursuant to paragraph (b) of this subsection. Such allocations shall minimize to the extent practical the amount of expenses which may be categorized as residual (those of managing the organization as a whole). These residual expenses shall be allocated pursuant to paragraph (c) of this subsection.

(2) No segment shall have allocated to it as an indirect cost, either through a homogeneous expense pool, or the residual expense pool, any cost, if other costs incurred for the same purpose have been allocated directly to that or any other segment.

(b) The following subparagraphs provide criteria for allocation of groups of home office expenses.

(1) *Centralized service functions.* Expenses of centralized service functions performed by a home office for its segments shall be allocated to segments on the basis of the service furnished to or received by each segment. Centralized service functions performed by a home office for its segments are considered to consist of specific functions which, but for the existence of a home office, would be performed or acquired by some or all of the segments individually. Examples include centrally performed personnel administration and centralized data processing.

(2) *Staff management of certain specific activities of segments.* The expenses incurred by a home office for staff management or policy guidance functions which are significant in amount and in relation to total home office expenses shall be allocated to segments receiving more than a minimal benefit over a base, or bases, representative of the total specific activity being managed. Staff management or policy guidance to segments is commonly provided in the overall direction or support of the performance of discrete segment activities such as manufacturing, accounting, and engineering (but see paragraph (b)(6) of this subsection).

(3) *Line management of particular segments or groups of segments.* The expense of line management shall be allocated only to the particular segment or group of segments which are being managed or supervised. If more than one segment is managed or supervised, the expense shall be allocated using a base or bases representative of the total activity of such segments. Line management is considered to consist of management or supervision of a segment or group of segments as a whole.

(4) *Central payments or accruals.* Central payments or accruals which are made by a home office on behalf of its segments shall be allocated directly to segments to the extent that all such payments or accruals of a given type or class can be identified specifically with individual segments. Central payments or accruals are those which but for the existence of a number of segments would be accrued or paid by the individual segments. Common examples include centrally paid or accrued pension costs, group insurance costs, State and local income taxes and franchise taxes, and payrolls paid by a home office on behalf of its segments. Any such types of payments or accruals which cannot be identified specifically with individual segments shall be allocated to benefitted segments using an allocation base representative of the factors on which the total payment is based.

(5) *Independent research and development costs and bid and proposal costs.* Independent research and development costs and bid and proposal costs of a home office shall be allocated in accordance with 9904.420.

(6) *Staff management not identifiable with any certain specific activities of segments.* The expenses incurred by a home office for staff management, supervisory, or policy functions, which are not identifiable to specific activities of segments shall be allocated in accordance with paragraph (c) of this subsection as residual expenses.

(c) *Residual expenses.* (1) All home office expenses which are not allocable in accordance with paragraph (a) of this subsection and paragraphs (b)(1) through (b)(5) of this subsection shall be deemed residual expenses. Typical residual expenses are those for the chief executive, the chief financial officer, and any staff which are not identifiable with specific activities of segments. Residual expenses shall be allocated to all segments under a home office by means of a base representative of the total activity of such segments, except where paragraph (c) (2) or (3) of this subsection applies.

(2) Residual expenses shall be allocated pursuant to 9904.403–50(c)(1) if the total amount of such expenses for the contractor's previous fiscal year (excluding any unallowable costs and before eliminating any amounts to be allocated in accordance with paragraph (c)(3) of this subsection) exceeds the amount obtained by applying the following percentage(s) to the aggregate operating revenue of all segments for such previous year: 3.35 percent of the first $100 million; 0.95 percent of the next $200 million; 0.30 percent of the next $2.7 billion; 0.20 percent of all amounts over $3 billion. The determination required by this paragraph for the 1st year the contractor is subject to this Standard shall be based on the pro forma application of this Standard to the home office expenses and aggregate operating revenue for the contractor's previous fiscal year.

(3) Where a particular segment receives significantly more or less benefit from residual expenses than would be reflected by the allocation of such expenses pursuant to paragraph (c) (1) or (2) of this subsection (see 9904.403–50(d)), the Government and the contractor may agree to a special allocation of residual expenses to such segment commensurate with the benefits received. The amount of a special allocation to any segment made pursuant to such an agreement shall be excluded from the pool of residual expenses to be allocated pursuant to paragraph (c) (1) or (2) of this subsection, and such segment's data shall be excluded from the base used to allocate this pool.

**9904.403–50 Techniques for application.**

(a)(1) Separate expense groupings will ordinarily be required to implement 9904.403–40. The number of groupings will depend primarily on the variety and significance of service and management functions performed by a particular home office. Ordinarily, each service or management function will have to be separately identified for allocation by means of an appropriate allocation technique. However, it is not necessary to identify and allocate different functions separately, if allocation in accordance with the relevant requirements of 9904.403–40(b) can be made using a common allocation base. For example, if the personnel department of a home office provides personnel services for some or all of the segments (a centralized service function) and also established personnel policies for the same segments (a staff management function), the expenses of both functions could be allocated over the same base, such as the number of personnel, and the separate functions do not have to be identified.

(2) Where the expense of a given function is to be allocated by means of a particular allocation base, all segments shall be included in the base unless:

(i) Any excluded segment did not receive significant benefits from, or contribute significantly to the cause of the expense to be allocated and,

(ii) Any included segment did receive significant benefits from or contribute significantly to the cause of the expense in question.

(b)(1) Section 9904.403–60 illustrates various expense pools which may be

used together with appropriate allocation bases. The allocation of centralized service functions shall be governed by a hierarchy of preferable allocation techniques which represent beneficial or causal relationships. The preferred representation of such relationships is a measure of the activity of the organization performing the function. Supporting functions are usually labor-oriented, machine-oriented, or space-oriented. Measures of the activities of such functions ordinarily can be expressed in terms of labor hours, machine hours, or square footage. Accordingly, costs of these functions shall be allocated by use of a rate, such as a rate per labor hour, rate per machine hour or cost per square foot, unless such measures are unavailable or impractical to ascertain. In these latter cases the basis for allocation shall be a measurement of the output of the supporting function. Output is measured in terms of units of end product produced by the supporting function, as for example, number of printed pages for a print shop, number of purchase orders processed by a purchasing department, number of hires by an employment office.

(2) Where neither activity nor output of the supporting function can be practically measured, a surrogate for the beneficial, or causal relationship must be selected. Surrogates used to represent the relationship are generally measures of the activity of the segments receiving the service; for example, for personnel services reasonable surrogates would be number of personnel, labor hours, or labor dollars of the segments receiving the service. Any surrogate used should be a reasonable measure of the services received and, logically, should vary in proportion to the services received.

(c)(1) Where residual expenses are required to be allocated pursuant to 9904.403–40(c)(2), the three factor formula described below must be used. This formula is considered to result in appropriate allocations of the residual expenses of home offices. It takes into account three broad areas of management concern: The employees of the organization, the business volume, and the capital invested in the organization. The percentage of the residual expenses to be allocated to any segment pursuant to the three factor formula is the arithmetical average of the following three percentages for the same period.

(i) The percentage of the segment's payroll dollars to the total payroll dollars of all segments.

(ii) The percentage of the segment's operating revenue to the total operating revenue of all segments. For this purpose, the operating revenue of any segment shall include amounts charged to other segments and shall be reduced by amounts charged by other segments for purchases.

(iii) The percentage of the average net book value of the sum of the segment's tangible capital assets plus inventories to the total average net book value of such assets of all segments. Property held primarily for leasing to others shall be excluded from the computation. The average net book value shall be the average of the net book value at the beginning of the organization's fiscal year and the net book value at the end of the year.

(d) The following paragraphs provide guidance for implementing the requirements of 9904.403–40(c)(3).

(1) An indication that a segment received significantly less benefit in relation to other segments can arise if a segment, unlike all or most other segments, performs on its own many of the functions included in the residual expense. Another indication may be that, in relation to its size, comparatively little or no costs are allocable to a segment pursuant to 9904.403–40(b) (1) through (5). Evidence of comparatively little communication or interpersonal relations between a home office and a segment, in relation to its size, may also indicate that the segment receives significantly less benefit from residual expenses. Conversely, if the opposite conditions prevail at any segment, a greater allocation than would result from the application of 9904.403–40(c) (1) or (2) may be indicated. This may be the case, for example, if a segment relies heavily on the home office for certain residual functions normally performed by other segments on their own.

(2) Segments which may require special allocations of residual expenses

pursuant to 9904.403–40(c)(3) include, but are not limited to foreign subsidiaries, GOCO's, domestic subsidiaries with less than a majority ownership, and joint ventures.

(3) The portion of residual expenses to be allocated to a segment pursuant to 9904.403–40(c)(3) shall be the cost of estimated or recorded efforts devoted to the segments.

(e) Home office functions may be performed by an organization which for some purposes may not be a part of the legal entity with which the Government has contracted. This situation may arise, for example, in instances where the Government contracts directly with a corporation which is wholly or partly owned by another corporation. In this case, the latter corporation serves as a ''home office,'' and the corporation with which the contract is made is a ''segment'' as those terms are defined and used in this Standard. For purposes of contracts subject to this Standard, the contracting corporation may only accept allocations from the other corporation to the extent that such allocations meet the requirements set forth in this Standard for allocation of home office expenses to segments.

**9904.403–60 Illustrations.**

(a) The following table lists some typical pools, together with illustrative allocation bases, which could be used in appropriate circumstances:

| Home office expense or function | Illustrative allocation bases |
|---|---|
| Centralized service functions: | |
| 1. Personnel administration | 1. Number of personnel, labor hours, payroll, number of hires. |
| 2. Data processing services | 2. Machine time, number of reports. |
| 3. Centralized purchasing and subcontracting | 3. Number of purchase orders, value of purchases, number of items. |
| 4. Centralized warehousing | 4. Square footage, value of material, volume. |
| 5. Company aircraft service | 5. Actual or standard rate per hour, mile, passenger mile, or similar unit. |
| 6. Central telephone service | 6. Usage costs, number of instruments. |

(b) The selection of a base for allocating centralized service functions shall be governed by the criteria established in 9904.403–50(b).

(c) The listed allocation bases in this section are illustrative. Other bases for allocation of home office expenses to segments may be used if they are substantially in accordance with the beneficial or casual relationships outlined in 9904.403–40.

| Home office expenses or function | Illustrative allocation bases |
|---|---|
| Staff management or specific activities: | |
| 1. Personnel management | 1. Number of personnel, labor hours, payroll, number of hires. |
| 2. Manufacturing policies, (quality control, industrial engineering, production, scheduling, tooling, inspection and testing, etc. | 2. Manufacturing cost input, manufacturing direct labor. |
| 3. Engineering policies | 3. Total engineering costs, engineering direct labor, number of drawings. |
| 4. Material/purchasing policies | 4. Number of purchase orders, value of purchases. |
| 5. Marketing policies | 5. Sales, segment marketing costs. |
| Central payments or accruals: | |
| 1. Pension expenses | 1. Payroll or other factor on which total payment is based. |
| 2. Group insurance expenses | 2. Payroll or other factor on which total payment is based. |
| 3. State and local income taxes and franchise taxes | 3. Any base or method which results in an allocation that equals or approximates a segment's proportionate share of the tax imposed by the jurisdiction in which the segment does business, as measured by the same factors used to determine taxable income for that jurisdiction. |

**9904.403–61 Interpretation.**

(a) Questions have arisen as to the requirements of 9904.403, Cost Accounting Standard, Allocation of Home Office Expenses to Segments, for the purpose of allocating State and local income taxes and franchise taxes based

on income (hereinafter collectively referred to as income taxes) from a home office of an organization to its segments.

(b) By means of an illustrative allocation base in 9904.403–60, the Standard provides that income taxes are to be allocated by ''any base or method which results in an allocation that equals or approximates a segment's proportionate share of the tax imposed by the jurisdiction in which the segment does business, as measured by the same factors used to determine taxable income for that jurisdiction.'' This provision contains two essential criteria for the allocation of income taxes from a home office to segments. First, the taxes of any particular jurisdiction are to be allocated only to those segments that do business in the taxing jurisdiction. Second, where there is more than one segment in a taxing jurisdiction, the taxes are to be allocated among those segments on the basis of ''the same factors used to determine the taxable income for that jurisdiction.'' The questions that have arisen relate primarily to whether segment book income or loss is a ''factor'' for this purpose.

(c) Most States tax a fraction of total organization income, rather than the book income of segments that do business within the State. The fraction is calculated pursuant to a formula prescribed by State statute. In these situations the book income or loss of individual segments is not a factor used to determine taxable income for that jurisdiction. Accordingly, in States that tax a fraction of total organization income, rather than the book income of segments within the State, such book income is irrelevant for tax allocation purposes. Therefore, segment book income is to be used as a factor in allocating income tax expense from a home office to segments only where this amount is expressly used by the taxing jurisdiction in computing the income tax.

**9904.403–62 Exemption. [Reserved]**

**9904.403–63 Effective date.**

This Standard is effective as of April 17, 1992. Contractors with prior CAS-covered contracts with full coverage shall continue this Standard's applicability upon receipt of a contract to which this Standard is applicable. For contractors with no previous contracts subject to this Standard, this Standard shall be applied beginning with the contractor's next full fiscal year beginning after the receipt of a contract to which this Standard is applicable.

## 9904.404 Capitalization of tangible assets.

**9904.404–10 [Reserved]**

**9904.404.20 Purpose.**

This Standard requires that, for purposes of cost measurement, contractors establish and adhere to policies with respect to capitalization of tangible assets which satisfy criteria set forth herein. Normally, cost measurements are based on the concept of enterprise continuity; this concept implies that major asset acquisitions will be capitalized, so that the cost applicable to current and future accounting periods can be allocated to cost objectives of those periods. A capitalization policy in accordance with this Standard will facilitate measurement of costs consistently over time.

**9904.404–30 Definitions.**

(a) The following are definitions of terms which are prominent in this standard. Other terms defined elsewhere in this part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

(1) *Asset accountability unit* means a tangible capital asset which is a component of plant and equipment that is capitalized when acquired or whose replacement is capitalized when the unit is removed, transferred, sold, abandoned, demolished, or otherwise disposed of.

(2) *Original complement of low cost equipment* means a group of items acquired for the initial outfitting of a tangible capital asset or an operational unit, or a new addition to either. The items in the group individually cost less than the minimum amount established by the contractor for capitalization for the classes of assets acquired but in the aggregate they represent a material investment. The group, as a complement, is expected to be held for

continued service beyond the current period. Initial outfitting of the unit is completed when the unit is ready and available for normal operations.

(3) *Repairs and maintenance* generally means the total endeavor to obtain the expected service during the life of tangible capital assets. Maintenance is the regularly recurring activity of keeping assets in normal or expected operating condition while repair is the activity of putting them back into such condition.

(4) *Tangible capital asset* means an asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the service it yields.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

### 9904.404–40 Fundamental requirement.

(a) The acquisition cost of tangible capital assets shall be capitalized. Capitalization shall be based upon a written policy that is reasonable and consistently applied.

(b) The contractor's policy shall designate economic and physical characteristics for capitalization of tangible assets.

(1) The contractor's policy shall designate a minimum service life criterion, which shall not exceed 2 years, but which may be a shorter period. The policy shall also designate a minimum acquisition cost criterion which shall not exceed $5,000, but which may be a smaller amount.

(2) The contractor's policy may designate other specific characteristics which are pertinent to his capitalization policy decisions (e.g., class of asset, physical size, identifiability and controllability, the extent of integration or independence of constituent units).

(3) The contractor's policy shall provide for identification of asset accountability units to the maximum extent practical.

(4) The contractor's policy may designate higher minimum dollar limitations for original complement of low cost equipment and for betterments and improvements than the limitation established in accordance with paragraph (b)(1) of this subsection, provided such higher limitations are reasonable in the contractor's circumstances.

(c) Tangible assets shall be capitalized when both of the criteria in the contractor's policy as required in paragraph (b)(1) of this subsection are met, except that assets described in subparagraph (b)(4) of this subsection shall be capitalized in accordance with the criteria established in accordance with that paragraph.

(d) Costs incurred subsequent to the acquisition of a tangible capital asset which result in extending the life or increasing the productivity of that asset (e.g., betterments and improvements) and which meet the contractor's established criteria for capitalization shall be capitalized with appropriate accounting for replaced asset accountability units. However, costs incurred for repairs and maintenace to a tangible capital asset which either restore the asset to, or maintain it at, its normal or expected service life or production capacity shall be treated as costs of the current period.

[57 FR 14153, Apr. 17, 1992, as amended at 61 FR 5522, Feb. 13, 1996]

### 9904.404–50 Techniques for application.

(a) The cost to acquire a tangible capital asset includes the purchase price of the asset and costs necessary to prepare the asset for use.

(1) The purchase price of an asset shall be adjusted to the extent practical by premiums and extra charges paid or discounts and credits received which properly reflect an adjustment in the purchase price.

(i) Purchase price is the consideration given in exchange for an asset and is determined by cash paid, or to the extent payment is not made in cash, in an amount equivalent to what would be the cash price basis. Where this amount is not available, the purchase price is determined by the current value of the consideration given in exchange for the asset. For example, current value for a credit instrument is the amount immediately required to settle the obligation or the amount of money which might have been raised

directly through the use of the same instrument employed in making the credit purchase. The current value of an equity security is its market value. Market value is the current or prevailing price of the security as indicated by recent market quotations. If such values are unavailable or not appropriate (thin market, volatile price movement, etc.), an acceptable alternative is the fair value of the asset acquired.

(ii) Donated assets which, at the time of receipt, meet the contractor's criteria for capitalization shall be capitalized at their fair value at that time.

(2) Costs necessary to prepare the asset for use include the cost of placing the asset in location and bringing the asset to a condition necessary for normal or expected use. Where material in amount, such costs, including initial inspection and testing, installation and similar expenses, shall be capitalized.

(b) Tangible capital assets constructed or fabricated by a contractor for its own use shall be capitalized at amounts which include all indirect costs properly allocable to such assets. This requires the capitalization of general and administrative expenses when such expenses are identifiable with the constructed asset and are material in amount (e.g., when the in-house construction effort requires planning, supervisory, or other significant effort by officers or other personnel whose salaries are regularly charged to general and administrative expenses). When the constructed assets are identical with or similar to the contractor's regular product, such assets shall be capitalized at amounts which include a full share of indirect costs.

(c) In circumstances where the acquisition by purchase or donation of previously used tangible capital assets is not an arm's length transaction, acquisition cost shall be limited to the capitalized cost of the asset to the owner who last acquired the asset through an arm's-length transaction, reduced by depreciation charges from date of that acquisition to date of gift or sale.

(d) The capitalized values of tangible capital assets acquired in a business combination, accounted for under the ''purchase method'' of accounting, shall be assigned to these assets as follows:

(1) All the tangible capital assets of the acquired company that during the most recent cost accounting period prior to a business combination generated either depreciation expense or cost of money charges that were allocated to Federal government contracts or subcontracts negotiated on the basis of cost, shall be capitalized by the buyer at the net book value(s) of the asset(s) as reported by the seller at the time of the transaction.

(2) All the tangible capital asset(s) of the acquired company that during the most recent cost accounting period prior to a business combination did not generate either depreciation expense or cost of money charges that were allocated to Federal government contracts or subcontracts negotiated on the basis of cost, shall be assigned a portion of the cost of the acquired company not to exceed their fair value(s) at the date of acquisition. When the fair value of identifiable acquired assets less liabilities assumed exceeds the purchase price of the acquired company in an acquisition under the ''purchase method,'' the value otherwise assignable to tangible capital assets shall be reduced by a proportionate part of the excess.

(e) Under the ''pooling of interest method'' of accounting for business combinations, the values established for tangible captial assets for financial accounting shall be the values used for determining the cost of such assets.

(f) Asset accountability units shall be identified and separately capitalized at the time the assets are acquired. However, whether or not the contractor identifies and separately capitalizes a unit initially, the contractor shall remove the unit from the asset accounts when it is disposed of and, if replaced, its replacement shall be capitalized.

[57 FR 14153, Apr. 17, 1992, as amended at 61 FR 5523, Feb. 13, 1996]

**9904.404–60 Illustrations.**

(a) *Illustrations of costs which must be capitalized.* (1) Contractor has an established policy of capitalizing tangible assets which have a service life of more than 1 year and a cost of $6,000. The contractor's policy must be modified to conform to the $5,000 policy limitation

on minimum acquisition cost established by the Standard.

(i) Contractor acquires a tangible capital asset with a life of 18 months at a cost of $6,500. The Standard requires that the asset be capitalized in compliance with contractor's policy as to service life.

(ii) Contractor acquires a tangible asset with a life of 18 months at a cost of $900. The asset need not be capitalized unless the contractor's revised policy establishes a minimum cost criterion below $900.

(2) Contractor has an established policy of capitalizing tangible assets which have a service life of more than 1 year and a cost of $250. Contractor acquires a tangible asset with a life of 18 months and a cost of $300. The Standard requires that, based upon contractor's policy, the asset be capitalized.

(3) Contractor establishes a major new production facility. In the process, a number of large and small items of equipment were acquired to outfit it. The contractor has an established policy of capitalizing individual items of tangible assets which have a service life of over 1 year and a cost of $500, and all items meeting these requirements were capitalized. In addition, the contractor's policy requires capitalization of an original complement which has a service life of over 1 year and a cost of $5,000. Items of durable equipment acquired for the production facility costing less than $500 each aggregated $50,000. Based upon the contractor's policy, the durable equipment items must be capitalized as the original complement of low cost equipment. (The concept of original complement applies to such items as books in a new library, impact wrenches in a new factory, work benches and racks in a new production facility, or furniture and fixtures in a new office building.)

(4) Contractor has an established policy for treating its heavy presses and their power supplies as separate asset accountability units. A power supply is replaced during the service life of the related press. The Standard requires that, based upon the contractor's policy, the new power supply be capitalized with appropriate accounting for the replaced unit.

(b) *Illustrations of costs which need not be capitalized.* (1) The contractor has an established policy of capitalizing tangible assets which have a service life of 2 years and a cost of $500. The contractor acquires an asset with a useful life of 18 months and a cost of $5,000. The tangible asset should be expensed because it does not meet the 2-year criterion.

(2) The contractor establishes a new assembly line. In outfitting the line, the contractor acquires $5,000 of small tools. On similar assembly lines under similar conditions, the original complement of small tools was expensed because the complement was replaced annually as a result of loss, pilferage, breakage, and physical wear and tear. Because the unit of original complement does not meet the contractor's service life criterion for capitalization (1 year), the small tools may be expensed.

[57 FR 14153, Apr. 17, 1992, as amended at 70 FR 37706, June 30, 2005]

### 9904.404–61 Interpretation. [Reserved]

### 9904.404–62 Exemption.

None for this Standard.

### 9904.404–63 Effective date.

(a) This Standard is effective April 15, 1996.

(b) This Standard shall be applied beginning with the contractor's next full cost accounting period beginning after the receipt of a contract or subcontract to which this Standard is applicable.

(c) Contractors with prior CAS-covered contracts with full coverage shall continue to follow Standard 9904.404 in effect prior to April 15, 1996, until this Standard, effective April 15, 1996, becomes applicable after the receipt of a contract or subcontract to which this revised Standard applies.

[61 FR 5523, Feb. 13, 1996]

**9904.405 Accounting for unallowable costs.**

**9904.405–10 [Reserved]**

**9904.405–20 Purpose.**

(a) The purpose of this Cost Accounting Standard is to facilitate the negotiation, audit, administration and settlement of contracts by establishing guidelines covering:

(1) Identification of costs specifically described as unallowable, at the time such costs first become defined or authoritatively designated as unallowable, and

(2) The cost accounting treatment to be accorded such identified unallowable costs in order to promote the consistent application of sound cost accounting principles covering all incurred costs.

The Standard is predicated on the proposition that costs incurred in carrying on the activities of an enterprise—regardless of the allowability of such costs under Government contracts—are allocable to the cost objectives with which they are identified on the basis of their beneficial or causal relationships.

(b) This Standard does not govern the allowability of costs. This is a function of the appropriate procurement or reviewing authority.

**9904.405–30 Definitions.**

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

(1) *Directly associated cost* means any cost which is generated solely as a result of the incurrence of another cost, and which would not have been incurred had the other cost not been incurred.

(2) *Expressly unallowable cost* means a particular item or type of cost which, under the express provisions of an applicable law, regulation, or contract, is specifically named and stated to be unallowable.

(3) *Indirect cost* means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(4) *Unallowable cost* means any cost which, under the provisions of any pertinent law, regulation, or contract, cannot be included in prices, cost reimbursements, or settlements under a Government contract to which it is allocable.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

**9904.405–40 Fundamental requirement.**

(a) Costs expressly unallowable or mutually agreed to be unallowable, including costs mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, or proposal applicable to a Government contract.

(b) Costs which specifically become designated as unallowable as a result of a written decision furnished by a contracting officer pursuant to contract disputes procedures shall be identified if included in or used in the computation of any billing, claim, or proposal applicable to a Government contract. This identification requirement applies also to any costs incurred for the same purpose under like circumstances as the costs specifically identified as unallowable under either this paragraph or paragraph (a) of this subsection.

(c) Costs which, in a contracting officer's written decision furnished pursuant to contract disputes procedures, are designated as unallowable directly associated costs of unallowable costs covered by either paragraph (a) or (b) of this subsection shall be accorded the identification required by paragraph (b) of this subsection.

(d) The costs of any work project not contractually authorized, whether or not related to performance of a proposed or existing contract, shall be accounted for, to the extent appropriate, in a manner which permits ready separation from the costs of authorized work projects.

(e) All unallowable costs covered by paragraphs (a) through (d) of this subsection shall be subject to the same cost accounting principles governing cost allocability as allowable costs. In

circumstances where these unallowable costs normally would be part of a regular indirect-cost allocation base or bases, they shall remain in such base or bases. Where a directly associated cost is part of a category of costs normally included in an indirect-cost pool that will be allocated over a base containing the unallowable cost with which it is associated, such a directly associated cost shall be retained in the indirect-cost pool and be allocated through the regular allocation process.

(f) Where the total of the allocable and otherwise allowable costs exceeds a limitation-of-cost or ceiling-price provision in a contract, full direct and indirect cost allocation shall be made to the contract cost objective, in accordance with established cost accounting practices and Standards which regularly govern a given entity's allocations to Government contract cost objectives. In any determination of unallowable cost overrun, the amount thereof shall be identified in terms of the excess of allowable costs over the ceiling amount, rather than through specific identification of particular cost items or cost elements.

**9904.405–50 Techniques for application.**

(a) The detail and depth of records required as backup support for proposals, billings, or claims shall be that which is adequate to establish and maintain visibility of identified unallowable costs (including directly associated costs), their accounting status in terms of their allocability to contract cost objectives, and the cost accounting treatment which has been accorded such costs. Adherence to this cost accounting principle does not require that allocation of unallowable costs to final cost objectives be made in the detailed cost accounting records. It does require that unallowable costs be given appropriate consideration in any cost accounting determinations governing the content of allocation bases used for distributing indirect costs to cost objectives. Unallowable costs involved in the determination of rates used for standard costs, or for the indirect-cost bidding or billing, need be identified only at the time rates are proposed, established, revised or adjusted.

(b)(1) The visibility requirement of paragraph (a) of this subsection, may be satisfied by any form of cost identification which is adequate for purposes of contract cost determination and verification. The Standard does not require such cost identification for purposes which are not relevant to the determination of Government contract cost. Thus, to provide visibility for incurred costs, acceptable alternative practices would include:

(i) The segregation of unallowable costs in separate accounts maintained for this purpose in the regular books of account,

(ii) The development and maintenance of separate accounting records or workpapers, or

(iii) The use of any less formal cost accounting techniques which establishes and maintains adequate cost identification to permit audit verification of the accounting recognition given unallowable costs.

(2) Contractors may satisfy the visibility requirements for estimated costs either:

(i) By designation and description (in backup data, workpapers, etc.) of the amounts and types of any unallowable costs which have specifically been identified and recognized in making the estimates, or

(ii) By description of any other estimating technique employed to provide appropriate recognition of any unallowable costs pertinent to the estimates.

(c) Specific identification of unallowable cost is not required in circumstances where, based upon considerations of materiality, the Government and the contractor reach agreement on an alternate method that satisfies the purpose of the Standard.

**9904.405–60 Illustrations.**

(a) An auditor recommends disallowance of certain direct labor and direct materials costs, for which a billing has been submitted under a contract, on the basis that these particular costs were not required for performance and were not authorized by the contract. The contracting officer issues a written decision which supports the auditor's position that the questioned costs are unallowable. Following receipt of the

contracting officer's decision, the contractor must clearly identify the disallowed direct labor and direct material costs in his accounting records and reports covering any subsequent submission which includes such costs. Also, if the contractor's base for allocation of any indirect cost pool relevant to the subject contract consists of direct labor, direct material, total prime cost, total cost input, etc., he must include the disallowed direct labor and material costs in his allocation base for such pool. Had the contracting officer's decision been against the auditor, the contractor would not, of course, have been required to account separately for the costs questioned by the auditor.

(b) A contractor incurs, and separately identifies, as a part of his manufacturing overhead, certain costs which are expressly unallowable under the existing and currently effective regulations. If manufacturing overhead is regularly a part of the contractor's base for allocation of general and administrative (G&A) or other indirect expenses, the contractor must allocate the G&A or other indirect expenses to contracts and other final cost objectives by means of a base which includes the identified unallowable manufacturing overhead costs.

(c) An auditor recommends disallowance of the total direct indirect costs attributable to an organizational planning activity. The contractor claims that the total of these activity costs are allowable under the Federal Acquisition Regulation (FAR) as ''Economic planning costs'' (48 CFR 31.205–12); the auditor contends that they constitute ''Organization costs'' (48 CFR 31.205–27) and therefore are unallowable. The issue is referred to the contracting officer for resolution pursuant to the contract disputes clause. The contracting officer issues a written decision supporting the auditor's position that the total costs questioned are unallowable under the FAR. Following receipt of the contracting officer's decision, the contractor must identify the disallowed costs and specific other costs incurred for the same purpose in like circumstances in any subsequent estimating, cost accumulation or reporting for Government contracts, in which such costs are included. If the contracting officer's decision had supported the contractor's contention, the costs questioned by the auditor would have been allowable ''Economic planning costs,'' and the contractor would not have been required to provide special identification.

(d) A defense contractor was engaged in a program of expansion and diversification of corporate activities. This involved internal corporate reorganization, as well as mergers and acquisitions. All costs of this activity were charged by the contractor as corporate or segment general and administrative (G&A) expense. In the contractor's proposals for final Segment G&A rates (including corporate home office allocations) to be applied in determining allowable costs of its defense contracts subject to 48 CFR part 31, the contractor identified and excluded the expressly unallowable costs (as listed in 48 CFR 31.205–12) incurred for incorporation fees and for charges for special services of outside attorneys, accountants, promoters, and consultants. In addition, during the course of negotiation of interim bidding and billing G&A rates, the contractor agreed to classify as unallowable various in-house costs incurred for the expansion program, and various directly associated costs of the identifiable unallowable costs. On the basis of negotiations and agreements between the contractor and the contracting officers' authorized representatives, interim G&A rates were established, based on the net balance of allowable G&A costs. Application of the rates negotiated to proposals, and on an interim basis to billings, for covered contracts constitutes compliance with the Standard.

(e) An official of a company, whose salary, travel, and subsistence expenses are charged regularly as general and administrative (G&A) expenses, takes several business associates on what is clearly a business entertainment trip. The entertainment costs of such trips is expressly unallowable because it constitutes entertainment expense, and is separately identified by the contractor. The contractor does not regularly include his G&A expenses in any indirect-expense allocation base. In these circumstances, the official's

travel and subsistence expenses would be directly associated costs for identification with the unallowable entertainment expense. However, unless this type of activity constituted a significant part of the official's regular duties and responsibilities on which his salary was based, no part of the official's salary would be required to be identified as a directly associated cost of the unallowable entertainment expense.

[57 FR 14153, Apr. 17, 1992; 57 FR 34167, Aug. 3, 1992; 57 FR 43776, Sept. 22, 1992]

**9904.405–61 Interpretation. [Reserved]**

**9904.405–62 Exemption.**

None for this Standard.

**9904.405–63 Effective date.**

This Standard is effective as of April 17, 1992.

**9904.406 Cost accounting standard—cost accounting period.**

**9904.406–10 [Reserved]**

**9904.406–20 Purpose.**

The purpose of this Cost Accounting Standard is to provide criteria for the selection of the time periods to be used as cost accounting periods for contract cost estimating, accumulating, and reporting. This Standard will reduce the effects of variations in the flow of costs within each cost accounting period. It will also enhance objectivity, consistency, and verifiability, and promote uniformity and comparability in contract cost measurements.

**9904.406–30 Definitions.**

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

(1) *Allocate* means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

(2) *Cost objective* means a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

(3) *Fiscal year* means the accounting period for which annual financial statements are regularly prepared, generally a period of 12 months, 52 weeks, or 53 weeks.

(4) *Indirect cost pool* means a grouping of incurred costs identified with two or more cost objectives but not identified specifically with any final cost objective.

(b) The following modification of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

**9904.406–40 Fundamental requirement.**

(a) A contractor shall use this fiscal year as his cost accounting period, except that:

(1) Costs of an indirect function which exists for only a part of a cost accounting period may be allocated to cost objectives of that same part of the period as provided in 9904.406–50(a).

(2) An annual period other than the fiscal year may, as provided in 9904.406–50(d), be used as the cost accounting period if its use is an established practice of the contractor.

(3) A transitional cost accounting period other than a year shall be used whenever a change of fiscal year occurs.

(4) Where a contractor's cost accounting period is different from the reporting period used for Federal income tax reporting purposes, the latter may be used for such reporting.

(b) A contractor shall follow consistent practices in his selection of the cost accounting period or periods in which any types of expense and any types of adjustment to expense (including prior-period adjustments) are accumulated and allocated.

(c) The same cost accounting period shall be used for accumulating costs in an indirect cost pool as for establishing its allocation base, except that the contracting parties may agree to use a

different period for establishing an allocation base as provided in 9904.406–50(e).

[57 FR 14153, Apr. 17, 1992; 57 FR 34167, Aug. 3, 1992]

**9904.406–50 Techniques for application.**

(a) The cost of an indirect function which exists for only a part of a cost accounting period may be allocated on the basis of data for that part of the cost accounting period if the cost is:

(1) Material in amount,

(2) Accumulated in a separate indirect cost pool, and

(3) Allocated on the basis of an appropriate direct measure of the activity or output of the function during that part of the period.

(b) The practices required by 9904.406–40(b) of this Standard shall include appropriate practices for deferrals, accruals, and other adjustments to be used in identifying the cost accounting periods among which any types of expense and any types of adjustment to expense are distributed. If an expense, such as taxes, insurance or employee leave, is identified with a fixed, recurring, annual period which is different from the contractor's cost accounting period, the Standard permits continued use of that different period. Such expenses shall be distributed to cost accounting periods in accordance with the contractor's established practices for accruals, deferrals, and other adjustments.

(c) Indirect cost allocation rates, based on estimates, which are used for the purpose of expediting the closing of contracts which are terminated or completed prior to the end of a cost accounting period need not be those finally determined or negotiated for that cost accounting period. They shall, however, be developed to represent a full cost accounting period, except as provided in paragraph (a) of this subsection.

(d) A contractor may, upon mutual agreement with the Government, use as his cost accounting period a fixed annual period other than his fiscal year, if the use of such a period is an established practice of the contractor and is consistently used for managing and controlling the business, and appropriate accruals, deferrals or other adjustments are made with respect to such annual periods.

(e) The contracting parties may agree to use an annual period which does not coincide precisely with the cost accounting period for developing the data used in establishing an allocation base: Provided,

(1) The practice is necessary to obtain significant administrative convenience,

(2) The practice is consistently followed by the contractor,

(3) The annual period used is representative of the activity of the cost accounting period for which the indirect costs to be allocated are accumulated, and

(4) The practice can reasonably be estimated to provide a distribution to cost objectives of the cost accounting period not materially different from that which otherwise would be obtained.

(f) When a transitional cost accounting period is required under the provisions of 9904.406–40(a)(3), the contractor may select any one of the following:

(1) The period, less than a year in length, extending from the end of his previous cost accounting period to the beginning of his next regular cost accounting period,

(2) A period in excess of a year, but not longer than 15 months, obtained by combining the period described in paragraph (f)(1) of this subsection with the previous cost accounting period, or

(3) A period in excess of a year, but not longer than 15 months, obtained by combining the period described in paragraph (f)(1) of this subsection with the next regular cost accounting period.

A change in the contractor's cost accounting period is a change in accounting practices for which an adjustment in the contract price may be required in accordance with paragraph (a)(4) (ii) or (iii) of the contract clause set out at 9903.201–4(a).

**9904.406–60 Illustrations.**

(a) A contractor allocates general management expenses on the basis of total cost input. In a proposal for a covered negotiated fixed-price contract, he estimates the allocable expenses based solely on the estimated

amount of the general management expense pool and the amount of the total cost input base estimated to be incurred during the 8 months in which performance is scheduled to be commenced and completed. Such a proposal would be in violation of the requirements of this Standard that the calculation of the amounts of both the indirect cost pools and the allocation bases be based on the contractor's cost accounting period.

(b) A contractor whose cost accounting period is the calendar year, installs a computer service center to begin operations on May 1. The operating expense related to the new service center is expected to be material in amount, will be accumulated in a separate indirect cost pool, and will be allocated to the benefiting cost objectives on the basis of measured usage. The total operating expenses of the computer service center for the 8-month part of the cost accounting period may be allocated to the benefiting cost objectives of that same 8-month period.

(c) A contractor changes his fiscal year from a calendar year to the 12-month period ending May 31. For financial reporting purposes, he has a 5-month transitional ''fiscal year.'' The same 5-month period must be used as the transitional cost accounting period; it may not be combined as provided in 9904.406–50(f), because the transitional period would be longer than 15 months. The new fiscal year must be adopted thereafter as his regular cost accounting period. The change in his cost accounting period is a change in accounting practices; adjustments of the contract prices may thereafter be required in accordance with paragraph (a)(4) (ii) or (iii) of the contract clause at 9903.201–4(a).

(d) Financial reports to stockholders are made on a calendar year basis for the entire contractor corporation. However, the contracting segment does all internal financial planning, budgeting, and internal reporting on the basis of a ''model year.'' The contracting parties agree to use a ''model year'' and they agree to overhead rates on the ''model year'' basis. They also agree on a technique for prorating fiscal year assignment of corporate home office expenses between model years. This practice is permitted by the Standard.

(e) Most financial accounts and contract cost records are maintained on the basis of a fiscal year which ends November 30 each year. However, employee vacation allowances are regularly managed on the basis of a ''vacation year'' which ends September 30 each year. Vacation expenses are estimated uniformly during each ''vacation year.'' Adjustments are made each October to adjust the accrued liability to actual, and the estimating rates are modified to the extent deemed appropriate. This use of a separate annual period for determining the amounts of vacation expense is permitted under 9904.406–50(b).

**9904.406–61 Interpretation.**

(a) Questions have arisen as to the allocation and period cost assignment of certain contract costs (primarily under defense contracts and subcontracts). This section deals primarily with the assignment of restructuring costs to cost accounting periods. In essence, it clarifies whether restructuring costs are to be treated as an expense of the current period or as a deferred charge that is subsequently amortized over future periods.

(b) *Restructuring costs* as used in this Interpretation means costs that are incurred after an entity decides to make a significant nonrecurring change in its business operations or structure in order to reduce overall cost levels in future periods through work force reductions, the elimination of selected operations, functions or activities, and/or the combination of ongoing operations, including plant relocations. Restructuring activities do not include ongoing routine changes an entity makes in its business operations or organizational structure. Restructuring costs are comprised both of direct and indirect costs associated with contractor restructuring activities taken after a business combination is effected or after a decision is made to execute a significant restructuring event not related to a business combination. Typical categories of costs that have been included in the past and may be considered in the future as restructuring charges include severance pay, early

retirement incentives, retraining, employee relocation, lease cancellation, asset disposition and write-offs, and relocation and rearrangement of plant and equipment. Restructuring costs do not include the cost of such activities when they do not relate either to business combinations or to other significant nonrecurring restructuring decisions.

(c) The costs of betterments or improvements of capital assets that result from restructuring activities shall be capitalized and depreciated in accordance with the provisions of 9904.404 and 9904.409.

(d) When a procuring agency imposes a net savings requirement for the payment of restructuring costs, the contractor shall submit data specifying

(1) The estimated restructuring costs by period,

(2) The estimated restructuring savings by period (if applicable), and

(3) The cost accounting practices by which such costs shall be allocated to cost objectives.

(e) Contractor restructuring costs defined pursuant to this section may be accumulated as deferred cost, and subsequently amortized, over a period during which the benefits of restructuring are expected to accrue. However, a contractor proposal to expense restructuring costs for a specific event in a current period is also acceptable when the Contracting Officer agrees that such treatment will result in a more equitable assignment of costs in the circumstances.

(f) If a contractor incurs restructuring costs but does not have an established or disclosed cost accounting practice covering such costs, the deferral of such restructuring costs may be treated as the initial adoption of a cost accounting practice (see 9903.302–2(a)). If a contractor incurs restructuring costs but does have an existing established or disclosed cost accounting practice that does not provide for deferring such costs, any resulting change in cost accounting practice to defer such costs may be presumed to be desirable and not detrimental to the interests of the Government (see 9903.201–6). Changes in cost accounting practices for restructuring costs shall be subject to disclosure statement revision requirements (see 9903.202–3), if applicable.

(g) Business changes giving rise to restructuring costs may result in changes in cost accounting practice (see 9903.302). If a contract price or cost allowance is affected by such changes in cost accounting practice, adjustments shall be made in accordance with subparagraph (a)(4) of the CAS clause (see 9903.201–4(a)(2), 9903.201–4(c)(2) and 9903.201–4(e)(2)).

(h) The amortization period for deferred restructuring costs shall not exceed five years. The straight-line method of amortization should normally be used, unless another method results in a more appropriate matching of cost to expected benefits.

(i) Restructuring costs that are deferred shall not be included in the computation to determine facilities capital cost of money (see 9904.414). Specifically, deferred charges are not tangible or intangible capital assets and therefore are excluded from the facilities capital values for the computation of facilities capital cost of money.

(j) Restructuring costs incurred at a home office level shall be treated in accordance with the provisions of 9904.403. Restructuring costs incurred at the segment level that benefit more than one segment should be allocated to the home office and treated as home office expense pursuant to 9904.403. Restructuring costs incurred at the segment level that benefit only that segment shall be treated in accordance with the provisions of 9904.418. If one or more indirect cost pools do not comply with the homogeneity requirements of 9904.418 due to the inclusion of the costs of restructuring activities, then the restructuring costs shall be accumulated in indirect cost pools that are distinct from the contractor's ongoing indirect cost pools.

(k) This section is applicable to contractor ''restructuring costs'' paid or approved on or after August 15, 1994.

[62 FR 31308, June 6, 1997]

### 9904.406–62 Exemption.

None for this Standard.

### 9904.406–63 Effective date.

This Standard is effective as of April 17, 1992. Contractors with prior CAS-

covered contracts with full coverage shall continue this Standard's applicability upon receipt of a contract to which this Standard is applicable. For contractors with no previous contracts subject to this Standard, this Standard shall be applied beginning with the contractor's next full fiscal year beginning after the receipt of a contract to which this Standard is applicable.

### 9904.407 Use of standard costs for direct material and direct labor.

### 9904.407–10 [Reserved]

### 9904.407–20 Purpose.

(a) The purpose of this Cost Accounting Standard is to provide criteria under which standard costs may be used for estimating, accumulating, and reporting costs of direct material and direct labor; and to provide criteria relating to the establishment of standards, accumulation of standard costs, and accumulation and disposition of variances from standard costs. Consistent application of these criteria where standard costs are in use will improve cost measurement and cost assignment.

(b) This Cost Accounting Standard is not intended to cover the use of pre-established measures solely for estimating.

### 9904.407–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *Labor cost at standard* means a pre-established measure of the labor element of cost, computed by multiplying labor-rate standard by labor-time standard.

(2) *Labor-rate standard* means a pre-established measure, expressed in monetary terms, of the price of labor.

(3) *Labor-time standard* means a pre-established measure, expressed in temporal terms, of the quantity of labor.

(4) *Material cost at standard* means a pre-established measure of the material element of cost, computed by multiplying material-price standard by material-quantity standard.

(5) *Material-price standard* means a pre-established measure, expressed in monetary terms, of the price of material.

(6) *Material-quantity standard* means a pre-established measure, expressed in physical terms, of the quantity of material.

(7) *Production unit* means a grouping of activities which either uses homogeneous inputs of direct material and direct labor or yields homogeneous outputs such that the costs or statistics related to these homogeneous inputs or outputs are appropriate as bases for allocating variances.

(8) *Standard cost* means any cost computed with the use of pre-established measures.

(9) *Variance* means the difference between a pre-established measure and an actual measure.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard:

(1) Actual cost. An amount determined on the basis of cost incurred.

(2) [Reserved]

### 9904.407–40 Fundamental requirement.

Standard costs may be used for estimating, accumulating, and reporting costs of direct material and direct labor only when all of the following criteria are met:

(a) Standard costs are entered into the books of account.

(b) Standard costs and related variances are appropriately accounted for at the level of the production unit.

(c) Practices with respect to the setting and revising of standards, use of standard costs, and disposition of variances are stated in writing and are consistently followed.

### 9904.407–50 Techniques for application.

(a)(1) A contractor's written statement of practices with respect to standards shall include the bases and criteria (such as engineering studies, experience, or other supporting data) used in setting and revising standards; the period during which standards are to remain effective; the level (such as ideal or realistic) at which material-quantity standards and labor-time

standards are set; and conditions (such as those expected to prevail at the beginning of a period) which material-price standards and labor-rate standards are designed to reflect.

(2) Where only either the material price or material quantity is set at standard, with the other component stated at actual, the result of the multiplication shall be treated as material cost at standard. Similarly, where only either the labor rate or labor time is set at standard, with the other component stated at actual, the result of the multiplication shall be treated as labor cost at standard.

(3) A labor-rate standard may be set to cover a category of direct labor only if the functions performed within that category are not materially disparate and the employees involved are interchangeable with respect to the functions performed.

(4) A labor-rate standard may be set to cover a group of direct labor workers who perform disparate functions only under either one of the following conditions:

(i) Where that group of workers all work in a single production unit yielding homogeneous outputs (in this case, the same labor-rate standard shall be applied to each worker in that group).

(ii) Where that group of workers, in the performance of their respective functions, forms an integral team (in this case, a labor-rate standard shall be set for each integral team).

(b)(1) Material-price standards may be used and their related variances may be recognized either at the time purchases of material are entered into the books of account, or at the time material cost is allocated to production units.

(2) Where material-price standards are used and related variances are recognized at the time purchases of material are entered into the books of account, they shall be accumulated separately by homogeneous groupings of material. Examples of homogeneous groupings of material are:

(i) Where prices of all items in that grouping of material are expected to fluctuate in the same direction and at substantially the same rate, or

(ii) Where items in that grouping of material are held for use in a single production unit yielding homogeneous outputs.

(3) Where material-price variances are recognized at the time purchases of material are entered into the books of account, variances of each homogeneous grouping of material shall be allocated (except as provided in paragraph (b)(4) of this subsection), at least annually, to items in purchased-items inventory and to production units receiving items from that homogeneous grouping of material, in accordance with either one of the following practices, which shall be consistently followed:

(i) Items in purchased-items inventory of a homogeneous grouping of material are adjusted from standard cost to actual cost; the balance of the material-price variance, after reflecting these adjustments, shall be allocated to production units on the basis of the total of standard cost of material received from that homogeneous grouping of material by each of the production units; or

(ii) Items, at standard cost, in purchased-items inventory of a homogeneous grouping of material, are treated, collectively, as a production unit; the material-price variance shall be allocated to production units on the basis of standard cost of material received from that homogeneous grouping of material by each of the production units.

(4) Where material-price variances are recognized at the time purchases of material are entered into the books of account, variances of each homogeneous grouping of material which are insignificant may be included in appropriate indirect cost pools for allocation to applicable cost objectives.

(5) Where a material-price variance is allocated to a production unit in accordance with paragraph (b)(3) of this subsection, it may be combined with material-quantity variance into one material-cost variance for that production unit. A separate material-cost variance shall be accumulated for each production unit.

(6) Where material-price variances are recognized at the time material cost is allocated to production units, these variances and material-quantity

variances may be combined into one material-cost variance account.

(c) Labor-cost variances shall be recognized at the time labor cost is introduced into production units. Labor-rate variances and labor-time variances may be combined into one labor-cost variance account. A separate labor-cost variance shall be accumulated for each production unit.

(d) A contractor's established practice with respect to the disposition of variances accumulated by production unit shall be in accordance with one of the following subparagraphs:

(1) Variances are allocated to cost objectives (including ending in-process inventory) at least annually. Where a variance related to material is allocated, the allocation shall be on the basis of the material cost at standard, or, where outputs are homogeneous, on the basis of units of output. Similarly, where a variance related to labor is allocated, the allocation shall be on the basis of the labor cost at standard or labor hours at standard or, where outputs are homogeneous, on the basis of units of output; or

(2) Variances which are immaterial may be included in appropriate indirect cost pools for allocation to applicable cost objectives.

(e) Where variances applicable to covered contracts are allocated by memorandum worksheet adjustments rather than in the books of account, the bases used for adjustment shall be in accordance with those stated in paragraph (b)(3) and paragraph (d) of this subsection.

**9904.407–60 Illustrations.**

(a) Contractor A's written practice is to set his material-price standard for an item on the basis of average purchase prices expected to prevail during the calendar year. For that item whose usage from month to month is stable, a purchase contract is generally signed on May 1 of each year for a 1-year commitment. The current purchase contract calls for a purchase price of $3 per pound; an increase of 5 percent, or 15¢ per pound, has been announced by the vendor when the new purchase contract comes into effect next May. Contractor A sets his material-price standard for this item at $3.10 per pound for the year ([$3.00×4+$3.15×8]÷ 12). Since Contractor A sets his material-price standard in accordance with his written practice, he complies with provisions of 9904.407–40(c) of this Cost Accounting Standard.

(b) Contractor B accumulates, in one account, labor cost at standard for a department in which several categories of direct labor of disparate functions, in different combinations, are used in the manufacture of various dissimilar outputs of the department. Contractor B's department is not a production unit as defined in 9904.407–30(a)(7) of this Cost Accounting Standard. Modifying his practice so as to comply with the definition of production unit in 9904.407–30(a)(7), he could accumulate the standard costs and variances separately,

(1) For each of the several categories of direct labor, or

(2) For each of several subdepartments, with homogeneous output for each of the subdepartments.

(c) Contractor C allocates variances at the end of each month. During the month of March, a production unit has accumulated the following data with respect to labor:

| | Labor hours at standard | Labor dollars at standard | Labor cost variance |
|---|---|---|---|
| Balance, March 1 | 5,000 | $25,000 | $2,000 |
| Additions in March | 15,000 | 75,000 | 5,000 |
| Total | 20,000 | 100,000 | 7,000 |
| Transfers-out in March | 8,000 | 40,000 | |
| Balance, March 31 | 12,000 | 60,000 | |

Using labor hours at standard as the base, Contractor C establishes a labor-cost variance rate of $.35 per standard labor hour ($7,000 ÷ 20,000), and deducts $2,800 ($.35 × 8,000) from the labor-cost variance account, leaving a balance of $4,200 ($7,000–$2,800). Contractor C's practice complies with provisions of 9904.407–50(d)(1) of this Cost Accounting Standard.

(d) Contractor D, who uses materials the prices of which are expected to fluctuate at different rates, recognizes material-price variances at the time purchases of material are entered into the books of account. He maintains one purchase-price variance account for the whole plant. Purchased items are

requisitioned by various production units in the plant. Since prices of material are expected to fluctuate at different rates, this plant-wide grouping does not constitute a homogeneous grouping of material. Contractor D's practice does not comply with provisions of 9904.407–50(b)(2) of this Cost Accounting Standard. However, if he would maintain several purchased-items inventory accounts, each representing a homogeneous grouping of material, and maintain a material-price variance account for each of these homogeneous groupings of material, Contractor D's practice would comply with 9904.407–50(b)(2) of this Cost Accounting Standard.

(e)(1) Contractor E recognizes material-price variances at the time purchases of material are entered into the books of account and allocates variances at the end of each month. During the month of May, a homogeneous grouping of material has accumulated the following data:

| | Material cost at standard | Material price variance |
|---|---|---|
| Inventory, May 1 | $150,000 | $20,000 |
| Additions in May | 1,850,000 | 120,000 |
| Total | 2,000,000 | 140,000 |
| Requisitions: | | |
| Production Unit 1 | 900,000 | |
| Production Unit 2 | 450,000 | |
| Production Unit 3 | 300,000 | |
| Production Unit 4 | 150,000 | |
| Inventory, May 31 | 200,000 | |

(2) Contractor E establishes a material-price variance rate of 7% ($140,000 ÷ $2,000,000) and allocates as follows:

| | Material cost at standard | Material price variance rate (%) | Material price variance allocation |
|---|---|---|---|
| Production Unit 1 | $900,000 | 7 | $63,000 |
| Production Unit 2 | 450,000 | 7 | 31,500 |
| Production Unit 3 | 300,000 | 7 | 21,000 |
| Production Unit 4 | 150,000 | 7 | 10,500 |
| Ending inventory of homogeneous grouping of material | 200,000 | 7 | 14,000 |
| Total | 2,000,000 | | 140,000 |

Contractor E's practice complies with provisions of 9904.407–50(b)(3)(ii) of this Cost Accounting Standard.

(f)(1) Contractor F makes year-end adjustments for variances attributable to covered contracts. During the year just ended, a covered contract was processed in four production units, each with homogeneous outputs. Data with respect to output and to labor of each of the four production units are as follows:

| Production unit | Total units of output | Total units used by the covered contract | Total labor costs at standard | Total labor-cost variance |
|---|---|---|---|---|
| 1 | 100,000 | 10,000 | $400,000 | $20,000 |
| 2 | 30,000 | 6,000 | 900,000 | 30,000 |
| 3 | 20,000 | 5,000 | 600,000 | 10,000 |
| 4 | 10,000 | 4,000 | 500,000 | 20,000 |

(2) Since the outputs of each production unit are homogeneous, Contractor F uses the units of output as the basis of making memorandum worksheet adjustments concerning applicable variances, and establishes the following figures:

| | Labor-cost variance per unit of unit | Units used by the covered contract | Labor-cost variance attributable to the covered contract |
|---|---|---|---|
| Production Unit 1 | $0.20 | 10,000 | $2,000 |
| Production Unit 2 | 1.00 | 6.000 | 6.000 |
| Production Unit 3 | .50 | 5,000 | 2,500 |
| Production Unit 4 | 2.00 | 4,000 | 8,000 |
| Total labor-cost variance attributable to the covered contract | | | 18,500 |

(3) Contractor F makes a year-end adjustment of $18,500 as the labor-cost variances attributable to the covered contract. Contractor F's practice complies with provisions of 9904.407–50(e) of this Cost Accounting Standard.

[57 FR 14153, Apr. 17, 1992; 57 FR 34167, Aug. 3, 1992]

### 9904.407–61 Interpretation. [Reserved]

### 9904.407–62 Exemption.

None for this Standard.

### 9904.407–63 Effective date.

This Standard is effective as of April 17, 1992. Contractors with prior CAS-covered contracts with full coverage shall continue this Standard's applicability upon receipt of a contract to

which this Standard is applicable. For contractors with no previous contracts subject to this Standard, this Standard shall be applied beginning with the contractor's next full fiscal year beginning after the receipt of a contract to which this Standard is applicable.

### 9904.408 Accounting for costs of compensated personal absence.

### 9904.408–10 [Reserved]

### 9904.408–20 Purpose.

The purpose of this Standard is to improve, and provide uniformity in, the measurement of costs of vacation, sick leave, holiday, and other compensated personal absence for a cost accounting period, and thereby increase the probability that the measured costs are allocated to the proper cost objectives.

### 9904.408–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

(1) *Compensated personal absence* means any absence from work for reasons such as illness, vacation, holidays, jury duty or military training, or personal activities, for which an employer pays compensation directly to an employee in accordance with a plan or custom of the employer.

(2) *Entitlement* means an employee's right, whether conditional or unconditional, to receive a determinable amount of compensated personal absence, or pay in lieu thereof.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard: None.

### 9904.408–40 Fundamental requirement.

(a) The costs of compensated personal absence shall be assigned to the cost accounting period or periods in which the entitlement was earned.

(b) The costs of compensated personal absence for an entire cost accounting period shall be allocated pro-rata on an annual basis among the final cost objectives of that period.

### 9904.408–50 Techniques for application.

(a) *Determinations.* Each plan or custom for compensated personal absence shall be considered separately in determining when entitlement is earned. If a plan or custom is changed or a new plan or custom is adopted, then a new determination shall be made beginning with the first cost accounting period to which such new or changed plan or custom applies.

(b) *Measurement of entitlement.* (1) For purposes of compliance with 9904.408–40(a), compensated personal absence is earned at the same time and in the same amount as the employer becomes liable to compensate the employee for such absence if the employer terminates the employee's employment for lack of work or other reasons not involving disciplinary action, in accordance with a plan or custom of the employer. Where a new employee must complete a probationary period before the employer becomes liable, the employer may nonetheless treat such service as creating entitlement in any computations required by this Standard, provided that he does so consistently.

(2) Where a plan or custom provides for entitlement to be determined as of the first calendar day or the first business day of a cost accounting period based on service in the preceding cost accounting period, the entitlement shall be considered to have been earned, and the employer's liability to have arisen, as of the close of the preceding cost accounting period.

(3) In the absence of a determinable liability, in accordance with paragraph (b)(1) of this subsection, compensated personal absence will be considered to be earned only in the cost accounting period in which it is paid.

(c) *Determination of employer's liability.* In computing the cost of compensated personal absence, the computation shall give effect to the employer's liability in accordance with the following paragraphs:

(1) The estimated liability shall include all earned entitlement to compensated personal absence which exists

at the time the liability is determined, in accordance with paragraph (b) of this subsection.

(2) The estimated liability shall be reduced to allow for anticipated non-utilization, if material.

(3) The liability shall be estimated consistently either in terms of current or of anticipated wage rates. Estimates may be made with respect to individual employees, but such individual estimates shall not be required if the total cost with respect to all employees in the plan can be estimated with reasonable accuracy by the use of sample data, experience or other appropriate means.

(d) *Adjustments.* (1) The estimate of the employer's liability for compensated personal absence at the beginning of the first cost accounting period for which a contractor must comply with this standard shall be based on the contractor's plan or custom applicable to that period, notwithstanding that some part of that liability has not previously been recognized for contract costing purposes. Any excess of the amount of the liability as determined in accordance with paragraph (c) of this subsection over the corresponding amount of the liability as determined in accordance with the contractor's previous practice shall be held in suspense and accounted for as described in subparagraph (d)(3) of this subsection.

(2) If a plan or custom is changed or a new plan or custom is adopted, and the new determination made in accordance with paragraph (a) of this subsection results in an increase in the estimate of the employer's liability for compensated personal absence at the beginning of the first cost accounting period for which the new plan is effective over the estimate made in accordance with the contractor's prior practice, then the amount of such increase shall be held in suspense and accounted for as described in paragraph (d)(3) of this subsection.

(3) At the close of each cost accounting period, the amount held in suspense shall be reduced by the excess of the amount held in suspense at the beginning of the cost accounting period over the employer's liability (as estimated in accordance with paragraph (c) of this subsection) at the end of that cost accounting period. The cost of compensated personal absence assigned to that cost accounting period shall be increased by the amount of the excess.

(e) *Allocations.* Except where the use of a longer or shorter period is permitted by the provisions of the Cost Accounting Standard on Cost Accounting Period (9904.406), the cost of compensated personal absence shall be allocated to cost objectives on a pro-rata basis which reflects the total of such costs and the total of the allocation base for the entire cost accounting period. However, this provision shall not preclude revisions to an allocation rate during a cost accounting period based on revised estimates of period totals.

**9904.408–60 Illustrations.**

(a) Company A's vacation plan provides that on the anniversary of each employee's hiring date, that employee shall become eligible to receive a 2-week vacation with pay. Vacation entitlement must be used within 2 years or forfeited. An employee who leaves the company voluntarily will be paid for any remaining unused vacation entitlement which was earned through the employee's last anniversary date. An employee who is laid off for lack of work will also be paid a pro-rata vacation allowance for service since the employee's last anniversary date. Company A accrues vacation costs each month based on an estimate of the anniversary years which will be completed in that month. At the end of its cost accounting period, Company A adjusts its estimated liability to agree with its actual liability for completed years of service on an individual employee basis.

(1) In order to comply with 9904.408–50(c), Company A must increase its estimated liability for vacation pay at all times to include the estimated additional amount which would be payable to employees in the event of layoff. The additional liability may be calculated on an individual employee basis or it may be estimated for the employees as a group by the use of sample or historical data.

(2) The following illustrates one method of estimating Company A's liability at the end of its cost accounting period, December 31, with respect

to individual employees, in accordance with 9904.408–50(c).

John Doe, Anniversary date July 10:

| | |
|---|---|
| Unused entitlement resulting from completed service years, 24 hrs. at $5 | $120 |
| Full months of service since anniversary, 5: | |
| Pro-rata entitlement on lay-off=80 hrs.×5/12=33.3 hrs. at 15 | 167 |
| Total | 287 |
| Less estimated allowance for forfeitures, 3½ percent | 10 |
| Net liability | 277 |

(b) Company B has a vacation plan similar to Company A's, but Company B does not pay pro-rata vacation pay on lay-off for service since the last anniversary date. Company B must include in its estimate of its liability at the end of its cost accounting period only that unused vacation entitlement which results from completed years of service, with allowance for forfeitures if material.

(c) Company C's sick leave plan provides that an employee will accumulate one-half day of sick leave entitlement for each full month of service. Sick leave entitlement may be accumulated without limit, but an employee is paid for sick leave only during actual illness; the Company does not pay for unused sick leave on lay-off. Despite the fact that Company C might be able to estimate the amount which will be paid for sick leave in a future cost accounting period with a high degree of accuracy, it has no liability for payment for unused sick leave entitlement in the event of lay-off. Therefore, in accordance with 9904.408–50(b)(3), it must assign to each cost accounting period only the costs of sick leave which it pays in that period.

(d) Company D's vacation plan provides that on July 1, each employee who has been employed by the Company for at least 1 year shall be entitled to 2 weeks of vacation. All vacation must be taken between July 1 and September 30. An employee who terminates after September 30 and before July 1 receives no vacation pay. Company D has a cost accounting period which ends on December 31; however Company D customarily accrues its anticipated liability for vacation pay at July 1 in 12 equal installments over the ''vacation year'' starting on July 1 of the previous year and ending on June 30 of the current year. Company D has no liability for vacation pay at January 1 or at December 31. In accordance with 9904.408–50(b)(3), the amount of vacation cost which Company D must assign to each cost accounting period is the amount of such costs paid in that period. Therefore, Company D may not use the ''vacation year'' ending June 30 to apportion these costs between cost accounting periods.

(e) Company E's cost accounting period ends on December 31. Its vacation plan provides that on January 1, each employee who has been employed for at least 1 year shall become entitled to 2 weeks of vacation. The Company does not recognize a liability for vacation pay at December 31 because an employee must be employed on January 1 to be eligible.

(1) Despite the requirement that the employee also be employed on January 1, the necessary service was completed in the preceding cost accounting period. If the other terms of the plan are such that in accordance with this Standard, Company E must recognize its vacation costs on the accrual basis, then in accordance with 9904.408–50(b)(2), Company E must estimate its vacation costs as if the liability arose on December 31 rather than on the following January 1.

(2) Assume that Company E must comply with this Standard beginning on January 1, 1976. Assume that the employees of Company E earned $90,000 in vacation pay in 1975, all of which will be taken in 1976. Assume, further, that because of reduced employment levels, the employees of Company E will earn only $80,000 in vacation pay in 1976, $5,000 of which will be paid in 1976 because of layoffs. The following example illustrates the computation of vacation pay costs for Company E in 1976:

| | |
|---|---|
| 1976 beginning liability: | |
| With Standard (9904.408–50(d)(1)) | $90,000 |
| Without Standard | 0 |
| Amount to be held in suspense (9904.408–50(d)(1)) | 90,000 |

| | |
|---|---|
| 1976 ending liability | 75,000 |
| Plus: Paid in 1976 | 95,000 |
| Subtotal | 170,000 |
| Less: 1976 beginning liability | 90,000 |
| 1976 vacation cost, basic amount | 80,000 |
| Amount in suspense at beginning of 1976 | 90,000 |
| Less: 1976 ending liability | 75,000 |
| Suspense to be ritten off in 1976; additional 1976 vacation cost (9904.408–50(d)(3)) | 15,000 |
| 1976 basic vacation cost | 80,000 |
| Plus: 1976 reduction of suspense | 15,000 |
| 1976 total vacation cost | 95,000 |

(3) Assume, further, that all of the vacation entitlement which remained at December 31, 1976 ($75,000), is taken in 1977. Also, Company E hires a substantial number of additional employees in 1977, so that the amount of vacation entitlement earned in 1977 is $85,000. The following example illustrates the computation of vacation pay costs for Company E in 1977:

| | |
|---|---|
| 1977 ending liability | $85,000 |
| Plus: Paid in 1977 | 75,000 |
| Subtotal | 160,000 |
| Less: 1977 beginning liability | 75,000 |
| 1977 vacation cost, basic amount | 85,000 |
| Amount in suspense at beginning of 1977 (Note 1) | 75,000 |
| 1977 ending liability (Note 1) | 85,000 |
| 1977 basic vacation cost | 85,000 |
| Plus: reduction of suspense (Note 1) | 0 |
| 1977 total vacation cost | 85,000 |

NOTE 1. Because the 1977 ending liability exceeds the amount in suspense at the beginning of 1977, there is no reduction of suspense in 1977.

(4) Assume further, that Company E goes out of business in 1978. All employees are terminated and paid both for the $85,000 vacation liability at the end of 1977 and an additional $40,000 earned in 1978. The following example illustrates the computation of vacation pay costs for Company E in 1978:

| | |
|---|---|
| 1978 ending liability | 0 |
| Plus: Paid in 1978 | $125,000 |
| Subtotal | 125,000 |
| Less: 1978 beginning liability | 85,000 |
| 1978 vacation cost, basic amount | 40,000 |
| Amount in suspense at beginning of 1978 | 75,000 |
| Less: 1978 ending liability | 0 |
| Suspense to be written off in 1978; additional 1978 vacation cost (9904.408–50(d)(3) | 75,000 |
| 1978 basic vacation cost | 40,000 |
| Plus: 1978 reduction in suspense | 75,000 |
| 1978 total vacation cost | 115,000 |

(f) All of the salary costs of Company F's salaried employees are charged to service, administrative, or overhead functions. No accounting entries are made to segregate costs of compensated personal absence of these employees from their other salary costs, although other records are maintained to control the total amount of such absences.

(1) This policy does not violate the requirement of 9904.408–40(b) if such salaries are charged to overhead or indirect cost pools for subsequent allocation to final cost objectives over annually determined allocation bases which are appropriate for those pools.

(2) If the same policy were followed in the case of engineers whose salaries were directly allocated to two or more final cost objectives, or to both intermediate and final cost objectives, so that costs of compensated personal absence were charged directly to the jobs on which the individuals were working when paid, then this would violate the requirement of 9904.408–40(b) that these costs be allocated among cost objectives on the basis of the costs of the entire cost accounting period. Only if all salaries were directly allocated to a single final cost objective, as might be the case with personnel assigned to an overseas base for the performance of a single contract, would this practice be in accord with that requirement.

(g) Company G determines a ''charging rate'' for each employee. The charging rate includes an allowance for compensated personal absence based on average experience. As the employee

performs services, the related cost objectives are charged for the services at the charging rate, the employee is paid at his base rate, and the excess is credited to the accrued liability for each benefit. As benefits are paid, the costs are charged against the accrued liabilities. The amount of each accrued liability is adjusted at the end of the cost accounting period, and any difference is adjusted through appropriate overhead accounts in accordance with company policy.

(1) This method is not a violation of 9904.408–40(b) if it results in allocating the estimated annual costs of compensated personal absence at a rate which reflects the anticipated costs of the entire cost accounting period.

(2) The computation itself must comply with the criteria of 9904.408–40(a). For example, if the terms of the Company's sick leave plan are such that in accordance with this Standard, the costs should be recognized in the cost accounting period when they are paid, then the computation should be intended to amortize the expected costs of sick leave over the activity of that cost accounting period, leaving no accrued liability for sick leave at the end of the cost accounting period.

[57 FR 14153, Apr. 17, 1992; 57 FR 34167, Aug. 3, 1992]

### 9904.408–61 Interpretation. [Reserved]

### 9904.408–62 Exemption.

This Standard shall not apply to contracts and grants with state, local, and Federally recognized Indian Tribal Governments.

### 9904.408–63 Effective date.

This Standard is effective as of April 17, 1992. Contractors with prior CAS-covered contracts with full coverage shall continue this Standard's applicability upon receipt of a contract to which this Standard is applicable. For contractors with no previous contracts subject to this Standard, this Standard shall be applied beginning with the contractor's next full fiscal year beginning after the receipt of a contract to which this Standard is applicable.

## 9904.409 Cost accounting standard—depreciation of tangible capital assets.

### 9904.409–10 [Reserved]

### 9904.409–20 Purpose.

The purpose of this Standard is to provide criteria and guidance for assigning costs of tangible capital assets to cost accounting periods and for allocating such costs in cost objectives within such periods in an objective and consistent manner. The Standard is based on the concept that depreciation costs identified with cost accounting periods and benefiting cost objectives within periods should be a reasonable measure of the expiration of service potential of the tangible assets subject to depreciation. Adherence to this Standard should provide a systematic and rational flow of the costs of tangible capital assets to benefitted cost objectives over the expected service lives of the assets. This Standard does not cover nonwasting assets or natural resources which are subject to depletion.

### 9904.409–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this Chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

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

(2) *Service life* means the period of usefulness of a tangible asset (or group of assets) to its current owner. The period may be expressed in units of time or output. The estimated service life of a tangible capital asset (or group of assets) is a current forecast of its service life and is the period over which depreciation cost is to be assigned.

(3) *Tangible capital asset* means an asset that has physical substance,

more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the services it yields.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard: None.

**9904.409–40 Fundamental requirement.**

(a) The depreciable cost of a tangible capital asset (or group of assets) shall be assigned to cost accounting periods in accordance with the following criteria:

(1) The depreciable cost of a tangible capital asset shall be its capitalized cost less its estimated residual value.

(2) The estimated service life of a tangible capital asset (or group of assets) shall be used to determine the cost accounting periods to which the depreciable cost will be assigned.

(3) The method of depreciation selected for assigning the depreciable cost of a tangible capital asset (or group of assets) to the cost accounting periods representing its estimated service life shall reflect the pattern of consumption of services over the life of the asset.

(4) The gain or loss which is recognized upon disposition of a tangible capital asset shall be assigned to the cost accounting period in which the disposition occurs.

(b) The annual depreciation cost of a tangible capital asset (or group of assets) shall be allocated to cost objectives for which it provides service in accordance with the following criteria:

(1) Depreciation cost may be charged directly to cost objectives only if such charges are made on the basis of usage and only if depreciation costs of all like assets used for similar purposes are charged in the same manner.

(2) Where tangible capital assets are part of, or function as, an organizational unit whose costs are charged to other cost objectives based on measurement of the services provided by the organizational unit, the depreciation cost of such assets shall be included as part of the cost of the organizational unit.

(3) Depreciation costs which are not allocated in accordance with paragraph (b) (1) or (2) of this subsection, shall be included in appropriate indirect cost pools.

(4) The gain or loss which is recognized upon disposition of a tangible capital asset, where material in amount, shall be allocated in the same manner as the depreciation cost of the asset has been or would have been allocated for the cost accounting period in which the disposition occurs. Where such gain or loss is not material, the amount may be included in an appropriate indirect cost pool.

**9904.409–50 Techniques for application.**

(a) Determination of the appropriate depreciation charges involves estimates both of service life and of the likely pattern of consumption of services in the cost accounting periods included in such life. In selecting service life estimates and in selecting depreciation methods, many of the same physical and economic factors should be considered. The following are among the factors which may be taken into account: Quantity and quality of expected output, and the timing thereof; costs of repair and maintenance, and the timing thereof; standby or incidental use and the timing thereof; and technical or economic obsolescence of the asset (or group of assets), or of the product or service it is involved in producing.

(b) Depreciation of a tangible capital asset shall begin when the asset and any others on which its effective use depends are ready for use in a normal or acceptable fashion. However, where partial utilization of a tangible capital asset is identified with a specific operation, depreciation shall commence on any portion of the asset which is substantially completed and used for that operation. Depreciable spare parts which are required for the operation of such tangible capital assets shall be accounted for over the service life of the assets.

(c) A consistent policy shall be followed in determining the depreciable cost to be assigned to the beginning and ending cost accounting periods of asset use. The policy may provide for

any reasonable starting and ending dates in computing the first and last year depreciable cost.

(d) Tangible capital assets may be accounted for by treating each individual asset as an accounting unit, or by combining two or more assets as a single accounting unit, provided such treatment is consistently applied over the service life of the asset or group of assets.

(e) Estimated service lives initially established for tangible capital assets (or groups of assets) shall be reasonable approximations of their expected actual periods of usefulness, considering the factors mentioned in paragraph (a) of this subsection. The estimate of the expected actual periods of usefulness need not include the additional period tangible capital assets are retained for standby or incidental use where adequate records are maintained which reflect the withdrawal from active use.

(1) The expected actual periods of usefulness shall be those periods which are supported by records of either past retirement or, where available, withdrawal from active use (and retention for standby or incidental use) for like assets (or groups of assets) used in similar circumstances appropriately modified for specifically identified factors expected to influence future lives. The factors which can be used to modify past experience include:

(i) Changes in expected physical usefulness from that which has been experienced such as changes in the quantity and quality of expected output.

(ii) Changes in expected economic usefulness, such as changes in expected technical or economic obsolescence of the asset (or group of assets), or of the product or service produced.

(2) Supporting records shall be maintained which are adequate to show the age at retirement or, if the contractor so chooses, at withdrawal from active use (and retention for standby or incidental use) for a sample of assets for each significant category. Whether assets are accounted for individually or by groups, the basis for estimating service life shall be predicated on supporting records of experienced lives for either individual assets or any reasonable grouping of assets as long as that basis is consisently used. The burden shall be on the contractor to justify estimated service lives which are shorter than such experienced lives.

(3) The records required in subparagraphs (e) (1) and (2) of this subsection, if not available on the date when the requirements of this Standard must first be followed by a contractor, shall be developed from current and historical fixed asset records and be available following the second fiscal year after that date. They shall be used as a basis for estimates of service lives of tangible capital assets acquired thereafter. Estimated service lives used for financial accounting purposes (or other accounting purposes where depreciation is not recorded for financial accounting purposes for some non-commercial organizations), if not unreasonable under the criteria specified in paragraph (e) of this subsection, shall be used until adequate supporting records are available.

(4) Estimated service lives for tangible capital assets for which the contractor has no available data or no prior experience for similar assets shall be established based on a projection of the expected actual period of usefulness, but shall not be less than asset guideline periods (mid-range) established for asset guideline classes under Internal Revenue Procedures which are in effect as of the first day of the cost accounting period in which the assets are acquired. Use of this alternative procedure shall cease as soon as the contractor is able to develop estimates which are appropriately supported by his own experience.

(5) The contracting parties may agree on the estimated service life of individual tangible capital assets where the unique purpose for which the equipment was acquired or other special circumstances warrant a shorter estimated service life than the life determined in accordance with the other provisions of this 9904.409–50(e) and where the shorter life can be reasonably predicted.

(f)(1) The method of depreciation used for financial accounting purposes (or other accounting purposes where depreciation is not recorded for financial accounting purposes) shall be used for contract costing unless:

(i) Such method does not reasonably reflect the expected consumption of services for the tangible capital asset (or group of assets) to which applied, or

(ii) The method is unacceptable for Federal income tax purposes.

If the contractors' method of depreciation used for financial accounting purposes (or other accounting purposes as provided above) does not reasonably reflect the expected consumption of services or is unacceptable for Federal income tax purposes, he shall establish a method of depreciation for contract costing which meets these criteria, in accordance with subparagraph (f)(3) of this subsection.

(2) After the date of initial applicability of this Standard, selection of methods of depreciation for newly acquired tangible capital assets, which are different from the methods currently being used for like assets in similar circumstances, shall be supported by projections of the expected consumption of services of those assets (or groups of assets) to which the different methods of depreciation shall apply. Support in accordance with paragraph (f)(3) of this subsection shall be based on the expected consumption of services of either individual assets or any reasonable grouping of assets as long as the basis selected for grouping assets is consistently used.

(3) The expected consumption of asset services over the estimated service life of a tangible capital asset (or group of assets) is influenced by the factors mentioned in paragraph (a) of this subsection which affect either potential activity or potential output of the asset (or group of assets). These factors may be measured by the expected activity or the expected physical output of the assets, as for example: Hours of operation, number of operations performed, number of units produced, or number of miles traveled. An acceptable surrogate for expected activity or output might be a monetary measure of that activity or output generated by use of tangible capital assets, such as estimated labor dollars, total cost incurred or total revenues, to the extent that such monetary measures can reasonably be related to the usage of specific tangible capital assets (or groups of assets). In the absence of reliable data for the measurement or estimation of the consumption of asset services by the techniques mentioned, the expected consumption of services may be represented by the passage of time. The appropriate method of depreciation should be selected as follows:

(i) An accelerated method of depreciation is appropriate where the expected consumption of asset services is significantly greater in early years of asset life.

(ii) The straight-line method of depreciation is appropriate where the expected consumption of asset services is reasonably level over the service life of the asset (or group of assets).

(g) The estimated service life and method of depreciation to be used for an original complement of low-cost equipment shall be based on the expected consumption of services over the expected useful life of the complement as a whole and shall not be based on the individual items which form the complement.

(h) Estimated residual values shall be determined for all tangible capital assets (or groups of assets). For tangible personal property, only estimated residual values which exceed ten percent of the capitalized cost of the asset (or group of assets) need be used in establishing depreciable costs. Where either the declining balance method of depreciation or the class life asset depreciation range system is used consistent with the provisions of this Standard, the residual value need not be deducted from capitalized cost to determine depreciable costs. No depreciation cost shall be charged which would significantly reduce book value of a tangible capital asset (or group of assets) below its residual value.

(i) Estimates of service life, consumption of services, and residual value shall be reexamined for tangible capital assets (or groups of assets) whenever circumstances change significantly. Where changes are made to the estimated service life, residual value, or method of depreciation during the life of a tangible capital asset, the remaining depreciable costs for cost accounting purposes shall be limited to the undepreciated cost of the assets and shall be assigned only to the cost

accounting period in which the change is made and to subsequent periods.

(j)(1) Gains and losses on disposition of tangible capital assets shall be considered as adjustments of depreciation costs previously recognized and shall be assigned to the cost accounting period in which disposition occurs except as provided in subparagraphs (j) (2) and (3) of this subsection. The gain or loss for each asset disposed of is the difference between the net amount realized, including insurance proceeds in the event of involuntary conversion, and its undepreciated balance. However, the gain to be recognized for contract costing purposes shall be limited to the difference between the original acquisition cost of the asset and its undepreciated balance.

(2) Gains and losses on the disposition of tangible capital assets shall not be recognized where:

(i) Assets are grouped and such gains and losses are processed through the accumulated depreciation account, or

(ii) The asset is given in exchange as part of the purchase price of a similar asset and the gain or loss is included in computing the depreciable cost of the new asset.

Where the disposition results from an involuntary conversion and the asset is replaced by a similar asset, gains and losses may either be recognized in the period of disposition or used to adjust the depreciable cost base of the new asset.

(3) The contracting parties may account for gains and losses arising from mass or extraordinary dispositions in a manner which will result in treatment equitable to all parties.

(4) Gains and losses on disposition of tangible capital assets transferred in other than an arms-length transaction and subsequently disposed of within 12 months from the date of transfer shall be assigned to the transferor.

(5) The provisions of this subsection 9904.409–50(j) do not apply to business combinations. The carrying values of tangible capital assets acquired subsequent to a business combination shall be established in accordance with the provisions of subsection 9904.404–50(d).

(k) Where, in accordance with 9904.409–40(b)(1), the depreciation costs of like tangible capital assets used for similar purposes are directly charged to cost objectives on the basis of usage, average charging rates based on cost shall be established for the use of such assets. Any variances between total depreciation cost charged to cost objectives and total depreciation cost for the cost accounting period shall be accounted for in accordance with the contractor's established practice for handling such variances.

(l) Practices for determining depreciation methods, estimated service lives and estimated residual values need not be changed for assets acquired prior to compliance with this Standard if otherwise acceptable under applicable procurement regulations. However, if changes are effected such changes must conform to the criteria established in this Standard and may be effected on a prospective basis to cover the undepreciated balance of cost by agreement between the contracting parties pursuant to negotiation under subdivision (a)(4) (ii) or (iii) of the contract clause set out at 9903.201–4(a).

[57 FR 14153, Apr. 17, 1992; 57 FR 34167, Aug. 3, 1992; 61 FR 5523, Feb. 13, 1996]

**9904.409–60 Illustrations.**

The following examples are illustrative of the provisions of this Standard.

(a) Companies X, Y, and Z purchase identical milling machines to be used for similar purposes.

(1) Company X estimates service life for tangible capital assets on an individual asset basis. Its experience with similar machines is that the average replacement period is 14 years. Under the provisions of the Standard, Company X shall use the estimated service life of 14 years for the milling machine unless it can demonstrate changed circumstances or new circumstances to support a different estimate.

(2) Company Y estimates service life for tangible capital assets by grouping assets of the same general kind and with similar service lives. Accordingly, all machine tools are accounted for as a single group. The average replacement life for machine tools for Company Y is 12 years. In accordance with the provisions of the Standard, Company Y shall use a life of 12 years for

the acquisition unless it can support a different estimate for the entire group.

(3) Company Z estimates service life for tangible capital assets by grouping assets according to use without regard to service lives. Accordingly, all machinery and equipment is accounted for as a single group. The average replacement life for machinery and equipment in Company Z is 10 years. In accordance with the provisions of the Standard, Company Z shall use an estimated service life of ten years for the acquisition unless it can support a different estimate for the entire group.

(b) Company X desires to charge depreciation of the milling machine described in paragraph (a) of this subsection, directly to final cost objectives. Usage of the milling machine can be measured readily based on hours of operation. Company X may charge depreciation cost directly on a unit of time basis provided he uses one depreciation charging rate for all like milling machines in the machine shop and charges depreciation for all such milling machines directly to benefiting cost objectives.

(c) A contractor acquires, and capitalizes as an asset accountability unit, a new lathe. The estimated service life is 10 years for the lathe. He acquires, and capitalizes as an original complement of low-cost equipment related to the lathe, a collection of tool holders, chucks, indexing heads, wrenches, and the like. Although individual items comprising the complement have an average life of 6 years, replacements of these items will be made as needed and, therefore, the expected useful life of the complement is equal to the life of the lathe. An estimated service life of 10 years should be used for the original complement.

(d) A contractor acquires a test facility with an estimated physical life of 10 years, to be used on contracts for a new program. The test facility was acquired for $5 million. It is expected that the program will be completed in 6 years and the test facility acquired is not expected to be required for other products of the contractor. Although the facility will last 10 years, the contracting parties may agree in advance to depreciate the facility over 6 years.

(e) Contractor acquires a building by donation from its local Government. The building had been purchased new by another company and subsequently acquired by the local Government. Contractor capitalizes the building at its fair value. Under the Standard the depreciable cost of the asset based on that value may be accounted for over its estimated service life and allocated to cost objectives in accordance with contractor's cost allocation practices.

(f) A major item of equipment which was acquired prior to the applicability of this Standard was estimated, at acquisition, to have a service life of 12 years and a residual value of no more than 10 percent of acquisition cost. After 4 years of service, during which time this Standard has become applicable, a change in the production situation results in a well-supported determination to shorten the estimated service life to a total of 7 years. The revised estimated residual value is 15 percent of acquisition cost. The annual depreciation charges based on this particular asset will be appropriately increased to amortize the remaining cost, less the current estimate of residual value, over the remaining 3 years of expected usefulness. This change is not a change of cost accounting practice, but a correction of numeric estimates. The requirement of 9904.409–50(1) for an adjustment pursuant to subdivision (a)(4) (ii) or (iii) of the CAS clause does not apply.

(g) The support required by 9904.409–50(e) can, in all likelihood, be derived by sampling from almost any reasonable fixed asset records. Of course, the more complete the data in the records which are available, the more confidence there can be in determinations of asset service lives. The following descriptions of sampling methods are illustrations of techniques which may be useful even with limited fixed asset records.

(1) A company maintains an inventory of assets in use. The company should select a sampling time period which, preferably, is significantly longer than the anticipated life of the assets for which lives are to be established. Of course, the inventory must be available for each year in the sampling time period. The company would

then select a randon sample of items in each year except the most recent year of the time period. Each item in the sample would be compared to the subsequent year's inventory to determine if the asset is still in service; if not, then the asset had been retired in the year from which the sample was drawn. The item is then traced to prior year inventories to determine the year in which acquired.

NOTE: Sufficient items must be drawn in each year to ensure an adequate sample.

(2) A company maintains an inventory of assets in use and also has a record of retirements. In this case the company does not have to compare the sample to subsequent years to determine if disposition has occurred. As in Example (g)(1) of this subsection, the sample items are traced to prior years to determine the year in which acquired.

(3) A company maintains retirement records which show acquisition dates. The company should select a sampling time period which, preferably, is significantly longer than the anticipated life of the assets for which lives are to be estimated. The company would then select a random sample of items retired in each year of the sampling time period and tabulate age at requirement.

(4) A company maintains only a record of acquisitions for each year. The company should select a random sample of items acquired in the most recent complete year and determine from current records or observations whether each item is currently in service. The acquisitions of each prior year should be samples in turn to determine if sample items are currently in service. This sampling should be performed for a time period significantly longer than the anticipated life of assets for which the lives are to be established, but can be discontinued at the point at which sample items no longer appear in current use. From the data obtained, mortality tables can be constructed to determine average asset life.

(5) A company does not maintain accounting records on fully depreciated assets. However, property records are maintained, and such records are retained for 3 years after disposition of an asset in groups by year of disposition. An analysis of these retirements may be made by selecting the larger dollar items for each category of assets for which lives are to be determined (for example, at least 75 percent of the acquisition values retired each year). The cases cited above are only examples and many other examples could have been used. Also, in any example, a company's individual circumstances must be considered in order to take into account possible biased results because of changes in organizations, products, acquisition policies, economic factors, etc. The results from example (g)(5) of this subsection, for instance, might be substantially distorted if the 3-year period was unusual with respect to dispositions. Therefore, the examples are illustrative only and any sampling performed in compliance with this Standard should take into account all relevant information to ensure that reasonable results are obtained.

**9904.409–61 Interpretation. [Reserved]**

**9904.409–62 Exemption.**

This Standard shall not apply where compensation for the use of tangible capital assets is based on use rates or allowances provided by other appropriate Federal acquisition regulations such as those governing:

(a) Educational institutions,

(b) State, local, and Federally recognized Indian tribal government, or

(c) Construction equipment rates (See 48 CFR 31.105(d)).

**9904.409–63 Effective date.**

(a) This Standard is effective April 15, 1996.

(b) This Standard shall be applied beginning with the contractor's next full cost accounting period beginning after the receipt of a contract or subcontract to which this Standard is applicable.

(c) Contractors with prior CAS-covered contracts with full coverage shall continue to follow Standard 9904.409 in effect prior to April 15, 1996, until this Standard, effective April 15, 1996, becomes applicable after the receipt of a contract or subcontract to which this revised Standard applies.

[61 FR 5523, Feb. 13, 1996]

**9904.410 Allocation of business unit general and administrative expenses to final cost objectives.**

**9904.410–10 [Reserved]**

**9904.410–20 Purpose.**

The purpose of this Cost Accounting Standard is to provide criteria for the allocation of business unit general and administrative (G&A) expenses to business unit final cost objectives based on their beneficial or causal relationship. These expenses represent the cost of the management and administration of the business unit as a whole. The Standard also provides criteria for the allocation of home office expenses received by a segment to the cost objectives of that segment. This Standard will increase the likelihood of achieving objectivity in the allocation of expenses to final cost objectives and comparability of cost data among contractors in similar circumstances.

**9904.410–30 Definitions.**

(a) The following are definitions of terms which are prominent in this standard. Other terms defined elsewhere in this part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this section, requires otherwise.

(1) *Allocate* means to assign an item of cost or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

(2) *Business unit* means any segment of an organization, or an entire business organization which is not divided into segments.

(3) *Cost input* means the cost, except G&A expenses, which for contract costing purposes is allocable to the production of goods and services during a cost accounting period.

(4) *Cost objective* means a function, organizational subdivision, contract or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

(5) *Final cost objective* means a cost objective which has allocated to it both direct and indirect costs, and, in the contractor's accumulation systems, is one of the final accumulation points.

(6) *General and administrative (G&A) expense* means any management, financial, and other expense which is incurred by or allocated to a business unit and which is for the general management and administration of the business unit as a whole. G&A expense does not include those management expenses whose beneficial or causal relationship to cost objectives can be more directly measured by a base other than a cost input base representing the total activity of a business unit during a cost accounting period.

(7) *Segment* means one of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service. The terms include Government-owned contractor-operated (GOCO) facilities, and joint ventures and subsidiaries (domestic and foreign) in which the organization has a majority ownership. The term also includes those joint ventures and subsidiaries (domestic and foreign) in which the organization has less than a majority of ownership, but over which it exercises control.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

**9904.410–40 Fundamental requirement.**

(a) Business unit G&A expenses shall be grouped in a separate indirect cost pool which shall be allocated only to final cost objectives.

(b)(1) The G&A expense pool of a business unit for a cost accounting period shall be allocated to final cost objectives of that cost accounting period by means of a cost input base representing the total activity of the business unit except as provided in subparagraph (b)(2) of this subsection. The cost input base selected shall be the one which best represents the total activity of a typical cost accounting period.

(2) The allocation of the G&A expense pool to any particular final cost objectives which receive benefits significantly different from the benefits accruing to other final cost objectives shall be determined by special allocation (9904.410–50(j)).

(c) Home office expenses received by a segment shall be allocated to segment cost objectives as required by 9904.410–50(g).

(d) Any costs which do not satisfy the definition of G&A expense but which have been classified by a business unit as G&A expenses, can remain in the G&A expense pool unless they can be allocated to business unit cost objectives on a beneficial or causal relationship which is best measured by a base other than a cost input base.

**9904.410–50 Techniques for application.**

(a) G&A expenses of a segment incurred by another segment shall be removed from the incurring segment's G&A expense pool. They shall be allocated to the segment for which the expenses were incurred on the basis of the beneficial or causal relationship between the expenses incurred and all benefiting or causing segments. If the expenses are incurred for two or more segments, they shall be allocated using an allocation base common to all such segments.

(b) The G&A expense pool may be combined with other expenses for allocation to final cost objectives provided that—

(1) The allocation base used for the combined pool is appropriate both for the allocation of the G&A expense pool under this Standard and for the allocation of the other expenses; and

(2) Provision is made to identify the components and total of the G&A expense pool separately from the other expenses in the combined pool.

(c) Expenses which are not G&A expenses and are insignificant in amount may be included in the G&A expense pool for allocation to final cost objectives.

(d) The cost input base used to allocate the G&A expense pool shall include all significant elements of that cost input which represent the total activity of the business unit. The cost input base selected to represent the total activity of a business unit during a cost accounting period may be: Total cost input; value-added cost input; or single element cost input. The determination of which cost input base best represents the total activity of a business unit must be judged on the basis of the circumstances of each business unit.

(1) A total cost input base is generally acceptable as an appropriate measure of the total activity of a business unit.

(2) Value-added cost input shall be used as an allocation base where inclusion of material and subcontract costs would significantly distort the allocation of the G&A expense pool in relation to the benefits received, and where costs other than direct labor are significant measures of total activity. A value-added cost input base is total cost input less material and subcontract costs.

(3) A single element cost input base; e.g., direct labor hours or direct labor dollars, which represents the total activity of a business unit may be used to allocate the G&A expense pool where it produces equitable results. A single element base may not produce equitable results where other measures of activity are also significant in relation to total activity. A single element base is inappropriate where it is an insignificant part of the total cost of some of the final cost objectives.

(e) Where, prior to the effective date of this Standard, a business unit's disclosed or established cost accounting practice was to use a cost of sales or sales base, that business unit may use the transition method set out in appendix A hereof.

(f) Cost input shall include those expenses which by operation of this Standard are excluded from the G&A expense pool and are not part of a combined pool of G&A expenses and other expenses allocated using the same allocation base.

(g)(1) Allocations of the home office expenses of:

(i) Line management of particular segments or groups of segments,

(ii) Residual expenses, and

(iii) Directly allocated expenses related to the management and administration of the receiving segment as a whole, shall be included in the receiving segment's G&A expense pool.

(2) Any separate allocation of the expenses of home office centralized service functions, staff management of specific activities of segments, and central payments or accruals, which is received by a segment, shall be allocated to the segment cost objectives in proportion to the beneficial or causal relationship between the cost objectives and the expense if such allocation is significant in amount. Where a beneficial or causal relationship for the expense is not identifiable with segment cost objectives, the expense may be included in the G&A expense pool.

(h) Where a segment performs home office functions and also performs as an operating segment having a responsibility for final cost objectives, the expense of the home office functions shall be segregated. These expenses shall be allocated to all benefiting or causing segments, including the segment performing the home office functions, pursuant to disclosed or established accounting practices for the allocation of home office expenses to segments.

(i) For purposes of allocating the G&A expense pool, items produced or worked on for stock or product inventory shall be accounted for as final cost objectives in accordance with the following paragraphs:

(1) Where items are produced or worked on for stock or product inventory in a given cost accounting period, the cost input to such items in that period shall be included only once in the computation of the G&A expense allocation base and in the computation of the G&A expense allocation rate for that period and shall not be included in the computation of the base or rate for any other cost accounting period.

(2) A portion of the G&A expense pool shall be allocated to items produced or worked on for stock or product inventory in the cost accounting period or periods in which such items are produced at the rates determined for such periods except as provided in subparagraph (i)(3) of this subsection.

(3) Where the contractor does not include G&A expense in inventory as part of the cost of stock or product inventory items, the G&A rate of the cost accounting period in which such items are issued to final cost objectives may be used to determine the G&A expenses applicable to issues of stock or product inventory items.

(j) Where a particular final cost objective in relation to other final cost objectives receives significantly more or less benefit from G&A expense than would be reflected by the allocation of such expenses using a base determined pursuant to paragraph (d) of this subsection, the business unit shall account for this particular final cost objective by a special allocation from the G&A expense pool to the particular final cost objective commensurate with the benefits received. The amount of a special allocation to any such final cost objective shall be excluded from the G&A expense pool required by 9904.410–40(a), and the particular final cost objective's cost input data shall be excluded from the base used to allocate this pool.

**9904.410–60 Illustrations.**

(a) Business Unit A has been including the cost of scientific computer operations in its G&A expense pool. The scientific computer is used predominantly for research and development, rather than for the management and administration of the business unit as a whole. The costs of the scientific computer operation do not satisfy the Standard's definition of G&A expense; however, they may remain in the G&A expense pool unless they can be allocated to business unit cost objectives on a beneficial or causal relationship which is best measured by a base other than a cost input base representing the total activity of a business unit during a cost accounting period.

(b) Segment B performs a budgeting function, the cost of which is included in its G&A expense pool. This function includes the preparation of budgets for another segment. The cost of preparing the budgets for the other segment should be removed from B's G&A expense pool and transferred to the other segment.

(c)(1) Business Unit C has a personnel function which is divided into two parts: A vice president of personnel

who establishes personnel policy and overall guidance, and a personnel department which handles hirings, testing, evaluations, etc. The expense of the vice president is included in the G&A expense pool. The expense of the personnel department is allocated to the other indirect cost pools based on the beneficial or causal relationship between that expense and the indirect cost pools. This procedure is in compliance with the requirements of this Standard.

(2) Business Unit C has included selling costs as part of its G&A expense pool. Unit C wishes to continue to include selling costs in its G&A pool. Under the provisions of this Standard, Unit C may continue to include selling costs in its G&A pool, and these costs will be allocated over a cost input base selected in accordance with the provisions of 9904.410–50(d).

(3) Business Unit C has included IR&D and B&P costs in its G&A expense pool. Unit C has used a cost of sales base to allocate its G&A expense pool. As of January 1, 1978 (assumed for purposes of this illustration), the date on which Unit C must first allocate its G&A expense pool in accordance with the requirements of this Standard, Unit C has among its final cost objectives several cost reimbursement contracts and fixed price contracts subject to the CAS clause (referred to as the preexisting contracts). If Unit C chooses to use the transition method in 9904.410–50(e):

(i) Unit C shall allocate IR&D and B&P costs during the transition period (from January 1, 1978, to and including the cost accounting period during which the preexisting contracts are completed), to the preexisting contracts as part of its G&A expense pool using a cost of sales base pursuant to 9904.410–50(e) and appendix A to 9904.410.

(ii) During the transition period such costs, as part of the G&A expense pool, shall be allocated to new cost reimbursement contracts and new fixed price contracts subject to the CAS clause using a cost input base as required by 9904.410–50 (d) and (e) and appendix A to 9904.410.

(iii) Beginning with the cost accounting period after the transition period the IR&D and B&P costs, as part of the G&A expense pool, shall be allocated to all final cost objectives using a cost input base as required by 9904.410–50(d). If Unit C chooses not to use the transition method in 9904.410–50(e), the contractual provision requiring appropriate equitable adjustment of the prices of affected prime contracts and subcontracts will be implemented.

(4) Business Unit C has accounted for and allocated IR&D and B&P costs in a cost pool separate and apart from the G&A expense pool. Unit C may continue to account for these costs in a separate cost pool under the provision of this Standard. If Unit C is to use a total cost input base, these costs when accounted for and allocated in a cost pool separate and apart from the G&A expense pool will become part of the total cost input base used by Unit C to allocate the G&A expense pool.

(5) Business Unit C has included selling costs as part of its G&A expense pool. Unit C has used a cost of sales base to allocate the G&A expense pool. Unit C desires to continue to allocate selling costs using the costs of sales base. Under the provisions of this Standard, Unit C would account for selling costs as a cost pool separate and apart from the G&A expense pool, and continue to allocate these costs over a cost of sales base. If Unit C uses a total cost input base to allocate the G&A expense pool, the selling costs will become part of the total cost input base.

(d)(1) Business Unit D has accounted for selling costs in a cost pool separate and apart from its G&A expense pool and has allocated these costs using a cost of sales base. Under the provisions of this Standard, Unit D may continue to account for those costs in a separate pool and allocate them using a cost of sales base. Unit D has a total cost input base to allocate its G&A expense pool. The selling costs will become part of the cost input base used by Unit D to allocate the G&A expense pool.

(2) During a cost accounting period, Business Unit D buys $2,000,000 of raw materials. At the end of that cost accounting period, $500,000 of raw materials inventory have not been charged out to contracts or other cost objectives. The $500,000 of raw materials are

not part of the total cost input base for the cost accounting period, because they have not been charged to the production of goods and services during that period. If all of the $2,000,000 worth of raw material had been charged to cost objectives during the cost accounting period, the cost input base for the allocation of the G&A expense pool would include the entire $2,000,000.

(3) Business Unit D manufactures a variety of testing devices. During a cost accounting period, Unit D acquires and uses a small building, constructs a small production facility using its own resources, and keeps for its own use one unit of a testing device that it manufactures and sells to its customers. The acquisition cost of the building is not part of the total cost input base; however, the depreciation taken on the building would be part of the total cost input base. The costs of construction of the small production facility are not part of the total cost input base. The requirements of 9904.404 provide that those G&A expenses which are identifiable with the constructed asset and are material in amount shall be capitalized as part of the cost of the production facility. If there are G&A expenses material in amount and identified with the constructed asset, these G&A expenses would be removed from the G&A expense pool prior to the allocation of this pool to final cost objectives. The cost of the testing device shall be part of the total cost input base per the requirements of 9904.404 which provides that the costs of constructed assets identical with the contractor's regular product shall include a full share of indirect cost.

(e)(1) Business Unit E produces Item Z for stock or product inventory. The business unit does not include G&A expense as part of the inventory cost of these items for costing or financial reporting purposes. A production run of these items occurred during Cost Accounting Period 1. A number of the units produced were not issued during Period 1 and are issued in Period 2. However, those units produced in Period 1 shall be included in the cost input of that period for calculating the G&A expense allocation base and shall not be included in the cost input of Period 2.

(2) Business Unit E should apply the G&A expense rate of Period 1 to those units of Item Z issued during Period 1 and may apply the rate of Period 2 to the units issued in Period 2.

(3) If the practice of Business Unit E is to include G&A expense as part of the cost of stock or product inventory, the inventory cost of all units of Item Z produced in Period 1 and remaining in inventory at the end of Period 1, should include G&A expense using the G&A rate of Period 1.

(f)(1) Business Unit F produced Item X for stock or product inventory. The business unit does not include G&A expense as part of the inventory cost of these items. A production run of these items was started, finished, and placed into inventory in a single cost accounting period. These items are issued during the next cost accounting period.

(2) The cost of items produced for stock or product inventory should be included in the G&A base in the same year they are produced. The cost of such items is not to be included in the G&A base on the basis of when they are issued to final cost objectives. Therefore, the time of issuance of these items from inventory to a final cost objective is irrelevant in computing the G&A base.

(g) The normal productive activity of Business Unit G includes the construction of base operating facilities for others. Unit G uses a total cost input base to allocate G&A expense to final cost objectives. As part of a contract to construct an operating facility, Unit G agrees to acquire a large group of trucks and other mobile equipment to equip the base operating facility. Unit G does not usually supply such equipment. The cost of the equipment constitutes a significant part of the contract cost. A special G&A allocation to this contract shall be agreed to by the parties if they agree that in the circumstances the contract as a whole receives substantially less benefit from the G&A expense pool than that which would be represented by a cost allocation based on inclusion of the contract cost in the total cost input base.

(h)(1) The home office of Segment H separately allocates to benefiting or

causing segments significant home office expenses of staff management functions relative to manufacturing, staff management functions relative to engineering, central payment of health insurance costs, and residual expenses. Segment H receives these expenses as separate allocations and maintains three indirect cost pools; i.e., G&A expense, manufacturing overhead, and engineering overhead; all home office expenses allocated to Segment H are included in Segment H's G&A expense pool.

(2) This accounting practice of Segment H does not comply with 9904.410–50(g)(2). Home office residual expenses should be in the G&A expense pool, and the expenses of the staff management functions relative to manufacturing and engineering should be included in the manufacturing overhead and engineering overhead pools, respectively. The health insurance costs should be allocated in proportion to the beneficial and causal relationship between these costs and Segment H's cost objectives.

### 9904.410–61 Interpretation. [Reserved]

### 9904.410–62 Exemption.

This Standard shall not apply to contracts and grants with state, local, and Federally recognized Indian tribal governments.

### 9904.410–63 Effective date.

This Standard is effective as of April 17, 1992. Contractors with prior CAS-covered contracts with full coverage shall continue this Standard's applicability upon receipt of a contract to which this Standard is applicable. For contractors with no previous contracts subject to this Standard, this Standard shall be applied beginning with the contractor's next full fiscal year beginning after the receipt of a contract to which this Standard is applicable.

### APPENDIX A TO 9904.410—TRANSITION FROM A COST OF SALES OR SALES BASE TO A COST INPUT BASE

A business unit may use the method described below for transition from the use of a cost of sales or sales base to a cost input base.

(1) Calculate the cost of sales or sales base in accordance with the cost accounting practice disclosed or established prior to the date established by 9904.410–80(b) of the original Cost Accounting Standard.

(2) Calculate the G&A expense allocation rate using the base determined in subparagraph (1) of this appendix and use that rate to allocate from the G&A expense pool to the final cost objectives which were in existence prior to the date on which the business unit must first allocate costs in accordance with the requirements of this Cost Accounting Standard.

(3) Calculate a cost input base in compliance with 9904.410–50(d).

(4) Calculate the G&A expense rate using the base determined in subparagraph (3) of this appendix and use that rate to allocate from the G&A expense pool to those final cost objectives which arise under contracts entered into on or after the date on which the business unit must first allocate costs in accordance with the requirements of this Cost Accounting Standard.

(5) The calculations set forth in subparagraphs (1)–(4) of this appendix shall be performed for each cost accounting period during which final cost objectives described in (2) are being performed.

(6) The business unit shall establish an inventory suspense account. The amount of the inventory suspense account shall be equal to the beginning inventory of contracts subject to the CAS clause of the cost accounting period in which the business unit must first allocate costs in accordance with the requirements of this Cost Accounting Standard.

(7) In any cost accounting period, after the cost accounting periods described in subparagraph (5) of this Appendix, if the ending inventory of contracts subject to the CAS clause is less than the balance of the inventory suspense account, the business unit shall calculate two G&A expense allocation rates, one to allocate G&A expenses to contracts subject to the CAS clause and one applicable to other work.

(a) The G&A expense pool shall be divided in the proportion which the cost input of the G&A expense allocation base of the contracts subject to the CAS clause bears to the total of the cost input allocation base, selected in accordance with 9904.410–50(d), for the cost accounting period.

(b) The G&A expenses applicable to contracts subject to the CAS clause shall be reduced by an amount determined by multiplying the difference between the balance of the inventory suspense account and the ending inventory of contracts subject to the CAS clause by the cost of sales rate, as determined under subparagraph (1) of this Appendix, of the cost accounting period in which a business unit must first allocate costs in accordance with the requirements of this Cost Accounting Standard.

(8) In any cost accounting period in which such a reduction is made, the balance of the inventory suspense account shall be reduced to be equal to the ending inventory of contracts subject to the CAS clause of that cost accounting period.

The following illustrates how a business unit would use this transition method.

1. Business Unit R has been using a cost of sales base to allocate its G&A expense pool to final cost objectives. Unit R uses a calendar year as its cost accounting period. On October 1, 1976 (assumed for purposes of this illustration) Cost Accounting Standard 410 becomes effective. On October 2, 1976, Unit R receives a 3-year contract containing the Cost Accounting Standards clause. As a result, Unit R must comply with the requirements of the Standard in the cost accounting period beginning in January 1978. As of January 3, 1978, Business Unit R has the following contracts:

(1) Contract I—A 4-year contract awarded in January 1975.

(2) Contract II—A 3-year contract which was negotiated in March 1976, and was awarded on October 2, 1976.

(3) Contract III—A 4-year contract awarded on January 2, 1978.

If Business Unit R chooses to use the transition method provided in 9904.410–50(e), it will allocate the G&A expense pool to these contracts as follows:

(a) Contract I—Since Contract I was in existence prior to January 1, 1978, the G&A expense pool shall be allocated to it using a cost of sales base as provided in 9904.410–50(e).

(b) Contract II—Since this contract was in existence prior to January 1, 1978, the G&A expense pool shall be allocated to it using a cost of sales base as provided in 9904.410–50(e).

(c) Contract III—Since this contract was awarded after January 1, 1978, the G&A expense pool shall be allocated to this contract using a cost input base.

Having chosen to use 9904.410–50(e), Business Unit R will use the transition method of allocating the G&A expense pool to final cost objectives until all contracts awarded prior to January 1, 1978, are completed (1979 if the contracts are completed on schedule). Beginning with the cost accounting period subsequent to that time, 1980, Unit R will use a cost input base to allocate the G&A expense pool to all cost objectives. Unit R will also carry forward an inventory suspense account in accordance with the requirements of this Standard.

2.A. Business Unit N is first required to allocate its costs in accordance with the requirements of 9904.410 during the fiscal year beginning January 1, 1978. Unit N has used a cost of sales base to allocate its G&A expense pool.

During the years 1978, 1979, 1980, Business Unit N reported the following data:

| | Contracts prior to Jan. 1, 1978 | | | | Contracts prior to Jan. 1, 1978 | | |
|---|---|---|---|---|---|---|---|
| | Total | Non-CAS work | CAS-fixed price work | CAS-cost contract | Non-CAS work | CAS-fixed price work | CAS-cost contracts |
| Year 1978: | | | | | | | |
| Beginning inventory ... | $500 | 300 | 200 | 0 | 0 | 0 | 0 |
| Cost input ..... | +3000 | 400 | 600 | 700 | 500 | 500 | 300 |
| Total ..... | 3500 | 700 | 800 | 700 | 500 | 500 | 300 |
| Cost of sales ..... | −3000 | 600 | 550 | 700 | 450 | 400 | 300 |
| Ending inventory ..... | 500 | 100 | 250 | 0 | 50 | 100 | 0 |
| Year 1979: | | | | | | | |
| Beginning inventory ... | 500 | 100 | 250 | 0 | 50 | 100 | 0 |
| Cost input ..... | +3000 | 400 | 600 | 700 | 500 | 500 | 300 |
| Total ..... | 3500 | 500 | 850 | 700 | 550 | 600 | 300 |
| Cost of sales ..... | −2500 | 450 | 650 | 700 | 150 | 250 | 300 |
| Ending inventory .... | 1000 | 50 | 200 | 0 | 400 | 350 | 0 |
| Year 1980: | | | | | | | |
| Beginning inventory ... | 1000 | 50 | 200 | 0 | 400 | 350 | 0 |
| Cost input ..... | +3000 | 400 | 600 | 700 | 500 | 500 | 300 |
| Total ..... | 4000 | 450 | 800 | 700 | 900 | 850 | 300 |
| Cost of sales ..... | −3250 | 450 | 800 | 700 | 450 | 550 | 300 |
| Ending inventory ..... | 750 | 0 | 0 | 0 | 450 | 300 | 0 |

Notes:
Operating data is in thousands of dollars.
G. & A. expense $375,000 in accordance with the requirements of this standard.

Work existing prior to January 1, 1978, may include—

(1) Government contracts which contain the CAS clause;

(2) Government contracts which do not contain the CAS clause;
(3) Contracts other than Government contracts or customer orders; and
(4) Production not specifically identified with contracts or customer orders under production or work orders existing prior to the date on which a business unit must first allocate its costs in compliance with this Standard and which are limited in time or quantity.

Production under standing or unlimited work orders, continuous flow processes and the like, not identified with contracts or customer orders are to be treated as final cost objectives awarded after the date on which a business unit must first allocate its costs in compliance with the requirements of this Standard.

Business Unit N may allocate the G&A expense pool as follows:

[In dollars]

| | Year 1978 | Year 1979 | Year 1980 |
|---|---|---|---|
| 1. G.&A. expense pool | 375 | 375 | 375 |
| Cost of sales rate | 375/3,000=.125 | 375/2,500=.150 | 375/3,250=.115 |
| Cost input | 375/3,000=.125 | 375/3,000=.125 | 375/3,000=.125 |
| 2. G.&A. allocations: | | | |
| Prior contracts: | | | |
| Non-CAS work | 600×0.125=75.00 | 450×0.15=67.50 | 450×0.115=51.75 |
| CAS-fixed price work | 550×0.125=68.75 | 650×0.15=97.50 | 800×0.115=92.00 |
| CAS-cost contracts | 700×0.125=87.50 | 700×0.15=105.00 | 700×0.115=80.50 |
| After contracts: | | | |
| Non-CAS work | 500×0.125=62.50 | 500×0.125=62.50 | 500×0.125=62.50 |
| CAS-fixed price work | 500×0.125=62.50 | 500×0.125=62.50 | 500×0.125=62.50 |
| CAS-cost contracts | 300×0.125=37.50 | 300×0.125=37.50 | 300×0.125=37.55 |
| | 393.75 | 432.50 | 386.80 |
| 3. Inventory suspense account [1] | 200 | | |
| G.&A. rate applicable | .125 | | |

[1] Beginning inventory of contracts subject to the CAS clause, January 1978.

2.B. In cost accounting period 1982, Business Unit N has an ending inventory of contracts subject to the CAS clause of $100,000. This is the first cost accounting period after the transition in which the amount of the ending inventory is less than the amount of the inventory suspense account. During this cost accounting period, Business Unit N had G&A expenses of $410,000 and cost input of $3,500,000; $1,500,000 applicable to contracts subject to the CAS clause and $2,000,000 applicable to other work.

Business Unit N would compute its G&A expense allocation rate applicable to contracts subject to the CAS clause as follows:

| | |
|---|---|
| (1) Amount of inventory suspense account | $200,000 |
| Amount of ending inventory | 100,000 |
| Difference | 100,000 |
| G. & A. rate applicable (see 2.A. above) | ×0.125 |
| Adjustment to G. & A. expense applicable to contracts subject to the CAS clause | 12,500 |
| (2) G. & A. expense pool | 410,000 |
| G. & A. expenses applicable to contracts subject to the CAS clause ($1,500,000/$3,500,000 × $410,000) | 175,890 |
| G. & A. expenses applicable to other work | 234,110 |
| (3) G. & A. expenses applicable to contracts subject to the CAS clause | 175,890 |
| Adjustment to G. & A. expenses applicable to contracts subject to the CAS clause | −12,500 |
| G. & A. expenses allocable to contracts subject to the CAS clause | 163,390 |

(4) G. & A. expense allocation rate applicable to contracts subject to the CAS clause for cost accounting period 1982–$163,390/$1,500,000=0.109.

The amount of the inventory suspense account would be reduced to $100,000.

[57 FR 14153, Apr. 17, 1992; 57 FR 34081, 34167, Aug. 3, 1992]

## 9904.411 Cost accounting standard—accounting for acquisition costs of material.

### 9904.411–10 [Reserved]

### 9904.411–20 Purpose.

(a) The purpose of this Cost Accounting Standard is to provide criteria for

the accounting for acquisition costs of material. The Standard includes provisions on the use of inventory costing methods. Consistent application of this Standard will improve the measurement and assignment of costs to cost objectives.

(b) This Cost Accounting Standard does not cover accounting for the acquisition costs of tangible capital assets nor accountability for Government-furnished materials.

[57 FR 14153, Apr. 17, 1992; 57 FR 34167, Aug. 3, 1992]

**9904.411–30 Definitions.**

(a) The following are definitions of terms which are prominent in this Standard. Other terms elsewhere in this chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

(1) *Allocate* means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

(2) *Business unit* means any segment of an organization, or an entire business organization which is not divided into segments.

(3) *Category of material* means a particular kind of goods, comprised of identical or interchangeable units, acquired or produced by a contractor, which are intended to be sold, or consumed or used in the performance of either direct or indirect functions.

(4) *Cost objective* means a function, organizational subdivision, contract or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

(5) *Material inventory record* means any record used for the accumulation of actual or standard costs of a category of material recorded as an asset for subsequent cost allocation to one or more cost objectives.

(6) *Moving average cost* means an inventory costing method under which an average unit cost is computed after each acquisition by adding the cost of the newly acquired units to the cost of the units of inventory on hand and dividing this figure by the new total number of units.

(7) *Weighted average cost* means an inventory costing method under which an average unit cost is computed periodically by dividing the sum of the cost of beginning inventory plus the cost of acquisitions by the total number of units included in these two categories.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

**9904.411–40 Fundamental requirement.**

(a) The contractor shall have, and consistently apply, written statements of accounting policies and practices for accumulating the costs of material and for allocating costs of material to cost objectives.

(b) The cost of units of a category of material may be allocated directly to a cost objective provided the cost objective was specifically identified at the time of purchase or production of the units.

(c) The cost of material which is used solely in performing indirect functions, or is not a significant element of production cost, whether or not incorporated in an end product, may be allocated to an indirect cost pool. When significant, the cost of such indirect material not consumed in a cost accounting period shall be established as an asset at the end of the period.

(d) Except as provided in paragraphs (b) and (c) of this subsection, the cost of a category of materials shall be accounted for in material inventory records.

(e) In allocating to cost objectives the costs of a category of material issued from company-owned material inventory, the costing method used shall be selected in accordance with the provisions of 9904.411–50, and shall be used in a manner which results in systematic and rational costing of issues of material to cost objectives. The same costing method shall, within the same business unit, be used for similar categories of materials.

**9904.411–50 Techniques for application.**

(a) Material cost shall be the acquisition cost of a category of material, whether or not a material inventory record is used. The purchase price of material shall be adjusted by extra charges incurred or discounts and credits earned. Such adjustments shall be charged or credited to the same cost objective as the purchase price of the material, except that where it is not practical to do so, the contractor's policy may provide for the consistent inclusion of such charges or credits in an appropriate indirect cost pool.

(b) One of the following inventory costing methods shall be used when issuing material from a company-owned inventory:

(1) The first-in, first-out (FIFO) method.

(2) The moving average cost method.

(3) The weighted average cost method.

(4) The standard cost method.

(5) The last-in, first-out (LIFO) method.

(c) The method of computation used for any inventory costing method selected pursuant to the provisions of this Standard shall be consistently followed.

(d) Where the excess of the ending inventory over the beginning inventory of material of the type described in 9904.411–40(c) is estimated to be significant in relation to the total cost included in the indirect cost pool, the cost of such unconsumed material shall be established as an asset at the end of the period by reducing the indirect cost pool by a corresponding amount.

**9904.411–60 Illustrations.**

(a) Contractor ''A'' has one contract which requires two custom-ordered, high-value, airborne cameras. The contractor's established policy is to order such special items specifically identified to a contract as the need arises and to charge them directly to the contract. Another contract is received which requires three more of these cameras, which the contractor purchases at a unit cost which differs from the unit cost of the first two cameras ordered. When the purchase orders were placed, the contractor identified the specific contracts on which the cameras being purchased were to be used. Although these cameras are identical, the actual cost of each camera is charged to the contract for which it was acquired without establishing a material inventory record. This practice would not be a violation of this Standard.

(b)(1) A Government contract requires use of electronic tubes identified as ''W.'' The contractor expects to receive other contracts requiring the use of tubes of the same type. In accordance with its written policy, the contractor establishes a material inventory record for electronic tube ''W,'' and allocates the cost of units issued to the existing Government contract by the FIFO method. Such a practice would conform to the requirements of this Standard.

(2) The contractor is awarded several additional contracts which require an electronic tube which the contractor concludes is similar to the one described in paragraph (b)(1) of this subsection and which is identified as ''Y.'' At the time a purchase order for these tubes is written, the contractor cannot identify the specific number of tubes to be used on each contract. Consequently, the contractor establishes an inventory record for these tubes and allocates their cost to the contracts on an average cost method. Because a FIFO method is used for a similar category of material within the same business unit, the use of an average cost method for ''Y'' would be a violation of this Standard.

(c) A contractor complies with the Cost Accounting Standard on standard costs (9904.407), and he uses a standard cost method for allocating the costs of essentially all categories of material. Also, it is the contractor's established practice to charge the cost of purchased parts which are incorporated in his end products, and which are not a significant element of production cost to an indirect cost pool. Such practices conform to this Standard.

(d) A contractor has one established inventory for type ''R'' transformers. The contractor allocates by the LIFO

method the current costs of the individual units issued to Government contracts. Such a practice would conform to the requirements of this Standard.

(e) A contractor has established inventories for various categories of material which are used on Government contracts. During the year the contractor allocates the costs of the units of the various categories of material issued to contracts by the moving average cost method. The contractor uses the LIFO method for tax and financial reporting purposes and, at year end, applies a pooled LIFO inventory adjustment for all categories of material to Government contracts. This application of pooled costs to Government contracts would be a violation of this Standard because the lump sum adjustment to all of the various categories of material is, in effect, a noncurrent repricing of the material issues.

**9904.411–61 Interpretation. [Reserved]**

**9904.411–62 Exemption.**

None for this Standard.

**9904.411–63 Effective date.**

This Standard is effective as of April 17, 1992. Contracts with prior CAS-covered contract with full coverage shall continue this Standard's applicability upon receipt of a contract to which this Standard is applicable. For contractors with no previous contracts subject to this Standard, this Standard shall be applied beginning with the contractor's next full fiscal year beginning after the receipt of a contract to which this Standard is applicable.

## 9904.412 Cost accounting standard for composition and measurement of pension cost.

**9904.412–10 [Reserved]**

**9904.412–20 Purpose.**

(a) The purpose of this Standard 9904.412 is to provide guidance for determining and measuring the components of pension cost. The Standard establishes the basis on which pension costs shall be assigned to cost accounting periods. The provisions of this Cost Accounting Standard should enhance uniformity and consistency in accounting for pension costs and thereby increase the probability that those costs are properly allocated to cost objectives.

(b) This Standard does not cover the cost of Employee Stock Ownership Plans (ESOPs) that meet the definition of a pension plan. Such plans are considered a form of deferred compensation and are covered under 9904.415.

[73 FR 23964, May 1, 2008]

**9904.412–30 Definitions.**

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *Accrued benefit cost method* means an actuarial cost method under which units of benefits are assigned to each cost accounting period and are valued as they accrue, that is, based on the services performed by each employee in the period involved. The measure of normal cost under this method for each cost accounting period is the present value of the units of benefit deemed to be credited to employees for service in that period. The measure of the actuarial accrued liability at a plan's measurement date is the present value of the units of benefit credited to employees for service prior to that date. (This method is also known as the Unit Credit cost method without salary projection.)

(2) *Actuarial accrued liability* means pension cost attributable, under the actuarial cost method in use, to years prior to the current period considered by a particular actuarial valuation. As of such date, the actuarial accrued liability represents the excess of the present value of future benefits and administrative expenses over the present value of future normal costs for all plan participants and beneficiaries. The excess of the actuarial accrued liability over the actuarial value of the assets of a pension plan is the Unfunded Actuarial Liability. The excess of the actuarial value of the assets of a pension plan over the actuarial accrued liability is an actuarial surplus and is treated as a negative unfunded actuarial liability.

(3) *Actuarial assumption* means an estimate of future conditions affecting pension cost; for example, mortality rate, employee turnover, compensation levels, earnings on pension plan assets, changes in values of pension plan assets.

(4) *Actuarial cost method* means a technique which uses actuarial assumptions to measure the present value of future pension benefits and pension plan administrative expenses, and which assigns the cost of such benefits and expenses to cost accounting periods. The actuarial cost method includes the asset valuation method used to determine the actuarial value of the assets of a pension plan.

(5) *Actuarial gain and loss* means the effect on pension cost resulting from differences between actuarial assumptions and actual experience.

(6) *Actuarial valuation* means the determination, as of a specified date, of the normal cost, actuarial accrued liability, actuarial value of the assets of a pension plan, and other relevant values for the pension plan.

(7) *Assignable cost credit* means the decrease in unfunded actuarial liability that results when the pension cost computed for a cost accounting period is less than zero.

(8) *Assignable cost deficit* means the increase in unfunded actuarial liability that results when the pension cost computed for a qualified defined-benefit pension plan exceeds the maximum tax-deductible amount for the cost accounting period determined in accordance with the Internal Revenue Code at Title 26 of the U.S.C.

(9) *Assignable cost limitation* means the excess, if any, of the actuarial accrued liability and the normal cost for the current period over the actuarial value of the assets of the pension plan.

(10) *Defined-benefit pension plan* means a pension plan in which the benefits to be paid or the basis for determining such benefits are established in advance and the contributions are intended to provide the stated benefits.

(11) *Defined-contribution pension plan* means a pension plan in which the contributions are established in advance and the benefits are determined thereby.

(12) *Funded pension cost* means the portion of pension cost for a current or prior cost accounting period that has been paid to a funding agency.

(13) *Funding agency* means an organization or individual which provides facilities to receive and accumulate assets to be used either for the payment of benefits under a pension plan, or for the purchase of such benefits, provided such accumulated assets form a part of a pension plan established for the exclusive benefit of the plan participants and their beneficiaries. The fair market value of the assets held by the funding agency as of a specified date is the Funding Agency Balance as of that date.

(14) *Immediate-gain actuarial cost method* means any of the several cost methods under which actuarial gains and losses are included as part of the unfunded actuarial liability of the pension plan, rather than as part of the normal cost of the plan.

(15) *Market value of the assets* means the sum of the funding agency balance plus the accumulated value of any permitted unfunded accruals belonging to a pension plan. The Actuarial Value of the Assets means the value of cash, investments, permitted unfunded accruals, and other property belonging to a pension plan, as used by the actuary for the purpose of an actuarial valuation.

(16) *Multiemployer pension plan* means a plan to which more than one employer contributes and which is maintained pursuant to one or more collective bargaining agreements between an employee organization and more than one employer.

(17) *Nonforfeitable* means a right to a pension benefit, either immediate or deferred, which arises from an employee's service, which is unconditional, and which is legally enforceable against the pension plan or the contractor. Rights to benefits that do not satisfy this definition are considered forfeitable. A right to a pension benefit is not forfeitable solely because it may be affected by the employee's or beneficiary's death, disability, or failure to achieve vesting requirements. Nor is a right considered forfeitable because it can be affected by the unilateral actions of the employee.

(18) *Normal cost* means the annual cost attributable, under the actuarial cost method in use, to current and future years as of a particular valuation date, excluding any payment in respect of an unfunded actuarial liability.

(19) *Pay-as-you-go cost method* means a method of recognizing pension cost only when benefits are paid to retired employees or their beneficiaries.

(20) *Pension plan* means a deferred compensation plan established and maintained by one or more employers to provide systematically for the payment of benefits to plan participants after their retirement, provided that the benefits are paid for life or are payable for life at the option of the employees. Additional benefits such as permanent and total disability and death payments, and survivorship payments to beneficiaries of deceased employees may be an integral part of a pension plan.

(21) *Pension plan participant* means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit from a pension plan which covers employees of such employer or members of such organization who have satisfied the plan's participation requirements, or whose beneficiaries are receiving or may be eligible to receive any such benefit. A participant whose employment status with the employer has not been terminated is an active participant of the employer's pension plan.

(22) *Permitted unfunded accrual* means the amount of pension cost for nonqualified defined-benefit pension plans that is not required to be funded under 9904.412–50(d)(2). The Accumulated Value of Permitted Unfunded Accruals means the value, as of the measurement date, of the permitted unfunded accruals adjusted for imputed earnings and for benefits paid by the contractor.

(23) *Prepayment credit* means the amount funded in excess of the pension cost assigned to a cost accounting period that is carried forward for future recognition. The Accumulated Value of Prepayment Credits means the value, as of the measurement date, of the prepayment credits adjusted for income and expenses in accordance with 9904.413–50(c)(7) and decreased for amounts used to fund pension costs or liabilities, whether assignable or not.

(24) *Projected benefit cost method* means either (i) any of the several actuarial cost methods which distribute the estimated total cost of all of the employees' prospective benefits over a period of years, usually their working careers, or (ii) a modification of the accrued benefit cost method that considers projected compensation levels.

(25) *Qualified pension plan* means a pension plan comprising a definite written program communicated to and for the exclusive benefit of employees which meets the criteria deemed essential by the Internal Revenue Service as set forth in the Internal Revenue Code for preferential tax treatment regarding contributions, investments, and distributions. Any other plan is a Nonqualified Pension Plan.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

[57 FR 14153, Apr. 17, 1992, as amended at 60 FR 16540, Mar. 30, 1995; 76 FR 81309, Dec. 27, 2011]

**9904.412–40 Fundamental requirement.**

(a) *Components of pension cost.* (1) For defined-benefit pension plans, except for plans accounted for under the pay-as-you-go cost method, the components of pension cost for a cost accounting period are (i) the normal cost of the period, (ii) a part of any unfunded actuarial liability, (iii) an interest equivalent on the unamortized portion of any unfunded actuarial liability, and (iv) an adjustment for any actuarial gains and losses.

(2) For defined-contribution pension plans, the pension cost for a cost accounting period is the net contribution required to be made for that period, after taking into account dividends and other credits, where applicable.

(3) For defined-benefit pension plans accounted for under the pay-as-you-go cost method, the components of pension cost for a cost accounting period are:

(i) The net amount of periodic benefits paid for that period, and

(ii) An amortization installment, including an interest equivalent on the unamortized settlement amount, attributable to amounts paid to irrevocably settle an obligation for periodic benefits due in current and future cost accounting periods.

(b) *Measurement of pension cost.* (1) For defined-benefit pension plans other than those accounted for under the pay-as-you-go cost method, the amount of pension cost of a cost accounting period shall be determined by use of an immediate-gain actuarial cost method.

(2) Each actuarial assumption used to measure pension cost shall be separately identified and shall represent the contractor's best estimates of anticipated experience under the plan, taking into account past experience and reasonable expectations. The validity of each assumption used shall be evaluated solely with respect to that assumption. Actuarial assumptions used in calculating the amount of an unfunded actuarial liability shall be the same as those used for other components of pension cost.

(3) For qualified defined benefit pension plans, the measurement of pension costs shall recognize the requirements of 9904.412–50(b)(7) for periods beginning with the ''Applicability Date of the CAS Pension Harmonization Rule.'' However, paragraphs 9904.413–50(c)(8), (9) and (12) are exempt from the requirements of 9904.412–50(b)(7).

(c) *Assignment of pension cost.* Except costs assigned to future periods by 9904.412–50(c) (2) and (5), the amount of pension cost computed for a cost accounting period is assignable only to that period. For defined-benefit pension plans other than those accounted for under the pay-as-you-go cost method, the pension cost is assignable only if the sum of (1) the unamortized portions of assignable unfunded actuarial liability developed and amortized pursuant to 9904.412–50(a)(1), and (2) the unassignable portions of unfunded actuarial liability separately identified and maintained pursuant to 9904.412–50(a)(2) equals the total unfunded actuarial liability.

(d) *Allocation of pension cost.* Pension costs assigned to a cost accounting period are allocable to intermediate and final cost objectives only if they meet the requirements for allocation in 9904.412–50(d). Pension costs not meeting these requirements may not be reassigned to any future cost accounting period.

[60 FR 16541, Mar. 30, 1995, as amended at 76 FR 81309, Dec. 27, 2011]

### 9904.412–50 Techniques for application.

(a) *Components of pension cost.* (1) The following portions of unfunded actuarial liability shall be included as a separately identified part of the pension cost of a cost accounting period and shall be included in equal annual installments. Each installment shall consist of an amortized portion of the unfunded actuarial liability plus an interest equivalent on the unamortized portion of such liability. The period of amortization shall be established as follows:

(i) If amortization of an unfunded actuarial liability has begun prior to the date this Standard first becomes applicable to a contractor, no change in the amortization period is required by this Standard.

(ii) If amortization of an unfunded actuarial liability has not begun prior to the date this Standard first becomes applicable to a contractor, the amortization period shall begin with the period in which the Standard becomes applicable and shall be no more than 30 years nor less than 10 years. However, if the plan was in existence as of January 1, 1974, the amortization period shall be no more than 40 years nor less than 10 years.

(iii) Each increase or decrease in unfunded actuarial liability resulting from the institution of new pension plans, from the adoption of improvements, or other changes to pension plans subsequent to the date this Standard first becomes applicable to a contractor shall be amortized over no more than 30 years nor less than 10 years.

(iv) If any assumptions are changed during an amortization period, the resulting increase or decrease in unfunded actuarial liability shall be separately amortized over no more than 30 years nor less than 10 years.

(v) Actuarial gains and losses shall be identified separately from unfunded actuarial liabilities that are being amortized pursuant to the provisions of this Standard. The accounting treatment to be afforded to such gains and losses shall be in accordance with Cost Accounting Standard 9904.413.

(vi) Each increase or decrease in unfunded actuarial liability resulting from an assignable cost deficit or credit, respectively, shall be amortized over a period of 10 years.

(vii) Each increase or decrease in unfunded actuarial liability resulting from a change in actuarial cost method, including the asset valuation method, shall be amortized over a period of 10 to 30 years. This provision shall not affect the requirements of 9903.302 to adjust previously priced contracts.

(2)(i) Except as provided in 9904.412–50(d)(2), any portion of unfunded actuarial liability attributable to either pension costs applicable to prior years that were specifically unallowable in accordance with then existing Government contractual provisions or pension costs assigned to a cost accounting period that were not funded in that period, shall be separately identified and eliminated from any unfunded actuarial liability being amortized pursuant to paragraph (a)(1) of this subsection.

(ii) Such portions of unfunded actuarial liability shall be adjusted for interest based on the interest assumption established in accordance with 9904.412–50(b)(4) without regard to 9904.412–50(b)(7). The contractor may elect to fund, and thereby reduce, such portions of unfunded actuarial liability and future interest adjustments thereon. Such funding shall not be recognized for purposes of 9904.412–50(d).

(3) A contractor shall establish and consistently follow a policy for selecting specific amortization periods for unfunded actuarial liabilities, if any, that are developed under the actuarial cost method in use. Such policy may give consideration to factors such as the size and nature of the unfunded actuarial liabilities. Except as provided in 9904.412–50(c)(2) or 9904.413–50(c)(12), once the amortization period for a portion of unfunded actuarial liability is selected, the amortization process shall continue to completion.

(4) Any amount funded in excess of the pension cost assigned to a cost accounting period shall be accounted for as a prepayment credit. The accumulated value of such prepayment credits shall be adjusted for income and expenses in accordance with 9904.413–50(c)(7) until applied towards pension cost in a future accounting period. The accumulated value of prepayment credits shall be reduced for portions of the accumulated value of prepayment credits used to fund pension costs or to fund portions of unfunded actuarial liability separately identified and maintained in accordance with 9904.412–50(a)(2). The accumulated value of any prepayment credits shall be excluded from the actuarial value of the assets used to compute pension costs for purposes of this Standard and Cost Accounting Standard 9904.413.

(5) An excise tax assessed pursuant to a law or regulation because of excess, inadequate, or delayed funding of a pension plan is not a component of pension cost. Income taxes paid from the funding agency of a nonqualified defined-benefit pension plan on earnings or other asset appreciation of such funding agency shall be treated as an administrative expense of the fund and not as a reduction to the earnings assumption.

(6) For purposes of this Standard, defined-benefit pension plans funded exclusively by the purchase of individual or group permanent insurance or annuity contracts, and thereby exempted from the minimum funding requirements implemented by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, as amended, shall be treated as defined-contribution pension plans. However, all other defined-benefit pension plans administered wholly or in part through insurance company contracts shall be subject to the provisions of this Standard relative to defined-benefit pension plans.

(7) If a pension plan is supplemented by a separately-funded plan which provides retirement benefits to all of the participants in the basic plan, the two plans shall be considered as a single plan for purposes of this Standard. If

the effect of the combined plans is to provide defined-benefits for the plan participants, the combined plans shall be treated as a defined-benefit plan for purposes of this Standard.

(8) A multiemployer pension plan established pursuant to the terms of a collective bargaining agreement shall be considered to be a defined-contribution pension plan for purposes of this Standard.

(9) A pension plan applicable to a Federally-funded Research and Development Center (FFRDC) that is part of a State pension plan shall be considered to be a defined-contribution pension plan for purposes of this Standard.

(b) *Measurement of pension cost.* (1) For defined-benefit pension plans other than those accounted for under the pay-as-you-go cost method, the amount of pension cost assignable to cost accounting periods shall be measured by an immediate-gain actuarial cost method.

(2) Where the pension benefit is a function of salaries and wages, the normal cost shall be computed using a projected benefit cost method. The normal cost for the projected benefit shall be expressed either as a percentage of payroll or as an annual accrual based on the service attribution of the benefit formula. Where the pension benefit is not a function of salaries and wages, the normal cost shall be based on employee service.

(3) For defined-benefit plans accounted for under the pay-as-you-go cost method, the amount of pension cost assignable to a cost accounting period shall be measured as the sum of:

(i) The net amount for any periodic benefits paid for that period, and

(ii) The level annual installment required to amortize over 15 years any amounts paid to irrevocably settle an obligation for periodic benefits due in current or future cost accounting periods.

(4) Actuarial assumptions shall reflect long-term trends so as to avoid distortions caused by short-term fluctuations.

(5) Pension cost shall be based on provisions of existing pension plans. This shall not preclude contractors from making salary projections for plans whose benefits are based on salaries and wages, or from considering improved benefits for plans which provide that such improved benefits must be made. For qualified defined benefit plans whose benefits are subject to a collectively bargained agreement(s) and whose benefits are not based on salaries and wages, the contractor may recognize benefit improvements expected to occur in succeeding plan years determined on the basis of the average annual increase in benefits over the 6 immediately preceding plan years.

(6) If the evaluation of the validity of actuarial assumptions shows that any assumptions were not reasonable, the contractor shall:

(i) Identify the major causes for the resultant actuarial gains or losses, and

(ii) Provide information as to the basis and rationale used for retaining or revising such assumptions for use in the ensuing cost accounting period(s).

(7) *CAS Pension Harmonization Rule:* For qualified defined benefit pension plans, the pension cost shall be determined in accordance with the provisions of paragraph (b)(7)(i) of this section.

(i) In any period that the sum of the minimum actuarial liability and the minimum normal cost exceeds the sum of the actuarial accrued liability and the normal cost, the contractor shall measure and assign the pension cost for the period in accordance with 9904.412 and 9904.413 by using the minimum actuarial liability and minimum normal cost as the actuarial accrued liability and normal cost, respectively, for all purposes unless otherwise excepted.

(ii) Special definitions to be used for this paragraph:

(A) The *minimum actuarial liability* shall be the actuarial accrued liability measured under the accrued benefit cost method and using an interest rate assumption as described in 9904.412–50(b)(7)(iii).

(B) The *minimum normal cost* shall be the normal cost measured under the accrued benefit cost method and using an interest rate assumption as described in 9904.412–50(b)(7)(iii). Anticipated administrative expense for the period shall be recognized as a separate incremental component of normal cost.

(iii) Actuarial Assumptions: The actuarial assumptions used to measure the minimum actuarial liability and minimum normal cost shall meet the following criteria:

(A) The interest assumption used to measure the pension cost for the current period shall reflect the contractor's best estimate of rates at which the pension benefits could effectively be settled based on the current period rates of return on investment grade fixed-income investments of similar duration to the pension benefits and that are in the top 3 quality levels available, *e.g.*, Moody's' single ''A'' rated or higher;

(B) The contractor may elect to use the same rate or set of rates, for investment grade corporate bonds of similar duration to the pension benefits, as may be published by the Secretary of the Treasury and used for determination of the minimum contribution required by ERISA. The contractor's cost accounting practice includes the election of the specific published rate or set of rates and must be consistently followed;

(C) For purposes of 9904.412–50(b)(7)(ii)(A) and (B), use of current period rates of return on investment grade corporate bonds of similar duration to the pension benefits shall not violate the provisions of 9904.412–40(b)(2) and 9904.412–50(b)(4) regarding the interest rate used to measure the minimum actuarial liability and minimum normal cost; and

(D) All actuarial assumptions, other than interest assumptions, used to measure the minimum actuarial liability and minimum normal cost shall be the same as the assumptions used elsewhere in this Standard.

(c) *Assignment of pension cost.* (1) Amounts funded in excess of the pension cost assigned to a cost accounting period pursuant to the provisions of this Standard shall be accounted for as a prepayment credit and carried forward to future accounting periods.

(2) For qualified defined-benefit pension plans, the pension cost measured for a cost accounting period is assigned to that period subject to the following adjustments, in order of application:

(i) Any amount of pension cost measured for the period that is less than zero shall be assigned to future accounting periods as an assignable cost credit. The amount of pension cost assigned to the period shall be zero.

(ii) When the pension cost equals or exceeds the assignable cost limitation:

(A) The amount of pension cost, adjusted pursuant to paragraph (c)(2)(i) of this subsection, shall not exceed the assignable cost limitation,

(B) All amounts described in 9904.412–50(a)(1) and 9904.413–50(a), which are required to be amortized, shall be considered fully amortized, and

(C) Except for portions of unfunded actuarial liability separately identified and maintained in accordance with 9904.412–50(a)(2), any portion of unfunded actuarial liability, which occurs in the first cost accounting period after the pension cost has been limited by the assignable cost limitation, shall be considered an actuarial gain or loss for purposes of this Standard. Such actuarial gain or loss shall exclude any increase or decrease in unfunded actuarial liability resulting from a plan amendment, change in actuarial assumptions, or change in actuarial cost method effected after the pension cost has been limited by the assignable cost limitation.

(iii) An amount of pension cost of a qualified pension plan, adjusted pursuant to paragraphs (c)(2)(i) and (ii) of this subsection that exceeds the sum of (A) the maximum tax-deductible amount, determined in accordance with the Internal Revenue Code at Title 26 of the U.S.C., and (B) the accumulated value of prepayment credits, shall be assigned to future accounting periods as an assignable cost deficit. The amount of pension cost assigned to the current period shall not exceed the sum of the maximum tax-deductible amount and the accumulated value of prepayment credits.

(3) The cost of nonqualified defined-benefit pension plans shall be assigned to cost accounting periods in the same manner as qualified plans (with the exception of paragraph (c)(2)(iii) of this subsection) under the following conditions:

(i) The contractor, in disclosing or establishing his cost accounting practices, elects to have a plan so accounted for;

(ii) The plan is funded through the use of a funding agency; and,

(iii) The right to a pension benefit is nonforfeitable and is communicated to the participants.

(4) The costs of nonqualified defined-benefit pension plans that do not meet all of the requirements in 9904.412–50(c)(3) shall be assigned to cost accounting periods using the pay-as-you-go cost method.

(5) Any portion of pension cost measured for a cost accounting period and adjusted in accordance with 9904.412–50(c)(2) that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of ERISA shall not be assigned to the current period. Rather, such excess shall be treated as an assignable cost deficit, except that it shall be assigned to future cost accounting periods using the same amortization period as used for ERISA purposes.

(d) *Allocation of pension costs.* The amount of pension cost assigned to a cost accounting period allocated to intermediate and final cost objectives shall be limited according to the following criteria:

(1) Except for nonqualified defined-benefit plans, the costs of a pension plan assigned to a cost accounting period are allocable to the extent that they are funded.

(2) For nonqualified defined-benefit pension plans that meet the criteria set forth at 9904.412–50(c)(3), pension costs assigned to a cost accounting period are fully allocable if they are funded at a level at least equal to the percentage of the complement (i.e., 100% minus tax rate % = percentage of assigned cost to be funded) of the highest published Federal corporate income tax rate in effect on the first day of the cost accounting period. If the contractor is not subject to Federal income tax, the assigned costs are allocable to the extent such costs are funded. Funding at other levels and benefit payments of such plans are subject to the following:

(i) Funding at less than the foregoing levels shall result in proportional reductions of the amount of assigned cost that can be allocated within the cost accounting period.

(ii)(A) Payments to retirees or beneficiaries shall contain an amount drawn from sources other than the funding agency of the pension plan that is, at least, proportionately equal to the accumulated value of permitted unfunded accruals divided by an amount that is the market value of the assets of the pension plan excluding any accumulated value of prepayment credits.

(B) The amount of assigned cost of a cost accounting period that can be allocated shall be reduced to the extent that such payments are drawn in a higher ratio from the funding agency.

(iii) The permitted unfunded accruals shall be identified and accounted for year to year, adjusted for benefit payments directly paid by the contractor and for interest at the actual annual earnings rate on the funding agency balance.

(3) For nonqualified defined-benefit pension plans accounted for under the pay-as-you-go method, pension costs assigned to a cost accounting period are allocable in that period.

(4) Funding of pension cost shall be considered to have taken place within the cost accounting period if it is accomplished by the corporate tax filing date for such period including any permissible extensions thereto.

[60 FR 16542, Mar. 30, 1995, as amended at 61 FR 58011, Nov. 12, 1996; 76 FR 81310, Dec. 27, 2011]

**9904.412–60 Illustrations.**

(a) *Components of pension cost.* (1) Contractor A has insured pension plans for each of two small groups of employees. One plan is exclusively funded through a group permanent life insurance contract and is exempt from the minimum funding requirements of ERISA. The other plan is funded through a deposit administration contract, which is a form of group deferred annuity contract that is not exempt from ERISA's minimum funding requirements. Both plans provide for defined benefits. Pursuant to 9904.412–50(a)(6), for purposes of this Standard the plan financed through a group permanent insurance contract shall be considered to be a defined-contribution pension plan; the net premium required to be paid for a cost accounting period

(after deducting dividends and any credits) shall be the pension cost for that period. However, the deposit administration contract plan is subject to the provisions of this Standard that are applicable to defined-benefit plans.

(2) Contractor B provides pension benefits for certain hourly employees through a multiemployer defined-benefit plan. Under the collective bargaining agreement, the contractor pays six cents into the fund for each hour worked by the covered employees. Pursuant to 9904.412–50(a)(8), the plan shall be considered to be a defined-contribution pension plan. The payments required to be made for a cost accounting period shall constitute the assignable pension cost for that period.

(3) Contractor C provides pension benefits for certain employees through a defined-contribution pension plan. However, the contractor has a separate fund that is used to supplement pension benefits for all of the participants in the basic plan in order to provide a minimum monthly retirement income to each participant. Pursuant to 9904.412–50(a)(7), the two plans shall be considered as a single plan for purposes of this Standard. Because the effect of the supplemental plan is to provide defined-benefits for the plan's participants, the provisions of this Standard relative to defined-benefit pension plans shall be applicable to the combined plan.

(4) Contractor D provides supplemental benefits to key management employees through a nonqualified defined-benefit pension plan funded by a so-called ''Rabbi Trust.'' The trust agreement provides that Federal income taxes levied on the earnings of the Rabbi trust may be paid from the trust. The contractor's actuarial cost method recognizes the administrative expenses of the plan and trust, such as broker and attorney fees, by adding the prior year's expenses to the current year's normal cost. The income taxes paid by the trust on trust earnings shall be accorded the same treatment as any other administrative expense in accordance with 9904.412–50(a)(5).

(5) (i) Contractor E has been using the entry age normal actuarial cost method to compute pension costs. The contractor has three years remaining under a firm fixed price contract subject to this Standard. The contract was priced using the unfunded actuarial liability, normal cost, and net amortization installments developed using the entry age normal method. The contract was priced as follows:

ENTRY AGE NORMAL VALUES

| Cost component | Year 1 | Year 2 | Year 3 |
|---|---|---|---|
| Normal cost | $100,000 | $105,000 | $110,000 |
| Amortization | 50,000 | 50,000 | 50,000 |
| Pension cost | 150,000 | 155,000 | 160,000 |

(ii) The contractor, after notifying the cognizant Federal official, switches to the projected unit credit actuarial cost method. The unfunded actuarial liability and normal cost decreased when redetermined under the projected unit credit method. Pursuant to 9904.412–50(a)(1)(vii), the contractor determines that an annual installment credit of $20,000 will amortize the decrease in unfunded actuarial liability (UAL) over ten years. The following pension costs are determined under the projected unit credit method:

PROJECTED UNIT CREDIT VALUES

| Cost component | Year 1 | Year 2 | Year 3 |
|---|---|---|---|
| Normal cost | $80,000 | $85,000 | $90,000 |
| Amortization: | | | |
| Prior method | 50,000 | 50,000 | 50,000 |
| UAL decrease | (20,000) | (20,000) | (20,000) |
| Pension cost | 110,000 | 115,000 | 120,000 |

(iii) The change in cost method is a change in accounting method that decreased previously priced pension costs by $40,000 per year. In accordance with 9903.302, Contractor E shall adjust the cost of the firm fixed-price contract for the remaining three years by $120,000 ($40,000×3 years).

(6) Contractor F has a defined-benefit pension plan for its employees. Prior to being subject to this Standard the contractor's policy was to compute and fund as annual pension cost normal cost plus only interest on the unfunded actuarial liability. Pursuant to 9904.412–40(a)(1), the components of pension cost for a cost accounting period must now include not only the normal cost for the period and interest on the unfunded actuarial liability, but also an amortized portion of the unfunded

actuarial liability. The amortization of the liability and the interest equivalent on the unamortized portion of the liability must be computed in equal annual installments.

(b) *Measurement of pension cost.* (1) Contractor G has a pension plan whose costs are assigned to cost accounting periods by use of an actuarial cost method that does not separately identify actuarial gains and losses or the effect on pension cost resulting from changed actuarial assumptions. Contractor G's method is not an immediate-gain cost method and does not comply with the provisions of 9904.412–50(b)(1).

(2) For several years Contractor H has had an unfunded nonqualified pension plan which provides for payments of $200 a month to employees after retirement. The contractor is currently making such payments to several retired employees and recognizes those payments as its pension cost. The contractor paid monthly annuity benefits totaling $24,000 during the current year. During the prior year, Contractor H made lump sum payments to irrevocably settle the benefit liability of several participants with small benefits. The annual installment to amortize these lump sum payments over fifteen years at the interest rate assumption, which is based on expected rate of return on investments and complies with 9904.412–40(b)(2) and 9904.412–50(b)(4), is $5,000. Since the plan does not meet the criteria set forth in 9904.412–50(c)(3)(ii), pension cost must be accounted for using the pay-as-you-go cost method. Pursuant to 9904.412–50(b)(3), the amount of assignable cost allocable to cost objectives of that period is $29,000, which is the sum of the amount of benefits actually paid in that period ($24,000) and the second annual installment to amortize the prior year's lump sum settlements ($5,000).

(3) Contractor I has two qualified defined-benefit pension plans that provide for fixed dollar payments to hourly employees.

(i) Under the first plan, in which the benefits are not subject to a collective bargaining agreement, the contractor's actuary believes that the contractor will be required to increase the level of benefits by specified percentages over the next several years based on an established pattern of benefit improvements. In calculating pension costs for this first plan, the contractor may not assume future benefits greater than that currently required by the plan.

(ii) With regard to the second plan, a collective bargaining agreement negotiated with the employees' labor union provides that pension benefits will increase by specified percentages over the next several years. Because the improved benefits are required to be made, the contractor can consider not only benefits increases required by the collective bargaining agreement, but may also consider subsequent benefit increases based on the average increase in benefits during the previous 6 years in computing pension costs for the current cost accounting period in accordance with 9904.412–50(b)(5). The contractor shall limit projected benefits to the increases specified in the provisions of the existing plan, as amended by the collective bargaining agreement, in accordance with 9904.412–50(b)(5).

(4) In addition to the facts of 9904.412–60(b)(3), assume that Contractor I was required to contribute at a higher level for ERISA purposes because the plan was underfunded. To compute pension costs that are closer to the funding requirements of ERISA, Contractor I decides to ''fresh start'' the unfunded actuarial liability being amortized pursuant to 9904.412–50(a)(1); i.e., treat the entire amount as a newly established portion of unfunded actuarial liability, which is amortized over 10 years in accordance with 9904.412–50(a)(1)(ii). Because the contractor has changed the periods for amortizing the unfunded actuarial liability established pursuant to 9904.412–50(a)(3), the contractor has made a change in accounting practice subject to the provisions of Cost Accounting Standard 9903.302.

(c) *Assignment of pension cost.* (1) Contractor J maintains a qualified defined-benefit pension plan. The actuarial accrued liability for the plan is $20 million and is measured by the minimum actuarial liability in accordance with 9904.412–50(b)(7)(ii) since the criterion of 9904.412–50(b)(7(i) has been satisfied. The actuarial value of the assets of $18

million is subtracted from the actuarial accrued liability of $20 million to determine the total unfunded actuarial liability of $2 million. Pursuant to 9904.412–50(a)(1), Contractor J has identified and is amortizing twelve separate portions of unfunded actuarial liabilities. The sum of the unamortized balances for the twelve separately maintained portions of unfunded actuarial liability equals $1.8 million. In accordance with 9904.412–50(a)(2), the contractor has separately identified, and eliminated from the computation of pension cost, $200,000 attributable to a pension cost assigned to a prior period that was not funded. The sum of the twelve amortization bases maintained pursuant to 9904.412–50(a)(1) and the amount separately identified under 9904.412–50(a)(2) equals $2 million ($1,800,000 + 200,000). Because the sum of all identified portions of unfunded actuarial liability equals the total unfunded actuarial liability, the plan is in actuarial balance and Contractor J can assign pension cost to the current cost accounting period in accordance with 9904.412–40(c).

(2) Contractor K's pension cost computed for 2017, the current year, is $1.5 million. This computed cost is based on the components of pension cost described in 9904.412–40(a) and 9904.412–50(a) and is measured in accordance with 9904.412–40(b) and 9904.412–50(b). The assignable cost limitation, which is defined at 9904.412–30(a)(9), is $1.3 million. In accordance with the provisions of 9904.412–50(c)(2)(ii)(A), Contractor K's assignable pension cost for 2017 is limited to $1.3 million. In addition, all amounts that were previously being amortized pursuant to 9904.412–50(a)(1) and 9904.413–50(a) are considered fully amortized in accordance with 9904.412–50(c)(2)(ii)(B). The following year, 2018, Contractor K computes an unfunded actuarial liability of $4 million. Contractor K has not changed his actuarial assumptions nor amended the provisions of his pension plan. Contractor K has not had any pension costs disallowed or unfunded in prior periods. Contractor K must treat the entire $4 million of unfunded actuarial liability as an actuarial loss to be amortized over a ten-year period beginning in 2018 in accordance with 9904.412–50(c)(2)(ii)(C) and 9904.413–50(a)(2)(ii).

(3) Assume the same facts shown in illustration 9904.412–60(c)(2), except that in 2016, the prior year, Contractor K's assignable pension cost was $800,000, but Contractor K only funded and allocated $600,000. Pursuant to 9904.412–50(a)(2), the $200,000 of unfunded assignable pension cost was separately identified and eliminated from other portions of unfunded actuarial liability. This portion of unfunded actuarial liability was adjusted for 8% interest, which is the interest assumption for 2016 and 2017, and was brought forward to 2017 in accordance with 9904.412–50(a)(2). Therefore, $216,000 ($200,000 × 1.08) is excluded from the amount considered fully amortized in 2017. The next year, 2018, Contractor K must eliminate $233,280 ($216,000 × 1.08) from the $4 million so that only $3,766,720 is treated as an actuarial loss in accordance with 9904.412–50(c)(2)(ii)(C).

(4) Assume, as in 9904.412–60(c)(2), the 2017 pension cost computed for Contractor K's qualified defined-benefit pension plan is $1.5 million and the assignable cost limitation is $1.7 million. The accumulated value of prepayment credits is $0. However, because of the limitation on tax-deductible contributions imposed by the Internal Revenue Code at Title 26 of the U.S.C., Contractor K cannot fund more than $1 million without incurring an excise tax, which 9904.412–50(a)(5) does not permit to be a component of pension cost. In accordance with the provisions of 9904.412–50(c)(2)(iii), Contractor K's assignable pension cost for the period is limited to $1 million. The $500,000 ($1.5 million − $1 million) of pension cost not funded is reassigned to the next ten cost accounting periods beginning in 2018 as an assignable cost deficit in accordance with 9904.412–50(a)(1)(vi).

(5) Assume the same facts for Contractor K in 9904.412–60(c)(4), except that the accumulated value of prepayment credits equals $700,000. Therefore, in addition to the $1 million tax-deductible contribution which was deposited on the first day of the plan year, Contractor K could apply up to $700,000

of the accumulated value of prepayment credits towards the pension cost computed for the period. In accordance with the provisions of 9904.412–50(c)(2)(iii), the amount of pension cost assigned to the current period shall not exceed $1,700,000, which the sum of the $1 million maximum tax-deductible amount and $700,000 accumulated value of prepayment credits. Contractor K's assignable pension cost for the period is the full $1.5 million computed for the period. A new prepayment credit of $200,000 is created by the excess funding after applying sum of the $1 million contribution and $700,000 accumulated value of prepayment credits towards the $1.5 million assigned pension cost ($700,000 + $1,000,000 − $1,500,000). The $200,000 of remaining accumulated value of prepayment credits is adjusted for $14,460 of investment income allocated in accordance with 9904.412–50(a)(4) and 9904.413–50(c)(7) and the sum of $214,460 is carried forward until needed in future accounting periods in accordance with 9904.412–50(a)(4) and 9904.412–50(c)(1).

(6) Assume the same facts for Contractor K in 9904.412–60(c)(4), except that the 2017 assignable cost limitation is $1.3 million and the accumulated value of prepayment credits is $0. Pension cost of $1.5 million is computed for the cost accounting period, but the assignable cost is limited to $1.3 million in accordance with 9904.412–50(c)(2)(ii)(A). Pursuant to 9904.412–50(c)(2)(ii)(B), all existing amortization bases maintained in accordance with 9904.412–50(a)(1) are considered fully amortized. The assignable cost of $1.3 million is then compared to the maximum tax-deductible amount of $1 million. Pursuant to 9904.412–50(c)(2)(iii), Contractor K's assignable pension cost for the period is limited to $1 million. The $300,000 ($1.3 million − $1 million) excess of the assignable cost limitation over the tax-deductible maximum is assigned to future periods as an assignable cost deficit.

(7) Contractor L is currently amortizing a large decrease in unfunded actuarial liability over a period of ten years. A similarly large increase in unfunded actuarial liability is being amortized over 30 years. The absolute value of the resultant net amortization credit is greater than the normal cost so that the pension cost computed for the period is a negative $200,000. Contractor L first applies the provisions of 9904.412–50(c)(2)(i) and determines the assignable pension cost is $0. The negative pension cost of $200,000 is assigned to the next ten cost accounting periods as an assignable cost credit in accordance with 9904.412–50(a)(1)(vi). However, when Contractor L applies the provisions of 9904.412–50(c)(2)(ii), the assignable cost limitation is also $0. Because the assignable cost of $0 determined under 9904.412–50(c)(2)(i) is equal to the assignable cost limitation, the assignable cost credit of $200,000 is considered fully amortized along with all other portions of unfunded actuarial liability being amortized pursuant to 9904.412–50(a)(1). Conversely, if the assignable cost limitation had been greater than zero, the assignable cost credit of $200,000 would have carried-forward and amortized in future periods.

(8) Contractor M has a qualified defined-benefit pension plan which is funded through a funding agency. It computes $1 million of pension cost for a cost accounting period. However, pursuant to a waiver granted under the provisions of ERISA, Contractor M is required to fund only $800,000. Under the provisions of 9904.412–50(c)(5), the remaining $200,000 shall be accounted for as an assignable cost deficit and assigned to the next five cost accounting periods in accordance with the terms of the waiver.

(9) Contractor N has a company-wide defined-benefit pension plan, wherein benefits are calculated on one consistently applied formula. That part of the formula defining benefits within ERISA limits is administered and reported as a qualified plan and funded through a funding agency. The remainder of the benefits are considered to be a supplemental or excess plan which, while it meets the criteria at 9904.412–50(c)(3)(iii) as to nonforfeitability and communication, is not funded. The costs of the qualified portion of the plan shall be comprised of those elements of costs delineated at 9904.412–40(a)(1), while the supplemental or excess portion of the plan shall be accounted for and assigned to cost accounting periods under the pay-as-you-

go cost method provided at 9904.412–40(a)(3) and 9904.412–50(c)(4).

(10) Assuming the same facts as in 9904.412–60(c)(9), except that Contractor N funds its supplemental or excess plan using a so-called ''Rabbi Trust'' vehicle. Because the nonqualified plan is funded, the plan meets the criteria set forth at 9904.412–50(c)(3)(ii). Contractor N may account for the supplemental or excess plan in the same manner as its qualified plan, if it elects to do so pursuant to 9904.412–50(c)(3)(i).

(11) Assuming the same facts as in 9904.412–60(c)(10), except that under the nonqualified portion of the pension plan a former employee will forfeit his pension benefit if the employee goes to work for a competitor within three years of terminating employment. Since the right to a benefit cannot be affected by the unilateral action of the contractor, the right to a benefit is considered to be nonforfeitable for purposes of 9904.412–30(a)(17). The nonqualified plan still meets the criteria set forth at 9904.412–50(c)(3)(iii), and Contractor N may account for the supplemental or excess plan in the same manner as its qualified plan, if it elects to do so.

(12) Assume the same facts as in 9904.412–60(c)(11), except that Contractor N, while maintaining a ''Rabbi Trust'' funding vehicle elects to have the plan accounted for under the pay-as-you-go cost method so as to have greater latitude in annual funding decisions. It may so elect pursuant to 9904.412–50(c)(3)(i).

(13) The assignable pension cost for Contractor O's qualified defined-benefit plan is $600,000. For the same period Contractor O contributes $700,000 which is the minimum funding requirement under ERISA. In addition, there exists $75,000 of unfunded actuarial liability that has been separately identified pursuant to 9904.412–50(a)(2). Contractor O may use $75,000 of the contribution in excess of the assignable pension cost to fund this separately identified unfunded actuarial liability, if he so chooses. The effect of the funding is to eliminate the unassignable $75,000 portion of unfunded actuarial liability that had been separately identified and thereby eliminated from the computation of pension costs. Contractor O shall then account for the remaining $25,000 ([$700,000 − $600,000] − $75,000) of excess contribution as a prepayment credit in accordance with 9904.412–50(a)(4).

(d) *Allocation of pension cost.* (1) Assume the same set of facts for Contractor M in 9904.412–60(c)(8) except there was no ERISA waiver; i.e., only $800,000 was funded against $1 million of assigned pension cost for the period. Under the provisions of 9904.412–50(d)(1), only $800,000 may be allocated to Contractor M's intermediate and final cost objectives. The remaining $200,000 of assigned cost, which has not been funded, shall be separately identified and maintained in accordance with 9904.412–50(a)(2) so that it will not be reassigned to any future accounting periods.

(2) Contractor P has a nonqualified defined-benefit pension plan which covers benefits in excess of the ERISA limits. Contractor P has elected to account for this plan in the same manner as its qualified plan and, therefore, has established a ''Rabbi Trust'' as the funding agency. For the current cost accounting period, the contractor computes and assigns $100,000 as pension cost. The contractor funds $65,000, which is equivalent to a funding level equal to the complement of the highest published Federal corporate income tax rate of 35%. Under the provisions of 9904.412–50(d)(2), the entire $100,000 is allocable to cost objectives of the period.

(3) Assume the set of facts in 9904.412–60(d)(2), except that Contractor P's contribution to the Trust is $59,800. In that event, the provisions of 9904.412–50(d)(2)(i) would limit the amount of assigned cost allocable within the cost accounting period to the percentage of cost funded (i.e., $59,800/$65,000 = 92%). This results in allocable cost of $92,000 (92% of $100,000) for the cost accounting period. Under the provisions of 9904.412–40(c) and 9904.412–50(d)(2)(i), respectively, the unallocable $8,000 may not be assigned to any future cost accounting period. In addition, in accordance with 9904.412–50(a)(2), the $8,000 must be separately identified and no amount of interest on such separately identified $8,000 shall be a component of pension

cost in any future cost accounting period.

(4) Again, assume the set of facts in 9904.412–60(d)(2) except that, Contractor P's contribution to the Trust is $105,000 based on an interest assumption of 8%, which is based on the expected rate of return on investments and complies with 9904.412–40(b)(2) and 9904.412–50(b)(4). Under the provisions of 9904.412–50(d)(2) the entire $100,000 is allocable to cost objectives of the period. In accordance with the provisions of 9904.412–50(c)(1) Contractor P has funded $5,000 ($105,000 − $100,000) in excess of the assigned pension cost for the period. The $5,000 shall be accounted for as a prepayment credit. Pursuant to 9904.412–50(a)(4), the $5,000 shall be adjusted for an allocated portion of the total investment income and expenses in accordance with 9904.412–50(a)(4) and 9904.413–50(c)(7). Allocated earnings and expenses, and the prepayment credits, shall be excluded from the actuarial value of assets used to compute the next year's pension cost. For the current period the net return on assets attributable to investment income and expenses was 6.5%. Therefore, the accumulated value of prepayment credits of $5,325 ($5,000 × 1.065) may be used to fund the next year's assigned pension cost, if needed.

(5) Contractor Q maintains a nonqualified defined-benefit pension plan which satisfies the requirements of 9904.412–50(c)(3). As of the valuation date, the reported funding agency balance is $3.4 million excluding any accumulated value of prepayment credits. When the adjusted funding agency balance is added to the accumulated value of permitted unfunded accruals of $1.6 million, the market value of assets equals $5.0 million ($3.4 million + $1.6 million) in accordance with 9904.412–30(a)(13). During the plan year, retirees receive monthly benefits totalling $350,000. Pursuant to 9904.412–50(d)(2)(ii)(A), at least 32% ($1.6 million divided by $5 million) of these benefit payments shall be made from sources other than the funding agency. Contractor Q, therefore, draws $238,000 from the funding agency assets and pays the remaining $112,000 using general corporate funds.

(6) Assume the same facts as 9904.412–60(d)(5), except that by the time Contractor Q receives its actuarial valuation it has paid retirement benefits equalling $288,000 from funding agency assets. The contractor has made deposits to the funding agency equal to the tax complement of the $500,000 assignable pension cost for the period. Pursuant to 9904.412–50(d)(2)(ii)(B), the assignable $500,000 shall be reduced by the $50,000 ($288,000—$238,000) of benefits paid from the funding agency in excess of the permitted $238,000, unless the contractor makes a deposit to replace the $50,000 inadvertently drawn from the funding agency. If this corrective action is not taken within the time permitted by 9904.412–50(d)(4), Contractor Q shall allocate only $450,000 ($500,000–$50,000) to final cost objectives. Furthermore, the $50,000, which was thereby attributed to benefit payments instead of funding, must be separately identified and maintained in accordance with 9904.412–50(a)(2).

(7) Contractor R has a nonqualified defined-benefit plan that meets the criteria of 9904.412–50(c)(3). For 1996, the funding agency balance was $1,250,000 and the accumulated value of permitted unfunded accruals was $600,000. During 1996 the earnings and appreciation on the assets of the funding agency equalled $125,000, benefit payments to participants totalled $300,000, and administrative expenses were $60,000. All transactions occurred on the first day of the period. In accordance with 9904.412–50(d)(2)(ii)(A), $200,000 of benefits were paid from the funding agency and $100,000 were paid directly from corporate assets. Pension cost of $400,000 was assigned to 1996. Based on the current corporate tax rate of 35%, $260,000 ($400,000 × (1–35%)) was deposited into the funding agency at the beginning of 1996. For 1997 the funding agency balance is $1,375,000 ($1,250,000 + $260,000 + $125,000—$200,000—$60,000). The actual annual earnings rate of the funding agency was 10% for 1996. Pursuant to 9904.412–50(d)(2)(iii), the accumulated value of permitted unfunded accruals is updated from 1996 to 1997 by: (i) adding $140,000 (35% × $400,000), which is the unfunded portion of the assigned cost; (ii) subtracting the

$100,000 of benefits paid directly by the contractor; and (iii) increasing the value of the assets by $64,000 for imputed earnings at 10% (10% × ($600,000 + $140,000—$100,000)). The accumulated value of permitted unfunded accruals for 1997 is $704,000 ($600,000 + $140,000—$100,000 + $64,000).

[60 FR 16544, Mar. 30, 1995, as amended at 76 FR 81311, Dec. 27, 2011]

**9904.412–60.1 Illustrations—CAS Pension Harmonization Rule.**

The following illustrations address the measurement, assignment and allocation of pension cost on or after the Applicability Date of the CAS Harmonization Rule. The illustrations present the measurement, assignment and allocation of pension cost for a contractor that separately computes pension costs by segment or aggregation of segments. The actuarial gain and loss recognition of changes between measurements based on the actuarial accrued liability, determined without regard to the provisions of 9904.412–50(b)7) and the minimum actuarial liability are illustrated in 9904.412–60.1(d). The structural format for 9904.412.60.1 differs from the format for 9904.412–60.

(a) *Description of the pension plan, actuarial assumptions and actuarial methods used for 9904.412–60.1 Illustrations.* (1) *Introduction:* Harmony Corporation has a defined-benefit pension plan covering employees at seven segments, of which some segments have contracts that are subject to this Standard and 9904.413, while other segments perform commercial work only. The demographic experience regarding employee terminations for employees of Segment 1 is materially different from that of the other six segments so that pursuant to 9904.413–50(c)(2)(iii) the contractor must separately compute the pension cost for Segment 1. Because the factors comprising pension cost for Segments 2 through 7 are relatively equal, the contractor computes pension cost for these six segments in the aggregate and allocates the aggregate cost to segments on a composite basis. Inactive employees are retained in the segment from which they terminated employment. The contractor has received its annual actuarial valuation for its qualified defined benefit pension plan, which bases the pension benefit on the employee's final average salary.

(2) *Actuarial Methods and Assumptions:* (i) *Salary Projections:* As permitted by 9904.412–50(b)(5), the contractor includes a projection of future salary increases and uses the projected unit credit cost method, which is an immediate gain actuarial cost method that satisfies the requirements of 9904.412–40(b)(1) and 50(b)(1), for measuring the actuarial accrued liability and normal cost. The contractor uses the accrued benefit cost method (also known as the unit credit cost method without projection) to measure the minimum actuarial liability and minimum normal cost. The accrued benefit cost method satisfies 9904.412–50(b)(7)(ii) as well as 9904.412–40(b)(1) and 50(b)(1).

(ii) *Interest Rates:* (A) Assumed interest rate used to measure the actuarial accrued liability and normal cost: The contractor's basis for establishing the expected rate of return on investments assumption satisfies the criteria of 9904.412–40(b)(2) and 9904.412–50(b)(4). This is referred to as the ''assumed interest rate'' for purposes of this illustration.

(B) Corporate bond rate used to measure the minimum actuarial liability and minimum normal cost: For purposes of measuring the minimum actuarial liability and minimum normal cost the contractor has elected to use a specific set of investment grade corporate bond yield rates published by the Secretary of the Treasury for ERISA's minimum funding requirements. The basis for establishing the set of corporate bond rates meets the requirements of 9904.412–50(b)(7)(iii)(A) as permitted by 9904.412–50(b)(7)(iii)(B). This set of rates is referred to as the ''corporate bond rates'' for purposes of this illustration.

(iii) *Mortality:* The mortality assumption is based on a table of generational mortality rates published by the Secretary of the Treasury and reflects recent mortality improvements. This table satisfies 9904.412–40(b)(2) which requires assumptions to ''represent the contractor's best estimates of anticipated experience under the plan, taking into account past experience and reasonable expectations.'' The specific

table used for each valuation shall be identified.

(iv) *Termination of Employment:* The termination of employment (turnover) assumption is based on an experience study of Harmony Company employee terminations or causes other than retirement. Because the experience for Segment 1 was materially different from the experience for the rest of the company, the termination of employee assumption for Segment 1 was developed based on the experience of that segment only in accordance with 9904.413–50(c)(2)(iii). The termination of employment experiences for each of Segments 2 through 7 were materially similar, and therefore the termination of employee assumption for Segments 2 through 7 was developed based on the experiences of those segments in the aggregate.

(v) *Actuarial Value of Assets:* The valuation of the actuarial value of assets used for CAS 412 and 413 is based on a recognized smoothing technique that ''provides equivalent recognition of appreciation and depreciation of the market value of the assets of the pension plan.'' The disclosed method also constrains the asset value to a corridor bounded by 80% to 120% of the market value of assets. This method for measuring the actuarial value of assets satisfies the provisions of 9904.413–50(b)(2).

(b) *Measurement of Pension Costs.* Based on the pension plan, actuarial methods and actuarial assumptions described in 9904.412–60.1(a), the Harmony Corporation determines that the pension plan, as well as Segment 1 and Segments 2 through 7, have unfunded actuarial liabilities and measures its pension cost for plan year 2017 as follows:

(1) *Asset Values:* (i) *Market Values of Assets:* The contractor accounts for the market value of assets in accordance with 9904.413–50(c)(7). The contractor has elected to separately identify the accumulated value of prepayment credits from the assets allocated to segments. The accumulated value of prepayment credits are adjusted in accordance with 9904.412–50(a)(4) and 9904.413–50(c)(7). The market value of assets as of January 1, 2017, including the accumulated value of prepayment credits, is summarized in Table 1.

TABLE 1—JANUARY 1, 2017, MARKET VALUE OF ASSETS

| | Total plan | Segment 1 | Segments 2 through 7 | Accumulated prepayments | Note |
|---|---|---|---|---|---|
| Market Value of Assets | $14,257,880 | $1,693,155 | $11,904,328 | $660,397 | 1 |

**Note 1:** Information taken directly from the actuarial valuation report prepared for CAS 412 and 413 purposes and supporting documentation.

(ii) *Actuarial Value of Assets:* Based on the contractor's disclosed asset valuation method, and recognition of the asset gain or loss, which is the difference between the expected income, based on the assumed interest rate, which complies with 9904.412–40(b)(2) and 9904.412–50(b)(4), and the actual income, including realized and unrealized appreciation and depreciation for the current and four prior periods as required by 9904.413–40(b), is delayed and amortized over a five-year period. The portion of the appreciation and depreciation that is deferred until future periods is subtracted from the market value of assets to determine the actuarial value of assets for CAS 412 and 413 purposes. The actuarial value of assets cannot be less than 80%, or more than 120%, of the market value of assets. The development of the actuarial value of assets for the total plan, as well as for Segment 1 and Segments 2 through 7, as of January 1, 2017 is shown in Table 2.

TABLE 2—JANUARY 1, 2017, ACTUARIAL VALUE OF ASSETS

| | Total plan | Segment 1 | Segments 2 through 7 | Accumulated prepayments | Note |
|---|---|---|---|---|---|
| Market Value at January 1, 2017 | $14,257,880 | $1,693,155 | $11,904,328 | $660,397 | 1 |
| Total Deferred Appreciation | (37,537) | (4,398) | (31,400) | (1.739) | 2 |

TABLE 2—JANUARY 1, 2017, ACTUARIAL VALUE OF ASSETS—Continued

| | Total plan | Segment 1 | Segments 2 through 7 | Accumulated prepayments | Note |
|---|---|---|---|---|---|
| Unlimited Actuarial Value of Assets | 14,220,343 | 1,688,757 | 11,872,928 | 658,658 | |
| CAS 413 Asset Corridor 80% of Market Value of Assets | 11,406,304 | 1,354,524 | 9,523,462 | 528,318 | |
| Market Value at January 1, 2017 | 14,257,880 | 1,693,155 | 11,904,328 | 660,397 | 1 |
| 120% of Market Value of Assets | 17,109,456 | 2,031,786 | 14,285,194 | 792,476 | |
| CAS Actuarial Value of Assets | 14,220,343 | 1,688,757 | 11,872,928 | 658,658 | 3, 4 |

**Note 1:** See Table 1.
**Note 2:** Information taken directly from the actuarial valuation report prepared for CAS 412 and 413 purposes and supporting documentation.
**Note 3:** CAS Actuarial Value of Assets cannot be less than 80% of Market Value of Assets or more than 120% of Market Value of Assets.
**Note 4:** The Actuarial Value of Assets are used in determination of any Unfunded Actuarial Liability or Unfunded Actuarial Surplus regardless of whether the liability is based on the actuarial accrued liability measured without regard to 9904.412–50(b)(7) or minimum actuarial liability measured in accordance with 9904.412–50(b)(7).

(2) *Liabilities and Normal Costs:* (i) *Actuarial Accrued Liabilities and Normal Costs:* Based on the plan population data and the disclosed methods and assumptions for CAS 412 and 413 purposes, the contractor measures the actuarial accrued liability and normal cost on a going concern basis using an assumed interest rate that satisfies the requirements of 9904.412–40(b)(2) and 9904.412–50(b)(4). The actuarial accrued liability and normal cost for each segment are measured based on the termination of employment assumption unique to that segment. The actuarial accrued liability and normal cost for the total plan is the sum of the actuarial accrued liability and normal cost for the segments. The actuarial accrued liability and normal cost are shown in Table 3.

TABLE 3—ACTUARIAL ACCRUED LIABILITIES AND NORMAL COSTS AS OF JANUARY 1, 2017

| | Total plan | Segment 1 | Segments 2 through 7 | Notes |
|---|---|---|---|---|
| Actuarial Accrued Liability (AAL) | $16,325,000 | $2,100,000 | $14,225,000 | 1 |
| Normal Cost | 910,700 | 89,100 | 821,600 | 1 |
| Expense Load on Normal Cost | | | | 1, 2 |

**Note 1:** Information taken directly from the actuarial valuation report prepared for CAS 412 and 413 purposes and supporting documentation. The actuarial accrued liability and normal cost are computed using the assumed interest rate in accordance with 9904.412–40(b)(2) and 9904.412.50(b)(4).
**Note 2:** Expected administrative expenses are implicitly recognized as part of the assumed interest rate.

(ii) Likewise, based on the plan population data and the disclosed methods and assumptions for CAS 412 and 413 purposes, the contractor measures the minimum actuarial liability and minimum normal cost using a set of investment grade corporate bond yield rates published by the Secretary of the Treasury that satisfy the requirements of 9904.412–50(b)(7)(iii). The minimum actuarial liability and minimum normal cost for each segment are measured based on the termination of employment assumption for that segment. The minimum actuarial liability and minimum normal cost for the total plan is the sum of the actuarial accrued liability and normal cost for the segments as shown in Table 4.

TABLE 4—MINIMUM ACTUARIAL LIABILITIES AND MINIMUM NORMAL COSTS AS OF JANUARY 1, 2017

| | Total plan | Segment 1 | Segments 2 through 7 | Notes |
|---|---|---|---|---|
| Minimum Actuarial Liability | $16,636,000 | $2,594,000 | $14,042,000 | 1 |
| Minimum Normal Cost | 942,700 | 102,000 | 840,700 | 1 |
| Expense Load on Minimum Normal Cost | 82,000 | 8,840 | 73,160 | 1, 2 |

**Note 1:** Plan level information taken directly from the actuarial valuation report prepared for ERISA purposes and supporting documentation and equals the sum of the data for the segments. Data for the segments is taken directly from the actuarial valuation report prepared for CAS 412 and 413 purposes and supporting documentation.

**Note 2:** Anticipated annual administrative expenses are separately recognized as an incremental component of minimum normal cost in accordance with 9904.412–50(b)(7)(ii)(B).

(3) *CAS Pension Harmonization Test:* (i) In accordance with 9904.412–50(b)(7)(i), the contractor compares the sum of the actuarial accrued liability and normal cost plus any expense load, to the sum of the minimum actuarial liability and minimum normal cost plus any expense load. Because the contractor separately computes pension costs by segment, or aggregation of segments, the applicability of 9904.412–50(b)(7)(i) is determined separately for Segment 1 and Segments 2 through 7. See Table 5, which shows the application of the provisions of 9904.412–50(b)(7)(i), *i.e.*, the CAS pension harmonization test.

TABLE 5—CAS PENSION HARMONIZATION TEST AT JANUARY 1, 2017

| | Total plan | Segment 1 | Segments 2 through 7 | Notes |
|---|---|---|---|---|
| | (Note 1) | (Note 2) | (Note 2) | |
| "Going Concern" Liability for Period: | | | | 3 |
| Actuarial Accrued Liability | | $2,100,000 | $14,225,000 | 4 |
| Normal Cost | | 89,100 | 821,600 | 4 |
| Expense Load on Normal Cost | | | | 4, 5 |
| Total Liability for Period | | 2,189,100 | 15,046,600 | |
| Minimum Liability for Period: | | | | |
| Minimum Actuarial Liability | | 2,594,000 | 14,042,000 | 6 |
| Minimum Normal Cost | | 102,000 | 840,700 | 6 |
| Expense Load on Minimum Normal Cost | | 8,840 | 73,160 | 6, 7 |
| Total Minimum Liability for Period | | 2,704,840 | 14,955,860 | |

**Note 1:** Because the contractor determines pension costs separately for Segment 1 and Segments 2 through 7, the data for the Total Plan is not needed for purposes of the 9904.412–50(b)(7)(i) determination.

**Note 2:** Because the contractor determines pension cost separately for Segment 1 and Segments 2 through 7, the 9904.412–50(b)(7) CAS Pension Harmonization test is applied at the segment level to determine the larger of the Total Liability for Period or the Total Minimum Liability for Period. For Segment 1, the larger Total Minimum Liability for Period determines the measurement basis for the liability and normal cost. For Segments 2 through 7, the larger Total Liability for Period determines the measurement basis for the liability and normal cost.

**Note 3:** The actuarial accrued liability and normal cost plus any expense load are computed using interest assumptions based on long-term expectations in accordance with 9904.412–40(b)(2) and 9904.412–50(b)(4). For purposes of Illustration 9904.412–60.1(b), the sum of these amounts are referred to as the "Going Concern" Liability for the Period.

**Note 4:** See Table 3.

**Note 5:** Because the contractor's assumed interest rate implicitly recognizes expected administrative expenses there is no explicit amount added to the normal cost.

**Note 6:** See Table 4.

**Note 7:** The contractor explicitly identifies the expected expenses as a separate component of the minimum normal cost, as required by 9904.412–50(b)(7)(ii)(B).

(ii) As shown in Table 5 for Segment 1, the total minimum liability for the period (minimum actuarial liability and minimum normal cost) of $2,704,840 exceeds the total liability for the period (actuarial accrued liability and normal cost) of $2,189,100. Therefore, the contractor must measure the pension cost for Segment 1 using the minimum actuarial liability and minimum normal cost as the values of the actuarial accrued liability and normal cost in accordance with 9904.412–50(b)(7)(i). In other words, the contractor substitutes the minimum actuarial liability and minimum normal cost for the actuarial accrued liability and normal cost.

(iii) Conversely, as shown in Table 5 for Segments 2 through 7, the total liability for the period of $15,046,600 exceeds the total minimum liability for the period of $14,955,860 for Segments 2 through 7. Therefore, the contractor must measure the pension cost using the actuarial accrued liability and normal cost without regard for the minimum actuarial liability and minimum normal cost.

(4) *Measurement of Current Period Pension Cost:* (i) To determine the pension cost for Segment 1, the contractor measures the unfunded actuarial liability, pension cost without regard to 9904.412–50(c)(2) limitations, and the assignable cost limitation using the actuarial accrued liability and normal cost as measured by the minimum actuarial

liability and minimum normal cost, respectively, which are based on the accrued benefit cost method. This measurement complies with the requirements of 9904.412–50(b)(7) and the definition of actuarial accrued liability, 9904.412–30(a)(2) and normal cost, 9904.412–30(a)(18).

(ii) To determine the pension cost for Segments 2 through 7, the contractor measures the unfunded actuarial liability, pension cost without regard to 9904.412–50(c)(2) limitations, and the assignable cost limitation using the actuarial accrued liability and normal cost based on the projected unit credit cost method, which is the contractor's established cost accounting method and the contractor's assumed interest rate based on long-term trends as required by 9904.412–50(b)(4).

(iii) Unfunded Actuarial Liability (Table 6):

TABLE 6—UNFUNDED ACTUARIAL LIABILITY AS OF JANUARY 1, 2017

| | Total plan | Segment 1 | Segments 2 through 7 | Notes |
|---|---|---|---|---|
| | (Note 1) | | | |
| Actuarial Accrued Liability | $16,819,000 | $ 2,594,000 | $14,225,000 | 2 |
| CAS Actuarial Value of Assets | (13,561,685) | (1,688,757) | (11,872,928) | 3 |
| Unfunded Actuarial Liability | 3,257,315 | 905,243 | 2,352,072 | |

**Note 1:** Because the contractor determines pensions separately for Segment 1 and Segments 2 through 7, the values are the sum of the values for Segment 1 and Segments 2 through 7.

**Note 2:** For Segment 1, the actuarial accrued liability is measured by the accrued benefit cost method as required by 9904.412–50(b)(7), *i.e.,* the minimum actuarial liability as described in 9904.412–50(b)(7)(ii). See Table 4. For Segments 2 through 7, the actuarial accrued liability is measured by the projected unit credit cost method, which is the contractor's established actuarial cost method since these the 9904.412–50(b)(7)(i) criterion was not met for these segments. See Table 3.

**Note 3:** See Table 2. The CAS Actuarial Value of Assets is used regardless of the basis for determining the liabilities. The CAS Actuarial Value of Assets allocated to Segment 1 and Segments 2 through 7 excludes the accumulated value of prepayment credits as required by 9904.412–50(a)(4).

(iv) Measurement of the Adjusted Pension Cost (Table 7):

TABLE 7—MEASUREMENT OF PENSION COST AT JANUARY 1, 2017

| | Total plan | Segment 1 | Segments 2 through 7 | Notes |
|---|---|---|---|---|
| | (Note 1) | | | |
| Normal Cost | ..... | $ 102,000 | $821,600 | 2 |
| Expense Load on Normal Cost | ..... | 8,840 | ..... | 2, 3 |
| Amortization Installments | ..... | 140,900 | 366,097 | 4 |
| Measured Pension Cost | 1,439,437 | 251,740 | 1,187,697 | |

**Note 1:** Because the contractor separately computes pension cost for Segment 1 and Segments 2 through 7, only the total pension cost is shown.

**Note 2:** For Segment 1, the normal cost is measured by the accrued benefit cost method as required by 9904.412–50(b)(7), *i.e.,* the minimum normal cost as described in 9904.412–50(b)(7)(ii). See Table 4. For Segments 2 through 7, the normal cost is measured by the contractor's established immediate gain cost method since these the 9904.412–50(b)(7)(i) criterion was not met for these segments. See Table 3.

**Note 3:** Because the criterion of 9904.412–50(b)(7)(i) was met for Segment 1, the Normal Cost is measured by the Minimum Normal Cost, which explicitly identifies the expected expenses as a separate component of the minimum normal cost in accordance with 9904.412–50(b)(7)(ii)(B). See Table 4. For Segments 2 through 7, the normal cost is measured by the contractor's established immediate gain cost method, which implicitly recognizes expenses as a decrement to expected assumed interest rate, since the 9904.412–50(b)(7)(i) criterion was not met for these segments. See Table 3.

**Note 4:** Net amortization installment based on the unfunded actuarial liability of $3,257,315 ($905,243 for Segment 1, and $2,352,072 for Segments 2 through 7) and the contractor's assumed interest rate in compliance with 9904.412–40(b)(2) and 9904.412–50(b)(4). See Table 6.

(c) *Assignment of Pension Cost.* In 9904.412–60.1(b), the Harmony Corporation measured the total pension cost to be $1,439,437 ($251,740 for Segment 1 and $1,187,697 for Segments 2 through 7). The contractor must now determine if any of the limitations of 9904.412–50(c)(2) apply at the segment level.

(1) *Zero Dollar Floor:* The contractor compares the measured pension cost to a zero dollar floor as required by 9904.412–50(c)(2)(i). In this case, the measured pension cost is greater than

zero and no assignable cost credit is established. See Table 8.

TABLE 8—CAS 412–50(c)(2)(i) ZERO DOLLAR FLOOR AS OF JANUARY 1, 2017

| | Total plan | Segment 1 | Segments 2 through 7 | Notes |
|---|---|---|---|---|
| | (Note 1) | | | |
| Measured Pension Cost ≥ $0 | | $251,740 | $1,187,697 | 2 |
| Assignable Cost Credit | | | | 3 |

**Note 1:** Because the provisions of CAS 412–50(c)(2)(i) are applied at the segment level, no values are shown for the Total Plan.
**Note 2:** See Table 7. The Assignable Pension Cost in accordance with 9904.412–50(c)(2)(i) is the greater of zero or the Harmonized Pension Cost.
**Note 3:** There is no Assignable Cost Credit since the Measured Pension Cost is greater than zero.

(2) *Assignable Cost Limitation:* (i) As required by 9904.412–50(c)(2)(ii), the contractor measures the assignable cost limitation amount. The pension cost assigned to the period cannot exceed the assignable cost limitation amount. Because the measured pension cost for Segment 1 met the harmonization criterion of 9904.412–50(b)(7)(i), the assignable cost limitation is based on the sum of the actuarial accrued liability and normal cost plus expense load, using the accrued benefit cost method in accordance with 9904.412–50(b)(7)(ii). Therefore, the actuarial accrued liability and normal cost plus expense load are measured by the minimum actuarial liability and minimum normal cost plus expense load. See Table 9.

TABLE 9—CAS 412–50(c)(2)(ii) ASSIGNABLE COST LIMITATION AS OF JANUARY 1, 2017

| | Total plan | Segment 1 | Segments 2 through 7 | Notes |
|---|---|---|---|---|
| | (Note 1) | | | |
| Actuarial Accrued Liability | | $2,594,000 | $14,225,000 | 2 |
| Normal Cost | | 102,000 | 821,600 | 3 |
| Expense Load on Normal Cost | | 8,840 | | 4 |
| Total Liability for Period | | $2,704,840 | $15,046,600 | |
| CAS Actuarial Value of Plan Assets | | (1,688,757) | (11,872,928) | 5 |
| (A) Assignable Cost Limitation Amount | | $1,016,083 | $3,173,672 | 6 |
| (B) 412–50(c)(2)(i) Assigned Cost | | $251,740 | $1,187,697 | 7 |
| (C) 412–50(c)(2)(ii) Assigned Cost | $1,439,437 | $251,740 | $1,187,697 | 8 |

**Note 1:** Because the assignable cost limitation is applied at the segment level when pension costs are separately calculated by segment or aggregation of segments, no values are shown for the Total Plan other than the Assigned Cost after consideration of the Assignable Cost Limit.
**Note 2:** For Segment 1, the actuarial accrued liability is measured by the accrued benefit cost method as required by 9904.412–50(b)(7), *i.e.,* the minimum actuarial liability as described in 9904.412–50(b)(7)(ii)(A). See Table 4. For Segments 2 through 7, the actuarial accrued liability is measured by the contractor's established immediate gain cost method since these the 9904.412–50(b)(7)(i) criterion was not met for these segments. See Table 3.
**Note 3:** For Segment 1, the normal cost is measured by the accrued benefit cost method as required by 9904.412–50(b)(7), *i.e.,* the minimum normal cost as described in 9904.412–50(b)(7)(ii)(B). See Table 4. For Segments 2 through 7, the normal cost is measured by the contractor's established immediate gain cost method since these the 9904.412–50(b)(7)(i) criterion was not met for these segments. See Table 3.
**Note 4:** For Segment 1, the normal cost is measured by the accrued benefit cost method as required by 9904.412–50(b)(7), *i.e.,* the minimum normal cost as described in 9904.412–50(b)(7)(ii)(B), which explicitly identifies the expected expenses as a separate component of the minimum normal cost. See Table 4. For Segments 2 through 7, the normal cost is measured by the contractor's established immediate gain cost method, which implicitly recognizes expenses as a decrement to the assumed interest rate since these the 9904.412–50(b)(7)(i) criterion was not met for these segments. See Table 3.
**Note 5:** See Table 2. The CAS Actuarial Value of Assets is used regardless of the basis for determining the liabilities. The CAS Actuarial Value of Assets allocated to Segment 1 and Segments 2 through 7 excludes the accumulated value of prepayment credits as required by 9904.412–50(a)(4).
**Note 6:** The Assignable Cost Limitation cannot be less than $0.
**Note 7:** See Illustration 9904.412–60.1(c)(1), Table 8.
**Note 8:** Lesser of lines (A) or (B).

(ii) As shown in Table 9, the contractor determines that the measured pension costs for Segment 1 and Segments 2 through 7 do not exceed the assignable cost limitation and are not limited.

(3) *Measurement of Tax-Deductible Limitation on Assignable Pension Cost:* (i) Finally, after limiting the measured pension cost in accordance with 9904.412–50(c)(2)(i) and (ii), the contractor checks to ensure that the total assigned pension cost will not exceed $15,674,697, which is the sum of the maximum tax-deductible contribution ($15,014,300), which is developed in the actuarial valuation prepared for ERISA, and the accumulated value of prepayment credits ($660,397) shown in Table 1. Since the tax-deductible contribution and accumulated value of prepayment credits are maintained for the plan as a whole, these values are allocated to segments based on the assignable pension cost after adjustment, if any, for the assignable cost limitation in accordance with 9904.413–50(c)(1)(ii). See Table 10.

TABLE 10—CAS 412–50(c)(2)(iii) TAX-DEDUCTIBLE LIMITATION AS OF JANUARY 1, 2017

| | Total plan | Segment 1 | Segments 2 through 7 | Notes |
|---|---|---|---|---|
| Maximum Tax-deductible Amount | $15,014,300 | $2,625,818 | $12,388,482 | 1, 2 |
| Accumulated Prepayment Credits | 660,397 | 115,495 | 544,902 | 3, 4 |
| (A) 412–50(c)(2)(iii) Limitation | $15,674,697 | $2,741,313 | $12,933,384 | |
| (B) 412–50(c)(2)(ii) Assigned Cost | $1,439,437 | $251,740 | $1,187,697 | 5 |
| Assigned Pension Cost | $1,439,437 | $251,740 | $1,187,697 | 6 |

**Note 1:** The Maximum Deductible Amount for the Total Plan is obtained from the valuation report prepared for ERISA purposes.
**Note 2:** The Maximum Tax-deductible Amount for the Total Plan is allocated to segments based on the assigned cost after application of 9904.412–50(c)(2)(ii) in accordance with 9904.413–50(c)(1)(i) for purposes of this assignment limitation test.
**Note 3:** The Accumulated Prepayment Credits for the Total Plan are allocated to segments based on the assigned cost after application of 9904.412–50(c)(2)(ii) in accordance with 9904.413–50(c)(1)(i) for purposes of this assignment limitation test.
**Note 4:** See Table 1.
**Note 5:** See Table 9.
**Note 6:** Lesser of lines (A) or (B).

(ii) For Segment 1, the assignable pension cost of $251,740, measured after considering the assignable cost limitation, does not exceed the 9904.412–50(c)(2)(iii) limit of $2,741,313. For Segments 2 through 7, the assignable pension cost of $1,187,697, measured after considering the assignable cost limitation, does not exceed the 9904.412–50(c)(2)(iii) limit of $12,933,384.

(d) *Actuarial Gain and Loss—Change in Liability Basis.* (1) Assume the same facts shown in 9904.412–60.1(b) for Segment 1 of the Harmony Corporation for 2017. Table 11 shows the actuarial liabilities and normal costs plus any expense loads for Segment 1 for 2016 through 2018.

TABLE 11—SUMMARY OF LIABILITIES FOR SEGMENT 1 AS OF JANUARY 1

| | 2016 | 2017 | 2018 | Notes |
|---|---|---|---|---|
| "Going Concern" Liabilities for the Period: | | | | |
| Actuarial Accrued Liability | $1,915,000 | $2,100,000 | $2,305,000 | 1 |
| Normal Cost | 89,600 | 89,100 | 99,500 | 1 |
| Expense Load on Normal Cost | ..... | ..... | ..... | 1, 2 |
| Total Liability for Period | $2,004,600 | $2,189,100 | $2,404,500 | |
| Minimum Liabilities for the Period: | | | | |
| Minimum Actuarial Liability | $1,901,000 | $2,594,000 | $2,212,000 | 3 |
| Minimum Normal Cost | 83,800 | 102,000 | 96,500 | 3 |
| Expense Load on Minimum Normal Cost | 8,300 | 8,840 | 9,300 | 3, 4 |
| Total Minimum Liability for Period | $1,993,100 | $2,704,840 | $2,317,800 | |
| Interest Basis as Determined by Segment's Liabilities for Period | 9904.412–50(b)(4) | 9904.412–50(b)(7)(iii) | 9904.412–50(b)(4) | 5 |

**Note 1:** See Table 3 for 2017 values. For 2016 and 2018, the data for Segment 1 is taken directly from the actuarial valuation report prepared for CAS 412 and 413 purposes and supporting documentation, including subtotals of the data by segment.
**Note 2:** Because the contractor's interest assumption, which satisfies the requirements of 9904.412–40(b)(2) and 9904.412–50(b)(4), implicitly recognizes expected administrative expenses there is no explicit amount shown for the normal cost.

**Note 3:** See Table 4 for 2017 values. For 2016 and 2018, the data for Segment 1 is taken directly from the actuarial valuation report prepared for ERISA purposes and supporting documentation, including subtotals of the data by segment. The values for 2016 are based on the transitional minimum actuarial liability and transitional minimum normal cost measured in accordance with 9904.412–64.1(a) and (b).

**Note 4:** For purposes of determining minimum normal cost, the contractor explicitly identifies the expected administrative expense as a separate component as required by 9904.412–50(b)(7)(ii)(B).

**Note 5:** For determining the pension cost for the period, the measurements are based on the actuarial accrued liability and normal cost unless the total minimum liability for the period exceeds the ''Going Concern'' total liability for the period. The measurement basis was separately determined for each segment in accordance with 9904.412–50(b)(7)(i).

(2) For 2016, the sum of the minimum actuarial liability and minimum normal cost does not exceed the sum of the actuarial accrued liability and normal cost. Therefore the criterion of 9904.412–50(b)(7)(i) is not met, and the actuarial accrued liability and normal cost are used to compute the pension cost for 2016. For 2017, the sum of the minimum actuarial liability and minimum normal cost exceeds the sum of the actuarial accrued liability and normal cost, and therefore the pension cost is computed using minimum actuarial liability and minimum normal cost as required by 9904.412–50(b)(7)(i). For 2018, the sum of the minimum actuarial liability and minimum normal cost does not exceed the sum of the actuarial accrued liability and normal cost, and the actuarial accrued liability and normal cost are used to compute the pension cost for 2018 because the criterion of 9904.412–50(b)(7)(i) is not met. Table 12 shows the measurement of the unfunded actuarial liability for 2016 through 2018.

TABLE 12—UNFUNDED ACTUARIAL LIABILITY FOR SEGMENT 1 AS OF JANUARY 1

| | 2016 | 2017 | 2018 | Notes |
|---|---|---|---|---|
| Current Year Actuarial Liability Basis | 9904.412–50(b)(4) | 9904.412–50(b)(7)(iii) | 9904.412–50(b)(4) | 1 |
| Actuarial Accrued Liability | $1,915,000 | $2,594,000 | $2,305,000 | 1 |
| CAS Actuarial Value of Assets | (1,500,000) | (1,688,757) | (1,894,486) | 2 |
| Unfunded Actuarial Liability (Actual) | $415,000 | $905,243 | $410,514 | |

**Note 1:** See Table 11.

**Note 2:** The 2017 CAS Actuarial Value of Assets is developed in Table 2. For 2016 and 2018, the Actuarial Value of Assets for Segment 1 is taken directly from the actuarial valuation report prepared for CAS 412 and 413 purposes and supporting documentation.

(3) Except for changes in the value of the assumed interest rate used to measure the minimum actuarial liability and minimum normal cost, there were no changes to the pension plan's actuarial assumptions or actuarial cost methods during the period of 2016 through 2018. The contractor's actuary measured the expected unfunded actuarial liability and determined the actuarial gain or loss for 2017 and 2018 as shown in Table 13.

TABLE 13—MEASUREMENT OF ACTUARIAL GAIN OR LOSS FOR SEGMENT 1 AS OF JANUARY 1

| | 2016 | 2017 | 2018 | Notes |
|---|---|---|---|---|
| Actual Unfunded Actuarial Liability | (Note 1) | $905,243 | $410,514 | 2 |
| Expected Unfunded Actuarial Liability | ..... | (381,455) | (848,210) | 3 |
| Actuarial Loss (Gain) | ..... | $523,788 | $(437,696) | |

**Note 1:** The determination of the actuarial gain or loss that occurred during 2015 and measured on 2016 is outside the scope of this Illustration.

**Note 2:** See Table 12.

**Note 3:** Information taken directly from the actuarial valuation report prepared for CAS 412 and 413 purposes and supporting documentation. The expected unfunded actuarial liability is based on the prior unfunded actuarial liability updated based on the assumed interest rate in compliance with 9904.412–40(b)(2) and 9904.412–50(b)(4). Note that in accordance with 9904.412–50(b)(7)(iii)(D), the corporate bond yield rate is only used to determine the minimum actuarial liability but not to adjust the liability for the passage of time.

(4) According to the actuarial valuation report, the 2017 actuarial loss of $523,788 includes a $494,000 actuarial loss due to a change in measurement

basis from using an actuarial accrued liability of $2,100,000 to using a minimum actuarial liability of $2,594,000, including the effect of any change in the interest rate basis. (See Table 11 for the actuarial accrued liability and the minimum actuarial liability.) The $494,000 loss ($2,594,000–$2,100,000) due to the change in the liability basis is amortized as part of the total actuarial loss of $523,788 over a ten-year period in accordance with 9904.412–50(a)(1)(v) and 9904.413–50(a)(2)(ii). Similarly, the next year's valuation report shows a 2018 actuarial gain of $437,696, which includes a $93,000 actuarial gain ($2,305,000–$2,212,000) due to a change from a minimum actuarial liability back to a an actuarial accrued liability basis, which includes the effect of any change in interest rate basis. The $93,000 gain due the change in the liability basis will be amortized as part of the total $437,696 actuarial gain over a ten-year period in accordance with 9904.412–50(a)(1) and 9904.413–50(a)(2)(ii).

[76 FR 81312, Dec. 27, 2011, as amended at 77 FR 43543, July 25, 2012]

**9904.412–61 Interpretation. [Reserved]**

**9904.412–62 Exemption.**

None for this Standard.

**9904.412–63 Effective Date.**

(a) This Standard is effective as of February 27, 2012, hereafter known as the ''Effective Date'', and is applicable for cost accounting periods after June 30, 2012, hereafter known as the ''Implementation Date.''

(b) Following the award of a contract or subcontract subject to this Standard on or after the Effective Date, contractors shall follow this Standard, as amended, beginning with its next cost accounting period beginning after the later of the Implementation Date or the award date of a contract or subcontract to which this Standard is applicable. The first day of the cost accounting period that this Standard, as amended, is first applicable to a contractor or subcontractor is the ''Applicability Date of the CAS Pension Harmonization Rule'' for purposes of this Standard. Prior to the Applicability Date of the CAS Pension Harmonization Rule, contractors or subcontractors shall follow the Standard in 9904.412 in effect prior to the Effective Date.

(1) Following the award of a contract or subcontract subject to this Standard received on or after the Effective Date, contractors with contracts or subcontracts subject to this Standard that were received prior to the Effective Date shall continue to follow the Standard in 9904.412 in effect prior to the Effective Date. Beginning with the Applicability Date of the CAS Pension Harmonization Rule, such contractors shall follow this Standard, as amended, for all contracts or subcontracts subject to this Standard.

(2) Following the award of a contract or subcontract subject to this Standard received during the period beginning on or after the date published in the FEDERAL REGISTER and ending before the Effective Date, contractors shall follow the Standard in 9904.412 in effect prior to the Effective Date. If another contract or subcontract, subject to this Standard, is received on or after the Effective Date, the provisions of 9904.412–63(b)(1) shall apply.

[76 FR 81319, Dec. 27, 2011, as amended at 77 FR 43543, July 25, 2012]

**9904.412–64 Transition method.**

To be acceptable, any method of transition from compliance with Standard 9904.412 in effect prior to March 30, 1995, to compliance with the Standard effective March 30, 1995, must follow the equitable principle that costs, which have been previously provided for, shall not be redundantly provided for under revised methods. Conversely, costs that have not previously been provided for must be provided for under the revised method. This transition subsection is not intended to qualify for purposes of assignment or allocation, pension costs which have previously been disallowed for reasons other than ERISA tax-deductibility limitations. The sum of all portions of unfunded actuarial liability identified pursuant to Standard 9904.412, effective March 30, 1995, including such portions of unfunded actuarial liability determined for transition purposes, is subject to the provisions of 9904.412–40(c) on requirements for assignment. The method, or methods, employed to

achieve an equitable transition shall be consistent with the provisions of Standard 9904.412, effective March 30, 1995, and shall be approved by the contracting officer. Examples and illustrations of such transition methods include, but are not limited to, the following:

(a) *Reassignment of certain prior unfunded accruals.* (1) Any portion of pension cost for a qualified defined-benefit pension plan, assigned to a cost accounting period prior to March 30, 1995, which was not funded because such cost exceeded the maximum tax-deductible amount, determined in accordance with ERISA, shall be assigned to subsequent accounting periods, including an adjustment for interest, as an assignable cost deficit. However, such costs shall be assigned to periods on or after March 30, 1995, only to the extent that such costs have not previously been allocated as cost or price to contracts subject to this Standard.

(2) Alternatively, the transition method described in paragraph (d) of this subsection may be applied separately to costs subject to paragraph (a)(1) of this subsection.

(b) *Reassignment of certain prior unallocated credits.* (1) Any portion of pension cost for a defined-benefit pension plan, assigned to a cost accounting period prior to March 30, 1995, which was not allocated as a cost or price credit to contracts subject to this Standard because such cost was less than zero, shall be assigned to subsequent accounting periods, including an adjustment for interest, as an assignable cost credit.

(2) Alternatively, the transition method described in paragraph (d) of this subsection may be applied separately to costs subject to paragraph (b)(1) of this subsection.

(c) *Accounting for certain prior allocated unfunded accruals.* Any portion of unfunded pension cost for a nonqualified defined-benefit pension plan, assigned to a cost accounting period prior to March 30, 1995, that was allocated as cost or price to contracts subject to this Standard, shall be recognized in subsequent accounting periods, including adjustments for imputed interest and benefit payments, as an accumulated value of permitted unfunded accruals.

(d) *''Fresh start'' alternative transition method.* The transition methods of paragraphs (a)(1), (b)(1), and (c) of this subsection may be implemented using the so-called ''fresh start'' method whereby a portion of the unfunded actuarial liability of a defined-benefit pension plan, which occurs in the first cost accounting period after March 30, 1995, shall be treated in the same manner as an actuarial gain or loss. Such portion of unfunded actuarial liability shall exclude any portion of unfunded actuarial liability that must continue to be separately identified and maintained in accordance with 9904.412–50(a)(2), including interest adjustments. If the contracting officer already has approved a different amortization period for the fresh start amortization, then such amortization period shall continue.

(e) *Change to pay-as-you-go method.* A change in accounting method subject to 9903.302 will have occurred whenever costs of a nonqualified defined-benefit pension plan have been accounted for on an accrual basis prior to March 30, 1995, and the contractor must change to the pay-as-you-go cost method because the plan does not meet the requirement of 9904.412–50(c)(3), either by election or otherwise. In such case, any portion of unfunded pension cost, assigned to a cost accounting period prior to March 30, 1995 that was allocated as cost or price to contracts subject to this Standard, shall be assigned to future accounting periods, including adjustments for imputed interest and benefit payments, as an accumulated value of permitted unfunded accruals. Costs computed under the pay-as-you-go cost method shall be charged against such accumulated value of permitted unfunded accruals before such costs may be allocated to contracts.

(f) *Actuarial assumptions.* The actuarial assumptions used to calculate assignable cost deficits, assignable cost credits, or accumulated values of permitted unfunded accruals for transition purposes shall be consistent with the long term assumptions used for valuation purposes for such prior periods unless the contracting officer has

previously approved the use of other reasonable assumptions.

(g) *Transition illustrations.* Unless otherwise noted, paragraphs (g) (1) through (9) of this subsection address pension costs and transition amounts determined for the first cost accounting period beginning on or after the date this revised Standard becomes applicable to a contractor. For purposes of these illustrations an interest assumption of 7% is presumed to be in effect for all periods.

(1) For the cost accounting period immediately preceding the date this revised Standard was applicable to a contractor, Contractor S computed and assigned pension cost of $1 million for a qualified defined-benefit pension plan. The contractor made a contribution equal to the maximum tax-deductible amount of $800,000 for the period leaving $200,000 of assigned cost unfunded for the period. Except for this $200,000, no other assigned pension costs have ever been unfunded or otherwise disallowed. Using the transition method of paragraph (a)(1) of this subsection, the contractor shall establish an assignable cost deficit equal to $214,000 ($200,000 × 1.07), which is the prior unfunded assigned cost plus interest. If this assignable cost deficit amount, plus all other portions of unfunded actuarial liability identified in accordance with 9904.412–50(a) (1) and (2), equal the total unfunded actuarial liability, pension cost may be assigned to the current period.

(2) Assume that Contractor S in 9904.412–64(g)(1) priced the entire $1 million into firm fixed-price contracts. In this case, no assignable cost deficit amount may be established. In addition, the $214,000 ($200,000 × 1.07) shall be separately identified and maintained in accordance with 9904.412–50(a)(2). If all portions of unfunded actuarial liability identified in accordance with 9904.412–50(a) (1) and (2), equal the total unfunded actuarial liability, pension cost may be assigned to the period.

(3) Assume the same facts as in 9904.412–64(g)(1), except Contractor S only funded and allocated $500,000. The $300,000 of assigned cost that was not funded, but could have been funded without exceeding the tax-deductible maximum, may not be recognized as an assignable cost deficit. Instead, the $300,000 must be separately identified and maintained in accordance with 9904.412–50(a)(2). If the $321,000 ($300,000 × 1.07) plus the $214,000 already identified as an assignable cost deficit plus all other portions of unfunded actuarial liability identified in accordance with 9904.412–50(a) (1) and (2), equal the total unfunded actuarial liability, pension cost may be assigned to the period.

(4) Assume that, for Contractor S in 9904.412–64(g)(3), the only portion of unfunded actuarial liability that must be identified under 9904.412–50(a)(2) is the $321,000. If Contractor S chooses to use the ''fresh start'' transition method, the $321,000 of unfunded assigned cost must be subtracted from the total unfunded actuarial liability in accordance with 9904.412–63(d). The net amount of unfunded actuarial liability shall then be amortized over a period of fifteen years as an actuarial loss in accordance with 9904.412–50(a)(1)(v) and Cost Accounting Standard 9904.413.

(5) For the cost accounting period immediately preceding the date this revised Standard becomes applicable to a contractor, Contractor T computed and assigned pension cost of negative $400,000 for a qualified defined-benefit plan. Because the contractor could not withdraw assets from the trust fund, the contracting officer agreed that instead of allocating a current period credit to contracts, the negative costs would be carried forward, with interest, and offset against future pension costs allocated to the contract. Using the transition method of paragraph (b)(1) of this subsection, the contractor shall establish an assignable cost credit equal to $428,000 ($400,000 × 1.07). If this assignable cost credit amount, plus all other portions of unfunded actuarial liability identified in accordance with 9904.412–50(a) (1) and (2), equals the total unfunded actuarial liability, pension cost may be assigned to the period.

(6) Assume that in 9904.412–64(g)(5), following guidance issued by the contracting agency the contracting officer had deemed the cost for the prior period to be $0. In order to satisfy the requirements of 9904.412–40(c) and assign

pension cost to the current period, Contractor S must account for the prior period negative accruals that have not been specifically identified. Following the transition method of paragraph (b)(1) of this subsection, the contractor shall identify $428,000 as an assignable cost credit.

(7) Assume the facts of 9904.412–64(g)(5), except Contractor S uses the ''fresh start'' transition method. In addition, for the current period the plan is overfunded since the actuarial value of the assets is greater than the actuarial accrued liability. In this case, an actuarial gain equal to the negative unfunded actuarial liability; i.e., actuarial surplus, is recognized since there are no portions of unfunded actuarial liability that must be identified under 9904.412–50(a)(2).

(8) Since March 28, 1989 Contractor U has computed, assigned, and allocated pension costs for a nonqualified defined-benefit plan on an accrual basis. The value of these past accruals, increased for imputed interest at 7% and decreased for benefits paid by the contractor, is equal to $2 million as of the beginning of the current period. Contractor U elects to establish a ''Rabbi trust'' and the plan meets the other criteria at 9904.412–50(c)(3). Using the transition method of paragraph (c) of this subsection, Contractor U shall recognize the $2 million as the accumulated value of permitted unfunded accruals, which will then be included in the market value and actuarial value of the assets. Because the accumulated value of permitted unfunded accruals is exactly equal to the current period market value of the assets, 100% of benefits for the current period must be paid from sources other than the funding agency in accordance with 9904.412–50(d)(2)(ii).

(9) Assume that Contractor U in 9904.412–64(g)(8) establishes a funding agency, but elects to use the pay-as-you-go method for current and future pension costs. Furthermore, plan participants receive $500,000 in benefits on the last day of the current period. Using the transition method of paragraph (e) of this subsection to ensure prior costs are not redundantly provided for, the contractor shall establish assets; i.e., an accumulated value of permitted unfunded accruals, of $2 million. Since these assets are sufficient to provide for the current benefit payments, no pension costs can be allocated in this period. Furthermore, previously priced contracts subject to this Standard shall be adjusted in accordance with 9903.302. The accumulated value of permitted unfunded accruals shall be carried forward to the next period by adding $140,000 (7%×$2 million) of imputed interest, and subtracting the $500,000 of benefit payments made by the contractor. The accumulated value of permitted unfunded accruals for the next period equals $1,640,000 ($2 million + $140,000—$500,000).

[60 FR 16547, Mar. 30, 1995; 60 FR 20248, Apr. 25, 1995]

### 9904.412–64.1 Transition Method for the CAS Pension Harmonization Rule.

Contractors or subcontractors that become subject to the Standard, as amended, during the Pension Harmonization Transition Period shall recognize the change in cost accounting method in accordance with paragraphs (a) and (b).

(a) The Pension Harmonization Rule Transition Period is the five cost accounting periods beginning with a contractor's first cost accounting period beginning after June 30, 2012, and is independent of the receipt date of a contract or subcontract subject to this Standard. The Pension Harmonization Rule Transition Period begins on the first day of a contractor's first cost accounting period that begins after June 30, 2012.

(b) Phase in of the Minimum Actuarial Liability and Minimum Normal Cost. During each successive accounting period of Pension Harmonization Rule Transition Period, the contractor shall recognize on a scheduled basis the amount by which the minimum actuarial liability differs from the actuarial accrued liability; and the amount by which the sum of the minimum normal cost plus any expense load differs from the sum of the normal cost plus any expense load.

(1) For purposes of determining the amount of the difference, the minimum

actuarial liability and minimum normal cost shall be measured in accordance with 9904.412–50(b)(7)(ii).

(2) During each successive accounting period of the Pension Harmonization Rule Transition Period, the transitional minimum actuarial liability shall be set equal to the actuarial accrued liability adjusted by an amount equal to the difference between the minimum actuarial liability and actuarial accrued liability, multiplied by the scheduled applicable percentage for that period. The sum of the transitional minimum normal cost plus any expense load shall be set equal to the sum of normal cost plus any expense load, adjusted by an amount equal to the difference between the minimum normal cost and the normal cost, plus expense loads, multiplied by the scheduled applicable percentage for that period.

(3) The scheduled applicable percentages for each successive accounting period of the Pension Harmonization Rule Transition Period are as follows: 0% for the First Cost Accounting Period, 25% for the Second Cost Accounting Period, 50% for the Third Cost Accounting Period, 75% for the Fourth Cost Accounting Period, and 100% for the Fifth Cost Accounting Period.

(4) The transitional minimum actuarial liability and transitional minimum normal cost measured in accordance with this provision shall be used for purposes of the 9904.412–50(b)(7) minimum actuarial liability and minimum normal cost.

(5) The actuarial gain or loss attributable to experience since the prior valuation, measured as of the First Cost Accounting Period of the Pension Harmonization Rule Transition Period, shall be amortized over a ten-year period in accordance with 9904.413–50(a)(2)(ii).

(c) Transition Illustration. Assume the same facts for the Harmony Corporation in Illustration 9904.412–60.1(a) and (b), except that this is the Fourth Cost Accounting Period of the Pension Harmonization Rule Transition Period. As in Illustration 9904.412–60.1(a) and (b), the contractor separately computes pension costs for Segment 1, and computes pension costs for Segments 2 through 7 in the aggregate. The contractor has two actuarial valuations prepared: one measures the actuarial accrued liability and normal cost using the contractor's expected rate of return on investments assumption, in accordance with 9904.412–40(b)(2) and 9904.412–50(b)(4), and the other valuation measures the minimum actuarial liability and minimum normal cost based on the assumed current yields on investment quality corporate bonds in accordance with 9904.412–50(b)(7)(iii)(A). The actuarial valuations present the values subtotaled for each segment and in total for the plan as a whole.

(1) The contractor applies 9904.412–64.1(b) as follows:

(i) (A) For Segment 1, the $494,000 ($2,594,000—$2,100,000) difference between the minimum actuarial liability and the actuarial accrued liability is multiplied by 75%. Therefore for Segment 1, the minimum actuarial liability for purposes of 9904.412–50(b)(7) is adjusted to a transitional minimum actuarial liability of $2,470,500 ($2,100,000 + [75% × $494,000]).

(B) For Segments 2 through 7, the ($183,000) difference ($14,042,000 − $14,225,000) between the minimum actuarial liability and the actuarial accrued liability is multiplied by 75%. For Segment 2 through 7, the minimum actuarial liability for purposes of 9904.412–50(b)(7) is adjusted to a transitional minimum actuarial liability of $14,087,750 ($14,225,000 + [75% × ($183,000)]).

(C) The computation of the transitional minimum actuarial liability that incrementally recognizes the difference between the minimum actuarial liability and the actuarial accrued liability for Segment 1, and for Segments 2 through 7, is shown in Table 1 below:

TABLE 1—DEVELOPMENT OF TRANSITIONAL MINIMUM ACTUARIAL LIABILITY FOR FOURTH TRANSITION PERIOD

| | Total plan | Segment 1 | Segments 2 through 7 | Notes |
|---|---|---|---|---|
| | (Note 1) | ..... | ..... | |

TABLE 1—DEVELOPMENT OF TRANSITIONAL MINIMUM ACTUARIAL LIABILITY FOR FOURTH TRANSITION PERIOD—Continued

| | Total plan | Segment 1 | Segments 2 through 7 | Notes |
|---|---|---|---|---|
| Minimum Actuarial Liability | | $2,594,000 | $14,042,000 | 2 |
| | | (2,100,000) | (14,225,000) | 3 |
| Actuarial Accrued Liability | | (2,100,000) | (14,225,000) | |
| Actuarial Accrued Liability Difference | | $494,000 | $(183,000) | 4 |
| Phase In Percentage (Period 4) | | 75% | 75% | 5 |
| Phase In Liability Difference | | $370,500 | $(137,250) | 6 |
| Actuarial Accrued Liability | | 2,100,000 | 14,225,000 | 6 |
| Transitional Minimum: | | | | |
| Actuarial Liability | | $2,470,500 | $14,087,750 | |

**Note 1:** The values for the Total Plan are not shown because the 9904.412–50(b)(7)(i) threshold criterion is applied separately for each segment.
**Note 2:** See Illustration 9904.412–60.1(b)(2)(ii), Table 4.
**Note 3:** See Illustration 9904.412–60.1(b)(2)(i), Table 3.
**Note 4:** The phase in percentage will be applied to positive or negative differences in the actuarial liabilities, since the purpose of the phase in is to incrementally move the measurement away from the actuarial accrued liability to the minimum actuarial liability, regardless of the direction of the movement.
**Note 5:** Appropriate transition percentage for the Fourth Cost Accounting Period of the Pension Harmonization Rule Transition Period as stipulated in 9904.412–64.1(b)(3).
**Note 6:** The actuarial accrued liability is adjusted by the phase in difference between liabilities, either positive or negative, in accordance with 9904.412–64.1(b)(2).

(ii) (A) For Segment 1, the $21,740 ($110,840–$89,100) difference between the minimum normal cost and the normal cost, plus expense loads, is multiplied by 75%. Therefore for Segment 1, the minimum normal cost plus expense load, for purposes of 9904.412–50(b)(7), is adjusted to a transitional minimum normal cost plus expense load of $105,405 ($89,100 + [75% × $21,740]).

(B) For Segments 2 through 7, the 92,260 ($913,860–$821,600) difference between the minimum normal cost and the normal cost, plus expense loads, is multiplied by 75%. Therefore, for Segments 2 through 7, the minimum normal cost for purposes of 9904.412–50(b)(7) is adjusted to a transitional minimum normal cost plus expense load of $890,795 ($821,600 + [75% × $92,260]).

(C) The computation of the transitional minimum normal cost plus expense load for Segment 1, and for Segments 2 through 7, is shown in Table 2 below:

TABLE 2—DEVELOPMENT OF TRANSITIONAL MINIMUM NORMAL COST FOR FOURTH TRANSITION PERIOD

| | Total plan | Segment 1 | Segments 2 through 7 | Notes |
|---|---|---|---|---|
| | (Note 1) | | | |
| Minimum Normal Cost | | $102,000 | $840,700 | 2 |
| Expense Load on Normal Cost | | 8,840 | 73,160 | 2, 3 |
| Minimum Normal Cost Plus Expense Load | | $110,840 | $913,860 | 2 |
| Normal Cost Plus Expense Load | | (89,100) | (821,600) | 4 |
| Difference | | $21,740 | $92,260 | 5 |
| Phase In Percentage (Period 4) | | 75% | 75% | 6 |
| Phase In Normal Cost Difference | | $16,305 | $69,195 | 7 |
| Normal Cost Plus Expense Load | | 89,100 | 821,600 | 7 |
| Transitional Minimum: | | | | |
| Normal Cost Plus Expense Load | | $105,405 | $890,795 | |

**Note 1:** The values for the Total Plan are not shown because the 9904.412–50(b)(7)(i) threshold criterion is applied separately for each segment.
**Note 2:** See Illustration 9904.412–60.1(b)(2)(ii), Table 4.
**Note 3:** For minimum normal cost valuation purposes, the contractor explicitly identifies the expected administrative expenses as a separate component of minimum normal cost.
**Note 4:** See Illustration 9904.412–60.1(b)(2)(i), Table 3. Expected expenses are implicitly recognized as part of the contractor's expected rate of return on investments assumption.

**Note 5:** The phase in percentage will be applied to positive and negative differences in the normal costs plus expense loads, since the purpose of the phase in is to incrementally move the measurement from the normal cost plus expense load, to the minimum normal cost plus expense load, regardless of the direction of the movement.
**Note 6:** Appropriate transition percentage for the Fourth Cost Accounting Period of the Pension Harmonization Rule Transition Period stipulated in 9904.412–64.1(b)(3).
**Note 7:** The sum of the normal cost plus expense load is adjusted by the phase in difference between normal costs, either positive or negative, in accordance with 9904.412–64.1(b)(2).

(2) The contractor applies the provisions of with 9904.412–50(b)(7)(i) using the transitional minimum actuarial liability and transitional minimum normal cost plus expense load, in accordance with 9904.412–64.1(b)(4).

(i) The comparison of the sum of the actuarial accrued liability and normal cost plus expense load, and the sum of the transitional minimum actuarial liability and minimum normal cost plus expense load, for Segment 1, and for Segments 2 through 7, is summarized in Table 3 below:

TABLE 3—SUMMARY OF LIABILITY AND NORMAL COST VALUES FOR FOURTH TRANSITION PERIOD

| | Total plan | Segment 1 | Segments 2 through 7 | Notes |
|---|---|---|---|---|
| | (Note 1) | ..... | ..... | |
| "Going Concern" Liabilities for Period: | | | | |
| Actuarial Accrued Liability | ..... | $2,100,000 | $14,225,000 | 2 |
| Normal Cost Plus Expense Load | ..... | 89,100 | 821,600 | 3 |
| Total Liability for Period | ..... | 2,189,100 | 15,046,600 | |
| Transitional Minimum Liabilities for the Period: | | | | |
| Transitional Minimum Actuarial Liability | ..... | 2,470,500 | 14,087,750 | 1 |
| Transitional Minimum Normal Cost Plus Expense Load | ..... | 105,405 | 890,795 | 3 |
| Total Transitional Minimum Liability for Period | ..... | 2,575,905 | 14,978,545 | 4 |

**Note 1:** The values for the Total Plan are not shown because the 9904.412–50(b)(7)(i) threshold criterion is applied separately for each segment.
**Note 2:** See Table 1.
**Note 3:** See Table 2.
**Note 4:** If the threshold criterion is met, then the pension cost for the period is measured based on the Transitional Minimum Actuarial Liability and Transition Normal Cost Plus Expense Load.

(ii) For Segment 1, the Total Transitional Minimum Liability for the Period of $2,575,905 exceeds the total liability for the period of $2,189,100. (See Table 3.) Therefore, in accordance with 9904.412–50(b)(7)(i), the pension cost for Segment 1 is measured using the actuarial accrued liability and normal cost as measured by the transitional minimum actuarial liability and transitional minimum normal cost, which are based on the accrued benefit cost method. This measurement complies with the requirements of 9904.412–50(b)(7) and with the definition of actuarial accrued liability, 9904.412–30(a)(2), and normal cost, 9904.412–30(a)(18).

(iii) For Segments 2 through 7, the total liability for the period of $15,046,600 exceeds the Total Transitional Minimum Liability for the Period of $14,978,545. (See Table 3.) Therefore, in accordance with 9904.412–50(b)(7)(i), the pension cost for Segment 2 through 7 is measured using the actuarial accrued liability and normal cost, which are based on the projected benefit cost method.

(3) The contractor computes the pension cost for the period in accordance with the provisions of 9904.412–50(b)(7)(i), which considers the transitional minimum actuarial liability and transitional minimum normal cost plus expense load, in accordance with 9904.412–64.1(b).

(i) The contractor computes the unfunded actuarial liability as shown in Table 4 below:

TABLE 4—UNFUNDED ACTUARIAL LIABILITY FOR FOURTH TRANSITION PERIOD

| | Total Plan | Segment 1 | Segments 2 through 7 | Notes |
|---|---|---|---|---|
| | (Note 1) | | | |
| Actuarial Accrued Liability | | $2,470,500 | $14,225,000 | 2 |
| CAS Actuarial Value of Assets | | (1,688,757) | (11,872,928) | 3 |
| Unfunded Actuarial Liability | | 781,743 | 2,352,072 | |

**Note 1:** The values for the Total Plan are not shown because the 9904.412–50(b)(7)(i) threshold criterion is applied separately for each segment.
**Note 2:** Because the Pension Harmonization criterion of 9904.412–50(b)(7)(i) has been met for Segment 1, the actuarial accrued liability is measured by the transitional minimum actuarial liability as required by 9904.412–64.1(b)(4). See Table 3. Because the Pension Harmonization criterion of 9904.412–50(b)(7)(i) was not satisfied for Segments 2 through 7, the actuarial accrued liability is based on the actuarial assumptions that reflect long-term trends in accordance with 9904.412–50(b)(4), *i.e.,* the transitional minimum actuarial liability does not apply.
**Note 3:** See Illustration 9904.412–60.1(b)(1)(ii), Table 2.

(ii) Measurement of the Pension Cost for the current period (Table 5):

TABLE 5—PENSION COST FOR FOURTH TRANSITION PERIOD

| | Total plan | Segment 1 | Segments 2 through 7 | Notes |
|---|---|---|---|---|
| | (Note 1) | | | |
| Normal Cost Plus Expense Load | | $105,405 | $821,600 | 2 |
| Amortization Installments | | 101,990 | 314,437 | 3, 4 |
| Pension Cost Computed for the Period | 1,343,432 | 207,395 | 1,136,037 | |

**Note 1:** Except for the Total Pension Cost Computed for the Period, the values for the Total Plan are not shown because the 9904.412–50(b)(7)(i) threshold criterion is applied separately for each segment.
**Note 2:** See Table 3. Because the Pension Harmonization criterion of 9904.412–50(b)(7)(i) has been met for Segment 1, the sum of the normal cost plus the expense load is measured by the sum of the transitional minimum normal cost plus the expense load, as required by 9904.412–64.1(a). Because the Pension Harmonization criterion of 9904.412–50(b)(7)(i) was not satisfied for Segments 2 through 7, the sum of the normal cost plus any applicable expense load is based on the contractor's actuarial assumptions reflecting long-term trends in accordance with 9904.412–40(b)(2) and 9904.412–50(b)(4), *i.e.,* the transitional minimum normal cost plus the expense load does not apply.
**Note 3:** Net amortization installment based on the unfunded actuarial liability of $781,743 for Segment 1, and $2,352,072 for Segments 2 through 7, including an interest equivalent on the unamortized portion of such liability. See Table 4. The interest adjustment is based on the contractor's interest rate assumption in compliance with 9904.412–40(b)(2) and 9904.412–50(b)(4).
**Note 4:** See 9904.64–1(c)(4) for details concerning the recognition of the unfunded actuarial liability during the first Pension Harmonization Rule Transition Period.

(4) The Silvertone Corporation separately computes pension costs for Segment 1, and computes pension costs for Segments 2 through 7 in the aggregate.

(i) For the First Cost Accounting Period of the Pension Harmonization Rule Transition Period, the difference between the actuarial accrued liability and the minimum actuarial liability, and the difference between the normal cost and the minimum normal cost, are multiplied by 0%. Therefore the transitional minimum actuarial liability and transitional minimum normal are equal to the actuarial accrued liability and normal cost. The total transitional minimum liability for the period does not exceed the total liability for the period in conformity with the criterion of 9904.412–50(b)(7)(i). Therefore, the pension cost for the First Cost Accounting Period of the Pension Harmonization Rule Transition Period is computed using the actuarial accrued liability and normal cost.

(ii) The actuarial gain attributable to experience during the prior period that is measured for the cost accounting period is amortized over a ten-year period in accordance with 9904.412–50(a)(1)(v) and 9904.413–50(a)(2)(ii).

(iii) The contractor computes the pension cost for First Cost Accounting Period of the Pension Harmonization Rule Transition Period as shown in Table 6 below.

TABLE 6—COMPUTATION OF THE PENSION FOR THE FIRST TRANSITION PERIOD

| | Total plan | Segment 1 | Segments 2 through 7 | Notes |
|---|---|---|---|---|
| | (Note 1) | | | |
| Amortization of Unfunded Liability Net Amortization Installment from Prior Periods | | $81,019 | $523,801 | 2 |
| January 1, 2013, Actuarial Loss (Gain) Amortization Installment | | (9,369) | (68,740) | 3 |
| Net Amortization Installment | | 71,650 | 455,061 | |
| Normal Cost plus expense load | | 78,400 | 715,000 | 4 |
| Pension Cost Computed for the Period | | 150,050 | 1,170,061 | |

**Note 1:** The values for the Total Plan are not shown because the 9904.412–50(b)(7)(i) threshold criterion is applied separately for each segment.

**Note 2:** Amortization installments of actuarial gains and losses, and other portions of the unfunded actuarial liability identified prior to January 1, 2013, in accordance with 9904.412–50(a)(1)(v) and 9904.413–50(b)(2)(ii), including an interest adjustment based on the contractor's long-term interest assumption in compliance with 9904.412–40(b)(2) and 9904.412–50(b)(4).

**Note 3:** The actuarial gains for both Segment 1, and Segments 2 through 7, as measured as of January 1, 2013, are amortized over a ten-year period in accordance with 9904.413–50(a)(2)(ii) and 9904.412–64–1(b)(4). Note that although the source of the actuarial gains was the deviation between assumed and actual changes during the prior period, the gain is measured on January 1, 2013, and so the ten-year amortization period applies in the current period, including an interest adjustment based on the contractor's long-term interest assumption in compliance with 9904.412–40(b)(2) and 9904.412–50(b)(4).

**Note 4:** For the first period of the Pension Harmonization Rule transition period, the adjustment to the sum of the actuarial accrued liability and normal cost is adjusted by $0. Therefore the sum of the transitional minimum actuarial liability and transitional minimum normal cost plus expense load is equal to the sum of the actuarial accrued liability and normal cost plus expense load, and the criterion of 9904.412–50(b)(7)(i) was not met for either Segment 1, or Segments 2 through 7. The sum of the normal cost plus expense load is based on the sum of the going concern normal cost plus expense load.

[76 FR 81319, Dec. 27, 2011, as amended at 77 FR 43543, July 25, 2012]

### 9904.413 Adjustment and allocation of pension cost.

### 9904.413–10 [Reserved]

### 9904.413–20 Purpose.

A purpose of this Standard is to provide guidance for adjusting pension cost by measuring actuarial gains and losses and assigning such gains and losses to cost accounting periods. The Standard also provides the bases on which pension cost shall be allocated to segments of an organization. The provisions of this Cost Accounting Standard should enhance uniformity and consistency in accounting for pension costs.

### 9904.413–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this chapter 99 shall have the meaning ascribed to them in those definitions unless paragraph (b) of this subsection requires therwise.

(1) *Accrued benefit cost method* means an actuarial cost method under which units of benefits are assigned to each cost accounting period and are valued as they accrue; that is, based on the services performed by each employee in the period involved. The measure of normal cost under this method for each cost accounting period is the present value of the units of benefit deemed to be credited to employees for service in that period. The measure of the actuarial accrued liability at a plan's measurement date is the present value of the units of benefit credited to employees for service prior to that date. (This method is also known as the Unit Credit cost method without salary projection.)

(2) *Actuarial accrued liability* means pension cost attributable, under the actuarial cost method in use, to years prior to the current period considered by a particular actuarial valuation. As of such date, the actuarial accrued liability represents the excess of the present value of future benefits and administrative expenses over the present value of future normal costs for all plan participants and beneficiaries. The excess of the actuarial accrued liability over the actuarial value of the assets of a pension plan is the Unfunded Actuarial Liability. The excess of the actuarial value of the assets of a pension plan over the actuarial accrued liability is an actuarial surplus and is treated as a negative unfunded actuarial liability.

(3) *Actuarial assumption* means an estimate of future conditions affecting pension cost; for example, mortality rate, employee turnover, compensation levels, earnings on pension plan assets, changes in values of pension plan assets.

(4) *Actuarial cost method* means a technique which uses actuarial assumptions to measure the present value of future pension benefits and pension plan administrative expenses, and which assigns the cost of such benefits and expenses to cost accounting periods. The actuarial cost method includes the asset valuation method used to determine the actuarial value of the assets of a pension plan.

(5) *Actuarial gain and loss* means the effect on pension cost resulting from differences between actuarial assumptions and actual experience.

(6) *Actuarial valuation* means the determination, as of a specified date, of the normal cost, actuarial accrued liability, actuarial value of the assets of a pension plan, and other relevant values for the pension plan.

(7) *Curtailment of benefits* means an event; e.g., a plan amendment, in which the pension plan is frozen and no further material benefits accrue. Future service may be the basis for vesting of nonvested benefits existing at the time of the curtailment. The plan may hold assets, pay benefits already accrued, and receive additional contributions for unfunded benefits. Employees may or may not continue working for the contractor.

(8) *Funding agency* means an organization or individual which provides facilities to receive and accumulate assets to be used either for the payment of benefits under a pension plan, or for the purchase of such benefits, provided such accumulated assets form a part of a pension plan established for the exclusive benefit of the plan participants and their beneficiaries. The fair market value of the assets held by the funding agency as of a specified date is the Funding Agency Balance as of that date.

(9) *Immediate-gain actuarial cost method* means any of the several cost methods under which actuarial gains and losses are included as part of the unfunded actuarial liability of the pension plan, rather than as part of the normal cost of the plan.

(10) *Market value of the assets* means the sum of the funding agency balance plus the accumulated value of any permitted unfunded accruals belonging to a pension plan. The Actuarial Value of the Assets means the value of cash, investments, permitted unfunded accruals, and other property belonging to a pension plan, as used by the actuary for the purpose of an actuarial valuation.

(11) *Normal cost* means the annual cost attributable, under the actuarial cost method in use, to current and future years as of a particular valuation date, excluding any payment in respect of an unfunded actuarial liability.

(12) *Pension plan* means a deferred compensation plan established and maintained by one or more employers to provide systematically for the payment of benefits to plan participants after their retirement, provided that the benefits are paid for life or are payable for life at the option of the employees. Additional benefits such as permanent and total disability and death payments, and survivorship payments to beneficiaries of deceased employees may be an integral part of a pension plan.

(13) *Pension plan participant* means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit from a pension plan which covers employees of such employer or members of such organization who have satisfied the plan's participation requirements, or whose beneficiaries are receiving or may be eligible to receive any such benefit. A participant whose employment status with the employer has not been terminated is an active participant of the employer's pension plan.

(14) *Pension plan termination* means an event; i.e., plan amendment, in which either the pension plan ceases to exist and all benefits are settled by purchase of annuities or other means, or the trusteeship of the plan is assumed by the Pension Benefit Guarantee Corporation or other conservator. The plan may or may not be replaced by another plan.

(15) *Permitted unfunded accruals* means the amount of pension cost for nonqualified defined-benefit pension plans that is not required to be funded under 9904.412–50(d)(2). The Accumulated Value of Permitted Unfunded Accruals means the value, as of the measurement date, of the permitted unfunded accruals adjusted for imputed earnings and for benefits paid by the contractor.

(16) *Prepayment credit* means the amount funded in excess of the pension cost assigned to a cost accounting period that is carried forward for future recognition. The Accumulated Value of Prepayment Credits means the value, as of the measurement date, of the prepayment credits adjusted for income and expenses in accordance with 9904.413–50(c)(7) and decreased for amounts used to fund pension costs or liabilities, whether assignable or not.

(17) *Projected benefit cost method* means either (i) any of the several actuarial cost methods which distribute the estimated total cost of all of the employees' prospective benefits over a period of years, usually their working careers, or (ii) a modification of the accrued benefit cost method that considers projected compensation levels.

(18) *Qualified pension plan* means a pension plan comprising a definite written program communicated to and for the exclusive benefit of employees which meets the criteria deemed essential by the Internal Revenue Service as set forth in the Internal Revenue Code for preferential tax treatment regarding contributions, investments, and distributions. Any other plan is a nonqualified pension plan.

(19) *Segment* means one of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service. The term includes Government-owned contractor-operated (GOCO) facilities, and joint ventures and subsidiaries (domestic and foreign) in which the organization has a majority ownership. The term also includes those joint ventures and subsidiaries (domestic and foreign) in which the organization has less than a majority ownership, but over which it exercises control.

(20) *Segment closing* means that a segment has (i) been sold or ownership has been otherwise transferred, (ii) discontinued operations, or (iii) discontinued doing or actively seeking Government business under contracts subject to this Standard.

(21) *Termination of employment gain or loss* means an actuarial gain or loss resulting from the difference between the assumed and actual rates at which plan participants separate from employment for reasons other than retirement, disability, or death.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

[57 FR 14153, Apr. 17, 1992, as amended at 60 FR 16549, Mar. 30, 1995; 76 FR 81323, Dec. 27, 2011]

### 9904.413–40 Fundamental requirement.

(a) Assignment of actuarial gains and losses. Actuarial gains and losses shall be calculated annually and shall be assigned to the cost accounting period for which the actuarial valuation is made and subsequent periods.

(b) *Valuation of the assets of a pension plan.* The actuarial value of the assets of a pension plan shall be determined under an asset valuation method which takes into account unrealized appreciation and depreciation of the market value of the assets of the pension plan, including the accumulated value of permitted unfunded accruals, and shall be used in measuring the components of pension costs.

(c) *Allocation of pension cost to segments.* Contractors shall allocate pension costs to each segment having participants in a pension plan.

(1) A separate calculation of pension costs for a segment is required when the conditions set forth in 9904.413–50(c)(2) or (3) are present. When these conditions are not present, allocations may be made by calculating a composite pension cost for two or more segments and allocating this cost to these segments by means of an allocation base.

(2) When pension costs are separately computed for a segment or segments,

the provisions of Cost Accounting Standard 9904.412 regarding the assignable cost limitation shall be based on the actuarial value of assets, actuarial accrued liability and normal cost for the segment or segments for purposes of such computations. In addition, for purposes of 9904.412–50(c)(2)(iii), the amount of pension cost assignable to a segment or segments shall not exceed the sum of:

(i) The maximum tax-deductible amount computed for the plan as a whole, and

(ii) The accumulated value of prepayment credits not already allocated to segments apportioned among the segment(s).

[57 FR 14153, Apr. 17, 1992, as amended at 60 FR 16550, Mar. 30, 1995; 76 FR 81323, Dec. 27, 2011]

**9904.413–50 Techniques for application.**

(a) *Assignment of actuarial gains and losses.* (1) In accordance with the provisions of Cost Accounting Standard 9904.412, actuarial gains and losses shall be identified separately from other unfunded actuarial liabilities.

(2) Actuarial gains and losses shall be amortized as required by 9904.412–50(a)(1)(v).

(i) For periods beginning prior to the ''Applicability Date of the CAS Pension Harmonization Rule,'' actuarial gains and losses determined under a pension plan whose costs are measured by an immediate-gain actuarial cost method shall be amortized over a fifteen-year period in equal annual installments, beginning with the date as of which the actuarial valuation is made.

(ii) For periods beginning on or after the ''Applicability Date of the CAS Pension Harmonization Rule,'' such actuarial gains and losses shall be amortized over a ten-year period in equal annual installments, beginning with the date as of which the actuarial valuation is made.

(iii) The installment for a cost accounting period shall consist of an element for amortization of the gain or loss, and an element for interest on the unamortized balance at the beginning of the period. If the actuarial gain or loss determined for a cost accounting period is not material, the entire gain or loss may be included as a component of the current or ensuing year's pension cost.

(3) Pension plan terminations and curtailments of benefits shall be subject to adjustment in accordance with 9904.413–50(c)(12).

(b) *Valuation of the assets of a pension plan.* (1) The actuarial value of the assets of a pension plan shall be used:

(i) In measuring actuarial gains and losses, and

(ii) For purposes of measuring other components of pension cost.

(2) The actuarial value of the assets of a pension plan may be determined by the use of any recognized asset valuation method which provides equivalent recognition of appreciation and depreciation of the market value of the assets of the pension plan. However, the actuarial value of the assets produced by the method used shall fall within a corridor from 80 to 120 percent of the market value of the assets, determined as of the valuation date. If the method produces a value that falls outside the corridor, the actuarial value of the assets shall be adjusted to equal the nearest boundary of the corridor.

(3) The method selected for valuing pension plan assets shall be consistently applied from year to year within each plan.

(4) The provisions of paragraphs (b)(1) through (3) of this subsection are not applicable to plans that are treated as defined-contribution plans in accordance with 9904.412–50(a)(6).

(5) The market and actuarial values of the assets of a pension plan shall not be adjusted for any fee, reserve charge, or other investment charge for withdrawals from or termination of an investment contract, trust agreement, or other funding arrangement, unless such fee is determined in an arm's length transaction, and actually incurred and paid.

(6) The market value of the assets of a pension plan shall include the present value of contributions received after the date the market value of plan assets is measured.

(i) The assumed rate of interest, established in accordance with 9904.412–40(b)(2) and 9904.412–50(b)(4), shall be

used to determine the present value of such receivable contributions as of the valuation date.

(ii) The market value of plan assets measured in accordance with paragraphs (b)(6)(i) of this section shall be the basis for measuring the actuarial value of plan assets in accordance with this Standard.

(c) *Allocation of pension cost to segments.* (1) For contractors who compute a composite pension cost covering plan participants in two or more segments, the base to be used for allocating such costs shall be representative of the factors on which the pension benefits are based. For example, a base consisting of salaries and wages shall be used for pension costs that are calculated as a percentage of salaries and wages; a base consisting of the number of participants shall be used for pension costs that are calculated as an amount per participant. If pension costs are separately calculated for one or more segments, the contractor shall make a distribution among the segments for the maximum tax-deductible amount and the contribution to the funding agency as follows:

(i) When apportioning to the segments the sum of (A) the maximum tax-deductible amount, which is determined for a qualified defined-benefit pension plan as a whole pursuant to the Internal Revenue Code at Title 26 of the U.S. C., as amended, and (B) the accumulated value of the prepayment credits not already allocated to segments, the contractor shall use a base that considers the otherwise assignable pension costs or the funding levels of the individual segments.

(ii) When apportioning amounts deposited to a funding agency to segments, contractors shall use a base that is representative of the assignable pension costs, determined in accordance with 9904.412–50(c) for the individual segments. However, for qualified defined-benefit pension plans, the contractor may first apportion amounts funded to the segment or segments subject to this Standard.

(2) Separate pension cost for a segment shall be calculated whenever any of the following conditions exist for that segment, provided that such condition(s) materially affect the amount of pension cost allocated to the segment:

(i) There is a material termination of employment gain or loss attributable to the segment,

(ii) The level of benefits, eligibility for benefits, or age distribution is materially different for the segment than for the average of all segments, or

(iii) The appropriate actuarial assumptions are, in the aggregate, materially different for the segment than for the average of all segments. Calculations of termination of employment gains and losses shall give consideration to factors such as unexpected early retirements, benefits becoming fully vested, and reinstatements or transfers without loss of benefits. An amount may be estimated for future reemployments.

(3) Pension cost shall also be separately calculated for a segment under circumstances where—

(i) The pension plan for that segment becomes merged with that of another segment, or the pension plan is divided into two or more pension plans, and in either case,

(ii) The ratios of market value of the assets to actuarial accrued liabilities for each of the merged or separated plans are materially different from one another after applying the benefits in effect after the pension plan merger or pension plan division.

(4) For a segment whose pension costs are required to be calculated separately pursuant to paragraphs (c) (2) or (3) of this subsection, such calculations shall be prospective only; pension costs need not be redetermined for prior years.

(5) For a segment whose pension costs are either required to be calculated separately pursuant to paragraph (c)(2) or (c)(3) of this subsection or calculated separately at the election of the contractor, there shall be an initial allocation of a share in the undivided market value of the assets of the pension plan to that segment, as follows:

(i) If the necessary data are readily determinable, the funding agency balance to be allocated to the segment shall be the amount contributed by, or on behalf of, the segment, increased by

income received on such assets, and decreased by benefits and expenses paid from such assets. Likewise, the accumulated value of permitted unfunded accruals to be allocated to the segment shall be the amount of permitted unfunded accruals assigned to the segment, increased by interest imputed to such assets, and decreased by benefits paid from sources other than the funding agency; or

(ii) If the data specified in paragraph (c)(5)(i) of this subsection are not readily determinable for certain prior periods, the market value of the assets of the pension plan shall be allocated to the segment as of the earliest date such data are available. Such allocation shall be based on the ratio of the actuarial accrued liability of the segment to the plan as a whole, determined in a manner consistent with the immediate gain actuarial cost method or methods used to compute pension cost. Such assets shall be brought forward as described in paragraph (c)(7) of this subsection.

(iii) The actuarial value of the assets of the pension plan shall be allocated to the segment in the same proportion as the market value of the assets.

(6) If, prior to the time a contractor is required to use this Standard, it has been calculating pension cost separately for individual segments, the amount of assets previously allocated to those segments need not be changed.

(7) After the initial allocation of assets, the contractor shall maintain a record of the portion of subsequent contributions, permitted unfunded accruals, income, benefit payments, and expenses attributable to the segment, and paid from the assets of the pension plan. Income shall include a portion of any investment gains and losses attributable to the assets of the pension plan. Income and expenses of the pension plan assets shall be allocated to the segment in the same proportion that the average value of assets allocated to the segment bears to the average value of total pension plan assets, including the accumulated value of prepayment credits, for the period for which income and expenses are being allocated.

(8) If plan participants transfer among segments, contractors need not transfer assets or actuarial accrued liabilities, unless a transfer is sufficiently large to distort the segment's ratio of pension plan assets to actuarial accrued liabilities determined using the accrued benefit cost method. If assets and liabilities are transferred, the amount of assets transferred shall be equal to the actuarial accrued liabilities transferred, determined using the accrued benefit cost method and long-term assumptions in accordance with 9904.412–40(b)(2) and 9904.412–50(b)(4).

(9) Contractors who separately calculate the pension cost of one or more segments may calculate such cost either for all pension plan participants assignable to the segment(s) or for only the active participants of the segment(s). If costs are calculated only for active participants, a separate segment shall be created for all of the inactive participants of the pension plan and the cost thereof shall be calculated. When a contractor makes such an election, assets shall be allocated to the segment for inactive participants in accordance with paragraphs (c)(5), (6), and (7) of this subsection. When an employee of a segment becomes inactive, assets shall be transferred from that segment to the segment established to accumulate the assets and actuarial liabilities for the inactive plan participants. The amount of assets transferred shall be equal to the actuarial accrued liabilities, determined under the accrued benefit cost method and long-term assumptions in accordance with 9904.412–40(b)(2) and 9904.412–50(b)(4), for these inactive plan participants. If inactive participants become active, assets and liabilities shall similarly be transferred to the segments to which the participants are assigned. Such transfers need be made only as of the last day of a cost accounting period. The total annual pension cost for a segment having active employees shall be the amount calculated for the segment and an allocated portion of the pension cost calculated for the inactive participants. Such an allocation shall be on the same basis as that set forth in paragraph (c)(1) of this subsection.

(10) Where pension cost is separately calculated for one or more segments,

the actuarial cost method used for a plan shall be the same for all segments. Unless a separate calculation of pension cost for a segment is made because of a condition set forth in paragraph (c)(2)(iii) of this subsection, the same actuarial assumptions may be used for all segments covered by a plan.

(11) If a pension plan has participants in the home office of a company, the home office shall be treated as a segment for purposes of allocating the cost of the pension plan. Pension cost allocated to a home office shall be a part of the costs to be allocated in accordance with the appropriate requirements of Cost Accounting Standard 9904.403.

(12) If a segment is closed, if there is a pension plan termination, or if there is a curtailment of benefits, the contractor shall determine the difference between the actuarial accrued liability for the segment and the market value of the assets allocated to the segment, irrespective of whether or not the pension plan is terminated. The difference between the market value of the assets and the actuarial accrued liability for the segment represents an adjustment of previously-determined pension costs.

(i) The determination of the actuarial accrued liability shall be made using the accrued benefit cost method. The actuarial assumptions employed shall be consistent with the current and prior long term assumptions used in the measurement of pension costs. If there is a pension plan termination, the actuarial accrued liability shall be measured as the amount paid to irrevocably settle all benefit obligations or paid to the Pension Benefit Guarantee Corporation.

(ii) In computing the market value of assets for the segment, if the contractor has not already allocated assets to the segment, such an allocation shall be made in accordance with the requirements of paragraphs (c)(5) (i) and (ii) of this subsection. The market value of the assets shall be reduced by the accumulated value of prepayment credits, if any. Conversely, the market value of the assets shall be increased by the current value of any unfunded actuarial liability separately identified and maintained in accordance with 9904.412–50(a)(2).

(iii) The calculation of the difference between the market value of the assets and the actuarial accrued liability shall be made as of the date of the event (e.g., contract termination, plan amendment, plant closure) that caused the closing of the segment, pension plan termination, or curtailment of benefits. If such a date is not readily determinable, or if its use can result in an inequitable calculation, the contracting parties shall agree on an appropriate date.

(iv) Pension plan improvements adopted within 60 months of the date of the event which increase the actuarial accrued liability shall be recognized on a prorata basis using the number of months the date of adoption preceded the event date. Plan improvements mandated by law or collective bargaining agreement are not subject to this phase-in.

(v) If a segment is closed due to a sale or other transfer of ownership to a successor in interest in the contracts of the segment and all of the pension plan assets and actuarial accrued liabilities pertaining to the closed segment are transferred to the successor segment, then no adjustment amount pursuant to this paragraph (c)(12) is required. If only some of the pension plan assets and actuarial accrued liabilities of the closed segment are transferred, then the adjustment amount required under this paragraph (c)(12) shall be determined based on the pension plan assets and actuarial accrued liabilities remaining with the contractor. In either case, the effect of the transferred assets and liabilities is carried forward and recognized in the accounting for pension cost at the successor contractor.

(vi) The Government's share of the adjustment amount determined for a segment shall be the product of the adjustment amount and a fraction. The adjustment amount shall be reduced for any excise tax imposed upon assets withdrawn from the funding agency of a qualified pension plan. The numerator of such fraction shall be the sum of the pension plan costs allocated to all contracts and subcontracts (including Foreign Military Sales) subject to this Standard during a period of years representative of the Government's

participation in the pension plan. The denominator of such fraction shall be the total pension costs assigned to cost accounting periods during those same years. This amount shall represent an adjustment of contract prices or cost allowance as appropriate. The adjustment may be recognized by modifying a single contract, several but not all contracts, or all contracts, or by use of any other suitable technique.

(vii) The full amount of the Government's share of an adjustment is allocable, without limit, as a credit or charge during the cost accounting period in which the event occurred and contract prices/costs will be adjusted accordingly. However, if the contractor continues to perform Government contracts, the contracting parties may negotiate an amortization schedule, including interest adjustments. Any amortization agreement shall consider the magnitude of the adjustment credit or charge, and the size and nature of the continuing contracts.

(viii) If a benefit curtailment is caused by a cessation of benefit accruals mandated by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, as amended based on the plan's funding level, then no adjustment for the curtailment of benefit pursuant to this paragraph (c)(12) is required. Instead, the curtailment of benefits shall be recognized as follows:

(A) If the written plan document provides that benefit accruals are nonforfeitable once employment service has been rendered, and shall be retroactively restored if, and when, the benefit accrual limitation ceases, then the contractor may elect to recognize the expected benefit accruals in the actuarial accrued liability and normal cost during the period of cessation for the determination of pension cost in accordance with the provisions of 9904–412 and 413.

(B) Otherwise, the curtailment of benefits shall be recognized as an actuarial gain or loss for the period. The subsequent restoration of missed benefit accruals shall be recognized as an actuarial gain or loss in the period in which the restoration occurs.

[60 FR 16550, Mar. 30, 1995, as amended at 76 FR 81323, Dec. 27, 2011]

**9904.413–60 Illustrations.**

(a) *Assignment of actuarial gains and losses.* Contractor A has a defined-benefit pension plan whose costs are measured under an immediate-gain actuarial cost method. The contractor makes actuarial valuations every other year. In the past, at each valuation date, the contractor has calculated the actuarial gains and losses that have occurred since the previous valuation date, and has merged such gains and losses with the unfunded actuarial liabilities that are being amortized. Pursuant to 9904.413–40(a), the contractor must make an actuarial valuation annually, and any actuarial gains or losses measured must be separately amortized over a specific period of years beginning with the period for which the actuarial valuation is made in accordance with 9904.413–50(a)(1) and (2). If the actuarial gain or loss is measured for a period beginning prior to the ''Applicability Date for the CAS Pension Harmonization Rule,'' the gain or loss shall be amortized over a fifteen-year period. For gains and losses measured for periods beginning on or after the ''Applicability Date for the CAS Pension Harmonization Rule,'' the gain or loss shall be amortized over a ten-year period.

(b)(1) *Valuation of the assets of a pension plan.* Contractor B has a qualified defined-benefit pension plan, the assets of which are invested in equity securities, debt securities, and real property. The contractor, whose cost accounting period is the calendar year, has an annual actuarial valuation of the pension plan assets in June of each year; the effective date of the valuation is the beginning of that year. The contractor's method for valuing the assets of the pension plan is as follows: debt securities expected to be held to maturity are valued on an amortized basis running from initial cost at purchase to par value at maturity; land and buildings are valued at cost less depreciation taken to date; all equity securities and debt securities not expected to be held to maturity are valued on the basis of a five-year moving average of market values. In making an actuarial valuation, the contractor must compare the values reached under the asset

valuation method used with the market value of all the assets as required by 9904.413–40(b). In this case, the assets are valued as of January 1 of that year. The contractor established the following values as of the valuation date.

| | Asset valuation method | Market |
|---|---|---|
| Cash | $100,000 | 100,000 |
| Equity securities | 6,000,000 | 7,800,000 |
| Debt securities, expected to be held to maturity | 550,000 | 600,000 |
| Other debt securities | 600,000 | 750,000 |
| Land and Buildings, net of depreciation | 400,000 | 750,000 |
| Total | 7,650,000 | 10,000,000 |

(2) Section 9904.413–50(b)(2) requires that the actuarial value of the assets of the pension plan fall within a corridor from 80 to 120 percent of market. The corridor for the plan's assets as of January 1 is from $12 million to $8 million. Because the asset value reached by the contractor, $7,650,000, falls outside that corridor, the value reached must be adjusted to equal the nearest boundary of the corridor: $8 million. In subsequent years the contractor must continue to use the same method for valuing assets in accordance with 9904.413–50(b)(3). If the value produced falls inside the corridor, such value shall be used in measuring pension costs.

(3) Assume that besides the market value of assets of $10 million that Contractor B has on the valuation date of January 1, 2017, the contractor makes a contribution of $100,000 on July 1, 2017, to cover its prior year's pension cost. Based on the contractor's assumed interest rate of 8% which complies with 9904.412–40(b)(2) and 9904.412.–50(b)(5), the contribution is discounted for the six-month period from January 1, 2017 to July 1, 2017. For contract cost accounting purposes, the contractor measures $96,225 as the present value (PV) of the $100,000 contribution on January 1, 2017 (discounted at 8% per annum for one half year using compound interest, i.e., Net PV = $100,000/$1.08^{0.5}$), and therefore recognizes $10,096,225 as the market value of assets as required by 9904.413–50(b)(6)(ii). The actuarial value of assets on January 1, 2017, must also reflect $96,225 as the present value of the July 1, 2017, contribution of $100,000.

(c) *Allocation of pension costs to segments.* (1) Contractor C has a defined-benefit pension plan covering employees at five segments. Pension cost is computed by use of an immediate-gain actuarial cost method. One segment (X) is devoted primarily to performing work for the Government. During the current cost accounting period, Segment X had a large and unforeseeable reduction of employees because of a contract termination at the convenience of the Government and because the contractor did not receive an anticipated follow-on contract to one that was completed during the period. The segment does continue to perform work under several other Government contracts. As a consequence of this termination of employment gain, a separate calculation of the pension cost for Segment X would result in materially different allocation of costs to the segment than would a composite calculation and allocation by means of a base. Accordingly, pursuant to 9904.413–50(c)(2), the contractor must calculate a separate pension cost for Segment X. In doing so, the entire termination of employment gain must be assigned to Segment X and amortized over fifteen years. If the actuarial assumptions for Segment X continue to be substantially the same as for the other segments, the termination of employment gain may be separately amortized and allocated only to Segment X; all other Segment X computations may be included as part of the composite calculation. After the termination of employment gain is amortized, the contractor is no longer required to separately calculate the costs for Segment X unless subsequent events require each separate calculation.

(2) Contractor D has a defined-benefit pension plan covering employees at ten segments, all of which have some contracts subject to this Standard. The contractor's calculation of normal cost is based on a percentage of payroll for all employees covered by the plan. One of the segments (Segment Y) is entirely devoted to Government work. The contractor's policy is to place junior employees in this segment. The salary scale assumption for employees of the segment is so different from that of the other segments that the pension

cost for Segment Y would be materially different if computed separately. Pursuant to 9904.413–50(c)(2)(iii), the contractor must compute the pension cost for Segment Y as if it were a separate pension plan. Therefore, the contractor must allocate a portion of the market value of pension plan's assets to Segment Y in accordance with 9904.413–50(c)(5). Memorandum records may be used in making the allocation. However, because the necessary records only exist for the last five years, 9904.413–50(c)(5)(ii) permits an initial allocation to be made as of the earliest date such records are available. The initial allocation must be made on the basis of the immediate gain actuarial cost method or methods used to calculate prior years' pension cost for the plan. Once the assets have been allocated, they shall be brought forward to the current period as described in 9904.413–50(c)(7). A portion of the undivided actuarial value of assets shall then be allocated to the segment based on the segment's proportion of the market value of assets in accordance with 9904.413–50(c)(5)(iii). In future cost accounting periods, the contractor shall make separate pension cost calculations for Segment Y based on the appropriate salary scale assumption. Because the factors comprising pension cost for the other nine segments are relatively equal, the contractor may compute pension cost for these nine segments by using composite factors. As required by 9904.413–50(c)(1), the base to be used for allocating such costs shall be representative of the factors on which the pension benefits are based.

(3) Contractor E has a defined-benefit pension plan which covers employees at twelve segments. The contractor uses composite actuarial assumptions to develop a pension cost for all segments. Three of these segments primarily perform Government work; the work at the other nine segments is primarily commercial. Employee turnover at the segments performing commercial work is relatively stable. However, employment experience at the Government segments has been very volatile; there have been large fluctuations in employment levels and the contractor assumes that this pattern of employment will continue to occur. It is evident that separate termination of employment assumptions for the Government segments and the commercial segments will result in materially different pension costs for the Government segments. Therefore, the cost for these segments must be separately calculated, using the appropriate termination of employment assumptions for these segments in accordance with 9904.413–50(c)(2)(iii).

(4) Contractor F has a defined-benefit pension plan covering employees at 25 segments. Twelve of these segments primarily perform Government work; the remaining segments perform primarily commercial work. The contractor's records show that the termination of employment experience and projections for the twelve segments are so different from that of the average of all of the segments that separate pension cost calculations are required for these segments pursuant to 9904.413–50(c)(2). However, because the termination of employment experience and projections are about the same for all twelve segments, Contractor F may calculate a composite pension cost for the twelve segments and allocate the cost to these segments by use of an appropriate allocation base in accordance with 9904.413–50(c)(1).

(5) After this Standard becomes applicable to Contractor G, it acquires Contractor H and makes it Segment H. Prior to the merger, each contractor had its own defined-benefit pension plan. Under the terms of the merger, Contractor H's pension plan and plan assets were merged with those of Contractor G. The actuarial assumptions, current salary scale, and other plan characteristics are about the same for Segment H and Contractor G's other segments. However, based on the same benefits at the time of the merger, the plan of Contractor H had a disproportionately larger unfunded actuarial liability than did Contractor G's plan. Any combining of the assets and actuarial liabilities of both plans would result in materially different pension cost allocation to Contractor G's segments than if pension cost were computed for Segment H on the basis that

it had a separate pension plan. Accordingly, pursuant to 9904.413–50(c)(3), Contractor G must allocate to Segment H a portion of the assets of the combined plan. The amount to be allocated shall be the market value of Segment H's pension plan assets at the date of the merger determined in accordance with 9904.413–50(c)(5), and shall be adjusted for subsequent receipts and expenditures applicable to the segment in accordance with 9904.413–50(c)(7). Pursuant to 9904.413–40(b)(1) and 9904.413–50(c)(5)(iii), Contractor G must use these amounts of assets as the basis for determining the actuarial value of assets used for calculating the annual pension cost applicable to Segment H.

(6) Contractor I has a defined-benefit pension plan covering employees at seven segments. The contractor has been making a composite pension cost calculation for all of the segments. However, the contractor determines that, pursuant to this Standard, separate pension costs must be calculated for one of the segments. In accordance with 9904.413–50(c)(9), the contractor elects to allocate pension plan assets only for the active participants of that segment. The contractor must then create a segment to accumulate the assets and actuarial accrued liabilities for the plan's inactive participants. When active participants of a segment become inactive, the contractor must transfer assets to the segment for inactive participants equal to the actuarial accrued liabilities for the participants that become inactive.

(7) Contractor J has a defined-benefit pension plan covering employees at ten segments. The contractor makes a composite pension cost calculation for all segments. The contractor's records show that the termination of employment experience for one segment, which is performing primarily Government work, has been significantly different from the average termination of employment experience of the other segments. Moreover, the contractor assumes that such different experience will continue. Because of this fact, and because the application of a different termination of employment assumption would result in significantly different costs being charged the Government, the contractor must develop separate pension cost for that segment. In accordance with 9904.413–50(c)(2)(iii), the amount of pension cost must be based on an acceptable termination of employment assumption for that segment; however, as provided in 9904.413–50(c)(10), all other assumptions for that segment may be the same as those for the remaining segments.

(8) Contractor K has a five-year contract to operate a Government-owned facility. The employees of that facility are covered by the contractor's overall qualified defined-benefit pension plan which covers salaried and hourly employees at other locations. At the conclusion of the five-year period, the Government decides not to renew the contract. Although some employees are hired by the successor contractor, because Contractor K no longer operates the facility, it meets the 9904.413–30(a)(20)(iii) definition of a segment closing. Contractor K must compute the actuarial accrued liability for the pension plan for that facility using the accrued benefit cost method as of the date the contract expired in accordance with 9904.413–50(c)(12)(i). Because many of Contractor K's employees are terminated from the pension plan, the Internal Revenue Service considers it to be a partial plan termination, and thus requires that the terminated employees become fully vested in their accrued benefits to the extent such benefits are funded. Taking this mandated benefit improvement into consideration in accordance with 9904.413–50(c)(12)(iv), the actuary calculates the actuarial accrued liability to be $12.5 million. The contractor must then determine the market value of the pension plan assets allocable to the facility, in accordance with 9904.413–50(c)(5), as of the date agreed to by the contracting parties pursuant to 9904.413–50(c)(12)(iii), the date the contract expired. In making this determination, the contractor is able to do a full historical reconstruction of the market value of the assets allocated to the segment. In this case, the market value of the segment's assets amounted to $13.8 million. Thus, for this facility the value of pension plan assets exceeded the actuarial accrued liability by $1.3 million. Pursuant to 9904.413–50(c)(12)(vi), this amount

indicates the extent to which the Government over-contributed to the pension plan for the segment and, accordingly, is the amount of the adjustment due to the Government.

(9) Contractor L operated a segment over the last five years during which 80% of its work was performed under Government CAS-covered contracts. The Government work was equally divided each year between fixed-price and cost-type contracts. The employees of the facility are covered by a funded nonqualified defined-benefit pension plan accounted for in accordance with 9904.412–50(c)(3). For each of the last five years the highest Federal corporate income tax rate has been 30%. Pension costs of $1 million per year were computed using a projected benefit cost method. Contractor L funded at the complement of the tax rate ($700,000 per year). The pension plan assets held by the funding agency earned 8% each year. At the end of the five-year period, the funding agency balance; i.e., the market value of invested assets, was $4.4 million. As of that date, the accumulated value of permitted unfunded accruals; i.e., the current value of the $300,000 not funded each year, is $1.9 million. As defined by 9904.413–30(a)(20)(i), a segment closing occurs when Contractor L sells the segment at the end of the fifth year. Thus, for this segment, the market value of the assets of the pension plan determined in accordance with 9904.413–30(a)(10) is $6.3 million, which is, the sum of the funding account balance ($4.4 million) and the accumulated value of permitted unfunded accruals ($1.9 million). Pursuant to 9904.413–50(c)(12)(i), the contractor uses the accrued benefit cost method to calculate an actuarial accrued liability of $5 million as of that date. There is no transfer of plan assets or liabilities to the buyer. The difference between the market value of the assets and the actuarial accrued liability for the segment is $1.3 million ($6.3 million—$5 million). Pursuant to 9904.413–50(c)(12)(vi), the adjustment due the Government for its 80% share of previously-determined pension costs for CAS-covered contracts is $1.04 million (80% times $1.3 million). Because contractor L has no other Government contracts the $1.04 million is a credit due to the Government.

(10) Assume the same facts as in 9904.413–60(c)(9), except that Contractor L continues to perform substantial Government contract work through other segments. After considering the amount of the adjustment and the current level of contracts, the contracting officer and the contractor establish an amortization schedule so that the $1.04 million is recognized as credits against ongoing contracts in five level annual installments, including an interest adjustment based on the interest assumption used to compute pension costs for the continuing contracts. This amortization schedule satisfies the requirements of 9904.413–50(c)(12))(vii).

(11) Assume the same facts as in 9904.413–60(c)(9). As part of the transfer of ownership, Contractor L also transfers all pension liabilities and assets of the segment to the buyer. Pursuant to 9904.413–50(c)(12)(v), the segment closing adjustment amount for the current period is transferred to the buyer and is subsumed in the future pension cost accounting of the buyer. If the transferred liabilities and assets of the segment are merged into the buyer's pension plan which has a different ratio of market value of pension plan assets to actuarial accrued liabilities, then pension costs must be separately computed in accordance with 9904.413–50(c)(3).

(12) Contractor M sells its only Government segment. Through a contract novation, the buyer assumes responsibility for performance of the segment's Government contracts. Just prior to the sale, the actuarial accrued liability under the actuarial cost method in use is $18 million, and the market value of assets allocated to the segment of $22 million. In accordance with the sales agreement, Contractor M is required to transfer $20 million of plan assets to the new plan sponsored by the buyer. In determining the segment closing adjustment under 9904.413–50(c)(12), the actuarial accrued liability and the market value of assets are reduced by the amounts transferred to the buyer's new plan in accordance with the terms of the sales agreement. The adjustment amount, which is the difference between the remaining assets ($2 million)

and the remaining actuarial liability ($0), is $2 million.

(13) Contractor N has three segments that perform primarily government work and has been separately calculating pension costs for each segment. As part of a corporate reorganization, the contractor closes the production facility for Segment A and transfers all of that segment's contracts and employees to Segments B and C, the two remaining government segments. The pension assets from Segment A are allocated to the remaining segments based on the actuarial accrued liability of the transferred employees. Because Segment A has discontinued operations, a segment closing has occurred pursuant to 9904.413–30(a)(20)(ii). However, because all pension assets and liabilities have been transferred to other segments or to successors in interest of the contracts of Segment A, an immediate period adjustment is not required pursuant to 9904.413–50(c)(12)(v).

(14) Contractor O does not renew its government contract and decides to not seek additional government contracts for the affected segment. The contractor reduces the work force of the segment that had been dedicated to the government contract and converts the segment's operations to purely commercial work. In accordance with 9904.413–30(a)(20)(iii), the segment has closed. Immediately prior to the end of the contract the market value of the segment's assets was $20 million and the actuarial accrued liability determined under the actuarial cost method in use was $22 million. An actuarial accrued liability of $16 million is determined using the accrued benefit cost method as required by 9904.413–50(c)(12)(i). The segment closing adjustment is $4 million ($20 million—$16 million).

(15) Contractor P terminated its underfunded defined-benefit pension plan for hourly employees. The market value of the assets for the pension plan is $100 million. Although the actuarial accrued liability exceeds the $100 million of assets, the termination liability for benefits guaranteed by the Pension Benefit Guarantee Corporation (PBGC) is only $85 million. Therefore, the $15 million of assets in excess of the liability for guaranteed benefits are allocated to plan participants in accordance with PBGC regulations. The PBGC does not impose an assessment for unfunded guaranteed benefits against the contractor. The adjustment amount determined under 9904.413–50(c)(12) is zero.

(16) Assume the same facts as 9904.413–60(c)(15), except that the termination liability for benefits guaranteed by the Pension Benefit Guarantee Corporation (PBGC) is $120 million. The PBGC imposes a $20 million ($120 million—$100 Million) assessment against Contractor P for the unfunded guaranteed benefits. The contractor then determines the Government's share of the pension plan termination adjustment charge of $20 million in accordance with 9904.413–50(c)(12)(vi). In accordance with 9904.413–50(c)(12)(vii), the cognizant Federal official may negotiate an amortization schedule based on the contractor's schedule of payments to the PBGC.

(17) Assume the same facts as in 9904.413–60(c)(16), except that pursuant to 9904.412–50(a)(2) Contractor P has an unassignable portion of unfunded actuarial liability for prior unfunded pension costs which equals $8 million. The $8 million represents the value of assets that would have been available had all assignable costs been funded and, therefore, must be added to the assets used to determine the pension plan termination adjustment in accordance with 9904.413–50(c)(12)(ii). In this case, the adjustment charge is determined to be $12 million ($20 million − $8 million).

(18) Contractor Q terminates its qualified defined-benefit pension plan without establishing a replacement plan. At termination, the market value of assets is $85 million. All obligations for benefits are irrevocably transferred to an insurance company by the purchase of annuity contracts at a cost of $55 million, which thereby determines the actuarial liability in accordance with 9904.413–50(c)(12)(i). The contractor receives a reversion of $30 million ($85 million − $55 million). The adjustment is equal to the reversion amount, which is the excess of the market value of assets over the actuarial liability. However, the Internal Revenue Code imposes a 50% excise tax of $15 million (50% of $30 million) on

the reversion amount. In accordance with 9904.413–50(c)(12)(vi), the $30 million adjustment amount is reduced by the $15 million excise tax. Pursuant to 9904.413–50(c)(12)(vi), a share of the $15 million net adjustment ($30 million − $15 million) shall be allocated, without limitation, as a credit to CAS-covered contracts.

(19) Assume that, in addition to the facts of 9904.413–60(c)(18), Contractor Q has an accumulated value of prepayment credits of $10 million. Contractor Q has $3 million of unfunded actuarial liability separately identified and maintained pursuant to 9904.412–50(a)(2). The assets used to determine the adjustment amount equal $78 million. This amount is determined as the market value of assets ($85 million) minus the accumulated value of prepayment credits ($10 million) plus the portion of unfunded actuarial liability maintained pursuant to 9904.412–50(a)(2) ($3 million). Therefore, the difference between the assets and the actuarial liability is $23 million ($78 million − $55 million). In accordance with 9904.413–50(c)(12)(vi), the $23 million adjustment is reduced by the $15 million excise tax to equal $8 million. The contracting officer determines that the pension cost data of the most recent eight years reasonably reflects the government's participation in the pension plan. The sum of costs allocated to fixed-price and cost-type contracts subject to this Standard over the eight-year period is $21 million. The sum of costs assigned to cost accounting periods during the last eight years equals $42 million. Therefore, the government's share of the net adjustment is 50% ($21 million divided by $42 million) of the $8 million and equals $4 million.

(20) Contractor R maintains a qualified defined-benefit pension plan. Contractor R amends the pension plan to eliminate the earning of any future benefits; however the participants do continue to earn vesting service. Pursuant to 9904.413–30(a)(7), a curtailment of benefits has occurred. An actuarial accrued liability of $78 million is determined under the accrued benefit cost method using the interest assumption used for the last four actuarial valuations. The market value of assets, determined in accordance with 9904.413–50(c)(12)(ii), is $90 million. Contractor R shall determine the Government's share of the adjustment in accordance with 9904.413–50(c)(12)(vi). The contractor then shall allocate that share of the $12 million adjustment ($90 million − $78 million) determined under 9904.413–50(c)(12) to CAS-covered contracts. The full amount of adjustment shall be made without limitation in the current cost accounting period unless arrangements to amortize the adjustment are permitted and negotiated pursuant to 9904.413–50(c)(12)(vii).

(21) Contractor S amends its qualified defined-benefit pension plan to ''freeze'' all accrued benefits at their current level. Although not required by law, the amendment also provides that all accrued benefits are fully vested. Contractor S must determine the adjustment for the curtailment of benefits. Fifteen months prior to the date of the plan amendment freezing benefits, Contractor S voluntarily amended the plan to increase benefits. This voluntary amendment resulted in an overall increase of over 10%. All actuarial accrued liabilities are computed using the accrued benefit cost method. The actuarial accrued liability for all accrued benefits is $1.8 million. The actuarial accrued liability for vested benefits immediately prior to the current plan amendment is $1.6 million. The actuarial accrued liability determined for vested benefits based on the plan provisions before the voluntary amendment is $1.4 million. The $1.4 million actuarial liability is based on benefit provisions that have been in effect for six years and is fully recognized. However, the $200,000 increase in liability due to the voluntary benefit improvement adopted 15 months ago must be phased-in on a prorata basis over 60 months. Therefore, only 25% (15 months divided by 60 months) of the $200,000 increase, or $50,000, can be included in the curtailment liability. The current amendment voluntarily increasing vesting was just adopted and, therefore, none of the associated increase in actuarial accrued liability can be included. Accordingly, in accordance with 9904.413–50(c)(12)(iv), Contractor S determines the adjustment for the curtailment of

benefits using an actuarial accrued liability of $1.45 million ($1.4 million plus $50,000).

(22) Contractor T has maintained separate qualified defined-benefit plans for Segments A and B and has separately computed pension costs for each segment. Both segments perform work under contracts subject to this Standard. On the first day of the current cost accounting period, Contractor T merges the two pension plans so that segments A and B are now covered by a single pension plan. Because the ratio of assets to liabilities for each plan is materially different from that of the merged plan, the contractor continues the separate computation of pension costs for each segment pursuant to 9904.413–50(c)(3). After considering the assignable cost limitations for each segment, Contractor T determines the potentially assignable pension cost is $12,000 for Segment A and $24,000 for Segment B. The maximum tax-deductible amount for the merged plan is $30,000, which is $6,000 less than the sum of the otherwise assignable costs for the segments ($36,000). To determine the portion of the total maximum tax-deductible amount applicable to each segment on a reasonable basis, the contractor prorates the $30,000 by the pension cost determined for each segment after considering the assignable cost limitations for each segment. Therefore, in accordance with 9904.413–50(c)(1)(i), the assignable pension cost is $10,000 for Segment A ($30,000 times $12,000 divided by $36,000) and $20,000 for Segment B ($30,000 times $24,000 divided by $36,000). Contractor T funds the full $30,000 and allocates the assignable pension cost for each segment to final cost objectives.

(23) Assume the same facts as in 9904.413–60(c)(22), except that the tax-deductible maximum is $40,000 and the ERISA minimum funding requirement is $18,000. Since funding of the accrued pension cost is not constrained by tax-deductibility, Contractor T determines the assignable pension cost to be $12,000 for Segment A and $24,000 for Segment B. If the contractor funds $36,000, the full assigned pension cost of each segment can be allocated to final cost objectives. However, because the contractor funds only the ERISA minimum of $18,000, the contractor must apportion the $18,000 contribution to each segment on a basis that reflects the assignable pension cost of each segment in accordance with 9904.413–50(c)(1)(ii). To measure the funding level of each segment, Contractor T uses an ERISA minimum funding requirement separately determined for each segment, as if the segment were a separate plan. On this basis, the allocable pension cost is determined to be $8,000 for Segment A and $10,000 for Segment B. In accordance with 9904.412–50(a)(2), Contractor T must separately identify, and eliminate from future cost computations, $4,000 ($12,000 − $8,000) for Segment A and $14,000 ($24,000 − $10,000) for Segment B.

(24) Assume the same facts as in 9904.413–60(c)(23), except that Segment B performs only commercial work. As permitted by 9904.413–50(c)(1)(ii), the contractor first applies $12,000 of the contribution amount to Segment A, which is performing work under Government contracts, for purposes of 9904.412–50(d)(1). The remaining $6,000 is applied to Segment B. The full assigned pension cost of $12,000 for Segment A is funded and such amount is allocable to CAS-covered contracts. Pursuant to 9904.412–50(a)(2), the contractor separately identifies, and eliminates from future pension costs, the $18,000 ($24,000 − $6,000) of unfunded assigned cost for Segment B.

(25) Contractor U has a qualified defined-benefit pension plan covering employees at two segments that perform work on contracts subject to this Standard. The ratio of the actuarial value of assets to actuarial accrued liabilities is significantly different between the two segments. Therefore, Contractor U is required to compute pension cost separately for each segment. The actuarial value of assets allocated to Segment A exceeds the actuarial accrued liability by $50,000. Segment B has an unfunded actuarial liability of $20,000. Thus, the pension plan as a whole has an actuarial surplus of $30,000. Pension cost of $5,000 is computed for Segment B and is less than Segment B's assignable cost limitation of $9,000. The tax-deductible maximum is $0 for the plan as whole and, therefore, $0 for each segment.

Contractor U will deem all existing amortization bases maintained for Segment A to be fully amortized in accordance with 9904.412–50(c)(2)(ii). For Segment B, the amortization of existing portions of unfunded actuarial liability continues unabated. Furthermore, pursuant to 9904.412–50(c)(2)(iii), the contractor establishes an additional amortization base for Segment B for the assignable cost deficit of $5,000.

(26) Assume the same facts as Illustration 9904.413–60(c)(20), except that ERISA required Contractor R to cease benefit accruals. In this case, the segment closing adjustment is exempted by 9904.413–50(c)(12)(viii). If the written plan document provides that benefit accruals will automatically be retroactively reinstated when permitted by ERISA, then the pension cost measured pursuant to CAS 412 and this Standard for contract costing purposes may continue to recognize the benefit accruals, if the contractor has so elected. If there is evidence that the contractor might revoke the plan provision to restore the missed benefit accruals, then the contractor shall not make such election. Otherwise, the pension cost measured pursuant to CAS 412 and this Standard shall not recognize any benefit accruals until, and unless, the plan is subsequently amended to reinstate the accruals. Furthermore, when the plan is amended, the change in the actuarial accrued liability shall be measured as an actuarial gain or loss, and amortized in accordance with 9904.412–50(a)(1)(v) and 9904.413–50(a)(2)(ii).

[60 FR 16553, Mar. 30, 1995; 60 FR 20248, Apr. 25, 1995, as amended at 61 FR 58011, Nov. 12, 1996; 76 FR 81324, Dec. 27, 2011; 77 FR 43543, July 25, 2012]

### 9904.413–61 Interpretation. [Reserved]

### 9904.413–62 Exemption.

None for this Standard.

### 9904.413–63 Effective Date.

(a) This Standard is effective as February 27, 2012, hereafter known as the ''Effective Date'', and is applicable for cost accounting periods after June 30, 2012, hereafter known as the ''Implementation Date.''

(b) Following the award of a contract or subcontract subject to this Standard on or after the Effective Date, contractors shall follow this Standard, as amended, beginning with its next cost accounting period beginning after the later of the Implementation Date or the award date of a contract or subcontract to which this Standard is applicable. The first day of the cost accounting period that this Standard, as amended, is first applicable to a contractor or subcontractor is the ''Applicability Date of the CAS Pension Harmonization Rule'' for purposes of this Standard. Prior to the Applicability Date of the CAS Pension Harmonization Rule, contractors or subcontractors shall follow the Standard in 9904.413 in effect prior to the Effective Date.

(1) Following the award of a contract or subcontract subject to this Standard received on or after the Effective Date, contractors with contracts or subcontracts subject to this Standard that were received prior to the Effective Date shall continue to follow the Standard in 9904.413 in effect prior to the Effective Date. Beginning with the Applicability Date of the CAS Pension Harmonization Rule, such contractors shall follow this Standard, as amended, for all contracts or subcontracts subject to this Standard.

(2) Following the award of a contract or subcontract subject to this Standard received during the period beginning on or after the date published in the FEDERAL REGISTER and ending before the Effective Date, contractors shall follow the Standard in 9904.413 in effect prior to the Effective Date. If another contract or subcontract, subject to this Standard, is received on or after the Effective Date, the provisions of 9904.413–63(b)(1) shall apply.

[60 FR 16557, Mar. 30, 1995, as amended at 76 FR 81325, Dec. 27, 2011; 77 FR 43543, July 25, 2012]

### 9904.413–64 Transition method.

(a) To be acceptable, any method of transition from compliance with Standard 9904.413 in effect prior to March 30, 1995, to compliance with Standard 9904.413 in effect as of March 30, 1995, must follow the equitable principle that costs, which have been previously provided for, shall not be redundantly provided for under revised

methods. Conversely, costs that have not previously been provided for must be provided for under the revised method. This transition subsection is not intended to qualify for purposes of assignment or allocation, pension costs which have previously been disallowed for reasons other than ERISA funding limitations.

(b) The sum of all portions of unfunded actuarial liability identified pursuant to Standard 9904.413, effective March 30, 1995, including such portions of unfunded actuarial liability determined for transition purposes, is subject to the requirements for assignment of 9904.412–40(c).

(c) Furthermore, this Standard, effective March 30, 1995, clarifies, but is not intended to create, rights of the contracting parties, and specifies techniques for determining adjustments pursuant to 9904.413–50(c)(12). These rights and techniques should be used to resolve outstanding issues that will affect pension costs of contracts subject to this Standard.

(d) The method, or methods, employed to achieve an equitable transition shall be consistent with the provisions of this Standard and shall be approved by the contracting officer.

(e) All adjustments shall be prospective only. However, costs/prices of prior and existing contracts not subject to price adjustment may be considered in determining the appropriate transition method or adjustment amount for the computation of costs/prices of contracts subject to this Standard.

[60 FR 16557, Mar. 30, 1995]

### 9904.413–64.1 Transition Method for the CAS Pension Harmonization Rule.

The transition method for the CAS Pension Harmonization Rule under this Standard shall be in accordance with 9904.412.64.1 Transition Method for CAS Pension Harmonization Rule.

[76 FR 81325, Dec. 27, 2011]

## 9904.414 Cost accounting standard—cost of money as an element of the cost of facilities capital.

### 9904.414–10 [Reserved]

### 9904.414–20 Purpose.

The purpose of this Cost Accounting Standard is to establish criteria for the measurement and allocation of the cost of capital committed to facilities as an element of contract cost. Consistent application of these criteria will improve cost measurement by providing for allocation of cost of contractor investment in facilities capital to negotiated contracts.

### 9904.414–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this Part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

(1) *Business Unit* means any segment of an organization, or an entire business organization, which is not divided into segments.

(2) *Cost of capital committed to facilities* means an imputed cost determined by applying a cost of money rate to facilities capital.

(3) *Facilities capital* means the net book value of tangible capital assets and of those intangible capital assets that are subject to amortization.

(4) *Intangible capital asset* means an asset that has no physical substance, has more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the benefits it yields.

(5) *Tangible capital asset* means an asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the services it yields.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

**9904.414–40 Fundamental requirement.**

(a) A contractor's facilities capital shall be measured and allocated in accordance with the criteria set forth in this Standard. The allocated amount shall be used as a base to which a cost of money rate is applied.

(b) The cost of money rate shall be based on rates determined by the Secretary of the Treasury, pursuant to Public Law 92–41 (85 stat. 97).

(c) The cost of capital committed to facilities shall be separately computed for each contract using facilities capital cost of money factors computed for each cost accounting period.

**9904.414–50 Techniques for application.**

(a) The investment base used in computing the cost of money for facilities capital shall be computed from accounting data used for contract cost purposes. The form and instructions stipulated in this Standard shall be used to make the computation.

(b) The cost of money rate for any cost accounting period shall be the arithmetic mean of the interest rates specified by the Secretary of the Treasury pursuant to Public Law 92–41 (85 stat. 97). Where the cost of money must be determined on a prospective basis, the cost of money rate shall be based on the most recent available rate published by the Secretary of the Treasury.

(c)(1) A facilities capital cost of money factor shall be determined for each indirect cost pool to which a significant amount of facilities capital has been allocated and which is used to allocate indirect costs to final cost objectives.

(2) The facilities capital cost of money factor for an indirect cost pool shall be determined in accordance with Form CASB CMF, and its instructions which are set forth in appendix A to 9904.414. One form will serve for all the indirect cost pools of a business unit.

(3) For each CAS-covered contract, the applicable cost of capital committed to facilities for a given cost accounting period is the sum of the products obtained by multiplying the amount of allocation base units (such as direct labor hours, or dollars of total cost input) identified with the contract for the cost accounting period by the facilities capital cost of money factor for the corresponding indirect cost pool. In the case of process cost accounting systems, the contracting parties may agree to substitute an appropriate statistical measure for the allocation base units identified with the contract.

**9904.414–60 Illustrations.**

The use of Form CASB CMF and other computations anticipated for this Cost Accounting Standard are illustrated in appendix B to 9904.414.

**9904.414–61 Interpretation. [Reserved]**

**9904.414–62 Exemption.**

(a) For contractors who are not subject to full CAS-coverage as of the date of publication of this part 99 as a final rule, this Standard shall apply only to those fully-covered contracts with subsequent dates of award and pricing certification.

(b) This Standard shall not apply where compensation for the use of tangible capital assets is based on use rates or allowances provided for by other appropriate Federal procurement regulations such as those governing:

(1) Educational institutions,

(2) State, local, and federally recognized Indian tribal governments, or

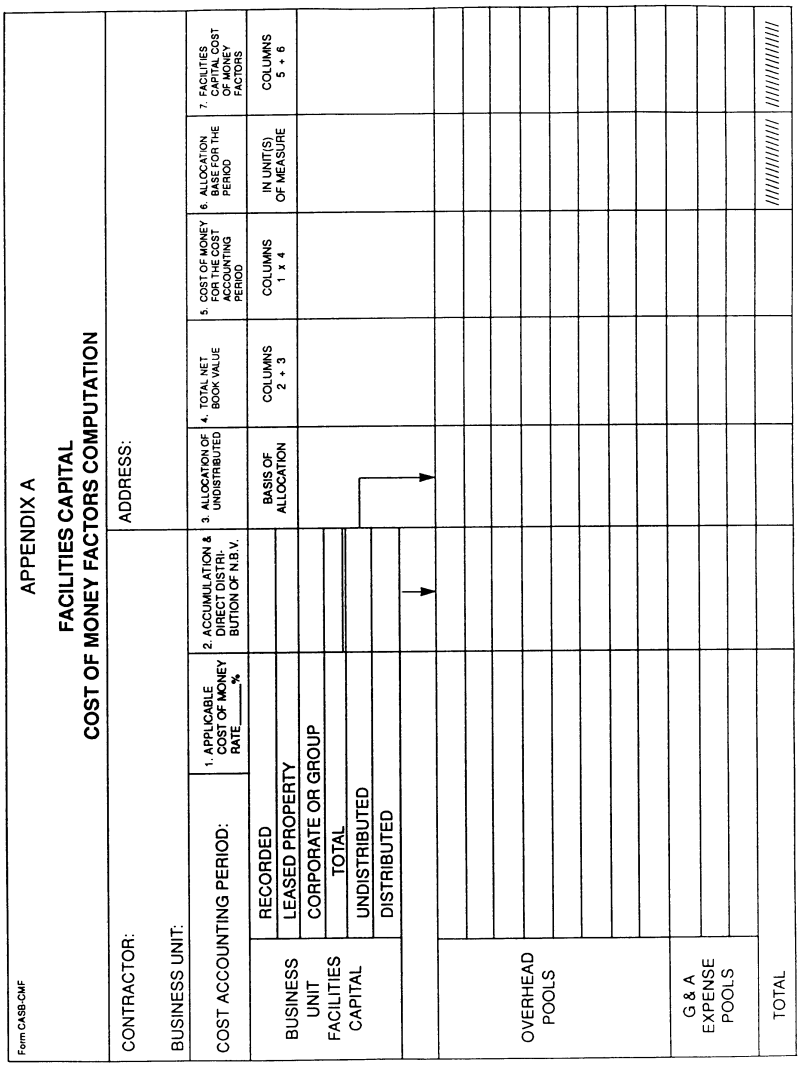
(3) Construction equipment rates (see 48 CFR 31.105(d)).

**9904.414–63 Effective date.**

This Standard is effective as of April 17, 1992.

APPENDIX A TO 9904.414—INSTRUCTIONS FOR FORM CASB CMF

FORM APPROVED OMB NUMBER
0348–0051



Form CASB-CMF

APPENDIX A
FACILITIES CAPITAL
COST OF MONEY FACTORS COMPUTATION

CONTRACTOR: ADDRESS:

BUSINESS UNIT:

| COST ACCOUNTING PERIOD: | | 1. APPLICABLE COST OF MONEY RATE ____% | 2. ACCUMULATION & DIRECT DISTRIBUTION OF N.B.V. | 3. ALLOCATION OF UNDISTRIBUTED | 4. TOTAL NET BOOK VALUE | 5. COST OF MONEY FOR THE COST ACCOUNTING PERIOD | 6. ALLOCATION BASE FOR THE PERIOD | 7. FACILITIES CAPITAL COST OF MONEY FACTORS |
|---|---|---|---|---|---|---|---|---|
| | | | | BASIS OF ALLOCATION | COLUMNS 2 + 3 | COLUMNS 1 x 4 | IN UNIT(S) OF MEASURE | COLUMNS 5 ÷ 6 |
| BUSINESS UNIT FACILITIES CAPITAL | RECORDED | | | | | | | |
| | LEASED PROPERTY | | | | | | | |
| | CORPORATE OR GROUP | | | | | | | |
| | TOTAL | | | | | | | |
| | UNDISTRIBUTED | | | | | | | |
| | DISTRIBUTED | | | | | | | |
| OVERHEAD POOLS | | | | | | | | |
| G & A EXPENSE POOLS | | | | | | | | |
| TOTAL | | | | | | | ////////////// | ////////////// |

*Purpose*

The purpose of this form is to (a) accumulate total facilities capital net book values allocated to each business unit for the contractor cost accounting period, and (b) convert those values to facilities capital cost of money factors applicable to each overhead or G&A expense allocation base employed within a business unit.

*Basis*

All data pertain to the cost accounting period for which the contractor prepares overhead and G&A expense allocations. The cost of money computations should be compatible with those allocation procedures. More specifically, facilities capital values used should be the same values that are used to generate depreciation or amortization that is allowed for Federal Government contract costing

purposes; land which is integral to the regular operation of the business unit shall be included.

*Applicable Cost of Money Rate (Col. 1)*

Enter here the rate as computed in accordance with 9904.414–50(b).

*Accumulation and Direct Distribution of Net Book Value (Col. 2)*

Recorded, Leased Property, Corporate.

The net book value of facilities capital items in this column shall represent the average balances outstanding during the cost accounting period. This applies both to items that are subject to periodic depreciation or amortization and also to such items as land that are not subject to periodic write-offs. Unless there is a major fluctuation, it will be adequate to ascertain the net book value of these assets at the beginning and end of each cost accounting period, and to compute an average of those two sets of figures. ''Recorded'' facilities are the facilities capital items owned by the contractor, carried on the books of the business unit, and used in its regular business activity. ''Leased property'' is the capitalized value of leases for which constructive costs of ownership are allowed in lieu of rental costs under Government procurement regulations. Corporate or group facilities are the business unit's allocable share of corporate-owned and leased facilities. The net book value of items of facilities capital which are held or controlled by the home office shall be allocated to the business unit on a basis consistent with the home office expense allocation.

Distributed and Undistributed.

All facilities capital items that are identified in the contractor's records as solely applicable to an organizational unit corresponding to a specific overhead, G&A or other indirect cost pool which is used to allocate indirect costs to final cost objectives, are listed against the applicable pools and are classified as ''distributed.'' ''Undistributed'' is the remainder of the business unit's facilities capital. The sum of ''distributed'' and ''undistributed'' must also correspond to the amount shown on the ''total'' line.

Allocation of Distributed.

List in the narrative column all the overhead and G&A expense pools to which ''distributed'' facilities capital items have been allocated. Enter the corresponding amounts in (Col. 2). The sum of all the amounts shown against specific overhead and G&A expense pools must correspond to the amount shown in the ''distributed'' line.

*Allocation of Undistributed (Col. 3)*

Business unit ''undistributed'' facilities are allocated to overhead and the G&A expense pools on any reasonable basis that approximates the actual absorption of depreciation or amortization of such facilities. For instance, the basis of allocation of undistributed assets in each business unit between; e.g., engineering overhead pool and the manufacturing overhead pool, should be related to the manner in which the expenses generated by these assets are allocated between the two overhead pools. Detailed analysis of this allocation is not required where essentially the same results can be obtained by other means. Where the cost accounting system for purposes of Government contract costing uses more than one ''charging rate'' for allocating indirect costs accumulated in a single cost pool, one representative base may be substituted for the multiplicity of bases used in the allocation process. The net book value of service center facilities capital items appropriately allocated should be included in this column. The sum of the entries in Column 3 is equal to the entry in the undistributed line, Column 2.

A supporting work sheet of this allocation should be prepared if there is more than one service center or other similar ''intermediate'' cost objective involved in the reallocation process.

Alternative Allocation Process—As an alternative to the above allocation process all the undistributed assets for one or more service centers or similar intermediate cost objectives may be allocated to the G&A expense pool. Consequently, the cost of money for these undistributed assets will be distributed to the final cost objectives on the same basis that is used to allocate G&A expense. This procedure may be adopted for any cost accounting period only when the contracting parties agree (a) that the depreciation or amortization generated by these undistributed assets is immaterial, or (b) that the results of this alternative procedure are not likely to differ materially from those which would be obtained under the ''regular'' allocation process described previously.

*Total Net Book Value (Col. 4)*

The sum of Columns 2 and 3. The total of this column should agree with the business unit's total shown in Column 2.

*Cost of Money for the Cost Accounting Period (Col. 5)*

Multiply the amounts in Column 4 by the percentage rate in Column 1.

*Allocation Base for the Period (Col. 6)*

Show here the total units of measure used to allocate overhead and G&A expense pools (e.g., direct labor dollars, machine hours,

total cost input, etc.). Include service centers that make charges to final cost objectives. Each base unit-of-measure must be compatible with the bases used for applying overhead in the Federal Government contract cost computation. The total base unit of measure used for allocation in this column refers to all work done in an organizational unit associated with the indirect cost pool and not to Government work alone.

*Facilities Capital Cost of Money Factors (Col. 7)*

The quotients of cost of money for the cost accounting period (Col. 5) separately divided by the corresponding overhead or G&A expense allocation bases (Col. 6). Carry each computation to five decimal places. This factor represents the cost of money applicable to facilities capital allocated to each unit of measure of the overhead or G&A expense allocation base.

## APPENDIX B TO 9904.414—EXAMPLE—ABC CORPORATION

ABC Corporation has a home office that controls three operating divisions (Business Units A, B & C). The home office includes an administrative computer center whose costs are allocated separately to the business units. The separate allocation conforms to the requirements specified in the Cost Accounting Standard No. 403. Tables I through VI deal with home office expense allocations to business units.

The A Division is a business unit as defined by the CASB, and it uses one engineering and one manufacturing overhead pool to accumulate costs for charging overhead to final cost objectives. In addition, the indirect cost allocation process also uses two ''service centers'' with their own indirect cost pools: Occupancy and technical computer center.

The costs accumulated in the occupancy pool are allocated among manufacturing overhead, engineering overhead, and the technical computer center on the basis of floor space occupied. The costs accumulated in the technical computer center cost pool are allocated to users on the basis of a CPU hourly rate. Some of these allocations are made to engineering or manufacturing overhead while others are allocated direct to final cost objectives.

At the business unit level, all the indirect expense incurred is regarded either as an engineering or manufacturing expense. Thus the sole item that enters into the business unit G&A expense pool is the allocation received by the A Division from the home office.

Operating results for the A Division are given in Table VII. Facilities capital items for the division are given in Table IX.

The example is based on a single set of illustrative contract cost data given in Table VIII. Since two methods, the ''regular'' and the ''alternative'' method, are potentially available for computing cost of money on facilities capital items two sets of different results can be considered.

In addition, total cost input is used in the example as the allocation base for the G&A expense. Two variations of this example have been prepared to illustrate the impact of excluding or including cost of money from total cost input. Variation I, summarized in Table XIII, excludes cost of money from the cost input allocation base. Variation II, summarized in Tables XVII and XVIII, includes cost of money in the cost input allocation base.

Throughout the example, where appropriate, cross references have been made to the text of the relevant parts of the Standard.

### VARIATION I—TOTAL COST INPUT ALLOCATION BASE EXCLUDES COST OF MONEY

### TABLE I—NET BOOK VALUE OF HOME OFFICE FACILITIES CAPITAL

| | Dec. 31, 1974 | Dec. 31, 1975 |
|---|---|---|
| Administrative computer center facilities capital ... | $550,000 | $450,000 |
| Other home office facilities capital ..... | 420,000 | 380,000 |
| Total ..... | 970,000 | 830,000 |

The assets in the above table generate allowable depreciation or amortization, as explained in Instructions for Form CASB CMF (Basis). Thus they should be included in the asset base for cost of money computation.

### TABLE II—HOME OFFICE FACILITIES CAPITAL ANNUAL AVERAGE BALANCES

| | |
|---|---|
| Administrative computer center facilities capital ..... | $500,000 |
| Other home office facilities capital ..... | 400,000 |
| Total ..... | 900,000 |

The above averages are based on data in Table I computed in accordance with the criteria in Instructions for Form CASB CMF (Recorded, Leased Property, Corporate).

$970,000+$830,000=$1,800,000÷2=$900,000

### TABLE III—HOME OFFICE DEPRECIATION AND AMORTIZATION FOR 1975

| | |
|---|---|
| Administrative computer center facilities capital ..... | $100,000 |
| Other home office facilities capital ..... | 40,000 |
| Total ..... | 140,000 |

TABLE IV—ALLOCATION OF ABC HOME OFFICE EXPENSES TO DIVISIONS (BUSINESS UNITS)

| | Total expense | Allocation of business units | | |
|---|---|---|---|---|
| | | A | B | C |
| Administrative computer center | $1,800,000 | $900,000 | $900,000 | |
| Other home office | 4,800,000 | 2,400,000 | 1,200,000 | 1,200,000 |
| Total | 6,600,000 | 3,300,000 | 2,100,000 | 1,200,000 |

The above allocation is carried out in accordance with CAS 403. The expense allocated to individual business units above includes depreciation and amortization as reflected in Table V.

TABLE V—DEPRECIATION AND AMORTIZATION COMPONENT OF ABC HOME OFFICE EXPENSE

| | Total depreciation and amortization expense | Allocation of business units | | |
|---|---|---|---|---|
| | | A | B | C |
| Administrative computer center | $100,000 | $50,000 | $50,000 | |
| Other home office | 40,000 | 20,000 | 10,000 | 10,000 |
| Total | 140,000 | 70,000 | 60,000 | 10,000 |

TABLE VI—ALLOCATION OF HOME OFFICE FACILITIES CAPITAL TO BUSINESS UNITS

(a) Depreciation and amortization allocation in Table V converted to percentages.

| | Total depreciation and amoritzation expense (in percent) | Allocation of business units (in percent) | | |
|---|---|---|---|---|
| | | A | B | C |
| Administrative computer center | 100 | 50 | 50 | |
| Other home office | 100 | 50 | 25 | 25 |

(b) Application of percentages in (a) to average net book values in Table II, in accordance with criteria in Instructions for Form CASB CMF (Recorded, Leased Property, Corporate).

| | Total net book value | Allocation of business units | | |
|---|---|---|---|---|
| | | A | B | C |
| Administrative computer center facilities capital | $500,000 | $250,000 | $250,000 | |
| Other home office facilities capital | 400,000 | 200,000 | 100,000 | $100,000 |
| Total | 900,000 | 450,000 | 350,000 | 100,000 |

TABLE VII—"A" DIVISION 1975 OPERATING RESULTS

| | Total cost input and other work G.&A. | Fixed-price CAS-covered contract | Cost reimbursement CAS-covered contracts | Commercial and other work |
|---|---|---|---|---|
| Direct material: | | | | |
| Purchased parts | $2,000,000 | $100,000 | $100,000 | $1,800,000 |
| Subcontract items | 21,530,000 | 11,750,000 | 7,205,000 | 2,575,000 |
| Total | 23,530,000 | 11,850,000 | 7,305,000 | 4,375,000 |
| Director labor and overhead: | | | | |
| Engineering labor | 2,000,000 | 1,500,000 | 500,000 | |

TABLE VII—"A" DIVISION 1975 OPERATING RESULTS—Continued

| | Total cost input and other work G.&A. | Fixed-price CAS-covered contract | Cost reimbursement CAS-covered contracts | Commercial and other work |
|---|---|---|---|---|
| Engineering overhead (80 pct of direct engineering labor) | 1,600,000 | 1,200,000 | 400,000 | |
| Manufacturing labor | 3,000,000 | 1,200,000 | 200,000 | 1,600,000 |
| Manufacturing overhead (200 pct of direct management labor) | 6,000,000 | 2,400,000 | 400,000 | 3,200,000 |
| Other direct charges: | | | | |
| Technical computer center direct charge 2,280 h at $250/h | 570,000 | 200,000 | 370,000 | |
| Total cost input (excluding cost of money) | 36,700,000 | 18,350,000 | 9,175,000 | 9,175,000 |
| G. & A. (8.99 pct of cost input) | 3,300,000 | 1,650,000 | 825,000 | 825,000 |
| Total | 40,000,000 | 20,000,000 | 10,000,000 | 10,000,000 |

TABLE VIII—COST DATA FOR THE CONTRACT

| | |
|---|---|
| Purchased parts | $85,000 |
| Subcontract items | 990,000 |
| Technical computer time 280 h at $250/h | 70,000 |
| Engineering labor | 330,000 |
| Engineering overhead at 80 pct | 264,000 |
| Manufacturing labor | 1,210,000 |
| Manufacturing overhead at 200 pct | 2,420,000 |
| Total cost input (excluding cost of money) | 5,369,000 |
| G & A. at 8.99 pct | 483,000 |
| Total cost input and G. & A. (excluding cost of money) | 5,852,000 |

TABLE IX—DIVISION A FACILITIES CAPITAL

Average net book values are computed in accordance with Instructions to Form CASB CMF. Average figures only are given, the underlying beginning and ending balances for 1975 have not been reproduced.

| Name of indirect cost pool the asset is associated with | Average net book value | Annual depreciation |
|---|---|---|
| Engineering overhead | $320,000 | $40,000 |
| Manufacturing overhead | 4,500,000 | 900,000 |
| Technical computer center | 450,000 | 90,000 |
| Occupancy | 3,000,000 | 200,000 |
| Facilities capital recorded by division A (see Form CASB CMF instructions for description of recorded) | 8,270,000 | 1,230,000 |
| Allocated from home office, table VI | 450,000 | |
| Total division A | 8,720,000 | |

TABLE X—ALLOCATION OF UNDISTRIBUTED FACILITIES CAPITAL

(a) *Occupancy Pool Assets.* Total occupancy pool expenses are assumed to be $1,000,000 of which $200,000 is depreciation per Table IX. Allocation of the $3,000,000 net book value of assets per Table IX is performed on the basis of floor space utilization.

| Indirect cost pool | Occupancy expense and depreciation allocation | Percent of total floor space utilized | Asset allocation |
|---|---|---|---|
| Engineering | $200,000 | 20 | $600,000 |

| Indirect cost pool | Occupancy expense and depreciation allocation | Percent of total floor space utilized | Asset allocation |
|---|---|---|---|
| Manufacturing | 750,000 | 75 | 2,250,000 |
| Technical computer | 50,000 | 5 | 150,000 |
| Total | 1,000,000 | 100 | 3,000,000 |

(b) Technical Computer Center Assets. Total technical computer center expenses for the year are assumed to be $770,000 including $90,000 depreciation per Table IX and $50,000 charge from the occupancy pool per paragraph (a) of this table. A charging rate of $250 per hour is computed assuming a total of 3,080 chargeable CPU hours per annum. The net book value of assets amounting to $600,000 ($450,000 per Table IX plus the $150,000 allocated per (a) above) is allocated on the basis of CPU hours utilized.

| Overhead pool or cost objective | Hours charged | Amount charged | Percent | Asset allocation |
|---|---|---|---|---|
| Fixed price contracts, table VII | 800 | $200,000 | 26 | $156,000 |
| Cost reimbursement contracts, table VII | 1,480 | 370,000 | 48 | 288,000 |
| Engineering overhead pool | 800 | 200,000 | 26 | 156,000 |
| Total | 3,080 | 770,000 | 100 | 600,000 |

(c) Summary of Undistributed Facilities Capital Allocation. Undistributed (per Table IX).

| | |
|---|---|
| Technical computer center | $450,000 |
| Occupancy | 3,000,000 |
| Total | 3,450,000 |

Distribution per paragraph (a) or (b) of this table of balances to overhead pools that result in charges direct to final cost objectives.

| Overhead pool | (a) | (b) | Total |
|---|---|---|---|
| Engineering | $600,000 | $156,000 | $756,000 |
| Manufacturing | 2,250,000 | ..... | 2,250,000 |
| Technical computer center (direct charge to contracts) | ..... | 444,000 | 444,000 |
| Total | 2,850,000 | 600,000 | 3,450,000 |

Form CASB-CMF

**TABLE XI**

**FACILITIES CAPITAL**
**COST OF MONEY FACTORS COMPUTATION**
("Regular" Method - Cost of Money Excluded from Total Cost Input)

CONTRACTOR: ABC Corp. ADDRESS:

BUSINESS UNIT: A Division

| COST ACCOUNTING PERIOD: Y.E. 12/31/75 | | 1. APPLICABLE COST OF MONEY RATE 8 % | 2. ACCUMULATION & DIRECT DISTRIBUTION OF N.B.V. | 3. ALLOCATION OF UNDISTRIBUTED | 4. TOTAL NET BOOK VALUE | 5. COST OF MONEY FOR THE COST ACCOUNTING PERIOD | 6. ALLOCATION BASE FOR THE PERIOD | | 7. FACILITIES CAPITAL COST OF MONEY FACTORS |
|---|---|---|---|---|---|---|---|---|---|
| BUSINESS UNIT FACILITIES CAPITAL | RECORDED | Table IX | 8,270,000 | BASIS OF ALLOCATION | COLUMNS 2 + 3 | COLUMNS 1 x 4 | IN UNIT(S) OF MEASURE | | COLUMNS 5 ÷ 6 |
| | LEASED PROPERTY | | | | | | | | |
| | CORPORATE OR GROUP | Table VI | 450,000 | Worksheet Table X | | | TableVII | | |
| | TOTAL | | 8,720,000 | | | | | | |
| | UNDISTRIBUTED | | 3,450,000 | | | | | | |
| | DISTRIBUTED | | 5,270,000 | | | | | | |
| OVERHEAD POOLS | Engineering | Table IX | 320,000 | 756,000 | 1,076,000 | 86,080 | $ 2,000,000 | | .04304 |
| | Manufacturing | Table IX | 4,500,000 | 2,250,000 | 6,750,000 | 540,000 | $ 3,000,000 | | .18 |
| | Technical Computer | | | 444,000 | 444,000 | 35,520 | 2,280 hr | | 15.57895 |
| G & A EXPENSE POOLS | G&A Expense | Table VI | 450,000 | | 450,000 | 36,000 | $36,700,000 | | .00098 |
| TOTAL | | | 5,270,000 | 3,450,000 | 8,720,000 | 697,600 | //////////// | //////////// | |

Form CASB-CMF

**TABLE XII**

**FACILITIES CAPITAL**
**COST OF MONEY FACTORS COMPUTATION**
("Alternative" Method - Cost of Money Excluded from Total Cost Input)

CONTRACTOR: ABC Corp. ADDRESS:

BUSINESS UNIT: A Division

| | | | COST ACCOUNTING PERIOD: Y.E. 12/31/75 | 1. APPLICABLE COST OF MONEY RATE 8 % | 2. ACCUMULATION & DIRECT DISTRIBUTION OF N.B.V. | 3. ALLOCATION OF UNDISTRIBUTED | 4. TOTAL NET BOOK VALUE | 5. COST OF MONEY FOR THE COST ACCOUNTING PERIOD | 6. ALLOCATION BASE FOR THE PERIOD | 7. FACILITIES CAPITAL COST OF MONEY FACTORS |
|---|---|---|---|---|---|---|---|---|---|---|
| BUSINESS UNIT FACILITIES CAPITAL | RECORDED | Table IX | | | 8,270,000 | BASIS OF ALLOCATION | COLUMNS 2 + 3 | COLUMNS 1 x 4 | IN UNIT(S) OF MEASURE | COLUMNS 5 ÷ 6 |
| | LEASED PROPERTY | | | | | | | | | |
| | CORPORATE OR GROUP | Table VI | | | 450,000 | All to G&A Expense Pool | | | Table VII | |
| | TOTAL | | | | 8,720,000 | | | | | |
| | UNDISTRIBUTED | | | | 3,450,000 | | | | | |
| | DISTRIBUTED | | | | 5,270,000 | | | | | |
| OVERHEAD POOLS | Engineering | Table IX | | | 320,000 | | 320,000 | 25,600 | $ 2,000,000 | .0128 |
| | Manufacturing | Table IX | | | 4,500,000 | | 4,500,000 | 360,000 | $ 3,000,000 | .12 |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| G & A EXPENSE POOLS | G&A Expense | Table VI | | | 450,000 | 3,450,000 | 3,900,000 | 312,000 | $36,700,000 | .00850 |
| | | | | | | | | | | |
| | | | | | | | | | | |
| TOTAL | | | | | 5,270,000 | 3,450,000 | 8,720,000 | 697,600 | //////////////// | //////////////// |

TABLE XIII—SUMMARY OF COST OF MONEY COMPUTATION ON FACILITIES CAPITAL

[Cost of money excluded from total cost input]

| Allocation base | Allocated to contract, table VIII | Computation using regular facilities, capital cost of money factor, table XI | Amount | Computation using alternative facilities capital, cost of money factor, table XI | Amount |
|---|---|---|---|---|---|
| Engineering labor | $330,000 | 0.04304 | $14,203 | 0.0128 | $4,244 |
| Manufacturing labor | 1,210,000 | .18 | 217,800 | .12 | 145,200 |
| Technical computer time | [1] 280 | 15.57895 | 4,362 | ..... | ..... |
| Cost input | $5,369,000 | .00098 | 5,261 | .00850 | 45,636 |
| Total cost of money on facilities capital | ..... | ..... | 241,626 | ..... | 195,060 |

[1] Hours.

VARIATION II—TOTAL COST INPUT ALLOCATION BASE INCLUDES COST OF MONEY

TABLE XIV—RECOMPUTATION OF "A" DIVISION TOTAL COST INPUT TO REFLECT INCLUSION OF COST OF MONEY

| | |
|---|---|
| (a) Regular method: | |
| Total cost input per table VII | $36,700,000 |
| Cost of money applicable to facilities capital identified with overhead pools per subtotal in column 5, table XV | 661,600 |
| Total cost input including cost of money | 37,361,600 |
| (b) Alternative method: | |
| Total cost input per table VII | 36,700,000 |
| Cost of money applicable to facilities capital identified with overhead pools per subtotal in column 5, table XVI | 385,600 |
| Total cost input including cost of money | 37,085,900 |

Form CASB-CMF

**TABLE XV**

**FACILITIES CAPITAL**
**COST OF MONEY FACTORS COMPUTATION**
("Regular" Method - Cost of Money Included in Total Cost Input)

CONTRACTOR: ABC Corp. ADDRESS:

BUSINESS UNIT: A Division

| COST ACCOUNTING PERIOD: Y.E. 12/31/75 | | 1. APPLICABLE COST OF MONEY RATE 8 % | 2. ACCUMULATION & DIRECT DISTRIBUTION OF N.B.V. | 3. ALLOCATION OF UNDISTRIBUTED | 4. TOTAL NET BOOK VALUE | 5. COST OF MONEY FOR THE COST ACCOUNTING PERIOD | 6. ALLOCATION BASE FOR THE PERIOD | 7. FACILITIES CAPITAL COST OF MONEY FACTORS |
|---|---|---|---|---|---|---|---|---|
| BUSINESS UNIT FACILITIES CAPITAL | RECORDED Table IX | | 8,270,000 | BASIS OF ALLOCATION | COLUMNS 2 + 3 | COLUMNS 1 x 4 | IN UNIT(S) OF MEASURE | COLUMNS 5 ÷ 6 |
| | LEASED PROPERTY | | | | | | | |
| | CORPORATE OR GROUP Table VI | | 450,000 | Worksheet Table X | | | TableVII & Table XIV | |
| | TOTAL | | 8,720,000 | | | | | |
| | UNDISTRIBUTED | | 3,450,000 | | | | | |
| | DISTRIBUTED | | 5,270,000 | | | | | |
| OVERHEAD POOLS | Engineering Table IX | | 320,000 | 756,000 | 1,076,000 | 86,080 | $ 2,000,000 | .04304 |
| | Manufacturing Table IX | | 4,500,000 | 2,250,000 | 6,750,000 | 540,000 | $ 3,000,000 | .18 |
| | Technical Computer | | | 444,000 | 444,000 | 35,520 | 2,280 hr | 15.57895 |
| | | | | | | | | |
| | Subtotal: Cost of Money | | | | | | | |
| | to be included in Total | | | | | | | |
| | Cost Input | | | | | 661,600 | | |
| | | | | | | | | |
| G & A EXPENSE POOLS | G&A Expense Table VI | | 450,000 | | 450,000 | 36,000 | $37,361,600 | .00096 |
| | | | | | | | | |
| | | | | | | | | |
| TOTAL | | | 5,270,000 | 3,450,000 | 8,720,000 | 697,600 | //////////////// | //////////////// |

Form CASB-CMF

**TABLE XVI**

**FACILITIES CAPITAL**

**COST OF MONEY FACTORS COMPUTATION**

("Alternative" Method - Cost of Money Include in Total Cost Input)

CONTRACTOR: ABC Corp. ADDRESS:

BUSINESS UNIT: A Division

| COST ACCOUNTING PERIOD: Y.E. 12/31/75 | | 1. APPLICABLE COST OF MONEY RATE 8 % | 2. ACCUMULATION & DIRECT DISTRIBUTION OF N.B.V. | 3. ALLOCATION OF UNDISTRIBUTED | 4. TOTAL NET BOOK VALUE | 5. COST OF MONEY FOR THE COST ACCOUNTING PERIOD | 6. ALLOCATION BASE FOR THE PERIOD | 7. FACILITIES CAPITAL COST OF MONEY FACTORS |
|---|---|---|---|---|---|---|---|---|
| | | | | BASIS OF ALLOCATION | COLUMNS 2 + 3 | COLUMNS 1 x 4 | IN UNIT(S) OF MEASURE | COLUMNS 5 ÷ 6 |
| BUSINESS UNIT FACILITIES CAPITAL | RECORDED | Table IX | 8,270,000 | | | | | |
| | LEASED PROPERTY | | | | | | | |
| | CORPORATE OR GROUP | Table VI | 450,000 | All to G&A Expense Pool | | | Table VII & Table XIV | |
| | TOTAL | | 8,720,000 | | | | | |
| | UNDISTRIBUTED | | 3,450,000 | | | | | |
| | DISTRIBUTED | | 5,270,000 | | | | | |
| OVERHEAD POOLS | Engineering | Table IX | 320,000 | | 320,000 | 25,600 | $ 2,000,000 | .0128 |
| | Manufacturing | Table IX | 4,500,000 | | 4,500,000 | 360,000 | $ 3,000,000 | .12 |
| | | | | | | | | |
| | Subtotal: Cost of Money to be included in Total Cost Input | | | | | 385,600 | | |
| G & A EXPENSE POOLS | G&A Expense | Table VI | 450,000 | 3,450,000 | 3,900,000 | 312,000 | $37,085,600 | .00841 |
| | | | | | | | | |
| TOTAL | | | 5,270,000 | 3,450,000 | 8,720,000 | 697,600 | ////////////// | ////////////// |

TABLE XVII—SUMMARY OF COST OF MONEY COMPUTATION ON FACILITIES CAPITAL

[Cost of money included in total cost input—regular method]

| Allocation base | Allocated to contract, table VIII | Computation using regular facilities, capital cost of money factor, table XV | Amount |
|---|---|---|---|
| Engineering labor | $330,000 | 0.04304 | $14,203 |

TABLE XVII—SUMMARY OF COST OF MONEY COMPUTATION ON FACILITIES CAPITAL—Continued

[Cost of money included in total cost input—regular method]

| Allocation base | Allocated to contract, table VIII | Computation using regular facilities, capital cost of money factor, table XV | Amount |
|---|---|---|---|
| Manufacturing labor | 1,210,000 | .18 | 217,800 |
| Technical computer time | [1] 280 | 15.57895 | 4,362 |
| Cost of money related to overheads | ..... | ..... | 236,365 |
| Cost of money above to be included in cost input | 236,365 | ..... | ..... |
| Cost input, table VIII | 5,369,000 | ..... | ..... |
| Cost input including cost of money | 5,605,365 | .00096 | 5,381 |
| Total cost of money on facilities capital | ..... | ..... | 241,674 |

[1] Hours.

TABLE XVIII—SUMMARY OF COST OF MONEY COMPUTATION ON FACILITIES CAPITAL

[Cost of money included in total cost input—alternative method]

| Allocation base | Allocated to contract, table VIII | Computation using alternative facilities, capital cost of money factor, table XVI | Amount |
|---|---|---|---|
| Engineering labor | $330,000 | 0.0128 | $4,224 |
| Manufacturing labor | 1,210,000 | .12 | 145,200 |
| Cost of money related to overheads | ..... | ..... | 149,424 |
| Cost of money above to be included in cost input | 149,424 | ..... | ..... |
| Cost input, table VIII | 5,369,000 | ..... | ..... |
| Cost input including cost of money | 5,518,424 | .00841 | 46,410 |
| Total cost of money on facilities capital | 5,518,424 | ..... | 195,834 |

[57 FR 14153, Apr. 17, 1992; 57 FR 34081, 34167, Aug. 3, 1992]

### 9904.415 Accounting for the cost of deferred compensation.

### 9904.415–10 [Reserved]

### 9904.415–20 Purpose.

(a) The purpose of this Standard 9904.415 is to provide criteria for the measurement of the cost of deferred compensation and the assignment of such cost to cost accounting periods. The application of these criteria should increase the probability that the cost of deferred compensation is allocated to cost objectives in a uniform and consistent manner.

(b) This Standard is applicable to the cost of all deferred compensation except the following which are covered in other Cost Accounting Standards:

(1) The cost for compensated personal absence, and

(2) The cost for pension plans that do not meet the definition of an Employee Stock Ownership Plan (ESOP).

[73 FR 23964, May 1, 2008]

### 9904.415–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard 9904.415. Other terms defined elsewhere in this Chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this section requires otherwise.

(1) *Deferred compensation* means an award made by an employer to compensate an employee in a future cost accounting period or periods for services rendered in one or more cost accounting periods prior to the date of the receipt of compensation by the employee. This definition shall not include the amount of year end accruals for salaries, wages, or bonuses that are to be paid within a reasonable period of

time after the end of a cost accounting period.

(2) Employee Stock Ownership Plan (ESOP) means:

(i) An employee benefit plan that is described by the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (IRC) of 1986 as a stock bonus plan, or combination stock bonus and money purchase pension plan, designed to invest primarily in employer stock, and

(ii) Any other deferred compensation plan designed to invest primarily in the stock of the contractor's corporation including, but not limited to, plans covered by ERISA.

(3) Fair value means the amount that a seller would reasonably expect to receive in a current arm's length transaction between a willing buyer and a willing seller, other than a forced or liquidation sale.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard:

(1) Market value means the current or prevailing price of a stock or other property as indicated by market quotations.

(2) [Reserved]

[57 FR 14153, Apr. 17, 1992, as amended at 73 FR 23964, May 1, 2008]

### 9904.415–40 Fundamental requirement.

(a) The cost of deferred compensation shall be assigned to the cost accounting period in which the contractor incurs an obligation to compensate the employee. In the event no obligation is incurred prior to payment, the cost of deferred compensation shall be the amount paid and shall be assigned to the cost accounting period in which the payment is made.

(b) Measurement of deferred compensation costs.

(1) For deferred compensation other than ESOPs, the deferred compensation cost shall be the present value of the future benefits to be paid by the contractor.

(2) For an ESOP, the deferred compensation cost shall be the amount contributed to the ESOP by the contractor.

(c) The cost of each award of deferred compensation shall be considered separately for purposes of measurement and assignment of such costs to cost accounting periods. However, if the cost of deferred compensation for the employees covered by a deferred compensation plan can be measured and assigned with reasonable accuracy on a group basis, separate computations for each employee are not required.

[73 FR 23965, May 1, 2008]

### 9904.415–50 Techniques for application.

(a) The contractor shall be deemed to have incurred an obligation for the cost of deferred compensation when all of the following conditions have been met. However, for awards which require that the employee perform future service in order to receive the benefits, the obligation is deemed to have been incurred as the future service is performed for that part of the award attributable to such future service:

(1) There is a requirement to make the future payment(s) which the contractor cannot unilaterally avoid.

(2) The deferred compensation award is to be satisfied by a future payment of money, other assets, or shares of stock of the contractor.

(3) The amount of the future payment can be measured with reasonable accuracy.

(4) The recipient of the award is known.

(5) If the terms of the award require that certain events must occur before an employee is entitled to receive the benefits, there is a reasonable probability that such events will occur.

(6) For stock options, there must be a reasonable probability that the options ultimately will be exercised.

(b) If any of the conditions in 9904.415–50(a) is not met, the cost of deferred compensation shall be assignable only to the cost accounting period or periods in which the compensation is paid to the employee.

(c) If the cost of deferred compensation can be estimated with reasonable accuracy on a group basis, including consideration of probable forfeitures, such estimate may be used as the basis for measuring and assigning the present value of future benefits.

(d) The following provisions are applicable for plans, other than ESOPs,

that meet the conditions of 9904.415–50(a) and the compensation is to be paid in money.

(1) If the deferred compensation award provides that the amount to be paid shall include the principal of the award plus interest at a rate fixed at the date of award, such interest shall be included in the computation of the amount of the future benefit. If no interest is included in the award, the amount of the future benefit is the amount of the award.

(2) If the deferred compensation award provides for payment of principal plus interest at a rate not fixed at the time of award but based on a specified index which is determinable in each applicable cost accounting period; e.g., a published corporate bond rate, such interest shall be included in the computation of the amount of future benefit. The interest rate to be used shall be the rate in effect at the close of the period in which the cost of deferred compensation is assignable. Since that interest rate is likely to vary from the actual rates in future periods, adjustments shall be made in any such future period in which the variation in rates materially affects the cost of deferred compensation.

(3) If the deferred compensation award provides for payment of principal plus interest at a rate not based on a specified index, or not determinable in each applicable year, the—

(i) Cost of deferred compensation for the principal of the award shall be measured by the present value of the future benefits of the principal, and shall be assigned to the cost accounting period in which the employer incurs an obligation to compensate the employee; and

(ii) Interest on such awards shall be assigned to the cost accounting period(s) in which the payment of the deferred compensation is made.

(4) If the terms of the award require that the employee perform future service in order to receive benefits, the cost of the deferred compensation shall be appropriately assigned to the periods of current and future service based on the facts and circumstances of the award. The cost of deferred compensation for each cost accounting period shall be the present value of the future benefits of the deferred compensation calculated as of the end of each such period to which such cost is assigned.

(5) In computing the present value of the future benefits, the discount rate shall be equal to the interest rate as determined by the Secretary of the Treasury pursuant to Public Law 92–41, 85 stat. 97 at the time the cost is assignable.

(6) If the award is made under a plan which requires irrevocable funding for payment to the employee in a future cost accounting period together with all interest earned thereon, the amount assignable to the period of award shall be the amount irrevocably funded.

(7) In computing the assignable cost for a cost accounting period, any forfeitures which reduce the employer's obligation for payment of deferred compensation shall be a reduction of contract costs in the period in which the forfeiture occurred. The amount of the reduction for a forfeiture shall be the amount of the award that was assigned to a prior period, plus interest compounded annually, using the same Treasury rate that was used as the discount rate at the time the cost was assigned. For irrevocably funded plans, pursuant to 9904.415–50(d)(6), the amount of the reduction for a forfeiture shall be the amount initially funded plus or minus a pro-rata share of the gains and losses of the fund.

(8) If the cost of deferred compensation for group plans measured in accordance with 9904.415–50(c) is determined to be greater than the amounts initially assigned because the forfeiture was overestimated, the additional cost shall be assignable to the cost accounting period in which such cost is ascertainable.

(e) The following provisions are applicable for plans, other than ESOPs, that meet the conditions of 9904.415–50(a) and the compensation is received by the employee in other than money. The measurements set forth in this paragraph constitute the present value of future benefits for awards made in other than money and, therefore, shall be deemed to be a reasonable measure of the amount of the future payment:

(1) If the award is made in the stock of the contractor, the cost of deferred compensation for such awards shall be

based on the market value of the stock on the measurement date; i.e., the first date the number of shares awarded is known. Market value is the current or prevailing price of the security as indicated by market quotations. If such values are unavailable or not appropriate (thin market, volatile price movements, etc.) and acceptable alternative is the fair value of the stock.

(2) If an award is made in the form of options to employees to purchase stock of the contractor, the cost of deferred compensation of such award shall be the amount by which the market value of the stock exceeds the option price multiplied by the number of shares awarded on the measurement date; i.e., the first date on which both the option price and the number of shares is known. If the option price on the measurement date is equal to or greater than the market value of the stock, no cost shall be deemed to have been incurred for contract costing purposes.

(3) If the terms of an award of stock or stock option require that the employee perform future service in order to receive the stock or to exercise the option, the cost of the deferred compensation shall be appropriately assigned to the periods of current and future service based on the facts and circumstances of the award. The cost to be assigned shall be the value of the stock or stock option at the measurement date as prescribed in 9904.415–50 (e)(1) or (e)(2).

(4) If an award is made in the form of an asset other than cash, the cost of deferred compensation for such award shall be based on the market value of the asset at the time the award is made. If a market value is not available, the fair value of the asset shall be used.

(5) If the terms of an award, made in the form of an asset other than cash, require that the employee perform future service in order to receive the asset, the cost of the deferred compensation shall be appropriately assigned to the periods of current and future service based on the facts and circumstances of the award. The cost to be assigned shall be the value of the asset at the time of award as prescribed in 9904.415–50(e)(4).

(6) In computing the assignable cost for a cost accounting period, any forfeitures which reduce the employer's obligation for payment of deferred compensation shall be a reduction of contract costs in the period in which the forfeiture occurred. The amount of the reduction shall be equal to the amount of the award that was assigned to a prior period, plus interest compounded annually, using the Treasury rate (see 9904.415–50(d)(5)) that was in effect at the time the cost was assigned. If the recipient of the award of stock options voluntarily fails to exercise such options, such failure shall not constitute a forfeiture under provisions of this Standard.

(7) Stock option awards or any other form of stock purchase plans containing all of the following characteristics shall be considered noncompensatory and not covered by this Standard:

(i) Substantially all full-time employees meeting limited employment qualifications may participate.

(ii) Stock is offered equally to eligible employees or based on a uniform percentage of salary or wages.

(iii) An option or a purchase right must be exercisable within a reasonable period.

(iv) The discount from the market price of the stock is no greater than would be reasonable in an offer of stock to stockholders or others.

(f)(1) For an ESOP, the contractor's cost shall be measured by the contractor's contribution, including interest and dividends if applicable, to the ESOP. The measurement of contributions made in the form of stock of the corporation or property, shall be based on the market value of the stock or property at the time the contributions are made. If the market value is not available, then fair value of the stock or property shall be used.

(2) A contractor's contribution to an ESOP shall be assignable to a cost accounting period only to the extent that the stock, cash, or any combination thereof resulting from the contribution is awarded to employees and allocated to individual employee accounts by the tax filing date for that period, including any permissible extensions thereof. All stock or cash that is allocated to

the individual employee accounts between the end of the cost accounting period and the tax filing date for that period must be assigned to the cost accounting period in which the employee is awarded the stock or cash. Any portion of the stock or cash resulting from a contractor's contribution that is not awarded to employees or allocated to individual employee accounts by the tax filing date for that period, including any permissible extensions thereof, shall be assigned to a future cost accounting period or periods when the remaining portion of stock or cash has been awarded to employees and allocated to individual employee accounts. This stock shall retain the value established when it was originally purchased by or otherwise made available to the ESOP.

[57 FR 14153, Apr. 17, 1992, as amended at 73 FR 23965, May 1, 2008]

**9904.415–60 Illustrations.**

(a) Contractor A has a deferred compensation plan in which all cash awards are increased each year by an interest factor equivalent to the long-term borrowing rate of the contractor prevailing during each such year. The interest factor based on a variable long-term borrowing rate meets the criteria of 9904.415–50(d)(2). Consequently, the cost of deferred compensation for Contractor A shall be measured by the present value of the future benefits and shall be assigned to the cost accounting period in which the contractor initially incurs an obligation to compensate the employee. If the long-term borrowing rate for Contractor A was 9 percent at the close of the period to which the cost of deferred compensation was assignable, then that rate should be used to calculate the future benefit. Any adjustment in the cost of deferred compensation which results from a material change in the 9 percent rate in future applicable periods shall be made in each such future period or periods (see 9904.415–50(d)(2)).

(b) Contractor B made a deferred compensation award of $10,000 to an employee on December 31, 1976, for services performed in 1976 to be paid in equal annual payments of $2,000 starting at December 31, 1981. The terms of the award do not provide for an interest factor to be included in the payment; consequently, according to provisions of 9904.415–50(d)(1), interest may not be included in the computation of the future benefits. The assignable cost for 1976 is computed as follows, assuming that the interest rate determined by the Secretary of the Treasury (pursuant to Public Law 92–41), 85 Stat. 97 at the time of the award is 8 percent and the conditions set forth in 9904.415–50(a) are met.

| Year | Amount of future payment × discount rate 8-percent present value factor=present value |
|---|---|
| 1981 | $2,000×0.6805=$1,361 |
| 1982 | 2,000×.6301=1,260 |
| 1983 | 2,000×.5834=1,167 |
| 1984 | 2,000×.5402=1,080 |
| 1985 | 2,000×.5002=1,000 |
| Assignable cost for 1976 | 5,868 |

(c) Contractor C awarded stock options for 1,000 shares of the contractor to key employees on December 31, 1976, under a deferred compensation plan requiring 2 years of additional service before the awards can be exercised. The facts and circumstances of the awards indicate that the deferred compensation applies only to the periods of future service. The market price of the stock was $26 per share, the option price was $22, and the interest rate established by the Secretary of the Treasury in effect at the time of award was 8 percent.

(1) In accordance with 9904.415–50(e)(2), the cost of the stock options is the amount by which the current value of the stock exceeds the option price multiplied by the number of shares awarded on the measurement date. Thus, the total cost of the stock options is 1,000 shares multiplied by the difference of the option price and the market price ($26–22) or $4,000.

(2) Under provisions of 9904.415–50(e)(3), the cost for stock options is assigned to each future cost accounting period in which employee service is required and is computed as follows:

| | *Assignable cost*[1] |
|---|---|
| Year of required service: | |
| 1977 | $2,000 |

| | *Assignable cost* [1] |
|---|---|
| 1978 | 2,000 |
| Total amount of award | 4,000 |

[1] Note that this illustration assumes that the facts and circumstances of the award indicate that the award relates equally to each period of future service. Thus, the assignable cost was allocated on a pro-rata basis.

(d)(1) Contractor D has a deferred compensation plan that specifies that an employee receiving a cash award must remain with the company for 3 calendar years after the award in order to qualify and receive the award and the facts and circumstances indicate that the deferred compensation applies only to the periods of future service. In accordance with 9904.415–50(d)(4), the cost of deferred compensation is assignable to the periods of future service. Thus, the amount of cost of deferred compensation to be assigned by Contractor D for each of the 3 years shall be the present value of the future benefits of the deferred compensation award calculated as of the end of each such period to which such cost is assigned.

(2) Under this plan, Contractor D made an award to an employee of $3,000 to be paid at the end of the third year. The assignable cost for each of the 3 years is computed as follows:

| Year [1] | Amount of future payment | | Present value factor [2] treasury rate [3] | | Assignable cost for each year |
|---|---|---|---|---|---|
| 1 | $1,000 | × | 0.8573 (8 pct for 2 yr) | = | $857.30 |
| 2 | 1,000 | × | 0.9302 (7.5 pct for 1 yr) | = | 930.20 |
| 3 | 1,000 | × | 1.000 (8 pct for 0 yr) | = | 1,000.00 |

[1] Note that in accordance with the facts and circumstances of the award no deferred compensation is assignable to the period in which the award is made and that the award relates equally to each period of future service.
[2] Note that since the costs are measured at the end of each year of required service, the present value factors are based on the number of years from the year of assignment to the date of payment.
[3] Note that the prevailing Treasury rate changed from year 1 to year 2.

(e)(1) Contractor E has a deferred compensation plan that specifies that an employee receiving a cash award must remain with the company for 2 calendar years after the award in order to qualify and receive the award. Contractor E made an award of $6,000 at the end of 1976 to an employee to be paid at the end of 1978. However, the employee voluntarily terminated his employment before the end of 1977. The facts and circumstances of the award indicate that $2,000 of the award represents compensation for services rendered in the period of award (1976). The remaining portion of the award represents compensation for services to be rendered in future periods. The assignable cost for 1976, which was the only period to which costs were assigned before termination, was the present value of $2,000, the amount of the award attributable to the services of that period. Thus, the cost assigned for 1976 was:

Amount of future payment×Discount rate present value factor for 2 yr at 8 pct=Assignable cost

$2,000×0.8573=$1,714.60

(2) According to provisions of 9904.415–50(d)(7), the amount of the forfeiture shall be the amount of the cost that was assigned to a prior period, plus interest compounded annually, from the year the cost was assigned to the year of forfeiture, using the same Treasury rate (see 9904.415–50(d)(5)) that was used as the discount rate at the time the cost was assigned. The IRS rate in effect at the date of award was 8 percent.

(3) The amount of the forfeiture is computed as follows:

Assignable cost×Discount rate future value for 1 yr at 8 pct=Forfeiture

$1,714.60×1.08=$1,851.77

(f) Contractor F has a non-leveraged ESOP. Under the contractor's plan, employees are awarded 5,000 shares of stock for the year ended December 31, 2007. On February 5, 2008, when the shares have a market value of $10.00

each, the 5,000 shares are contributed to the ESOP and allocated to the individual employee accounts. The total measured and assigned deferred compensation cost for FY 2007 is $50,000 (5,000 × $10 = $50,000). The market value of the contractor's stock when awarded to the employees, whether higher or lower than the $10.00 per share market value when the contractor's contribution was made to the ESOP, is irrelevant to the measurement of the contractor's ESOP costs.

(g) Contractor G has a leveraged ESOP. Under the contractor's plan, employees are awarded 10,000 shares of stock for the year ended December 31, 2007. On February 15, 2008, the contractor contributes $780,000 in cash to the ESOP trust (ESOT) to satisfy the principal and interest payment on the ESOT loan for FY 2007, resulting in the bank releasing 9,000 shares of stock, and 1,000 shares of stock valued at $60,000 to the ESOT, representing the balance of the 10,000 shares. On February 22, 2008, the ESOP allocates 10,000 shares to the individual employee accounts. The total measured and assigned deferred compensation cost for FY 2007 is $840,000—the contractor's total contribution required to satisfy the deferred compensation obligation totaling 10,000 shares.

(h)(1) Contractor H has a leveraged ESOP. Under the contractor's plan, employees are awarded 8,000 shares of stock for the year ended December 31, 2007. On January 31, 2008, the contractor contributes $500,000 in cash to the ESOT to satisfy the principal and interest payment on the ESOT loan for 2007, resulting in the bank releasing 10,000 shares of stock. On February 10, 2008, 8,000 shares are allocated to individual employee accounts, satisfying the deferred compensation obligation for 2007. The total measured deferred compensation cost for 2007 is $500,000—the contractor's contribution for the cost accounting period. However, the total assignable deferred compensation cost for 2007 is $400,000—the portion of the contribution that satisfies the 2007 deferred compensation obligation of 8,000 shares [(8,000 shares / 10,000 shares) × $500,000 = $400,000]. The remaining $100,000 of the contribution made in 2007 is assignable to future periods in which the remaining 2,000 shares of stock are awarded to employees and allocated to individual employee accounts.

(2) At December 31, 2008, the employees are awarded 12,000 shares of stock. On January 31, 2009, Contractor H contributes $500,000 in cash to the ESOT to satisfy the principal and interest payment on the ESOT loan for 2008, resulting in the bank releasing 10,000 shares of stock. On February 10, 2009, 12,000 shares are allocated to individual employee accounts satisfying the deferred compensation obligation for 2008. The total deferred compensation assignable to 2008 is $600,000, the cost of the 12,000 shares awarded to employees and allocated to individual employee accounts for 2008. The cost of the award is comprised of the contractor's contribution for the current cost accounting period (10,000 shares at $500,000) and the 2007 contribution carryover (2,000 shares at $100,000).

(i) Contractor I has a leveraged ESOP. Under the contractor's plan, employees are awarded 10,000 shares for FY 2007, which ended December 31, 2007. On February 10, 2008, Contractor I contributes $700,000 in cash to satisfy the principal and interest payment for the ESOP loan for FY 2007. This contribution results in the bank releasing 10,000 shares of stock. On March 1, 2008, the ESOP allocates the 10,000 shares to individual employee accounts satisfying the 2007 obligation. The 10,000 shares of stock must be assigned to FY 2007 (these shares cannot be assigned to 2008).

[57 FR 14153, Apr. 17, 1992, as amended at 73 FR 23965, May 1, 2008]

### 9904.415–61 Interpretation. [Reserved]

### 9904.415–62 Exemption.

None for this Standard.

### 9904.415–63 Effective date.

(a) This Standard 9904.415 is effective as of June 2, 2008.

(b) This Standard shall be followed by each contractor on or after the start of its next cost accounting period beginning after the receipt of a contract or subcontract to which this Standard is applicable.

(c) Contractors with prior CAS-covered contracts with full coverage shall continue to follow Standard 9904.415 in effect prior to June 2, 2008 until this Standard, effective June 2, 2008, becomes applicable following receipt of a contract or subcontract to which this revised Standard applies.

(d) For contractors and subcontractors that have established advance agreements prior to June 2, 2008 regarding the recognition of the costs of existing ESOPs, the awarding agency and contractor shall comply with the provisions of such advance agreement(s) for these existing ESOPs, regardless of whether the ESOP was previously subject to CAS 412 or 415. These advance agreements may be modified, by mutual agreement, to incorporate the requirements effective on June 2, 2008.

[73 FR 23966, May 1, 2008]

### 9904.416 Accounting for insurance costs.

### 9904.416–10 [Reserved]

### 9904.416–20 Purpose.

The purpose of this standard is to provide criteria for the measurement of insurance costs, the assignment of such costs to cost accounting periods, and their allocation to cost objectives. The application of these criteria should increase the probability that insurance costs are allocated to cost objectives in a uniform and consistent manner.

### 9904.416–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

(1) *Actual cash value* means the cost of replacing damaged property with other property of like kind and quality in the physical condition of the property immediately prior to the damage.

(2) *Insurance administration expenses* means the contractor's costs of administering an insurance program, e.g., the costs of operating an insurance or risk-management department, processing claims, actuarial fees, and service fee paid to insurance companies, trustees, or technical consultants.

(3) *Projected average loss* means the estimated long-term average loss per period for periods of comparable exposure to risk of loss.

(4) *Self-insurance* means the assumption or retention of the risk or loss by the contractor, whether voluntarily or involuntarily. Self-insurance includes the deductible portion of purchased insurance.

(5) *Self-insurance charge* means a cost which represents the projected average loss under a self-insurance plan.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

### 9904.416–40 Fundamental requirement.

(a) The amount of insurance cost to be assigned to a cost accounting period is the projected average loss for that period plus insurance administration expenses in that period.

(b) The allocation of insurance costs to cost objectives shall be based on the beneficial or casual relationship between the insurance costs and the benefiting or causing cost objectives.

### 9904.416–50 Techniques for application.

(a) *Measurement of projected average loss.* (1) For exposure to risk of loss which is covered by the purchase of insurance or by payments to a trusteed fund, the premium or payment, adjusted in accordance with the following criteria, shall represent the projected average loss:

(i) The premium cost applicable to a given policy term shall be assigned pro rata among the cost accounting periods covered by the policy term, except as provided in subdivisions (a)(1) (ii) through (vi) of this subsection. A refund, dividend or additional assessment shall become an adjustment to the pro rata premium costs for the earliest cost accounting period in which the refund or dividend is actually or constructively received or in which the additional assessment is payable.

(ii) Where insurance is purchased specifically for, and directly allocated to,

a single final cost objective, the premium need not be prorated among cost accounting periods.

(iii) Any part of a premium or payment to an insurer or trustee, or any part of a dividend or premium refund retained by an insurer or trustee which would be includable as a deposit in published financial statements prepared in accordance with generally accepted accounting principles shall be accounted for as a deposit for the purpose of determining insurance costs.

(iv) Any part of a premium or payment to an insurer or to a trustee, or any part of a dividend or premium refund retained by an insurer, for inclusion in a reserve or fund established and maintained on behalf of the insured or the policyholder or trustor, shall be accounted for as a deposit unless the following conditions are met:

(A) The objectives of the reserve or fund are clearly stated in writing.

(B) Measurement of the amount required for the reserve or fund is actuarially determined and is consistent with the objectives of the reserve or fund.

(C) Payments and additions to the reserve or fund are made in a systematic and consistent manner.

(D) If payments to accomplish the stated objectives of the reserve or fund are made from a source other than the reserve or fund, the payments into the reserve or fund are reduced accordingly.

(v) If an objective of an insurance program is to prefund insurance coverage on retired persons, then, in addition to the requirements imposed by subdivision (a)(1)(iv) of this subsection, the:

(A) Payments must be made to an insurer or trustee to establish and maintain a fund or reserve for that purpose;

(B) Policyholder or trustor must have no right of recapture of the reserve or fund so long as any active or retired participant in the program remains alive, unless the interests of such remaining participants are satisfied through adequate reinsurance or otherwise; and

(C) Amount added to the reserve or fund in any cost accounting period must not be greater than an amount which would be required to apportion the cost of the insurance coverage fairly over the working lives of the active employees in the plan. If a contractor establishes a terminal-funded plan for retired persons or converts from a pay-as-you-go plan to a terminal-funded plan, the actuarial present value of benefits applicable to employees already retired shall be amortized over a period of 15 years.

(vi) The contractor may adopt and consistently follow a practice of determining insurance costs based on the estimated premium and assessments net of estimated refunds and dividends. If this practice is adopted, then any difference between an estimated and actual refund, dividend, or assessment shall become an adjustment to the pro rata net premium costs for the earliest cost accounting period in which the refund or dividend is actually or constructively received or in which the additional assessment is payable.

(2) For exposure to risk of loss which is not covered by the purchase of insurance or by payments to a trusteed fund, the contractor shall follow a program of self-insurance accounting according to the following criteria:

(i) Except as provided in subdivisions (a)(2)(ii) and (iii) of this subsection, actual losses shall not become a part of insurance costs. Instead, the contractor shall make a self-insurance charge for each period for each type of self-insured risk which shall represent the projected average loss for that period. If insurance could be purchased against the self-insured risk, the cost of such insurance may be used as an estimate of the projected average loss; if this method is used, the self-insurance charge plus insurance administration expenses may be equal to, but shall not exceed, the cost of comparable purchased insurance plus the associated insurance administration expenses. However, the contractor's actual loss experience shall be evaluated regularly, and self-insurance charges for subsequent periods shall reflect such experience in the same manner as would purchased insurance. If insurance could not be purchased against the self-insured risk, the amount of the self-insurance charge for each period shall be based on the contractor's experience, relevant industry experience,

and anticipated conditions in accordance with accepted actuarial principles.

(ii) Where it is probable that the actual amount of losses which will occur in a cost accounting period will not differ significantly from the projected average loss for that period, the actual amount of losses in that period may be considered to represent the projected average loss for that period in lieu of a self-insurance charge.

(iii) Under self-insurance programs for retired persons, only actual losses shall be considered to represent the projected average loss unless a reserve or fund is established in accordance with 9904.416–50(a)(1)(v).

(iv) The self-insurance charge shall be determined in a manner which will give appropriate recognition to any indemnification agreement which exists between the contracting parties.

(3) In measuring actual losses under subparagraph (a)(2) of this subsection:

(i) The amount of a loss shall be measured by:

(A) The actual cash value of property destroyed,

(B) Amounts paid or accrued to repair damage,

(C) Amounts paid or accrued to estates and beneficiaries, and

(D) Amounts paid or accrued to compensate claimants, including subrogation.

Where the amount of a loss which is represented by a liability to a third party is uncertain, the estimate of the loss shall be the amount which would be includable as an accrued liability in financial statements prepared in accordance with generally accepted accounting principles.

(ii) If a loss has been incurred and the amount of the liability to a claimant is fixed or reasonably certain, but actual payment of the liability will not take place for more than 1 year after the loss is incurred, the amount of the loss to be recognized currently shall be the present value of the future payments, determined by using a discount rate equal to the interest rate as determined by the Secretary of the Treasury pursuant to Public Law 92–41, 85 stat. 97 in effect at the time the loss is recognized. Alternatively, where settlement will consist of a series of payments over an indefinite time period, as in workmen's compensation, the contractor may follow a consistent policy of recognizing only the actual amounts paid in the period of payment.

(4) The contractor may elect to recognize immaterial amounts of self-insured losses or insurance administration expenses as part of other expense categories rather than as ''insurance costs.''

(b) *Allocation of insurance costs.* (1) Where actual losses are recognized as an estimate of the projected average loss, in accordance with 9904.416–50(a)(2), or where actual loss experience is determined for the purpose of developing self-insurance charges by segment, a loss which is incurred in a given segment shall be identified with that segment. However, if the contractor's home office is, in effect, a reinsurer of its segments against catastrophic losses, a portion of such catastrophic losses shall be allocated to, or identified with, the home office.

(2) Insurance costs shall be allocated on the basis of the factors used to determine the premium, assessment, refund, dividend, or self-insurance charge, except that insurance costs incurred by a segment or allocated to a segment from a home office may be combined with costs of other indirect cost pools if the resultant allocation to each final cost objective is substantially the same as it would have been if separately allocated under this provision.

(3) Insurance administration expenses which are material in relation to total insurance costs shall be allocated on the same basis as the related premium costs or self-insurance charge.

(c) *Records.* The contractor shall maintain such records as may be necessary to substantiate the amounts of premiums, refunds, dividends, losses, and self-insurance charges, paid or accrued, and the measurement and allocation of insurance costs. Memorandum records may be used to reflect any material differences between insurance costs as determined in accordance with this standard and as includable in financial statements prepared

in accordance with generally accepted accounting principles.

[57 FR 14153, Apr. 17, 1992; 57 FR 34168, Aug. 3, 1992]

**9904.416–60 Illustrations.**

(a) Contractor A pays a company-wide property and casualty insurance premium for the policy term July 1, 1980, to July 1, 1983, and includes the entire amount as cost in its cost accounting period which ended December 31, 1980. This is a violation of 9904.416–50(a)(1)(i) in that only one-sixth of the policy term fell within the cost accounting period which ended December 31, 1980, and therefore only one-sixth of the premium should have been included in cost in that cost accounting period.

(b) Contractor B has a retrospectively rated worker's compensation insurance program. The policy term corresponds with the contractor's cost accounting period. Premium refunds are normally received and applied in the following cost accounting period. The contractor's practice is to include the entire gross premium in insurance cost in the cost accounting period in which it is paid and to credit the refund against insurance cost in the cost accounting period in which it is received. This practice conforms with 9904.416–50(a)(1)(i). The contractor could also, under the provisions of 9904.416–50(a)(1)(vi), have followed a consistent practice of estimating such refunds in advance and including the estimated net premium in insurance cost.

(c) Contractor C establishes a self-insured program of life insurance for active and retired persons. The contractor pays death benefits directly to the beneficiaries of deceased employees and includes such payments in insurance costs at the time of payment. This practice complies with 9904.416–50(a)(2)(iii) which requires that only the actual losses be recognized unless a trusteed reserve or fund is established in accordance with 9904.416–50(a)(1)(v).

(d) Instead of paying death benefits directly, contractor D purchases annual group term life insurance on active and retired persons and charges the premiums to insurance costs (with proper recognition for refunds and dividends). Contractor D's retired persons wish to be protected against possible discontinuance of the program. Contractor D, therefore, establishes a trusteed fund. As each employee retires, contractor D deposits in the fund an amount which is equal to the premium on a paid-up policy for that employee, and he advises the trustee that the fund is to be used to continue to pay premiums on retired persons in the event the program is discontinued. The contractor also continues to purchase group term insurance on both active employees and retired persons and charges both the premiums and the deposits to insurance costs. This practice does not comply with 9904.416–50(a)(1)(iv)(D) which requires that if payments to accomplish the stated objectives of the reserve or funds are made from a source other than the reserve or fund, the payments into the fund shall be reduced accordingly.

NOTE: In this instance the contractor could comply with the standard by paying from the fund that portion of the group term premium which represented the retired persons or by reducing the deposits to the fund by an equivalent amount in accordance with 9904.416–50(a)(1)(iv)(D). This practice would also comply with the requirement of 9904.416–50(a)(1)(v)(C) that the amount added to the fund not be greater than an amount which would be required to fairly allocate the cost over the working lives of the active employees in the plan.

(e) Contractor E wishes to provide assurance of his life insurance program continuance to both active and retired employees. He establishes a trusteed fund in accordance with 9904.416–50(a)(1) (iv) and (v) and thereafter pays into the fund each year for each active employee an actuarially determined amount which will accumulate to the equivalent of the premium on a paid-up life insurance policy at retirement. He charges the annual payments to insurance costs. Benefits are paid directly from the fund (or the fund is used to pay the annual premiums on group term life insurance for all employees). This practice also complies with the requirement of 9904.416–50(a)(1)(v)(C) that the amount added to the fund not be greater than an amount which would be required to fairly allocate the cost over the working lives of the active employees in the plan.

(f) Contractor F has a fire insurance policy which provides that the first

$50,000 of any fire loss will be borne by the contractor. Because the risk of loss is dispersed among many physical units of property and the average potential loss per unit is relatively low, the actual losses in any period may be expected not to differ significantly from the projected average loss. Therefore, the contractor intends to let the actual losses represent the projected average loss for this exposure to risk. Property with an actual cash value of $80,000 is destroyed in a fire. The contractor charges the $50,000 of the loss not covered by the policy to insurance costs for contract costing purposes. The practice complies with the requirement of 9904.416–50(a)(2). However, had the contractor's plan been to make a self-insurance charge for such losses, then any difference between the self-insurance charge and actual losses in that cost accounting period would not have been allocable as an insurance cost.

(g) Contractor G is preparing to enter into a Government contract to produce explosive devices. The contractor is unable to purchase adequate insurance protection and must act as a self-insurer. There is a significant possibility of a major loss, against which the Government will not undertake to indemnify the contractor. The contractor, therefore, intends to make a self-insurance charge for this exposure to risk. The contractor may, in accordance with 9904.416–50(a)(2)(i), use data obtained from other contractors or any other reasonable method of estimating the projected average loss in order to determine the self-insurance charge.

(h) Contractor H purchases liability insurance for all of its motor vehicles in a single, company-wide policy which contains a $50,000 deductible provision. However, the company's management policy provides that when a loss is incurred in a segment, only the first $5,000 of the loss will be charged to the segment; the balance of the loss will be absorbed at the home-office level and reallocated among all segments. Because the risk of loss is dispersed among many physical units and the maximum potential loss per occurrence is limited, the actual losses in any cost accounting period may be expected not to differ significantly from the projected average loss. Therefore, the contractor intends to let the actual losses represent the projected average loss for this exposure to risk. An analysis of the loss experience shows that many past losses exceeded $5,000. Contractor H's practice of allocating the loss in excess of $5,000 to the home office is a violation of 9904.416–50(b)(1). The limit of $5,000 cannot realistically be considered a measure of a ''catastrophic'' loss when losses frequently exceed this amount, and the use of a limit this low would obscure segment loss experience.

### 9904.416–61 Interpretation. [Reserved]

### 9904.416–62 Exemption.

None for this Standard.

### 9904.416–63 Effective date.

This Standard is effective as of April 17, 1992. Contractors with prior CAS-covered contracts with full coverage shall continue this Standard's applicability upon receipt of a contract to which this Standard is applicable. For contractors with no previous contracts subject to this Standard, this Standard shall be applied beginning with the contractor's next full fiscal year beginning after the receipt of a contract to which this Standard is applicable.

## 9904.417 Cost of money as an element of the cost of capital assets under construction.

### 9904.417–10 [Reserved]

### 9904.417–20 Purpose.

The purpose of this Cost Accounting Standard is to establish criteria for the measurement of the cost of money attributable to capital assets under construction, fabrication, or development as an element of the cost of those assets. Consistent application of these criteria will improve cost measurement by providing for recognition of cost of contractor investment in assets under construction, and will provide greater uniformity in accounting for asset acquisition costs.

### 9904.417–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this part 99 shall have the

meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *Intangible capital asset* means an asset that has no physical substance, has more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the benefits it yields.

(2) *Tangible capital asset* means an asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use of possession beyond the current accounting period for the services it yields.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

**9904.417–40 Fundamental requirement.**

The cost of money applicable to the investment in tangible and intangible capital assets being constructed, fabricated, or developed for a contractor's own use shall be included in the capitalized acquisition cost of such assets.

**9904.417–50 Techniques for application.**

(a) The cost of money for an asset shall be calculated as follows:

(1) The cost of money rate used shall be based on interest rates determined by the Secretary of the Treasury pursuant to Public Law 92–41 (85 stat. 97).

(2) A representative investment amount shall be determined each cost accounting period for each capital asset being constructed, fabricated, or developed giving appropriate consideration to the rate at which costs of construction are incurred.

(3) Other methods for calculating the cost of money to be capitalized, such as the method used for financial accounting and reporting, may be used, provided the resulting amount does not differ materially from the amount calculated by use of paragraphs (a) (1) and (2) of this subsection.

(b) If substantially all the activities necessary to get the asset ready for its intended use are discontinued, cost of money shall not be capitalized for the period of discontinuance. However, if such discontinuance arises out of causes beyond the control and without the fault or negligence of the contractor, cessation of cost of money capitalization is not required.

**9904.417–60 Illustrations.**

(a) A contractor decided to build a major addition to this plant using both his own labor and outside subcontractors. It took 13 months to complete the building. The first 10 months of the construction period were in one cost accounting period. At the end of the cost accounting period the total charges, including cost of money computed in accordance with 9904.414, accumulated in the construction-in-progress account for this project amounted to $750,000. However, most of these construction costs were incurred towards the end of the cost accounting period. In developing a method for determining a representative investment amount, appropriate consideration must be given to the rate at which costs have been incurred in accordance with 9904.417–50(a)(2). Therefore, the contractor averaged the 10 month-end balances and determined that the average investment in the project was $245,000. Two cost of money rates were in effect during the 10-month period; their time-weighted average was determined to be 8.6 percent. Application of the 8.6 percent rate for ten-twelfths of a year to the representative balance of $245,000 resulted in the determination that $17,558 should be added to the construction-in-progress account in recognition of the cost of money related to this project in its first cost accounting period. The project was completed with the addition of $750,000 of additional costs during the first 3 months of the subsequent cost accounting period. The contractor considered the 3 month-end balances (which included the $17,558 capitalized cost of money described in the preceding paragraph) and determined that the representative balance was $1,234,000. The cost of money rate in effect during this 3-month period was 7.75 percent. Applying the rate of 7.75 percent for one-fourth of a year to the balance of $1,234,000 resulted in a determination

that $23,909 should be added to the construction-in-progress account in recognition of the cost of money while under construction in the second cost accounting period. The capitalized project was put into service at the recognized cost of acquisition of $1,541,467 which consists of the ''regular'' costs of $1,500,000 plus $17,558 and $23,909 cost of money. This practice is in accordance with 9904.417–50(a) and other applicable provisions of the Standard.

NOTE: An alternative technique would be to make separate calculations, using an appropriate investment amount and cost of money rate, for each month. The sum of the monthly cost of money amounts could be entered in the construction-in-progress account once each cost accounting period.

(b) A contractor built a major addition with identical basic data to those described in 9904.417–60(a) except that the costs were incurred at a fairly uniform rate throughout the period. Because of the pattern of cost incurrence, the contractor used beginning and ending balances of the cost accounting period to find the representative amounts. For the first cost accounting period the representative investment amount was the average of the beginning and ending balances (zero and $750,000), or $375,000. Application of the average interest rate of 8.6 percent for ten-twelfths of a year resulted in the determination that $26,875 should be added to the construction-in-progress account in recognition of the cost of money related to this project in its first cost accounting period. During the subsequent 3 months the contractor used the representative balance of $1,151,875, derived by averaging the beginning balance of $776,875 ($750,000 ''regular'' cost plus the $26,875 imputed cost from the prior period) and the balance at the end, $1,526,875. Applying the 7.75 percent cost of money rate to this balance for a 3-month period resulted in a determination that $22,317 should be added to the construction-in-progress account in recognition of the cost of money while under construction in the second cost accounting period. The capitalized project was put into service at the recognized cost of acquisition of $1,549,192 which consists of the ''regular'' costs of $1,500,000 plus $26,875 and $22,317 imputed cost of money. This practice is in accordance with 9904.417–50(a) and other applicable provisions of the Standard.

NOTE: If this contractor, acting in accordance with established Standards for financial accounting, allocated a portion of its paid interest expense to this construction project and the resultant acquisition cost for financial reporting purposes was not materially different from $1,549,192, the contractor could, in accordance with 9904.417–50(a)(iii), use the same acquisition cost for contract costing purposes.

[57 FR 14153, Apr. 17, 1992; 57 FR 34081, Aug. 3, 1992]

### 9904.417–61 Interpretation. [Reserved]

### 9904.417–62 Exemption.

None for this Standard.

### 9904.417–63 Effective date.

This Standard is effective as of April 17, 1992. Contractors with prior CAS-covered contracts with full coverage shall continue this Standard's applicability upon receipt of a contract to which this Standard is applicable. For contractors with no previous contracts subject to this Standard, this Standard shall be applied beginning with the contractor's next full fiscal year beginning after the receipt of a contract to which this Standard is applicable.

## 9904.418 Allocation of direct and indirect costs.

### 9904.418–10 [Reserved]

### 9904.418–20 Purpose.

The purpose of this Cost Accounting Standard is to provide for consistent determination of direct and indirect costs; to provide criteria for the accumulation of indirect costs, including service center and overhead costs, in indirect cost pools; and, to provide guidance relating to the selection of allocation measures based on the beneficial or causal relationship between an indirect cost pool and cost objectives. Consistent application of these criteria and guidance will improve classification of costs as direct and indirect and the allocation of indirect costs.

### 9904.418–30 Definitions.

(a) The following are definitions of terms which are prominent in this

Standard. Other terms defined elsewhere in this chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

(1) *Allocate* means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

(2) *Direct cost* means any cost which is identified specifically with a particular final cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified specifically with other final cost objectives of the contractor are direct costs of those cost objectives.

(3) *Indirect cost* means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(4) *Indirect cost pool* means a grouping of incurred costs identified with two or more cost objectives but not identified specifically with any final cost objective.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

### 9904.418–40 Fundamental requirements.

(a) A business unit shall have a written statement of accounting policies and practices for classifying costs as direct or indirect which shall be consistently applied.

(b) Indirect costs shall be accumulated in indirect cost pools which are homogeneous.

(c) Pooled costs shall be allocated to cost objectives in reasonable proportion to the beneficial or causal relationship of the pooled costs to cost objectives as follows:

(1) If a material amount of the costs included in a cost pool are costs of management or supervision of activities involving direct labor or direct material costs, resource consumption cannot be specifically identified with cost objectives. In that circumstance, a base shall be used which is representative of the activity being managed or supervised.

(2) If the cost pool does not contain a material amount of the costs of management or supervision of activities involving direct labor or direct material costs, resource consumption can be specifically identified with cost objectives. The pooled cost shall be allocated based on the specific identifiability of resource consumption with cost objectives by means of one of the following allocation bases:

(i) A resource consumption measure,

(ii) An output measure, or

(iii) A surrogate that is representative of resources consumed.

The base shall be selected in accordance with the criteria set out in 9904.418–50(e).

(d) To the extent that any cost allocations are required by the provisions of other Cost Accounting Standards, such allocations are not subject to the provisions of this Standard.

(e) This Standard does not cover accounting for the costs of special facilities where such costs are accounted for in separate indirect cost pools.

### 9904.418–50 Techniques for application.

(a) *Determination of direct cost and indirect cost.* (1) The business unit's written policy classifying costs as direct or indirect shall be in conformity with the requirements of this Standard.

(2) In accounting for direct costs a business unit shall use actual costs, except that—

(i) Standard costs for material and labor may be used as provided in 9904.407; or

(ii) An average cost or pre-established rate for labor may be used provided that:

(A) The functions performed are not materially disparate and employees involved are interchangeable with respect to the functions performed, or

(B) The functions performed are materially disparate but the employees involved either all work in a single production unit yielding homogeneous outputs, or perform their respective functions as an integral team.

Whenever average cost or pre-established rates for labor are used, the

variances, if material, shall be disposed of at least annually by allocation to cost objectives in proportion to the costs previously allocated to these cost objectives.

(3) Labor or material costs identified specifically with one of the particular cost objectives listed in paragraph (d)(3) of this subsection shall be accounted for as direct labor or direct material costs.

(b) *Homogeneous indirect cost pools.* (1) An indirect cost pool is homogeneous if each significant activity whose costs are included therein has the same or a similar beneficial or causal relationship to cost objectives as the other activities whose costs are included in the cost pool. It is also homogeneous if the allocation of the costs of the activities included in the cost pool result in an allocation to cost objectives which is not materially different from the allocation that would result if the costs of the activities were allocated separately.

(2) An indirect cost pool is not homogeneous if the costs of all significant activities in the cost pool do not have the same or a similar beneficial or causal relationship to cost objectives and, if the costs were allocated separately, the resulting allocation would be materially different. The determination of materiality shall be made using the criteria provided in 9903.305.

(3) A homogeneous indirect cost pool shall include all indirect costs identified with the activity to which the pool relates.

(c) *Change in allocation base.* No change in an existing indirect cost pool allocation base is required if the allocation resulting from the existing base does not differ materially from the allocation that results from the use of the base determined to be most appropriate in accordance with the criteria set forth in paragraphs (d) and (e) of this subsection. The determination of materiality shall be made using the criteria provided in Subpart 9903.305.

(d) *Allocation measures for an indirect cost pool which includes a material amount of the costs of management or supervision of activities involving direct labor or direct material costs.* (1) The costs of the management or supervision of activities involving direct labor or direct material costs do not have a direct and definitive relationship to the benefiting cost objectives and cannot be allocated on measures of a specific beneficial or causal relationship. In that circumstance, the base selected to measure the allocation of the pooled costs to cost objectives shall be a base representative of the activity being managed or supervised.

(2) The base used to represent the activity being managed or supervised shall be determined by the application of the criteria below. All significant elements of the selected base shall be included.

(i) A direct labor hour base or direct labor cost base shall be used, whichever in the aggregate is more likely to vary in proportion to the costs included in the cost pool being allocated, except that:

(ii) A machine-hour base is appropriate if the costs in the cost pool are comprised predominantly of facility-related costs, such as depreciation, maintenance, and utilities; or

(iii) A units-of-production base is appropriate if there is common production of comparable units; or

(iv) A material cost base is appropriate if the activity being managed or supervised is a material-related activity.

(3) Indirect cost pools which include material amounts of the costs of management or supervision of activities involving direct labor or direct material costs shall be allocated to:

(i) Final cost objectives;

(ii) Goods produced for stock or product inventory;

(iii) Independent research and development and bid and proposal projects;

(iv) Cost centers used to accumulate costs identified with a process cost system (i.e., process cost centers);

(v) Goods or services produced or acquired for other segments of the contractor and for other cost objectives of a business unit; and

(vi) Self-construction, fabrication, betterment, improvement, or installation of tangible capital assets.

(e) *Allocation measures for indirect cost pools that do not include material amounts of the costs of management or supervision of activities involving direct*

*labor or direct material costs.* Homogeneous indirect cost pools of this type have a direct and definitive relationship between the activities in the pool and benefiting cost objectives. The pooled costs shall be allocated using an appropriate measure of resource consumption. This determination shall be made in accordance with the following criteria taking into consideration the individual circumstances:

(1) The best representation of the beneficial or causal relationship between an indirect cost pool and the benefiting cost objectives is a measure of resource consumption of the activities of the indirect cost pool.

(2)(i) If consumption measures are unavailable or impractical to ascertain, the next best representation of the beneficial or causal relationship for allocation is a measure of the output of the activities of the indirect cost pool. Thus, the output is substituted for a direct measure of the consumption of resources.

(ii) The use of the basic unit of output will not reflect the proportional consumption of resources in circumstances in which the level of resource consumption varies among the units of output produced. Where a material difference will result, either the output measure shall be modified or more than one output measure shall be used to reflect the resources consumed to perform the activity.

(3) If neither resources consumed nor output of the activities can be measured practically, a surrogate that varies in proportion to the services received shall be used to measure the resources consumed. Generally, such surrogates measure the activity of the cost objectives receiving the service.

(4) Allocation of indirect cost pools which benefit one another may be accomplished by use of:

(i) The cross-allocation (reciprocal) method,

(ii) The sequential method, or

(iii) Another method the results of which approximate those achieved by either of the methods in subdivisions (e)(4)(i) or (e)(4)(ii) of this subsection.

(5) Where the activities represented by an indirect cost pool provide services to two or more cost objectives simultaneously, the cost of such services shall be prorated between or among the cost objectives in reasonable proportion to the beneficial or causal relationship between the services and the cost objectives.

(f) *Special allocation.* Where a particular cost objective in relation to other cost objectives receives significantly more or less benefit from an indirect cost pool than would be reflected by the allocation of such costs using a base determined pursuant to paragraphs (d) and (e) of this subsection, the Government and contractor may agree to a special allocation from that indirect cost pool to the particular cost objective commensurate with the benefits received. The amount of a special allocation to any such cost objective made pursuant to such an agreement shall be excluded from the indirect cost pool and the particular cost objective's allocation base data shall be excluded from the base used to allocate the pool.

(g) *Use of preestablished rates for indirect costs.* (1) Preestablished rates, based on either forecasted actual or standard cost, may be used in allocating an indirect cost pool.

(2) Preestablished rates shall reflect the costs and activities anticipated for the cost accounting period except as provided in paragraph (g)(3) of this subsection. Such preestablished rates shall be reviewed at least annually, and revised as necessary to reflect the anticipated conditions.

(3) The contracting parties may agree on preestablished rates which are not based on costs and activities anticipated for a cost accounting period. The contractor shall have and consistently apply written policies for the establishment of these rates.

(4) Under paragraphs (g) (2) and (3) of this subsection where variances of a cost accounting period are material, these variances shall be disposed of by allocating them to cost objectives in proportion to the costs previously allocated to these cost objectives by use of the preestablished rates.

(5) If preestablished rates are revised during a cost accounting period and if the variances accumulated to the time of the revision are significant, the costs allocated to that time shall be adjusted to the amounts which would

have been allocated using the revised preestablished rates.

**9904.418–60 Illustrations.**

(a) Business Unit A has various classifications of engineers whose time is spent in working directly on the production of the goods or services called for by contracts and other final cost objectives. In keeping with its written policy, detailed time records are kept of the hours worked by these engineers, showing the job/account numbers representing various cost objectives. On the basis of these detailed time records, Unit A allocates the labor costs of these engineers as direct labor costs of final cost objectives. This practice is in accordance with the requirements of 9904.418–50(a)(1).

(b) Business Unit B has a fabrication department, employees of which perform various functions on units of the work-in-process of multiple final cost objectives. These employees are grouped by labor skills and are interchangeable within the skill grouping. The average wage rate for each group is multiplied by the hours worked on each cost objective by employees in that group. The contractor classifies these costs as direct labor costs of each final cost objective. This cost accounting treatment is in accordance with the provisions of 9904.418–50(a)(2)(ii)(B).

(c) Business Unit C accumulates the costs relating to building ownership, maintenance, and utility into one indirect cost pool designated ''Occupancy Costs'' for allocation to cost objectives. Each of these activites has the same or a similar beneficial or causal relationship to the cost objectives occupying a space. Unit C's practice is in conformance with the provisions of 9904.418–50(b)(1).

(d) Business Unit D includes the indirect costs of machining and assembling activities in a single manufacturing overhead pool. The machining activity does not have the same or similar beneficial or causal relationship to cost objectives as the assembling activity. Also, the allocation of the cost of the machining activity to cost objectives would be significantly different if allocated separately from the cost of the assembling activity. Unit D's single manufacturing overhead pool is not homogeneous in accordance with the provisions of 9904.418–50(b), and separate pools must be established in accordance with 9904.418–40(b).

(e) In accordance with 9904.418–50(b)(3), Business Unit E includes all the cost of occupancy in an indirect cost pool. In selecting an allocation measure for this indirect cost pool, the contractor establishes that it is impractical to ascertain a measurement of the consumption of resources in relation to the use of facilities by individual cost objectives. An output base, the number of square feet of space provided to users, can be measured practically; however, the cost to provide facilities is significantly different for various types of facilities such as warehouse, factory, and office and each type of facility requires a different level of resource consumption to provide the same number of square feet of usable space. Allocation on a basic unit measure of square feet of space occupied will not adequately reflect the proportional consumption of resources. Unit E establishes a weighted square foot measure for allocating occupancy costs, which reflects the different levels of resource consumption required to provide the different types of facilities. This practice is in conformance with provisions of 9904.418–50(e)(2)(ii).

(f) Business Unit F has an indirect cost pool containing a significant amount of material-related costs. The contractor allocates these costs between his machining overhead cost pool and his assembly overhead cost pool. The business unit finds it impractical to use an allocation measure based on either consumption or output. The business unit selects a dollars of material-issued base which varies in proportion to the services rendered. The dollars of material-issued base is a surrogate base which conforms to the provisions of 9904.418–50(e)(3).

(g) Business Unit G has a machining activity for which it develops a separate overhead rate, using direct labor cost as the allocation base. The machining activity occasionally does significant amounts of work for other activities of the business unit. The labor used in doing the work for other activities is of the same nature as that used

for contract work. However, the machining labor for other activities is not included in the base used to allocate the overhead costs of the machining activity. This practice is not in conformance with 9904.418–50(d)(2). Unit G must include the cost of labor doing work for the other activities in the allocation base for the machining activity indirect cost pool.

(h) Business Unit H accounts for the costs of company aircraft in a separate homogeneous indirect cost pool and allocates the cost to benefiting cost objectives using flight hours. Unit H prorates the cost of a single flight between benefiting cost objectives whenever simultaneous services have been rendered. Manager of Contract 2 learns of the trip and goes along with Manager of Contract 1. Unit H prorates the cost of the trip between Contract 1 and Contract 2. This practice is in conformance with the provision of 9904.418–50(e)(5).

(i) During a cost accounting period, Business Unit I allocates the cost of its flight services indirect cost pool to other indirect cost pools and final cost objectives using a preestablished rate. The preestablished rate is based on an estimate of the actual costs and activity for the cost accounting period. For the cost accounting period, Unit I establishes a rate of $200 per hour for use of the flight services activity. In March, the contractor's operating environment changes significantly; the contractor now expects a significant increase in the cost of this activity during the remainder of the year. Unit I estimates the rate for the entire cost accounting period to be $240 an hour. Pursuant to the provisions of 9904.418–50(g)(4), the Business Unit may revise its rate to the expected $240 an hour. If the accumulated variances are significant, the business unit must also adjust the costs previously allocated to reflect the revised rates.

### 9904.418–61 Interpretation. [Reserved]

### 9904.418–62 Exemptions.

This Standard shall not apply to contracts and grants with state, local, and Federally recognized Indian tribal governments.

### 9904.418–63 Effective date.

This Standard is effective as of April 17, 1992. Contractors with prior CAS-covered contracts with full coverage shall continue this Standard's applicability upon receipt of a contract to which this Standard is applicable. For contractors with no previous contracts subject to this Standard, this Standard shall be applied beginning with the contractor's second full fiscal year beginning after the receipt of a contract to which this Standard is applicable.

## 9904.420 Accounting for independent research and development costs and bid and proposal costs.

### 9904.420–10 [Reserved]

### 9904.420–20 Purpose.

The purpose of this Cost Accounting Standard is to provide criteria for the accumulation of independent research and development costs and bid and proposal costs and for the allocation of such costs to cost objectives based on the beneficial or causal relationship between such costs and cost objectives. Consistent application of these criteria will improve cost allocation.

### 9904.420–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this Chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

(1) *Allocate* means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

(2) *Bid and proposal (B&P) cost* means the cost incurred in preparing, submitting, or supporting any bid or proposal which effort is neither sponsored by a grant, nor required in the performance of a contract.

(3) *Business unit* means any segment of an organization, or an entire business organization which is not divided into segments.

(4) *General and administrative (G&A) expense* means any management, financial, and other expenses which is incurred by or allocated to a business unit and which is for the general management and administration of the business unit as a whole. G&A expense does not include those management expenses whose beneficial or causal relationship to cost objectives can be more directly measured by a base other than a cost input base representing the total activity of a business unit during a cost accounting period.

(5) *Home office* means an office responsible for directing or managing two or more, but not necessarily all, segments of an organization. It typically establishes policy for, and provides guidance to the segments in their operations. It usually performs management, supervisory, or administrative functions, and may also perform service functions in support of the operations of the various segments. An organization which has intermediate levels, such as groups, may have several home offices which report to a common home office. An intermediate organization may be both a segment and a home office.

(6) *Independent research and development* means the cost of effort which is neither sponsored by a grant, nor required in the performance of a contract, and which falls within any of the following three areas:

(i) Basic and applied research,

(ii) Development, and

(iii) Systems and other concept formulation studies.

(7) *Indirect cost* means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(8) *Segment* means one of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service. The term includes Government-owned contractor-operated (GOCO) facilities, and joint ventures and subsidiaries (domestic and foreign) in which the organization has a majority ownership. The term also includes those joint ventures and subsidiaries (domestic and foreign) in which the organizations has less than a majority of ownership, but over which it exercises control.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

**9904.420–40 Fundamental requirement.**

(a) The basic unit for the identification and accumulation of Independent Research and Development (IR&D) and Bid and Proposal (B&P) costs shall be the individual IR&D or B&P project.

(b) The IR&D and B&P project costs shall consist of all allocable costs, except business unit general and administrative expenses.

(c) The IR&D and B&P cost pools consist of all IR&D and B&P project costs and other allocable costs, except business unit general and administrative expenses.

(d) The IR&D and B&P cost pools of a home office shall be allocated to segments on the basis of the beneficial or causal relationship between the IR&D and B&P costs and the segments reporting to that home office.

(e) The IR&D and B&P cost pools of a business unit shall be allocated to the final cost objectives of that business unit on the basis of the beneficial or causal relationship between the IR&D and B&P costs and the final cost objectives.

(f)(1) The B&P costs incurred in a cost accounting period shall not be assigned to any other cost accounting period.

(2) The IR&D costs incurred in a cost accounting period shall not be assigned to any other cost accounting period, except as may be permitted pursuant to provisions of existing laws, regulations, and other controlling factors.

**9904.420–50 Techniques for application.**

(a) The IR&D and B&P project costs shall include (1) costs, which if incurred in like circumstances for a final cost objective, would be treated as direct costs of that final cost objective, and (2) the overhead costs of productive

activities and other indirect costs related to the project based on the contractor's cost accounting practice or applicable Cost Accounting Standards for allocation of indirect costs.

(b) The IR&D and B&P cost pools for a segment consist of the project costs plus allocable home office IR&D and B&P costs.

(c) When the costs of individual IR&D or B&P efforts are not material in amount, these costs may be accumulated in one or more project(s) within each of these two types of effort.

(d) The costs of any work performed by one segment for another segment shall not be treated as IR&D costs or B&P costs of the performing segment unless the work is a part of an IR&D or B&P project of the performing segment. If such work is part of a performing segment's IR&D or B&P project, the project will be transferred to the home office to be allocated in accordance with paragraph (e) of this subsection.

(e) The costs of IR&D and B&P projects accumulated at a home office shall be allocated to its segments as follows:

(1) Projects which can be identified with a specific segment(s) shall have their costs allocated to such segment(s).

(2) The costs of all other IR&D and B&P projects shall be allocated among all segments by means of the same base used by the company to allocate its residual expenses in accordance with 9904.403; provided, however, where a particular segment receives significantly more or less benefit from the IR&D or B&P costs than would be reflected by the allocation of such costs to the segment by the base, the Government and the contractor may agree to a special allocation of the IR&D or B&P costs to such segment commensurate with the benefits received. The amount of a special allocation to any segment made pursuant to such an agreement shall be excluded from the IR&D and B&P cost pools to be allocated to other segments and the base data of any such segment shall be excluded from the base used to allocate these pools.

(f) The costs of IR&D and B&P projects accumulated at a business unit shall be allocated to cost objectives as follows:

(1) Where costs of any IR&D or B&P project benefit more than one segment of the organization, the amounts to be allocated to each segment shall be determined in accordance with paragraph (e) of this subsection.

(2) The IR&D and B&P cost pools which are not allocated under subparagraph (f)(1) of this subsection, shall be allocated to all final cost objectives of the business unit by means of the same base used by the business unit to allocate its general and administrative expenses in accordance with 9904.410–50; provided, however, where a particular final cost objective receives significantly more or less benefit from IR&D or B&P cost than would be reflected by the allocation of such costs the Government and the contractor may agree to a special allocation of the IR&D or B&P costs to such final cost objective commensurate with the benefits received. The amount of special allocation to any such final cost objective made pursuant to such an agreement shall be excluded from the IR&D and B&P cost pools to be allocated to other final cost objectives and the particular final cost objective's base data shall be excluded from the base used to allocate these pools.

(g) Notwithstanding the provisions of paragraph (d), (e) or (f) of this subsection, the costs of IR&D and B&P projects allocable to a home office pursuant to 9904.420–50(d) may be allocated directly to the receiving segments, provided that such allocation not be substantially different from the allocation that would be made if they were first passed through home office accounts.

**9904.420–60 Illustrations.**

(a) Business Unit A's engineering department in accordance with its established accounting practice, charges administrative effort including typing its overhead cost pool. In submitting a proposal, the engineering department assigns several typists to the proposal project on a full time basis and charges the typists' time directly to the proposal project, rather than to its overhead pool. Because the engineering department under its established accounting practice does not charge the

cost of typing directly to final cost objectives, the direct charge does not meet with the requirements of 9904.420–50(a).

(b) Company B has five segments. The company undertakes an IR&D project which is part of IR&D plans of segments X, Y, and Z, and will be of general benefit to all five segments. The company designates Segment Z as the project leader in performing the project. In accumulating the costs, each segment allocates overhead to its part of the project but does not allocate segment G&A. The IR&D costs are then allocated to the home office by each segment. The costs are combined with other IR&D costs that benefit the company as a whole. The costs are allocated to all five segments by means of the same base by which the company allocates its residual home office expense costs of all segments. This practice meets the requirements of 9904.420–40(b), 9904.420–50(e)(2), and 9904.420–50(f)(1).

(c) Business Unit C normally accounts for its B&P effort by individual project. It accumulates directly allocated costs and departmental overhead costs by project. The business unit also submits large numbers of bids and proposals whose individual costs of preparation are not material in amount. The business unit collects the cost of these efforts under a single project. Since the cost of preparing each individual bid and proposal is not material, the practice of accumulating these costs in a single project meets the requirements of 9904.420–50(c).

(d) Segment D requests that Segment Y provide support for a Segment D IR&D project. The work being performed by Segment Y is similar in nature to Segment Y's normal product and is not part of its annual IR&D plan. Segment Y allocates to the project all costs it allocates to other final cost objectives, including G&A expense. Segment Y then directly transfers the cost of the project to Segment D in accordance with its normal intersegment transfer procedure. The accounting treatment meets the requirements of 9904.420–50(d) and 9904.410.

(e)(1) Contractor E has six operating segments and a research segment. The research segment performs work under:

(i) Research and development contracts,

(ii) Projects which are not part of its own IR&D plan but are specifically in support of other segments' IR&D projects, and

(iii) IR&D projects for the benefit of the company as a whole.

(2) The research segment directly allocates the cost of the projects in support of another segment's IR&D projects, including an allocation of its general and administrative expenses, to the receiving segment. This practice meets the requirements of 9904.420–50(d).

(3) The costs of the IR&D projects which benefit the company as a whole exclude any allocation of the research segment's general and administrative expenses and are transferred to the home office. The home office allocates these costs on the same base it uses to allocate its residual expenses to all seven segments. This practice meets the requirements of 9904.420–50 (e)(2) and (f)(1).

(f) Company F accumulates at the home office the costs of IR&D and B&P projects which generally benefit all segments of the company except Segment X. The company and the contracting officer agree that the nature of the business activity of Segment X is such that the home office IR&D and B&P effort is neither caused by nor provides any benefit to that segment. For the purpose of allocating its home office residual expenses, the company uses a base as provided in 9904.403. For the purpose of allocating the home office IR&D and B&P costs, the company removes the data of Segment X from the base used for the allocation of its residual expenses. This practice meets the requirements of 9904.420–50(e)(2).

(g) Company G has 10 segments. Segment X performs IR&D projects, the results of which benefit it and two other segments but none of the other seven segments. The cost of those projects performed by Segment X are transferred to the home office and allocated to the three segments on the basis of

the benefits received by the three segments. This practice meets the requirements of 9904.420–50(e)(1) and 9904.420–50(f)(1).

### 9904.420–61 Interpretation. [Reserved]

### 9904.420–62 Exemptions.

This Standard shall not apply to contracts and grants with State, local, and federally recognized Indian tribal governments.

### 9904.420–63 Effective date.

This Standard is effective as of April 17, 1992. Contractors with prior CAS-covered contracts with full coverage shall continue this Standard's applicability upon receipt of a contract to which this Standard is applicable. For contractors with no previous contracts subject to this Standard, this Standard shall be applied beginning with the contractor's second full fiscal year beginning after the receipt of a contract to which this Standard is applicable.

## PART 9905—COST ACCOUNTING STANDARDS FOR EDUCATIONAL INSTITUTIONS

Sec.

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9905.506–63 Effective date.

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### 9905.501 Cost accounting standard—consistency in estimating, accumulating and reporting costs by educational institutions.

### 9905.501–10 [Reserved]

### 9905.501–20 Purpose.

The purpose of this Cost Accounting Standard is to ensure that each educational institution's practices used in estimating costs for a proposal are consistent with cost accounting practices used by the institution in accumulating and reporting costs. Consistency in the application of cost accounting practices is necessary to enhance the likelihood that comparable transactions are treated alike. With respect to individual contracts, the consistent application of cost accounting practices will facilitate the preparation of reliable cost estimates used in pricing a proposal and their comparison with the costs of performance of the resulting contract. Such comparisons provide one important basis for financial control over costs during contract performance and aid in establishing accountability for costs in the manner agreed to by both parties at the time of contracting. The comparisons also provide an improved basis for evaluating estimating capabilities.

### 9905.501–30 Definitions.

(a) The following are definitions of terms which are prominent in this

Standard. Other terms defined elsewhere in this chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *Accumulating costs* means the collecting of cost data in an organized manner, such as through a system of accounts.

(2) *Actual cost* means an amount determined on the basis of cost incurred (as distinguished from forecasted cost), including standard cost properly adjusted for applicable variance.

(3) *Estimating costs* means the process of forecasting a future result in terms of cost, based upon information available at the time.

(4) *Indirect cost pool* means a grouping of incurred costs identified with two or more objectives but not identified specifically with any final cost objective.

(5) *Pricing* means the process of establishing the amount or amounts to be paid in return for goods or services.

(6) *Proposal* means any offer or other submission used as a basis for pricing a contract, contract modification or termination settlement or for securing payments thereunder.

(7) *Reporting costs* means the providing of cost information to others.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

**9905.501–40 Fundamental requirement.**

(a) An educational institution's practices used in estimating costs in pricing a proposal shall be consistent with the institution's cost accounting practices used in accumulating and reporting costs.

(b) An educational institution's cost accounting practices used in accumulating and reporting actual costs for a contract shall be consistent with the institution's practices used in estimating costs in pricing the related proposal.

(c) The grouping of homogeneous costs in estimates prepared for proposal purposes shall not *per se* be deemed an inconsistent application of cost accounting practices under paragraphs (a) and (b) of this subsection when such costs are accumulated and reported in greater detail on an actual cost basis during contract performance.

**9905.501–50 Techniques for application.**

(a) The standard allows grouping of homogeneous costs in order to cover those cases where it is not practicable to estimate contract costs by individual cost element. However, costs estimated for proposal purposes shall be presented in such a manner and in such detail that any significant cost can be compared with the actual cost accumulated and reported therefor. In any event, the cost accounting practices used in estimating costs in pricing a proposal and in accumulating and reporting costs on the resulting contract shall be consistent with respect to:

(1) The classification of elements of cost as direct or indirect;

(2) The indirect cost pools to which each element of cost is charged or proposed to be charged; and

(3) The methods of allocating indirect costs to the contract.

(b) Adherence to the requirement of 9905.501–40(a) of this standard shall be determined as of the date of award of the contract, unless the contractor has submitted cost or pricing data pursuant to 10 U.S.C. 2306(a) or 41 U.S.C. 254(d) (Pub. L. 87–653), in which case adherence to the requirement of 9905.501–40(a) shall be determined as of the date of final agreement on price, as shown on the signed certificate of current cost or pricing data. Notwithstanding 9905.501–40(b), changes in established cost accounting practices during contract performance may be made in accordance with part 9903 (48 CFR part 9903).

(c) The standard does not prescribe the amount of detail required in accumulating and reporting costs. The basic requirement which must be met, however, is that for any significant amount of estimated cost, the contractor must be able to accumulate and report actual cost at a level which permits sufficient and meaningful comparison with its estimates. The amount of detail required may vary considerably depending on how the proposed costs were estimated, the data presented in justification or lack thereof,

and the significance of each situation. Accordingly, it is neither appropriate nor practical to prescribe a single set of accounting practices which would be consistent in all situations with the practices of estimating costs. Therefore, the amount of accounting and statistical detail to be required and maintained in accounting for estimated costs has been and continues to be a matter to be decided by Government procurement authorities on the basis of the individual facts and circumstances.

**9905.501–60 Illustration. [Reserved]**

**9905.501–61 Interpretation. [Reserved]**

**9905.501–62 Exemption.**

None for this Standard.

**9905.501–63 Effective date.**

This Standard is effective as of January 9, 1995.

**9905.502 Cost accounting standard—consistency in allocating costs incurred for the same purpose by educational institutions.**

**9905.502–10 [Reserved]**

**9905.502–20 Purpose.**

The purpose of this Standard is to require that each type of cost is allocated only once and on only one basis to any contract or other cost objective. The criteria for determining the allocation of costs to a contract or other cost objective should be the same for all similar objectives. Adherence to these cost accounting concepts is necessary to guard against the overcharging of some cost objectives and to prevent double counting. Double counting occurs most commonly when cost items are allocated directly to a cost objective without eliminating like cost items from indirect cost pools which are allocated to that cost objective.

**9905.502–30 Definitions.**

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *Allocate* means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

(2) *Cost objective* means a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

(3) *Direct cost* means any cost which is identified specifically with a particular final cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified specifically with other final cost objectives of the educational institution are direct costs of those cost objectives.

(4) *Final cost objective* means a cost objective which has allocated to it both direct and indirect costs, and in the educational institution's accumulation system, is one of the final accumulation points.

(5) *Indirect cost* means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(6) *Indirect cost pool* means a grouping of incurred costs identified with two or more cost objectives but not identified with any final cost objective.

(7) *Intermediate cost objective* means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools and/or final cost objectives.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard: None.

**9905.502–40 Fundamental requirement.**

All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to final cost objectives. No final cost objective shall have allocated to it as an indirect cost any cost,

if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective. Further, no final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective.

**9905.502–50 Techniques for application.**

(a) The Fundamental Requirement is stated in terms of cost incurred and is equally applicable to estimates of costs to be incurred as used in contract proposals.

(b) The Disclosure Statement to be submitted by the educational institution will require that the institution set forth its cost accounting practices with regard to the distinction between direct and indirect costs. In addition, for those types of cost which are sometimes accounted for as direct and sometimes accounted for as indirect, the educational institution will set forth in its Disclosure Statement the specific criteria and circumstances for making such distinctions. In essence, the Disclosure Statement submitted by the educational institution, by distinguishing between direct and indirect costs, and by describing the criteria and circumstances for allocating those items which are sometimes direct and sometimes indirect, will be determinative as to whether or not costs are incurred for the same purpose. Disclosure Statement as used herein refers to the statement required to be submitted by educational institutions as a condition of contracting as set forth in subpart 9903.2.

(c) In the event that an educational institution has not submitted a Disclosure Statement, the determination of whether specific costs are directly allocable to contracts shall be based upon the educational institution's cost accounting practices used at the time of contract proposal.

(d) Whenever costs which serve the same purpose cannot equitably be indirectly allocated to one or more final cost objectives in accordance with the educational institution's disclosed accounting practices, the educational institution may either use a method for reassigning all such costs which would provide an equitable distribution to all final cost objectives, or directly assign all such costs to final cost objectives with which they are specifically identified. In the event the educational institution decides to make a change for either purpose, the Disclosure Statement shall be amended to reflect the revised accounting practices involved.

(e) Any direct cost of minor dollar amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives, provided that such treatment produces results which are substantially the same as the results which would have been obtained if such cost had been treated as a direct cost.

**9905.502–60 Illustrations.**

(a) Illustrations of costs which are incurred for the same purpose:

(1) An educational institution normally allocates all travel as an indirect cost and previously disclosed this accounting practice to the Government. For purposes of a new proposal, the educational institution intends to allocate the travel costs of personnel whose time is accounted for as direct labor directly to the contract. Since travel costs of personnel whose time is accounted for as direct labor working on other contracts are costs which are incurred for the same purpose, these costs may no longer be included within indirect cost pools for purposes of allocation to any covered Government contract. The educational institution's Disclosure Statement must be amended for the proposed changes in accounting practices.

(2) An educational institution normally allocates purchasing activity costs indirectly and allocates this cost to instruction and research on the basis of modified total costs. A proposal for a new contract requires a disproportionate amount of subcontract administration to be performed by the purchasing activity. The educational institution prefers to continue to allocate purchasing activity costs indirectly. In order to equitably allocate the total purchasing activity costs, the

educational institution may use a method for allocating all such costs which would provide an equitable distribution to all applicable indirect cost pools. For example, the institution may use the number of transactions processed rather than its former allocation base of modified total costs. The educational institution's Disclosure Statement must be amended for the proposed changes in accounting practices.

(b) Illustrations of costs which are not incurred for the same purpose:

(1) An educational institution normally allocates special test equipment costs directly to contracts. The costs of general purpose test equipment are normally included in the indirect cost pool which is allocated to contracts. Both of these accounting practices were previously disclosed to the Government. Since both types of costs involved were not incurred for the same purpose in accordance with the criteria set forth in the educational institution's Disclosure Statement, the allocation of general purpose test equipment costs from the indirect cost pool to the contract, in addition to the directly allocated special test equipment costs, is not considered a violation of the Standard.

(2) An educational institution proposes to perform a contract which will require three firemen on 24-hour duty at a fixed-post to provide protection against damage to highly inflammable materials used on the contract. The educational institution presently has a firefighting force of 10 employees for general protection of its facilities. The educational institution's costs for these latter firemen are treated as indirect costs and allocated to all contracts; however, it wants to allocate the three fixed-post firemen directly to the particular contract requiring them and also allocate a portion of the cost of the general firefighting force to the same contract. The institution may do so but only on condition that its disclosed practices indicate that the costs of the separate classes of firemen serve different purposes and that it is the institution's practice to allocate the general firefighting force indirectly and to allocate fixed-post firemen directly.

**9905.502–61 Interpretation.**

(a) 9905.502, Cost Accounting Standard—Consistency in Allocating Costs Incurred for the Same Purpose by Educational Institutions, provides, in 9905.502–40, that ''*** no final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective.''

(b) This interpretation deals with the way 9905.502 applies to the treatment of costs incurred in preparing, submitting, and supporting proposals. In essence, it is addressed to whether or not, under the Standard, all such costs are incurred for the same purpose, in like circumstances.

(c) Under 9905.502, costs incurred in preparing, submitting, and supporting proposals pursuant to a specific requirement of an existing contract are considered to have been incurred in different circumstances from the circumstances under which costs are incurred in preparing proposals which do not result from such a specific requirement. The circumstances are different because the costs of preparing proposals specifically required by the provisions of an existing contract relate only to that contract while other proposal costs relate to all work of the educational institution.

(d) This interpretation does not preclude the allocation, as indirect costs, of costs incurred in preparing all proposals. The cost accounting practices used by the educational institution, however, must be followed consistently and the method used to reallocate such costs, of course, must provide an equitable distribution to all final cost objectives.

**9905.502–62 Exemption.**

None for this Standard.

**9905.502–63 Effective date.**

This Standard is effective as of January 9, 1995.

**9905.505 Accounting for unallowable costs—Educational institutions.**

**9905.505–10 [Reserved]**

**9905.505–20 Purpose.**

(a)(1) The purpose of this Cost Accounting Standard is to facilitate the negotiation, audit, administration and settlement of contracts by establishing guidelines covering:

(i) Identification of costs specifically described as unallowable, at the time such costs first become defined or authoritatively designated as unallowable, and

(ii) The cost accounting treatment to be accorded such identified unallowable costs in order to promote the consistent application of sound cost accounting principles covering all incurred costs.

(2) The Standard is predicated on the proposition that costs incurred in carrying on the activities of an educational institution—regardless of the allowability of such costs under Government contracts—are allocable to the cost objectives with which they are identified on the basis of their beneficial or causal relationships.

(b) This Standard does not govern the allowability of costs. This is a function of the appropriate procurement or reviewing authority.

**9905.505–30 Definitions.**

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *Directly associated cost* means any cost which is generated solely as a result of the incurrence of another cost, and which would not have been incurred had the other cost not been incurred.

(2) *Expressly unallowable cost* means a particular item or type of cost which, under the express provisions of an applicable law, regulation, or contract, is specifically named and stated to be unallowable.

(3) *Indirect cost* means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(4) *Unallowable cost* means any cost which, under the provisions of any pertinent law, regulation, or contract, cannot be included in prices, cost reimbursements, or settlements under a Government contract to which it is allocable.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

**9905.505–40 Fundamental requirement.**

(a) Costs expressly unallowable or mutually agreed to be unallowable, including costs mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, or proposal applicable to a Government contract.

(b) Costs which specifically become designated as unallowable as a result of a written decision furnished by a contracting officer pursuant to contract disputes procedures shall be identified if included in or used in the computation of any billing, claim, or proposal applicable to a Government contract. This identification requirement applies also to any costs incurred for the same purpose under like circumstances as the costs specifically identified as unallowable under either this paragraph or paragraph (a) of this subsection.

(c) Costs which, in a contracting officer's written decision furnished pursuant to contract disputes procedures, are designated as unallowable directly associated costs of unallowable costs covered by either paragraph (a) or (b) of this subsection shall be accorded the identification required by paragraph (b) of this subsection.

(d) The costs of any work project not contractually authorized, whether or not related to performance of a proposed or existing contract, shall be accounted for, to the extent appropriate, in a manner which permits ready separation from the costs of authorized work projects.

(e) All unallowable costs covered by paragraphs (a) through (d) of this subsection shall be subject to the same cost accounting principles governing cost allocability as allowable costs. In

circumstances where these unallowable costs normally would be part of a regular indirect-cost allocation base or bases, they shall remain in such base or bases. Where a directly associated cost is part of a category of costs normally included in an indirect-cost pool that will be allocated over a base containing the unallowable cost with which it is associated, such a directly associated cost shall be retained in the indirect-cost pool and be allocated through the regular allocation process.

(f) Where the total of the allocable and otherwise allowable costs exceeds a limitation-of-cost or ceiling-price provision in a contract, full direct and indirect cost allocation shall be made to the contract cost objective, in accordance with established cost accounting practices and Standards which regularly govern a given entity's allocations to Government contract cost objectives. In any determination of unallowable cost overrun, the amount thereof shall be identified in terms of the excess of allowable costs over the ceiling amount, rather than through specific identification of particular cost items or cost elements.

**9905.505–50 Techniques for application.**

(a) The detail and depth of records required as backup support for proposals, billings, or claims shall be that which is adequate to establish and maintain visibility of identified unallowable costs (including directly associated costs), their accounting status in terms of their allocability to contract cost objectives, and the cost accounting treatment which has been accorded such costs. Adherence to this cost accounting principle does not require that allocation of unallowable costs to final cost objectives be made in the detailed cost accounting records. It does require that unallowable costs be given appropriate consideration in any cost accounting determinations governing the content of allocation bases used for distributing indirect costs to cost objectives. Unallowable costs involved in the determination of rates used for standard costs, or for indirect-cost bidding or billing, need be identified only at the time rates are proposed, established, revised or adjusted.

(b)(1) The visibility requirement of paragraph (a) of this subsection, may be satisfied by any form of cost identification which is adequate for purposes of contract cost determination and verification. The Standard does not require such cost identification for purposes which are not relevant to the determination of Government contract cost. Thus, to provide visibility for incurred costs, acceptable alternative practices would include:

(i) The segregation of unallowable costs in separate accounts maintained for this purpose in the regular books of account,

(ii) The development and maintenance of separate accounting records or workpapers, or

(iii) The use of any less formal cost accounting techniques which establishes and maintains adequate cost identification to permit audit verification of the accounting recognition given unallowable costs.

(2) Educational institutions may satisfy the visibility requirements for estimated costs either:

(i) By designation and description (in backup data, workpapers, etc.) of the amounts and types of any unallowable costs which have specifically been identified and recognized in making the estimates, or

(ii) By description of any other estimating technique employed to provide appropriate recognition of any unallowable costs pertinent to the estimates.

(c) Specific identification of unallowable costs is not required in circumstances where, based upon considerations of materiality, the Government and the educational institution reach agreement on an alternate method that satisfies the purpose of the Standard.

**9905.505–60 Illustrations.**

(a) An auditor recommends disallowance of certain direct labor and direct material costs, for which a billing has been submitted under a contract, on the basis that these particular costs were not required for performance and were not authorized by the contract. The contracting officer issues a written decision which supports the auditor's position that the questioned costs are

unallowable. Following receipt of the contracting officer's decision, the educational institution must clearly identify the disallowed direct labor and direct material costs in the institution's accounting records and reports covering any subsequent submission which includes such costs. Also, if the educational institution's base for allocation of any indirect cost pool relevant to the subject contract consists of direct labor, direct material, total prime cost, total cost input, etc., the institution must include the disallowed direct labor and material costs in its allocation base for such pool. Had the contracting officer's decision been against the auditor, the educational institution would not, of course, have been required to account separately for the costs questioned by the auditor.

(b) An educational institution incurs, and separately identifies, as a part of a service center or expense pool, certain costs which are expressly unallowable under the existing and currently effective regulations. If the costs of the service center or indirect expense pool are regularly a part of the educational institution's base for allocation of other indirect expenses, the educational institution must allocate the other indirect expenses to contracts and other final cost objectives by means of a base which includes the identified unallowable indirect costs.

(c) An auditor recommends disallowance of certain indirect costs. The educational institution claims that the costs in question are allowable under the provisions of Office Of Management and Budget Circular A–21, Cost Principles For Educational Institutions; the auditor disagrees. The issue is referred to the contracting officer for resolution pursuant to the contract disputes clause. The contracting officer issues a written decision supporting the auditor's position that the total costs questioned are unallowable under the Circular. Following receipt of the contracting officer's decision, the educational institution must identify the disallowed costs and specific other costs incurred for the same purpose in like circumstances in any subsequent estimating, cost accumulation or reporting for Government contracts, in which such costs are included. If the contracting officer's decision had supported the educational institution's contention, the costs questioned by the auditor would have been allowable and the educational institution would not have been required to provide special identification.

(d) An educational institution incurred certain unallowable costs that were charged indirectly as general administration and general expenses (GA&GE). In the educational institution's proposals for final indirect cost rates to be applied in determining allowable contract costs, the educational institution identified and excluded the expressly unallowable GA&GE costs form the applicable indirect cost pools. In addition, during the course of negotiation of indirect cost rates to be used for bidding and billing purposes, the educational institution agreed to classify as unallowable cost, various directly associated costs of the identifiable unallowable costs. On the basis of negotiations and agreements between the educational institution and the contracting officer's authorized representatives, indirect cost rates were established, based on the net balance of allowable GA&GE. Application of the rates negotiated to proposals, and to billings, for covered contracts constitutes compliance with the Standard.

(e) An employee, whose salary, travel, and subsistence expenses are charged regularly to the general administration and general expenses (GA&GE), an indirect cost category, takes several business associates on what is clearly a business entertainment trip. The entertainment costs of such trips is expressly unallowable because it constitutes entertainment expense prohibited by OMB Circular A–21, and is separately identified by the educational institution. In these circumstances, the employee's travel and subsistence expenses would be directly associated costs for identification with the unallowable entertainment expense. However, unless this type of activity constituted a significant part of the employee's regular duties and responsibilities on which his salary was based, no part of the employee's salary would be required to be identified as a directly associated cost of the unallowable entertainment expense.

**9905.505–61 Interpretation. [Reserved]**

**9905.505–62 Exemption.**

None for this Standard.

**9905.505–63 Effective date.**

This Standard is effective as of January 9, 1995.

**9905.506 Cost accounting period—Educational institutions.**

**9905.506–10 [Reserved]**

**9905.506–20 Purpose.**

The purpose of this Cost Accounting Standard is to provide criteria for the selection of the time periods to be used as cost accounting periods for contract cost estimating, accumulating, and reporting. This Standard will reduce the effects of variations in the flow of costs within each cost accounting period. It will also enhance objectivity, consistency, and verifiability, and promote uniformity and comparability in contract cost measurements.

**9905.506–30 Definitions.**

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *Allocate* means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

(2) *Cost objective* means a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

(3) *Fiscal year* means the accounting period for which annual financial statements are regularly prepared, generally a period of 12 months, 52 weeks, or 53 weeks.

(4) *Indirect cost pool* means a grouping of incurred costs identified with two or more cost objectives but not identified specifically with any final cost objective.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

**9905.506–40 Fundamental requirement.**

(a) Educational institutions shall use their fiscal year as their cost accounting period, except that:

(1) Costs of an indirect function which exists for only a part of a cost accounting period may be allocated to cost objectives of that same part of the period as provided in 9905.506–50(a).

(2) An annual period other than the fiscal year may, as provided in 9905.506–50(d), be used as the cost accounting period if its use is an established practice of the institution.

(3) A transitional cost accounting period other than a year shall be used whenever a change of fiscal year occurs.

(b) An institution shall follow consistent practices in the selection of the cost accounting period or periods in which any types of expense and any types of adjustment to expense (including prior-period adjustments) are accumulated and allocated.

(c) The same cost accounting period shall be used for accumulating costs in an indirect cost pool as for establishing its allocation base, except that the contracting parties may agree to use a different period for establishing an allocation base as provided in 9905.506–50(e).

**9905.506–50 Techniques for application.**

(a) The cost of an indirect function which exists for only a part of a cost accounting period may be allocated on the basis of data for that part of the cost accounting period if the cost is:

(1) Material in amount,

(2) Accumulated in a separate indirect cost pool or expense pool, and

(3) Allocated on the basis of an appropriate direct measure of the activity or output of the function during that part of the period.

(b) The practices required by 9905.506–40(b) of this Standard shall include appropriate practices for deferrals, accruals, and other adjustments to be used

in identifying the cost accounting periods among which any types of expense and any types of adjustment to expense are distributed. If an expense, such as insurance or employee leave, is identified with a fixed, recurring, annual period which is different from the institution's cost accounting period, the Standard permits continued use of that different period. Such expenses shall be distributed to cost accounting periods in accordance with the institution's established practices for accruals, deferrals, and other adjustments.

(c) Indirect cost allocation rates, based on estimates, which are used for the purpose of expediting the closing of contracts which are terminated or completed prior to the end of a cost accounting period need not be those finally determined or negotiated for that cost accounting period. They shall, however, be developed to represent a full cost accounting period, except as provided in paragraph (a) of this subsection.

(d) An institution may, upon mutual agreement with the Government, use as its cost accounting period a fixed annual period other than its fiscal year, if the use of such a period is an established practice of the institution and is consistently used for managing and controlling revenues and disbursements, and appropriate accruals, deferrals or other adjustments are made with respect to such annual periods.

(e) The contracting parties may agree to use an annual period which does not coincide precisely with the cost accounting period for developing the data used in establishing an allocation base: Provided,

(1) The practice is necessary to obtain significant administrative convenience,

(2) The practice is consistently followed by the institution,

(3) The annual period used is representative of the activity of the cost accounting period for which the indirect costs to be allocated are accumulated, and

(4) The practice can reasonably be estimated to provide a distribution to cost objectives of the cost accounting period not materially different from that which otherwise would be obtained.

(f)(1) When a transitional cost accounting period is required under the provisions of 9905.506–40(a)(3), the institution may select any one of the following:

(i) The period, less than a year in length, extending from the end of its previous cost accounting period to the beginning of its next regular cost accounting period,

(ii) A period in excess of a year, but not longer than 15 months, obtained by combining the period described in paragraph (f)(1) of this subsection with the previous cost accounting period, or

(iii) A period in excess of a year, but not longer than 15 months, obtained by combining the period described in subparagraph (f)(1) of this subsection with the next regular cost accounting period.

(2) A change in the institution's cost accounting period is a change in accounting practices for which an adjustment in the contract price may be required in accordance with subdivision (a)(4)(ii) or (iii) of the contract clause set out at 9903.201–4(e).

**9905.506–60 Illustrations.**

(a) An institution allocates indirect expenses for Organized Research on the basis of a modified total direct cost base. In a proposal for a covered contract, it estimates the allocable expenses based solely on the estimated amount of indirect costs allocated to Organized Research and the amount of the modified total direct cost base estimated to be incurred during the 8 months in which performance is scheduled to be commenced and completed. Such a proposal would be in violation of the requirements of this Standard that the calculation of the amounts of both the indirect cost pools and the allocation bases be based on the contractor's cost accounting period.

(b) An institution whose cost accounting period is the calendar year, installs a computer service center to begin operations on May 1. The operating expense related to the new service center is expected to be material in amount, will be accumulated in an intermediate cost objective, and will be allocated to the benefiting cost objectives on the basis of measured usage. The total operating expenses of the

computer service center for the 8-month part of the cost accounting period may be allocated to the benefiting cost objectives of that same 8-month period.

(c) An institution changes its fiscal year from a calendar year to the 12-month period ending May 31. For financial reporting purposes, it has a 5-month transitional ''fiscal year.'' The same 5-month period must be used as the transitional cost accounting period; it may not be combined as provided in 9905.506–50(f), because the transitional period would be longer than 15 months. The new fiscal year must be adopted thereafter as its regular cost accounting period. The change in its cost accounting period is a change in accounting practices; adjustments of the contract prices may thereafter be required in accordance with subdivision (a)(4) (ii) or (iii) of the contract clause at 9903.201–4(e).

(d) Financial reports are prepared on a calendar year basis on a university-wide basis. However, the contracting segment does all internal financial planning, budgeting, and internal reporting on the basis of a twelve month period ended June 30. The contracting parties agree to use the period ended June 30 and they agree to overhead rates on the June 30 basis. They also agree on a technique for prorating fiscal year assignment of the university's central system office expenses between such June 30 periods. This practice is permitted by the Standard.

(e) Most financial accounts and contract cost records are maintained on the basis of a fiscal year which ends November 30 each year. However, employee vacation allowances are regularly managed on the basis of a ''vacation year'' which ends September 30 each year. Vacation expenses are estimated uniformly during each ''vacation year.'' Adjustments are made each October to adjust the accrued liability to actual, and the estimating rates are modified to the extent deemed appropriate. This use of a separate annual period for determining the amounts of vacation expense is permitted under 9905.506–50(b).

**9905.506–61 Interpretation. [Reserved]**

**9905.506–62 Exemption.**

None for this Standard.

**9905.506–63 Effective date.**

This Standard is effective as of January 9, 1995. For institutions with no previous CAS-covered contracts, this Standard shall be applied as of the start of its next fiscal year beginning after receipt of a contract to which this Standard is applicable.

# FINDING AIDS

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