to acquire real estate for the United States by condemnation under judicial process, whenever in the opinion of the Director of Administration it is necessary for the Government to do so, and the Director of Administration is authorized to submit to the Attorney General of the United States requests for condemnation.

(b) The Director of Administration of the National Aeronautics and Space Administration may exercise the power of the Administrator of the National Aeronautics and Space Administration under the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. 258(a)) and Acts supplementary thereto and amendatory thereof, to sign declarations of taking.

(c) The delegation of authority covered in paragraphs (a) and (b) of this section shall be effective on and after July 1, 1962.

JAMES E. WEBB,
Administrator.

[F.R. Doc. 62-6320; Filed, June 28, 1962; 8:51 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket No. 8292]

PART 13—PROHIBITED TRADE PRACTICES

Alscap, Inc., et al.

Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* § 13.1185-90 *Wool Products Labeling Act.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended, secs. 2-5, 54 Stat. 1128-1130; 15 U.S.C. 45, 68) [Cease and desist order, Alscap, Inc., et al., New York, N.Y., Docket 8292, Feb. 14, 1962]

In the Matter of Alscap, Inc., a Corporation, Luba Scapa and Joseph Scapa, Individually and as Officers of Said Corporation, and Lopa of Italy, Ltd., a Corporation, and Bernard Kaplan and Joseph Scapa, Individually and as Officers of Said Corporation

Order requiring New York City importers of Italian wool products to cease misrepresenting the fiber content of wool products, including fabrics and skirts, imported from Italy.

The order to cease and desist is as follows:

It is ordered, That respondents Alscap, Inc., its officers, and Luba Scapa and Joseph Scapa, individually and as officers of said corporation, and Lopa of Italy, Ltd., its officers, and Bernard Kaplan and Joseph Scapa, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or indirectly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of woolen fabrics and ladies' skirts, or other "wool products" as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to affix labels on such products showing each element of information required to be disclosed by section 4(a)(2) of the Wool Products Labeling Act of 1939.

By "Order Vacating Prior Order, Decision of the Commission", etc., report of compliance was required as follows:

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: February 14, 1962.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 62-6309; Filed, June 28, 1962; 8:47 a.m.]

[Docket No. C-75]

PART 13—PROHIBITED TRADE PRACTICES

Lake Charm Fruit Co.

Subpart—Discriminating in price under section 2, Clayton Act—Payment or acceptance of commission, brokerage or other compensation under 2(c): § 13.820 *Direct buyers.*

(Secs. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 2, 49 Stat. 1527; 15 U.S.C. 13) [Cease and desist order, Lake Charm Fruit Company, Oviedo, Fla., Docket C-75, Feb. 12, 1962]

Consent order requiring Oviedo, Fla., citrus fruit packers to cease violating section 2(c) of the Clayton Act by granting commissions or brokerage on a large number of sales made by brokers and other direct buyers purchasing for their own accounts for resale.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That the respondent Lake Charm Fruit Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the sale of citrus fruit, or fruit products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from: Paying, granting, or allowing, directly or indirectly, to any buyer or to anyone acting for or in behalf of or who is subject to the direct or indirect control of such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale of citrus fruit or fruit products to such buyer for his own account.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Issued: February 12, 1962.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 62-6310; Filed, June 28, 1962; 8:48 a.m.]

[Docket No. C-76]

PART 13—PROHIBITED TRADE PRACTICES

Lake Region Packing Association

Subpart—Discriminating in price under section 2, Clayton Act—Payment or acceptance of commission, brokerage or other compensation under 2(c): § 13.820 *Direct buyers.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 2, 49 Stat. 1527; 15 U.S.C. 13) [Cease and desist order, Lake Region Packing Association, Tavares, Fla., Docket C-76, Feb. 12, 1962]

Consent order requiring Tavares, Fla., packers of citrus fruit to cease violating section 2(c) of the Clayton Act by granting commissions or discounts on a large number of sales made to brokers and other direct buyers purchasing for their own accounts for resale.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That the respondent Lake Region Packing Association, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the sale of citrus fruit, or fruit products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from: Paying, granting, or allowing, directly or indirectly, to any buyer or to anyone acting for or in behalf of or who is subject to the direct or indirect control of such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale of citrus fruit or fruit products to such buyer for his own account.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Issued: February 12, 1962.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 62-6311; Filed, June 28, 1962; 8:48 a.m.]

Title 29—LABOR

Subtitle A—Office of the Secretary

PART 4—CHILD LABOR REGULATIONS, ORDERS AND STATEMENTS OF INTERPRETATION

Subpart B—Acceptance of State Certificates

DESIGNATION OF STATES; EXTENSION OF EXPIRATION DATE

The age, employment, or working certificates or permits of several States are designated in 29 CFR 4.21 as having the same force and effect as Federal certificates of age issued under section 3(l) of the Fair Labor Standards Act of 1938 (52 Stat. 1061 as amended; 29 U.S.C. 203).

In a document promulgated on June 14, 1961, and published in the FEDERAL REGISTER on June 21, 1961 (26 F.R. 5503) it was provided that these designations would expire on June 30, 1962.

Accordingly, pursuant to subsection 3(l) and subsection 11(b) of the Fair Labor Standards Act of 1938 (52 Stat. 1061 and 1066 as amended; 29 U.S.C. 203 and 211), and Reorganization Plan No. 2 of 1946 (3 CFR 1943–1948 Comp., p. 1064), I hereby extend the designations contained in 29 CFR 4.21 until June 30, 1963.

Signed at Washington, D.C., this 22d day of June 1962.

ARTHUR J. GOLDBERG,
Secretary of Labor.

[F.R. Doc. 62-6319; Filed, June 28, 1962; 8:50 a.m.]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER A—ARMED SERVICES PROCUREMENT REGULATIONS

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

The following amendments to this subchapter are issued by direction of the Assistant Secretary of Defense (Installations and Logistics) pursuant to the authority contained in Department of Defense Directive No. 4105.30, dated March 11, 1959 (24 F.R. 2260), as amended, and 10 U.S.C. 2202, and have the concurrence of the military departments.

PART 1—GENERAL PROVISIONS

1. Sections 1.109–2, 1.308(b)(1) and 1.701–1(a)(2) are revised to read as follows:

§ 1.109–2 Deviations affecting one contract or transaction.

Deviations from this subchapter or a Department of Defense Directive which affect only one contract or procurement may be made or authorized in accordance with Departmental procedures providing (a) special circumstances justify a deviation and (b) written notice of such deviation is furnished to the Assistant Secretary of Defense (Installations and Logistics) and in the case of the Department of the Army, to the Assistant Secretary of the Army (I&L), Attn: ASPR Policy Member; the Department of the Navy, the Chief of Naval Material, Attn: (Code MO 3B); Department of the Air Force, Director of Procurement Management, DCS/S&L, Attn: AFSPM–AS; and the Defense Supply Agency, Executive Director, Procurement and Production, Attn: DSAH–PM. Such written notice shall be given in advance of the effective date of such deviations unless exigency of the situation requires immediate action.

§ 1.308 Records of contract actions.

* * * * *

(b) Each contract file shall include the following data, if applicable:

(1) a copy of the procurement directives or request, or appropriate reference thereto;

§ 1.701–1 Small business concern.

(a) * * *

(2) *Special industry definitions.* Unless certified as a small business concern, by SBA, in addition to being independently owned and operated, and not dominant in the field of operation in which it is bidding on Government contracts, a small business concern in order to qualify as such must meet special criteria in the following industries:

(i) *Construction industry.* In the construction industry, the average annual receipts of the concern and its affiliates for the preceding three fiscal years must not exceed $5,000,000: except that if the concern is located in Alaska, such receipts must not exceed $6,250,000. ("Annual receipts" means the annual receipts less returns and allowances of a concern and its affiliates.)

(ii) *Food, canning, and preserving industry.* In the food, canning and preserving industry, the concern and its affiliates must employ not more than 500 employees exclusive of "agricultural labor" as defined in 26 U.S.C. 3306(k).

(iii) *Trucking, warehousing, packing and crating industry.* In the trucking, warehousing, packing and crating industry, the annual receipts of the concern and its affiliates must be $3,000,000 or less; except that if the concern is located in Alaska, such receipts must be $3,750,000 or less. No such concern, however, will be denied small business status for the purpose of Government procurement solely because of its relationship with an interstate van line, if the concern's annual receipts have not exceeded $3,000,000 during its most recently completed fiscal year ($3,750,000 if located in Alaska), and not more than fifty percent (50%) of such annual receipts are directly attributable to the concern's relationship with an interstate van line.

(iv) *Certain industries employing not more than 1,000 employees.* In the following industries the number of employees of the concern and its affiliates must not exceed 1,000 employees:

(*a*) *Aircraft equipment and parts industry.* This special definition for the aircraft equipment and parts industry applies only in the procurement of the following items:

Airframes and structural components.
Aircraft propellers and hubs.
Wheel and brake systems.
Jet engines.
Fuel tanks.
Aircraft hydraulic systems.
Aircraft vacuum systems.
Aircraft air-conditioning.
Heating and pressurizing equipment.
Fire control systems.
Flight instruments.
Flight simulators (except small cockpit trainers).
Aircraft deicing systems.

(*b*) *Petroleum refining industry.* This special definition for the petroleum refining industry, excepting procurement of lubricants and miscellaneous petroleum products, applies to a concern and its affiliates which have a capacity of not more than 30,000 barrels per day crude oil capacity from owned or leased facilities. ("Crude oil capacity" means the maximum daily average crude throughput of a refinery in complete operation, with allowance for necessary shutdown time for routine maintenance, repairs, etc. It approximates the maximum daily average crude runs to stills that can be maintained for an extended period.)

(*c*) *Air transportation industry.*

(*d*) *Rubber footwear industry.*

(*e*) *Tire and inner tube industry.*

(*f*) *Small arms industry.* This special definition for the small arms industry applies to the procurement of small firearms having a bore of 30-mm (or 1.18 inches) and below.

(*g*) *Small arms ammunition.* This special definition applies to the procurement of ammunition for small arms having a bore of 30-mm (or 1.18 inches) and below.

§ 1.702 [Amendment]

2. In § 1.702(b), the reference to "§ 3.107" is changed to read "§ 4.205."

3. Sections 1.706–6(e), 1.804–2(d) and 1.1002 are revised, as follows:

§ 1.706–6 Partial set-asides.

* * * * *

(e)(1) After the award price for the nonset-aside portion has been determined, negotiations may be conducted for the set-aside portion. Procurement of the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those bidders or offerors who have submitted responsive bids or proposals on the nonset-aside portion at a unit price no greater than 120 percent of the highest award made or to be made on the nonset-aside portion and who are determined to be responsible prospective contractors for the set-aside portion of the procurement. Negotiations shall be conducted with small business concerns in the order of priority as indicated in the foregoing notices; provided that, where equal low bids are received on the nonset-aside portion from concerns which are equally eligible for the set-aside portion, the concern which is awarded the nonset-aside portion (under the equal low bid procedures of § 2.407–6 of this chapter) shall have first priority with respect to negotiations for the set-aside portion. The set-aside portion will be awarded at the highest unit price awarded or to be awarded for the non-set-aside portion.

(2) When the award price for the nonset-aside portion has been determined and where an award will be made to a small business concern and the same small business concern is entitled to receive the set-aside portion of a solicitation, the set-aside portion may be added to the basic contract by supplemental agreement. The supplemental agreement shall include the Examination of Records clause, applicable to the set-aside portion only.

§ 1.804-2 Set-aside procedures.

* * * * *

(d) (1) After the award price for the nonset-aside portion has been determined, negotiations may be conducted for the set-aside portion. Procurement of the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those bidders or offerors who have submitted responsive bids or proposals on the nonset-aside portion at a unit price no greater than 120 percent of the highest award made or to be made on the nonset-aside portion and who are determined to be responsible prospective contractors for the set-aside portion of the procurement. Negotiations shall be conducted in the order of priority indicated in the foregoing notices; provided that, where equal low bids are received on the nonset-aside portion from concerns which are equally eligible for the set-aside portion, the concern which is awarded the nonset-aside portion (under the equal low bid procedures of § 2.407-6 of this chapter) shall have first priority with respect to negotiations for the set-aside portion. The set-aside portion shall be awarded at the highest unit price awarded or to be awarded for the nonset-aside portion. If the entire set-aside portion cannot be awarded by the method described herein, any unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations (see § 3.201-2(b) (1) of this chapter as to negotiation).

(2) When the award price for a nonset-aside portion has been determined and where an award will be made to a labor surplus area concern and the same labor surplus area concern is entitled to receive a set-aside portion of the solicitation, the set-aside portion may be added to the basic contract by supplemental agreement. The supplemental agreement shall include the Examination of Records clause, applicable to the set-aside portion only.

§ 1.1002 Availability of invitations for bids and requests for proposals.

A reasonable number of copies of invitations for bids and requests for proposals publicized in the Commerce Business Daily, including specifications and other pertinent informaton, shall be maintained by the issuing office. To the extent that unclassified invitations for bids and requests for proposals are available, they shall be provided at the purchasing office to manufacturers, construction contractors, and regular dealers and to others having a legitimate interest therein, such as publishers, trade associations, procurement information services and others who disseminate information concerning invitations for bids and request for proposals; otherwise the purchasing office may limit the availability of invitations for bids and requests for proposals to perusal at such office.

4. In § 1.1003-1, revise the introductory portion and paragraph (a), and revise §§ 1.1003-2 and 1.1003-3, as follows:

§ 1.1003-1 General.

Every proposed advertised or negotiated procurement made in the United States, which may result in an award in excess of $10,000 shall be publicized promptly in the Commerce Business Daily "Synopsis of U.S. Government Proposed Procurement, Sales, and Contract Awards," except that the following need not be publicized in the Synopsis:

(a) Procurement of a classified nature where the information necessary to be included or referenced in the solicitation (Invitation for Bid or Request for Proposal) is in itself of a classified nature and the public disclosure of this information would violate security requirements. All other classified procurements shall be published in the Synopsis, if sufficient information of an unclassified nature, can be provided in the solicitation to enable a prospective contractor to submit a bid or proposal.

§ 1.1003-2 Research and development.

In order that potential sources may learn of research and development programs, advance notices of the Government's interest in a specific research and development field shall be published in the Commerce Business Daily in accordance with § 1.1003-9(d) so as to give such sources adequate opportunity to submit information for evaluation of their research and development capabilities, except where security considerations prohibit such publication. Each specific procurement of research and development projects shall be publicized in the Commerce Business Daily unless one of the exceptions in § 1.1003-1 is applicable or unless an advance notice of the Government's requirements in the particular field, published in the Commerce Business Daily in accordance with § 1.1003-9(d), has been sufficiently specific to permit potential sources to request solicitations for the prospective procurement. (See § 4.203 of this chapter.)

§ 1.1003-3 Synopses of subcontract opportunities.

(a) *By contracting officers.* In order to broaden the opportunity in negotiated procurement for subcontracting by small business concerns and others, contracting officers shall, unless not in the Government's interest or subcontracting opportunities do not exist, publish in the Commerce Business Daily the names and addresses of firms to whom requests for proposals are to be issued. This procedure will offer opportunity to small business concerns and others interested in subcontracting to make direct contact with prospective prime contractors at an early stage in the procurement. An addition to the regular synopsis prepared in accordance with § 1.1003-9 shall be made as set forth in § 1.1003-9(f).

(b) *By prime contractors and subcontractors.* Prime contractors and subcontractors should be encouraged to use the Commerce Business Daily to publicize opportunities in the field of subcontracting stemming from their defense business. Prime contractors and their subcontractors will be advised to mail subcontract information directly to the U.S. Department of Commerce, Room 1300, 433 West Van Buren Street, Chicago 7, Ill., under the heading "Subcontracting Assistance Wanted" and in the form of the following example:

XYZ CO., ATTN JOHN Z. SMITH, TELE. NO. RANDOLPH 6-1111, 102 FIRST AVE., CHICAGO 7, ILL., seeks Subcontractor on items to be used in connection with Contract No. ______ awarded 5-1-60.

COILS, INDUCTION, DWG. NO. 10-742______________________ 10,000 ea.

(Name, description and quantity of other items or services may be included as long as contract assistance is desired under the same contract number.) If interested, make inquiry before 5-16-60 to above Contractor.

PART 2—PROCUREMENT BY FORMAL ADVERTISING

5. Sections 2.104-4, 2.201(a) (25), (26), and (27), 2.302, and 2.303-2 are revised as follows:

§ 2.104-4 Indefinite delivery type contracts.

(a) *Definite quantity contracts.* See § 3.409(a) of this chapter.

(b) *Requirements contracts.* See § 3.409(b) of this chapter.

(c) *Indefinite quantity contracts.* See § 3.409(c) of this chapter.

§ 2.201 Preparation of invitation for bids.

* * * * *

(a) * * *

(25) Pending revision of paragraph 4 of the Terms and Conditions of the Invitation for Bids on the back of Standard Form 30 (October 1957 edition) and Standard Form 33 (October 1957 edition) and of paragraph 7 of Standard Form 22 (January 1961 edition), the following provision shall be submitted, as to each form, in lieu of the cited paragraph:

Late bids and modifications or withdrawals. Bids and modifications or withdrawals thereof received at the office designated in the Invitation for Bids after the exact time set for opening of bids will not be considered unless: (a) They are received before award is made; (b) they are sent by registered mail, or by certified mail for which an official post office stamp (postmark) on the original Receipt for Certified Mail has been obtained, or by telegraph if authorized; and (c) it is determined by the Government that late receipt was due solely to either (i) delay in the mails, or delay by the telegraph company if telegraphic bids are authorized, for which the bidder was not responsible or (ii) mishandling by the Government after receipt at the Government installation. However, a modification which is received from an otherwise successful bidder and which makes the terms of the bid more favorable to the Government will be considered at any time it is received and may thereafter be accepted. Bidders using certified mail are cautioned to obtain a legibly postmarked Receipt for Certified Mail and retain it against the chance that the postmark thereon will be required as evidence that a late bid was timely mailed. If the postmark on such receipt, or on the registered mail wrapper shows the hours of mailing as well as the date, the time of mailing shall be established accordingly; if it shows the date but not the hour, the time of mailing shall be deemed to be the last minute of the date shown, unless the bidder furnishes evidence from the post office of mailing which, in the case of registered mail, establishes an earlier time; or in the case of certified mail, where the receipt for Certified Mail identifies the post office station of mailing, the time of mailing shall be deemed to be the last minute of the business day of that station. (APR. 1962)

(26) A provision covering the required source for jeweled bearings (see § 1.315 of this chapter).

(27) A statement substantially as follows (prominently placed in the invitation):

Caution to bidders—Late bids. See the special provision entitled "Late Bids and Modifications or Withdrawals" which provides that late bids and modifications or withdrawals thereof sent through the mails will be considered only if sent by registered mail, or by certified mail for which a postmarked receipt has been obtained as specified in such provision. (Apr. 1962)

§ 2.302 Time of bid submission.

Bids shall be submitted so as to be received in the office designated in the invitation for bids not later than the exact time set for opening of bids. Where telegraphic bids are authorized a telegraphic bid received by telephone from the receiving telegraph office before the time set for opening of bids shall be considered if such bid is confirmed by the telegraph company with a written telegram.

§ 2.303-2 Consideration for award.

A late bid shall be considered for award only if:

(a) It is received before award;

(b) In the case of a mailed bid (other than one covered by paragraph (c)(2) of this section), it was sent by registered mail, or by certified mail for which an official post office stamp (postmark) on the original Receipt for Certified Mail has been obtained; and

(c) It is determined that either:

(1) The lateness was due solely to a delay in the mails (based on evidence pursuant to § 2.303-3), or to a delay by the telegraph company where the invitation authorizes telegraphic bids, for which the bidder was not responsible; or

(2) The bid, if submitted by mail (or by telegram where authorized), was received at the Government installation in sufficient time to be received at the office designated in the invitation by the time set for opening and, except for delay due to mishandling on the part of the Government at the installation, would have been received on time at the office designated.

6. Sections 2.303-3, 2.303-4, 2.303-6, 2.304, and 2.305 are revised to read as follows:

§ 2.303-3 Mailed bids.

(a) *Registered mail.* The time of mailing of a late bid mailed by registered mail shall be determined by the date, and hour if shown, in the postmark. If the postmark shows the date but not the hour of mailing, the time of mailing shall be deemed to be the last minute of the date shown unless the bidder furnishes evidence from the post office of mailing which establishes an earlier time. If the postmark does not show the date of mailing, the bid shall be deemed to have been mailed too late unless the bidder furnishes evidence from the post office of mailing which establishes a timely date.

(b) *Certified mail.* The time of mailing of a late bid mailed by certified mail for which a postmarked Receipt for Certified Mail was obtained shall be determined by the official post office stamp (postmark) on the original Receipt for Certified Mail, to be furnished by the bidder, showing the date of receipt by the post office at the time of mailing. If this postmark shows the hour of mailing as well as the date, the time of mailing shall be established accordingly; if it shows the date but not the hour, the time of mailing shall be deemed to be the last minute of the date shown, except that, where the Receipt for Certified Mail identifies the post office station of mailing, the time of mailing shall be deemed to be the last minute of the business day of that station. If this postmark does not show the date of mailing, the bid shall be deemed to have been mailed too late.

(c) *Delivery time.* Information concerning the normal time for mail delivery shall be obtained by the purchasing activity from the postmaster, superintendent of mails, or a duly authorized representative for that purpose, of the post office servicing that activity. When time permits, such information shall be obtained in writing.

§ 2.303-4 Telegraphic bids.

A late telegraphic bid shall be presumed to have been filed with the telegraph company too late to be received in time, except where the bidder demonstrates by clear and convincing evidence, which includes substantiation by an authorized official of the telegraph company, that the bid, as received at the office designated in the invitation for bids, was filed with the telegraph company in sufficient time to have been delivered by normal transmission procedure so as not to have been late (see § 2.302).

§ 2.303-6 Notification to late bidders.

Where a late bid is received and it is clear from available information that under § 2.303-2 such late bid cannot be considered, the contracting officer or his authorized representative shall promptly notify the bidder that his bid was received late and will not be considered. However, where a late bid is transmitted by registered mail and received before award but it is not clear from available information whether the bid can be considered, or in any case of a late bid transmitted by certified mail received before award, the bidder shall be promptly notified substantially as follows:

Your bid in response to Invitation for Bids No. ______, dated __________, was received after the time for opening specified in the Invitation. Accordingly, your bid will not be considered for award unless (1) there is received from you by ____________________ (Date) clear and convincing evidence from the post office of mailing which establishes the date (and hour, if possible) that the bid was deposited with that post office, and (2) it is determined by the Government that late receipt was due solely to a delay in the mail for which you are not responsible. In the case of certified mail, the original postmarked Receipt for Certified Mail must be furnished and is the only evidence acceptable under (1) above, except that, where the Receipt for Certified Mail identifies the post office station of mailing, evidence of the time of closing of that station is also acceptable. (Apr. 1962)

The foregoing notification shall be appropriately modified in the case of late telegraphic bids.

§ 2.304 Modification or withdrawal of bids.

(a) Bids may be modified or withdrawn by written telegraphic notice received prior to the exact time set for opening of bids. A telegraphic modification or withdrawal of a bid received by telephone from the receiving telegraph office prior to the time fixed for opening of bids shall be considered if such message is confirmed by the telegraph company with a written telegram. Modifications received by telegram shall be sealed in an envelope and no information contained therein shall be disclosed prior to the time set for bid opening.

(b) A bid may be withdrawn in person by a bidder or his authorized representative, providing his identity is made known and he signs a receipt for the bid, but only if the withdrawal is prior to the exact time set for opening of bids.

§ 2.305 Late modifications and withdrawals.

(a) Modifications of bids and requests for withdrawal of bids which are received in the office designated in the invitation for bids after the exact time set for opening are "late modifications" and "late withdrawals," respectively. A late modification or late withdrawal shall be subject to the rules applicable to late bids set forth in § 2.303. However, a modification received from an otherwise successful bidder which is favorable to the Government shall be considered at any time that such modification is received.

(b) Where a late modification or late withdrawal is received and it is clear from available information that under paragraph (a) of this section such late modification or late withdrawal cannot be considered, the contracting officer or his authorized representative shall promptly notify the bidder that his modification or withdrawal was received late and will not be considered. However, where a late modification or late withdrawal is transmitted by registered mail and received before award but it is not clear from available information whether the modification or withdrawal can be considered, or in any case of a late modification or withdrawal transmitted by certified mail and received before award, the bidder shall be promptly notified substantially as follows:

Your (modification) (request for withdrawal) of your bid in response to Invitation for Bids No. ______, dated __________, was received after the time for opening specified in the Invitation. Accordingly, your (modification) (request for withdrawal) will not be considered effective unless (1) there is received from you by ______________ clear (Date) and convincing evidence from the post office of mailing which establishes the date (and hour, if possible) that the (modification) (request for withdrawal) was deposited with that post office, and (2) it is determined by the Government that late receipt was due solely to a delay in the mail for which you are not responsible. In the case of certified mail, the original postmarked Receipt for Certified Mail must be furnished and is the only evidence acceptable under (1) above, except that, where the Receipt for Certified Mail identifies the post office station of mailing, evidence of the time of closing of that station is also acceptable. (Apr. 1962.)

The foregoing notification shall be appropriately modified in the case of late telegraphic modifications or withdrawals.

(c) Late modification or late withdrawals, which are not considered as being effective, shall be held unopened until after award and then returned to the bidder, unless other disposition is requested or agreed to by the bidder, except that:

(1) An unidentified modification or request for withdrawal may be opened solely for purposes of identification, as provided in § 2.401; and

(2) Any modification received from an otherwise successful bidder shall be opened, so as to determine whether it should be considered as stated in the proviso in paragraph (a) of this section.

(d) Records of late modifications and late withdrawals shall be maintained in accordance with the record requirements for late bids set forth in § 2.303–8.

PART 3—PROCUREMENT BY NEGOTIATION

7. Sections 3.107, 3.107–1, 3.107–2, 3.107–3, 3.107–4, 3.107–5, 3.107–6, 3.107–7, and 3.107–8 are revoked as follows:

§ 3.107 Selection of research and development contractors. [Revoked]

§ 3.107–1 General. [Revoked]

§ 3.107–2 Small Business concerns. [Revoked]

§ 3.107–3 Selection of sources for solicitations. [Revoked]

§ 3.107–4 Solicitation. [Revoked]

§ 3.107–5 Conduct of negotiations. [Revoked]

§ 3.107–6 Evaluation for award. [Revoked]

§ 3.107–7 Cost and price estimates. [Revoked]

§ 3.107–8 Documentation. [Revoked]

8. New paragraph (f) is added to § 3.202–2; § 3.202–3 is revised; and § 3.402 (a) (2) is revised, as follows:

§ 3.202–2 Application.

* * * * *

(f) Purchase request citing an issue priority designator 1 through 6, inclusive, when the priority designator has been assigned in accordance with the Uniform Materiel Issue Priority System.

NOTE: Requirements citing an issue priority designator 7 through 20 may justify negotiation under this or other negotiation authority, but in such cases the specific circumstances must be set forth in the determination and findings.

§ 3.202–3 Limitation.

Every contract negotiated under the authority of §§ 3.202 through 3.202–3 shall be accompanied by a determination and findings justifying its use, signed by the contracting officer and prepared in accordance with the requirements of Subpart C of this part, except that in the case of a contract resulting from a purchase request citing an issue priority designator 1 through 6, the determination and findings need only cite the designator as justification. The authority of §§ 3.202 through 3.202–3 shall not be used when negotiation is authorized by the provisions of § 3.203 or 3.206.

§ 3.402 Basic principles for use of contract types.

(a) *General.* * * *

(2) Success in harnessing the profit motive begins with the negotiation of sound performance goals and standards. This objective is met if the contractor either benefits or loses in relation to achieving or failing to achieve realistic targets. Where award is based on effective price competition, there is reasonable assurance that the contract price represents a realistic pricing standard, including a profit factor which reflects an appropriate return to the contractor for the financial risk assumed in undertaking performance at the competitive price. In the absence of competitive forces, however, the contract type selected should provide for a profit factor that will tie profits to the contractor's efficiency in controlling costs and meeting desired standards of performance, reliability, quality, and delivery. Therefore, in noncompetitive situations, the degree to which available cost estimates are realistic should be carefully considered in determining which type of contract should be selected and how it should be used—especially where the contractor is to assume substantial cost responsibility, since it is to his advantage to maximize the difference between estimated costs and actual costs in price negotiation as well as in contract performance. If estimated costs are negotiated on the basis of a full consideration of all significant cost or pricing data that are reasonably available at the time of negotiation, a contract type providing a high profit potential and concomitant contractor risks may be entirely appropriate even though there is a possibility that actual costs will vary widely from the estimate.

9. Revise the introductory portion of paragraph (c) in § 3.404–6; and revise §§ 3.404–7(c), 3.707, and 3.802–2, as follows:

§ 3.404–6 Retroactive and prospective price redetermination at a stated time during performance.

* * * * *

(c) *Limitations.* This contract type may be used only until January 1, 1962, and until then, only when:

§ 3.404–7 Retroactive price redetermination after completion.

* * * * *

(c) *Limitations.* This type of contract shall not be used unless the procurement is for research and development at an estimated cost of $100,000 or less, and

(1) The contractor's accounting system is adequate for price redetermination purposes;

(2) Reasonable assurance exists that price redetermination action will be taken promptly at the time specified;

(3) A ceiling price is established; and

(4) Until January 1, 1963, written approval has been received from the Office of the Deputy Chief of Staff for Logistics or Offices of the Heads of the Technical Services, for the Army; Office of Naval Material, for the Navy; Headquarters, Air Force Systems Command or Headquarters, Air Force Logistics Command, for the Air Force; and the Executive Director, Procurement and Production, for the Defense Supply Agency or, after January 1, 1963, written approval has been received from a level above the Head of a Procuring Activity.

Until January 1, 1963, this type of contract may also be used for procurements of an urgent nature where the total period of contract performance is six months or less and the limitations in subparagraphs (1) through (4) of this paragraph are satisfied.

§ 3.707 Cost-sharing rates.

Cost-sharing arrangements are frequently made wherein the cost participation by the contractor is evidenced by an agreement to accept overhead rates which are lower than the anticipated actual overhead rates. In such cases, a negotiated fixed-ceiling overhead rate may be used for application prospectively, provided that, in the event overhead rates developed by the cognizant audit activity on the basis of actual allowable costs are less than the negotiated rates, the negotiated rates will be reduced. Where reductions are necessary, they will be accomplished in accordance with § 3.705. The Government will not be obligated to pay any additional amounts on account of overhead above the negotiated fixed-ceiling rates. (For cost sharing practices under Research and Development Contracts, see § 4.208 of this chapter.)

§ 3.802–2 Selection of prospective sources.

Selection of qualified sources for solicitation of proposals is basic to sound pricing. Proposals should be solicited from a sufficient number of competent potential sources to insure adequate competition. (See §§ 1.302, 1.902, 3.101, 3.104, 3.105, 4.205–1, and 12.102 of this chapter.) The bidders mailing lists prescribed by § 2.205 of this chapter should be used where appropriate.

§ 3.804–2 [Amendment]

10. In § 3.804–2(b), reference to "§ 3.107–7" is changed to "§ 4.205–5."

11. Sections 3.808–2(h)(3)(i) and 3.808–4 are revised, and §§ 3.812, 3.812–1, 3.812–2, 3.812–3, and 3.812–4 are revoked, as follows:

§ 3.808–2 Factors for determining fee or profit.

* * * * *

(h) *Subcontracting.* * * *

(3) * * *

(i) The company's policies and procedures which energetically support Government small business and labor surplus area programs;

§ 3.808–4 Mineral fees or cost sharing arrangements.

In certain circumstances, as where experimental, developmental, or research work is attractive because of direct or potential commercial applications, consideration should be given to using a contract providing for only a nominal or token fee, or no fee, or on a cost-sharing basis. (See also § 4.208 of this chapter.)

§ 3.812 Special use allowances for research facilities acquired by educational institutions. [Revoked]

§ 3.812–1 Definitions. [Revoked]

§ 3.812–2 Policy. [Revoked]

§ 3.812–3 Authorization of special use allowances. [Revoked]

§ 3.812–4 Negotiation and administration of contracts providing for special use allowances. [Revoked]

PART 4—SPECIAL TYPES AND METHODS OF PROCUREMENTS

12. A new Subpart B is added to Part 4, as follows:

Subpart B—Procurement of Research and Development

Sec.

Sec.

AUTHORITY: §§ 4.200 to 4.214–4 issued under sec. 2203, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314.

§ 4.200 Scope of subpart.

Procurement procedures of special application to research and development contracts are set forth in this subpart, and in certain instances other portions of this subchapter having particular significance to research and development contracts are cross-referenced herein. This subpart however, does not purport to contain or cross-reference all provisions of this subchapter applying to research and development contracts. Other provisions of this subchapter are also applicable to research and development contracts and shall be adhered to where applicable.

§ 4.201 Definitions.

(a) "Basic Research" means that type of research which is directed toward increase of knowledge in science. In such research, the primary aim of the investigator is a fuller knowledge or understanding of the subject under study, rather than any practical application thereof.

(b) "Applied Research" means that type of effort which (1) normally follows basic research, but may not be severable from the related basic research, (2) attempts to determine and expand the potentialities of new scientific discoveries or improvements in technology, materials, processes, methods, devices, and techniques, and (3) attempts to "advance the state of the art". Applied research does not include any such efforts when their principal aim is the design, development, or test of specific articles or services to be offered for sale, which are within the definition of the term development as hereinafter provided.

(c) "Development" is the systematic use of scientific knowledge which is directed toward the production of, or improvements in, useful products to meet specific performance requirements, but exclusive of manufacturing and production engineering.

(d) "Educational or other nonprofit organization" means any corporation, foundation, trust, or institution operated for scientific, educational, or medical purposes, not organized for profit, no part of the net earnings of which inures to the profit of any private shareholder or individual.

(e) "Unsolicited proposal" is a research or development proposal which is made to the Government by a prospective contractor without prior formal or informal solicitation from a purchasing activity.

§ 4.202 General policy.

A fundamental mission of research and development programs is to maintain scientific and technological superiority requisite to promote and advance the effectiveness of military operations. The accomplishment of this mission requires the broadest possible base of contractor and subcontractor sources including the optimum use of manpower and resources. It is essential that the best technical competence be located and fully utilized. The procurement pattern of research and development must be responsive to the achievement of these goals on a timely basis.

§ 4.203 Publicizing procurement actions and expanding sources.

The Departments shall continually search for and develop information on sources (including small business concerns) competent to perform research and development. Advance publicity, including use of the Commerce Business Daily (see § 1.1003–2 of this chapter) to the fullest extent practicable, shall be given for this purpose. The search should include (a) a review of relevant data or brochures furnished by sources seeking research and development work and (b) a cooperative effort by technical personnel, small business specialists, and contracting officers to obtain information and recommendations with respect to potential sources and to consider the desirability of seeking other sources by publication of proposed procurements, in addition to the synopsis requirement.

§ 4.204 Method of contracting.

In research and development procurements it is generally not possible to formulate precise specifications necessary for formal advertising and, therefore, negotiation is necessary. The inherent difficulties in obtaining research and development by formal advertising are recognized by the exception in § 3.211 of this chapter. However, two-step formal advertising as stated in Subpart E, Part 2 of this chapter, may be useful, for example, in the case of an advanced developmental project. While the use of negotiation is the general rule for research and development contracts, this does not diminish the obligation to obtain competition to the maximum practicable extent. (See Subparts A and B, Part 3 of this chapter.)

§ 4.205 Selection of research and development contractors.

§ 4.205–1 Selection of sources.

(a) *General.* Through its research and development programs, the Department of Defense must seek the most advanced scientific knowledge attainable and the best possible equipment, weapons, and weapons systems that can be devised and produced. This means two things. First, it means seeking the best scientific and technological sources. Second, it means unremitting efforts to increase the number of sources, and to encourage participation by small business concerns, as well as others, in Defense research and development.

(b) *Small business sources.* (1) Contracting officers, technical personnel, and small business specialists shall cooperatively seek and develop information on the technical competence of small business concerns for research and development contracts. Small business specialists shall regularly bring to the attention of contracting officers and technical personnel descriptive data, brochures, and other information as to small business concerns that are apparently competent to perform research or development work in fields in which the purchasing activity is interested.

(2) In order to cooperate with the Small Business Administration in carrying out its responsibility of assisting small business concerns to obtain contracts for research and development, contracting officers, technical personnel and small business specialists shall, upon request, provide to authorized SBA representatives information necessary to understand the Government's needs concerning research and development programs under consideration for specific future procurement actions. The SBA may provide pertinent information concerning potential small business sources developed through its investigation of the capabilities of specific firms in the particular field of research or development covered by the programs. Full evaluation shall be given to any such information in selecting qualified sources.

(c) *Recommendations by technical personnel.* Recommendations as to which potential sources are technically qualified shall be made by cognizant technical personnel after review of the information obtained as a result of advance publicity (see § 4.203) and as appropriate, on the basis of discussion with potential sources (either singly or in a group), correspondence, or suitable surveys.

(d) *Research and development pools.* See § 1.302-3 of this chapter.

(e) *Unsolicited proposals.* Unsolicited proposals may be the product of original thinking and generally are the property of the organization or individual who presents them. They are offered in the hope that the Government will contract with the offeror for further research on, or development of, the ideas they contain. Extreme care must be exercised by the Government not to disclose to third parties any proprietary information contained in unsolicited proposals. Unsolicited proposals received by procuring activities shall be handled in a manner which will encourage prospective contractors to disclose to the Government ideas which they have originated, conceived, or developed.

§ 4.205-2 Solicitation.

(a) In order to minimize the preparation of technical proposals, which can be both costly and wasteful of scientific or engineering manpower, contracting officers should request proposals only from sources which have been technically evaluated and found qualified to perform research or development in the specific field of science or technology involved. Where there is no substantial question as to the choice of the source, as where only one source is found fully qualified as a result of thorough technical evaluation or the purpose of the contract is to explore an idea or initial development submitted in confidence by one firm, solicitations may be limited to a single source. Where several sources are found fully qualified technically, proposals generally shall be solicited from each such source. Sources which become known as a result of publication of synopses of specific procurements shall be sent requests for proposals only if such sources have been technically evaluated or if such evaluation can be made consistent with required procurement actions. In all procurements of research or development in which no small business firm was solicited for a proposal, a statement shall be included in the procurement file setting forth the reasons for not soliciting small businesses.

(b) In addition to paragraph (a) of this section, exploratory requests may be used to determine the existence of ideas or prior work in specific fields of research. However, the request for such information shall clearly state that it does not impose any obligation on the Government or signify a firm intention of the Government to enter into a contract.

§ 4.205-3 Conduct of negotiations.

See § 3.804 of this chapter. The contracting officer should make certain that each prospective contractor fully understands the details of the various phases of the Government's requirement, especially the statement of work. This may be best accomplished by conferences between a prospective contractor, the contracting officer, and appropriate technical personnel, particularly where there is doubt that a work statement is understood or will be interpreted correctly by prospective contractors.

§ 4.205-4 Evaluation for award.

(a) Generally, research and development contracts should be awarded to those organizations, including educational organizations, which have the highest competence in the specific field of science or technology involved. However, awards should not be made for research or development capabilities that exceed those needed for the successful performance of the work.

(b) Before determining the technical competence of prospective contractors, and recommending to the contracting officer the concern or concerns that they consider most technically competent, cognizant technical personnel shall consider the following:

(1) The contractor's understanding of the scope of the work as shown by the scientific or technical approach proposed;

(2) Availability and competence of experienced engineering, scientific, or other technical personnel;

(3) Availability, from any source, of necessary research, test, and production facilities;

(4) Experience or pertinent novel ideas in the specific branch of science or technology involved; and

(5) The contractor's willingness to devote his resources to the proposed work with appropriate diligence.

(c) In determining to whom the contract shall be awarded, the contracting officer shall consider not only technical competence, but also all other pertinent factors including management capabilities, cost controls, and past performance in adhering to contract requirements, weighing each factor in accordance with the requirements of the particular procurement. See § 1.903 of this chapter.

§ 4.205-5 Evaluation of price and costs.

(a) While cost or price should not be the controlling factor in selecting a contractor for a research or development contract, cost or price should not be disregarded in the choice of the contractor. It is important to evaluate a proposed contractor's cost or price estimate, not only to determine whether the estimate is reasonable, but also to determine his understanding of the project and ability to organize and perform the contract. The most useful tools for this purpose are price analysis (§ 3.807-3 of this chapter) and cost analysis (§ 3.807-4 of this chapter).

(b) Price analysis generally considers the overall reasonableness of the proposals in relation to the total contemplated expenditures and the extent and nature of the tasks scheduled to be accomplished. In most research and development contracts, the inability to define specifications and the nature of the end items prevent the effective use of certain techniques of price analysis, such as comparisons with prior quotations and current prices and evaluations in terms of quantitative yardsticks. The conclusions reached by price analysis techniques must be supported by cost analysis procedures, used to examine the details of the offeror's proposals.

(c) The analysis of cost factors begins with an evaluation of the reliability of the offeror's cost estimating procedures and the dependability of his cost controls, as demonstrated by his history of cost management in the performance of other contracts or by his establishment of sound practices for this purpose. The cost analysis proceeds with a critical examination of the composition of each cost element in terms of its expected application to the objectives of the contract, and its conformance to the accepted principles of allocability and reasonableness. (See Subpart C, Part 15, and § 15.201 of this subchapter.) A Government cost estimate may help in projecting tools for these purposes and may develop the expected incidence of various cost factors in relation to performance phases, planned segments, or identifiable "milestones". This estimate should provide a summary forecast of the time, effort, materials, equipment, and services necessary to accomplish the research or development objective. The comparison and reconciliation of the Government cost estimate with the offeror's cost estimate for the same phases, segments, or events should bring into focus any areas of excessive or insufficient emphasis and provide a foundation for meaningful discussions with the offeror.

(d) Special care should be exercised to comply with §§ 15.205–1 and 15.205–33 of this chapter in the allowances of advertising costs under § 15.307–3 of this chapter.

§ 4.205–6 **Profit or fee.**

See §§ 3.405–1(c), 3.405–5(c), 3.805–2, 3.806, 3.807–5(d), and 3.808 of this chapter.

§ 4.205–7 **Documentation.**

Contract files for research and development procurement shall be fully documented to include the basis and reasons for the selection of the sources solicited and for the award. Such documentation should be adequate to justify the selection of the contractor over others whose proposals, from the standpoint of some single factors (such as lower estimated costs or shorter performance time), might appear more advantageous to the Government. (See § 1.308 of this chapter.)

§ 4.206 **Grants for basic research.**

Grants are authorized under 42 U.S.C. 1891 for basic research at educational institutions and other nonprofit organizations whose primary purpose is the conduct of scientific research. The policies and procedures for grants are prescribed by other Department of Defense directives as implemented in Departmental procedures.

§ 4.207 **Types of contracts most applicable for research and development.**

See Subpart D, Part 3 of this chapter.

§ 4.208 **Cost sharing practices.**

It is not uncommon that certain advantages accrue to contractors performing research or development. Increased technical knowledge useful in commercial operations, adding to technical knowhow and training of employees, opportunity to benefit through patent rights, and use of background knowledge in future production contracts, are examples of advantages which contractors may receive from performing Government research or development. Because of these advantages, cost sharing arrangements should be negotiated, when appropriate, in research and development procurements. Cost sharing arrangements may be accomplished in a number of ways; for example, by the use of a reduced overhead rate, by eliminating charges for certain direct costs (e.g., salaries of technical personnel), by eliminating particular material or equipment charges, or by eliminating other forms of charges or by acceptance of various types of contributions by the contractor in the performance of the contract.

§ 4.209 **Special use allowances for research facilities acquired by educational institutions.**

(a) *Definitions.* As used in this section:

(1) "Special use allowance" means a negotiated direct or indirect allowance for buildings, structures, and real property, other than land, computed at an annual rate in excess of the rate which normally would be allowed under Subpart C, Part 15 of this chapter.

(2) "Research facility" means real property, other than land, and includes structures, alterations, and improvements, acquired for the purpose of conducting scientific research under contracts with agencies of the Department of Defense.

(b) *Policy.* The expanding requirements of the Department of Defense for the performance of scientific research programs by the educational institutions may create special situations wherein the acquisition or construction of additional research facilities by such institutions is essential for the effective performance of scientific research programs of major importance to the Department of Defense. Educational institutions are expected to furnish facilities required for the performance of Defense contracts, and the extent of reimbursement by the Government for the research programs of such institutions shall be governed by the principles set forth in Subpart C, Part 15 of this chapter. However, in certain limited situations an educational institution may be unable to provide capital for new laboratories or other expanded facilities necessitated by Defense contracts unless the institution is given governmental assistance in return for the risks and expenses it assumes in acquiring or constructing such facilities. Special use allowances constitute a means for recognizing these risks and expenses on the part of the educational institution and also provide a basis for permitting essential governmental research programs to go forward. The resort to special use allowances as provided by this section is an extraordinary type of arrangement and constitutes an exception to the provisions for normal use allowances contained in § 15.304(e) of this chapter. Any specific agreement providing for a special use allowance shall be negotiated on a case-by-case basis using the criteria established herein.

(c) *Authorization of special use allowances.* The Secretary concerned, or his sole designee for the purpose, may approve special use allowances for the acquisition or construction costs of research facilities financed by educational institutions only when all of the following conditions are met:

(1) The research facility is essential to the performance of Department of Defense contracts;

(2) The program requirements cannot be met practically and effectively by existing facilities, either Government or non-Government;

(3) The proposed agreement for the special use allowances represents a sound business arrangement;

(4) It is undesirable or impractical for the Government to provide Government-owned facilities for the performance of the research; and

(5) The proposed use of the research facility is in consonance with the underlying objective of the Government in granting the special use allowance.

(d) *Negotiation and administration of contracts providing for special use allowances.* The negotiation and administration of contracts providing for special use allowances are subject to the conditions set forth in subparagraph (1) through (13) of this paragraph.

(1) The terms of the agreement for special use allowances authorized herein shall be specified or incorporated by reference in the applicable contracts.

(2) Where the special use allowance is based on the total acquisition cost, no normal use allowance or other use or depreciation charge will apply during the special allowance period nor after the educational institution has recovered the total acquisition cost under Government contracts or from other users. Where the special use allowance is based on less than total acquisition cost of the research facility, the agreement will specify whether any normal use allowance or other use or depreciation charge will apply to the balance during the special use allowance period; however, no more than the normal use allowance computed in accordance with Subpart C, Part 15 of this chapter may be applied thereafter to the balance.

(3) During the period of the special use allowance, and for subsequent periods to the extent agreed upon, the research facility shall be available for Government research use on a priority basis over non-Government use. Any significant use during such period other than that which justified the special use allowance shall be subject to prior consent of the cognizant approval authority specified in this section.

(4) Special use allowances are applicable only in years in which the Government has contracts in effect with the educational institution for research to be conducted in the facility. The Government has no liability to the educational institution for the special use allowance in any year in which there is no Government contract. In any year when the level of research effort under Government contracts has been reduced to a point where the special use allowance is excessive in relation to the extent of the Government research funding, the parties may negotiate a special use allowance for that year at a mutually acceptable rate.

(5) Where more than one Government contract is to be performed in the research facility, special use allowances generally should be allocated to using contracts on an equitable basis.

(6) If during the period when a special use allowance is in effect, any substantial use is made of the research facility for parties other than the Government, only an allocable share of the special use allowance shall be charged to the Government.

(7) Special use allowances shall not include any maintenance, utilities, or other operational costs.

(8) Generally, the period for which a special use allowance is authorized shall be at least ten years. However, a shorter period of time is authorized where the total amount to be allowed is less than acquisition cost for the research facility.

(9) Reimbursements under contracts for special use allowances shall not commence until the research facility is occupied and used for research under the

contract. However, equitable adjustments may be made in the special use allowance during the construction period if the research facility is partially used for research under the contract.

(10) Determination of the amount of a special use allowance shall be based on the comparative need for the research facility by the Department of Defense and by the educational institution. In no event shall the institution be paid more than the acquisition costs.

(11) In establishing the annual special use allowance, due consideration shall be given to rental costs for similar space in the area where the research facility is to be located.

(12) No payment shall be made to the educational institution for costs of land or interest charges on capital, used or borrowed, for the acquisition of the research facility.

(13) Information copies of each special use allowance agreement negotiated shall be furnished to each authorizing official specified in paragraph (c) of this section, and to the Director of Defense Research and Engineering, Office of the Secretary of Defense.

§ 4.210 Placing subcontracts for research and development effort.

Since the selection of research or development contractors is based upon seeking the best scientific and technological sources, it is important that the contractor selected on this basis does not in turn subcontract technical or scientific work without prior approval of the contracting officer. The clause prescribed in § 7.402-8 of this chapter for cost-reimbursement type research and development contracts, requires prior written consent of the contracting officer for the placement of any subcontract which has experimental, developmental, or research work as one of its purposes. During the negotiation of the contract, it is imperative that the contracting officer obtain complete information concerning the contractor's plans for subcontracting any portion of the research or development effort. See §§ 1.906, 3.807-5, and 3.903-2 of this chapter.

§ 4.211 Scientific and technical reports.

(a) Research and development contracts are required to contain appropriate data clauses as prescribed in Subpart B, Part 9 of this chapter, which usually provide, among other things, for the reproduction and use for any purpose of the Government of any or all of the information to be provided under the contract. Contracting officers shall require contractors to furnish all such information resulting from research or development contracts. Scientific and technical reports should be reproduced as economically as practicable, consistent with the reporting needs of the Government.

(b) It is important that the results of research and development contracts be made readily available to Government activities, and to non-Government organizations and persons who have a need to know in accordance with procedures of the Military Departments. The Armed Services Technical Information Agency, Arlington Hall Station, Arlington 12, Virginia, provides a central service for the interchange of scientific and technical information of value to Department of Defense agencies and contractors.

§ 4.212 Data under research and development contracts.

(a) It is imperative that all research and development contracts carefully specify the data to be delivered under the contract since the Basic Data clause requires delivery only of "Subject Data" and defines "Subject Data" as data to be delivered under the contract.

(b) In planning a developmental procurement, when subsequent production contracts are contemplated, consideration should be given to the need and time required for obtaining a procurement package. The term "procurement package" means plans, drawings, specifications and other descriptive information and data necessary to achieve competition in production contracts.

§ 4.213 Insurance under research and development contracts.

See Part 10 of this chapter.

§ 4.213-1 Contractor immunity from liability for torts.

In the case of cost-reimbursement type contracts where nonprofit educational institutions or other contractors do not carry insurance either because as charitable organizations they claim immunity from liability for torts or, in the case of state institutions, because the state law does not permit them to expend their funds for insurance premiums, the requirements of the Insurance-Liability clause, § 7.203-22 of this chapter, may be modified to recognize a claim of partial immunity as provided in § 7.402-26(a) or for a claim of total immunity as provided in § 7.402-26(b).

§ 4.213-2 Indemnification against unusually hazardous risks.

Under the authority provided by 10 U.S.C. 2354, research and development contracts may specifically include language to indemnify contractors against liability on account of claims by third parties (including those of contractor's employees) for death, bodily injury, and loss or damage to property, and for loss of or damage to the contractor's property, to the extent such liabilities arise out of the direct performance of the contract involved and from a risk defined in the contract as unusually hazardous.

§ 4.214 Government property under research and development contracts.

§ 4.214-1 General.

In research and development contracts with commercial organizations, the clauses relating to property furnished by the Government or acquired by the contractor at Government expense are the same as those used in other types of contracts. (See §§ 13.502 and 13.503 of this chapter.) Different clauses are prescribed for use in research and development contracts with educational or other nonprofit institutions where no profit or fee is involved. (See §§ 13.505 and 13.506 of this chapter.)

§ 4.214-2 Control of government property in possession of research and development contractors.

The basic requirements to be observed by the Departments for establishing and maintaining control over Government Property as set forth in § 30.2 of this chapter are applicable to research and development contracts except, in contracts with educational or other nonprofit organizations (executed on a nonprofit basis), § 30.3 of this chapter is applicable.

§ 4.214-3 Nonseverable facilities.

Under 10 U.S.C. 2353, construction or acquisition of nonseverable research, developmental, or test facilities is authorized under certain conditions.

§ 4.214-4 Transfer of title to equipment to nonprofit educational or research institutions.

(a) *General.* This section implements 42 U.S.C. 1892 which gives the Department of Defense discretionary authority to vest in nonprofit institutions of higher education or nonprofit organizations whose primary purpose is the conduct of scientific research, without further obligation to the Government or on such other terms and conditions as may be appropriate, title to equipment purchased with funds available for grants or contracts for the conduct of basic or applied research.

(b) *Purpose of the legislation.* The general purpose of the legislation implemented by this section is to facilitate the scientific research performed under contract for the Government by the nonprofit institutions and organizations described in paragraph (a) of this section. It is intended to permit the elimination of the record-keeping required when the Government retains title to equipment furnished or purchased under a research contract, in those cases where the cost of such record-keeping to the contractor or to the Government is out of proportion to the value of the equipment. It is further intended to reduce where desirable the time and labor involved in formally circulating through the Government long lists of highly specialized or minor items of equipment or in relocating major equipment when such relocation is impracticable or uneconomical and not required for other research programs of the Government. Finally, it is intended to provide a measure of administrative flexibility when, from the standpoint of increased research effectiveness and in the absence of other Departmental or Governmental requirements, it is desirable to transfer title to equipment to such research contractors.

(c) *Transfer of title.* (1) Contracts with nonprofit institutions of higher education or nonprofit organizations whose primary purpose is the conduct of scientific research may provide, or may be amended to provide, that the contracting officer may transfer title to equipment to the contractor. Such transfer of title may be effected at the beginning, during the course of, or at the end of a contract: *Provided,*

(i) The equipment was purchased with grant or contract funds allocated for basic or applied scientific research;

(ii) (*a*) Either the retention of title in the Government would create an administrative burden not warranted by the value of the equipment, or the keeping of inventory and records by the contractor would become prohibitively complicated or expensive; or

(*b*) It would be impractical or uneconomical to remove the equipment from the contractor's plant;

(iii) The transfer of title will further the scientific research objectives of the Department concerned; and

(iv) The transfer of title is not precluded by controls governing the equipment involved.

(2) The contracting officer may, when provision is made therefor by contract, vest in the contractor title to any item of equipment having an acquisition cost of $3,000 or less, following his written determination that the criteria in subparagraph (1) of this paragraph have been met. When the acquisition cost of an item of equipment is in excess of $3,000, the contracting officer may transfer title to the contractor upon written approval of the head of the procuring activity or his designee. Such approval shall be given on the basis of the criteria in subparagraph (1) of this paragraph and only after considering whether transfer of title is consistent with any known need of the Department concerned. (No formal screening is required.) In addition, for items of equipment having an acquisition cost in excess of $25,000, the approval of designated representatives* of the Departments must be secured. Such approval shall be given within sixty (60) days, but only after a reasonable check, commensurate with the value of the item involved, has established that there is no known requirement for the item within the respective Departments.

Where title to equipment is vested pursuant to subparagraph (1) of this paragraph, the contractor shall be without further obligation to the Government with respect to such equipment, except that the contractor must agree, as a condition to taking title, that no charge will be made to the Government for any depreciation, amortization, or use charge with respect to such equipment under any existing or future Government contract.

(d) *Contract clauses*. Where it is anticipated that in connection with a contract, title to equipment may be vested in the contractor in accordance with this section, the alternate paragraph (c) of the clause in § 13.505 of this chapter shall be included in fixed-price type contracts, and the addition to paragraph (c) of the clause in § 13.506 of this chapter shall be included in cost-reimbursement contracts.

*In the case of the Department of the Army, the designee is Army Research Office, Office Chief of Research and Development, Washington 25, D.C.

In case of the Department of the Navy, the designee is Chief of Naval Research, Office of Naval Research, Washington 25, D.C.

In the case of the Department of the Air Force, the designee is Commander, Office of Aerospace Research, Washington 25, D.C.

In the case of the Defense Supply Agency, the designee is Executive Director for Supply Operations, Defense Supply Agency, Washington 25, D.C.

PART 5—INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

13. Subpart A of Part 5 is revised, as follows:

Subpart A—Procurement Under Federal Supply Schedule Contracts

Sec.

AUTHORITY: §§ 5.100 to 5.106 issued under sec. 2203, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314.

§ 5.100 Applicability.

This part applies only to procurement of supplies to be delivered, or services to be performed in the United States, its possessions or Puerto Rico. It does not apply to items under the cognizance of the Defense Subsistence Supply Center or the Defense Medical Supply Center or to items which are being purchased for resale.

§ 5.101 Federal Supply Schedule Contracts.

The Federal Supply Service, General Services Administration, establishes contracts for common use classes of supplies and services. These contracts are summarized in Federal Supply Schedules which list the supplies or services that may be purchased from the contractors named therein. Military purchasing activities shall order their requirements for supplies or services covered by these contracts as set forth in §§ 5.102 and 5.103. Copies of the Federal Supply Schedules and the Federal Supply Schedule Check List (a quarterly publication indicating the status of all Federal Supply Schedules) are distributed by the General Services Administration to all purchasing activities. Copies of the Schedules and the Check List and the General Provisions of the Federal Supply Schedule contracts are available from the General Services Administration regional offices listed in § 5.203. Requests should be submitted on GSA 457.

§ 5.102 Mandatory Federal Supply Schedules.

§ 5.102–1 General.

Federal Supply Schedules under which procurement is mandatory on the Department of Defense are listed in § 5.102–3. The pertinent contracts provide that for a definite period the contractor is obligated to deliver all supplies or services that may be ordered thereunder by Government agencies, subject to the stated minimum and maximum order limitations.

§ 5.102–2 Exceptions to mandatory use.

(a) *Delivery requirements*. When the delivery period offered in the Federal Supply Schedule does not meet the delivery requirements of the purchasing activity, use of the Federal Supply Schedule is not mandatory. However, delivery dates shown in Federal Supply Schedules are based upon the average capability of the contractor and are usually conservative. Contractors, in most instances, are able to make delivery within a shorter period of time than the maximum provided in the Schedule. Therefore, when the delivery requirements of the purchasing activity are less than the maximum shown in the Schedule, the contractor should be queried as to whether the delivery requirements can be met. This procedure shall be followed except in those cases where transportation time from the contractor's shipping point, or time required for inquiry and reply, make conformance impracticable. In cases where multiple award schedules are involved, the purchasing activity need only query one contractor after considering the requirements of § 5.106.

(b) *Similar items*. When specific supplies or services listed in a Federal Supply Schedule will not meet a special requirement, use of the Schedule is not mandatory. When supplies or services having the same general characteristics and intended use are procured from other sources, a statement signed by an authorized official of the purchasing activity will be prepared, identifying the supplies or services purchased, and explaining why similar items listed in the applicable Federal Supply Schedule would not meet the specific requirements. The statement will be furnished to the General Services Administration office which issued the Schedule within 15 days after the date of purchase.

(c) *Abnormal requirements*. When the requirements of the purchasing activity are (1) less than the minimum order limitation or (2) in excess of the maximum order limitation provided in the applicable Federal Supply Schedule, use of the Schedule is not mandatory. However, where requirements for supplies or services exceed the maximum limitations of the applicable Schedule, but are within the DOD–GSA Interagency Purchase Assignments, those items will be procured through the General Services Administration. (See § 5.1201–4 of this chapter.)

§ 5.102–3 Applicability of listed Federal Supply Schedules.

Supplies and services covered by the Federal Supply Schedules listed herein are mandatory in whole or in part upon some element of the Department of Defense. Some of the Federal Supply Schedules listed include classes unrelated to the Federal Supply Group which identifies the Schedule. To aid in locating an item in the mandatory Schedules, the classes included in each Schedule have been listed. The Remarks column states exceptions to the mandatory provisions of the Schedule when applicable. The Schedules should be checked for complete detail concerning the exceptions.

(a) *Mandatory nationally.*

FSC Group	FSC Class	Title of schedule	Remarks
*25	--------	VEHICULAR EQUIPMENT COMPONENTS	Mandatory on field service of the DOD for tire chains, clutch facings, metallic brake linings, and automotive seat belts only.
	2520	Brake lining and clutch facings (metallic)	
	2530	Brake band lining (nonmetallic) and brakeshoes, bonded or riveted-lined.	
	2540	Tire chains, truck floor mats, and seat belts. *This schedule also includes certain items in the following classes:	
	2990	Engine preheater	
	4330	Oil filter elements	
26	--------	TIRES AND TUBES, PART I	Not mandatory on requirements in excess of $100,000 per line item.
	2620	Tires and tubes, pneumatic, aircraft	
26	--------	TIRES AND TUBES, PART II	Mandatory for commercial tires and tubes, only.
	2610	Tires and tubes, pneumatic, except aircraft	
26	2630	Tires, solid and cushion	
	2640	Valves and valve cores	
29	--------	ENGINE ACCESSORIES	Not mandatory on spark plugs for diesel, semidiesel, aircraft, and marine motors.
	2920	Spark plugs, resistor and nonresistor types	
*36	--------	SPECIAL INDUSTRY MACHINERY, PART I	No exceptions.
	3610	Offset blankets, plates, lithographic printing, aluminum (presensitized) and paper (unsensitized, parchment, and plastic coated) and duplicating machine rolls (gelatin type). *This schedule also includes certain items in the following class:	
	6850	Lithograph solution for plates, aluminum (presensitized), and paper (unsensitized), and lithographic plate preserving gum.	
36	--------	SPECIAL INDUSTRY MACHINERY, PART II	Not mandatory for the following machines, their accessories and repair parts: Cameras, copying, lithographic, items 51-1 through 51-3; photocopying and processing machines, items 51-4 through 51-36, 51-58, 51-59, and 51-60-1; printing machines, blueprint, items 51-37 through 51-42; printing and dry d veloping machines, items 51-43 through 51-51; and printing and moist developing machines, items 51-52 through 51-54. Rental, repair, and maintenance in section B not mandatory.
	3610	Printing, duplicating, and bookbinding equipment.	
		COMMUNICATION EQUIPMENT, PART I	Not mandatory on instantaneous recordings; recording of one tape only; blank tape or multiple duplication.
	5835	Sound recording and transcription services (recording pressings and transcription service).	
62	--------	LIGHTING FIXTURESS AND LAMPS, PART I	Not mandatory on Army or Air Force for items covered by Army or military specifications.
	6230	Household and quarters lamps	
*62	--------	LIGHTING FIXTURES AND LAMPS, PART II	No exceptions.
	6240	Electric lamps. *This schedule also includes certain items in the following class:	
	6750	Photoflash lamps	
67	--------	PHOTOGRAPHIC EQUIPMENT, PART II	Mandatory except for papers, special whiteprint (diazo) papers, films, and cloths, item 19-4; photographic cloth, items 6750-558-4332 through 6750-558-4353; 6750-551-0233 through 6750-551-0235; and 6750-558-4331; photographic film, item 19-3; photographic paper, items 19-5 and 6750-543-7721 through 6750-209-7218; and plates.
	6750	Photographic sensitized and chemical supplies	
*67	--------	PHOTOGRAPHIC EQUIPMENT, PART IV	No exceptions.
	6750	Photographic supplies (purchase, maintenance, repair, and rental of micro-photographic equipment and supplies). *This schedule also includes certain items in the following class:	
	7530	Microfilm print paper	
71	--------	FURNITURE, PART I	Not mandatory for items covered by Army, Navy, or military specifications.
	7105	Household furniture, correlated groups of living room, dining room, and bedroom furniture in ranch type (oak and knotty pine), Early American (maple and cherry), modern, American style (Danish walnut finish), and bedsprings.	
71	--------	FURNITURE, PART II	Do.
	7105	Household furniture (upholstered living room furniture).	
71	--------	FURNITURE, PART III	Do.
	7105	Household furniture (traditional and modern, bedroom, dining room, living room furniture).	
71	--------	FURNITURE, PART IV	Do.
	7105	Household furniture (rattan living room, dining room, and recreation room furniture).	
*71	--------	OFFICE FURNITURE (WOOD AND METAL) PART V	No exceptions.
	7105	Ash receptacles, folding chairs, mirrors, wardrobes.	
	7110	Office furniture	
	7195	Racks, wearing apparel stand, lecture. *This schedule includes certain items in the following classes:	
	5340	Parts for filing cabinet and chairs	
	7520	Filing shelves	
71	--------	FURNITURE, PART V, SUPPLEMENT 1	Do.
	7110	Classroom furniture	Do.
71	--------	FURNITURE, PART V, SUPPLEMENT 2	Do.
	7110	Metal office furniture, filing cabinets, security (insulated and non-insulated).	
71	--------	FURNITURE, PART V, SUPPLEMENT 4	Do.
	7110	Metal office furniture—steel shelf filing cabinets	
	7105	Ash receivers	
71	--------	FURNITURE, PART VIII	Do.
	7110	Office furniture (unitized wood) and companion chairs.	
*72	--------	HOUSEHOLD AND COMMERCIAL FURNISHING AND APPLIANCES, PART I	Not mandatory on DOD for deck covering and items required aboard vessels.
	7220	Floor coverings. *This schedule also includes certain items in the following class:	
	8135	Tape, pressure sensitive adhesive	

FSC Group	FSC Class	Title of schedule	Remarks
74	--------	OFFICE MACHINES, PART I	Not mandatory for portable typewriters, composing machine and units repair parts, and typewriter repair parts; repair and maintenance of electric typewriters and composing machines.
	7430	Typewriters and office type composing machines.	
74	--------	OFFICE MACHINES, PART II AND III	Not mandatory on instrumentation tape and reels.
	7420	Accounting and calculating machines	
	7450	Office type sound recording and reproducing machines.	
	7490	Miscellaneous office machines	Rental, repair, and maintenance in part II not mandatory.
74	--------	OFFICE MACHINES, PART VI	Not mandatory for rental of equipment and machines, sections A and B; automatic data processing systems, items 132-16 through 132-21; and repair and maintenance, section D.
	7410	Punched card system machines.	
	7440	Automatic data processing systems.	
*75	--------	OFFICE SUPPLIES, PART I, SECTION A	No exceptions.
	7510	Office supplies *This schedule also includes certain items in the following class:	
	7690	Tape, label marking	
*75	--------	OFFICE SUPPLIES, PART I, SECTION B	Do.
	7520	Office devices and accessories *This schedule also includes certain items in the following classes:	
	8110	Tubes, mailing	
	8135	Packaging and packing bulk materials and tape.	
	9310	Paper and paperboard	
*75	--------	OFFICE SUPPLIES, PART I, SECTION C	Not mandatory on waterproof paper.
	7510	Holders, binder, label, flange type	
	7530	Stationery and papers, drawing and tracing. *This schedule also includes certain items in the following classes:	
	7690	Labels, printed	
	9905	Holders, card, label, stick-on type	
75	--------	OFFICE SUPPLIES, PART V	No exceptions.
		Envelopes, printed and plain	
76	--------	BOOKS, DICTIONARIES, AND OTHER PUBLICATIONS, PART I, SECTIONS A AND B	Section A only.
	7610	Books and pamphlets	
	7640	Charts	
76	--------	LAW BOOKS AND PERIODICALS, PART II, SECTIONS A AND B	Not mandatory on periodicals.
	7610	Law books	
	7630	Newspapers and periodicals	
	7660	Law books, microlex edition	
79	--------	CLEANING EQUIPMENT AND SUPPLIES	No exceptions.
	7910	Vacuum cleaners, parts and attachments	
79	--------	CLEANING EQUIPMENT AND SUPPLIES, SUPPLEMENT I	Do.
	7910	Floor polishers, accessories and replacement parts, and steel wool pads.	
91	--------	FUELS, LUBRICANTS, OILS, AND WAXES, PART III (Service Station Deliveries)	Do.
	9130	Gasoline and jet fuel	
	9140	Fuel oils	
	9150	Oils and greases, cutting, lubricating, hydraulics.	
*99	--------	REFLECTORIZED SHEETING, PART I	Do.
	9905	Reflectorized sheeting *This schedule also includes certain items in the following classes:	
	8010	Codit spray reflective liquid	
	8020	Applicator, adhesive activator	
	8040	Fabric adhesive	

(b) *Mandatory in Washington, D.C., and contiguous area.*

FSC Group	FSC Class	Title of schedule	Remarks
42	--------	FIRE FIGHTING EQUIPMENT, PART I	Not mandatory on fire hose, packing materials, and certain fire extinguishers.
	4210	Fire fighting equipment	
*53	--------	HARDWARE AND ABRASIVES, PART I	No exceptions.
	5335	Metal screening	
	5340	Miscellaneous hardware	
	5350	Abrasive materials *This Schedule also includes certain items in the following class:	
	8135	Packaging and packing bulk materials	
61	--------	ELECTRIC WIRE AND POWER AND DISTRIBUTION, PART III	Do.
	6135	Dry batteries	
66	--------	LABORATORY EQUIPMENT, PART II	Mandatory except for supplies procured through Defense Medical Supply Center.
	6640	Glass, plastic, and porcelain laboratory ware	
*68	--------	CHEMICALS AND CHEMICAL PRODUCTS, PART III	Not mandatory for refrigerating cases.
	6810	Chemicals	
	6830	Gases: Compressed and Liquefied *This Schedule also includes certain items in the following class:	
	6505	Oxygen, USP	
*71	--------	FURNITURE, PART VI	No exceptions.
	7105	Household furniture	
	7110	Office furniture	
	7195	Miscellaneous furniture and fixtures *This schedule also includes certain items in the following class:	
	7520	Office devices and accessories	
*72	--------	HOUSEHOLD AND COMMERCIAL FURNISHINGS AND APPLIANCES, PART II	Do.
	7230	Shades (window) *This schedule also includes certain items in the following class:	
	8305	Textile fabrics (window shade cloth)	
75	--------	OFFICES SUPPLIES, PART IV	Do.
	7520	Office devices and accessories (rubber stamps)	
87	--------	AGRICULTURAL SUPPLIES, PART I	Mandatory only on Marine Barracks, Quantico, Va. for items of bran, oats, hay, and straw.
	8710	Forage and feed	

FSC Group	FSC Class	Title of schedule	Remarks
87	-------	AGRICULTURAL SUPPLIES, PART II	Mandatory only on Naval Air Test Center, Patuxent, Md.
	8730	Seed	
89	-------	SUBSISTENCE, PART II	No exceptions.
	8920	Bread and rolls	
	8940	Sirup	
	8950	Yeast	
89	-------	SUBSISTENCE, PART III	Do.
	8960	Ice	
103	-------	CORRECT TIME SERVICE	Mandatory on Washington, D.C., activities only.
103	-------	REGRAINING OF OFFSET DUPLICATING PLATES, PART II	No exceptions.
103	-------	WIPING CLOTH SERVICE, PART IV	Do.

(c) *Mandatory in GSA Regional Areas other than Region 3.*

FSC Group	FSC Class	Title of schedule	Remarks
68	-------	CHEMICALS AND CHEMICAL PRODUCTS, PART III	Mandatory on DOD activities in Region 10.
	6830	Gases: Compressed and liquefied (propane gas)	
68	-------	CHEMICALS, PART IV	Do.
	6810	Gases, industrial and medicinal	

§ 5.102-4 Establishment or revision of Federal Supply Schedules mandatory upon the Department of Defense.

(a) *Policy.* The Administrator of General Services Administration has agreed that the concurrence of the Office of the Secretary of Defense will be obtained prior to establishing a Federal Supply Schedule which is mandatory upon the Department of Defense or prior to adding or removing any items from Federal Supply Schedules which are mandatory upon the Department of Defense or making any other changes in such Schedules affecting their use by Department of Defense in meeting its supply requirements. However, deletion of an item from a Federal Supply Schedule will not require Office of the Secretary of Defense concurrence when the reports of sales for that item amount to less than $1,000 per year except where:

(1) The item is a part or accessory incidental to a basic item;

(2) The item is a component of a unit assembly;

(3) The item has a demonstrated need to fill out a range of colors, sizes or other characteristics; or

(4) The item involves a contract for services.

(b) *Procedures.* Requests for the establishment of or a change in a Federal Supply Schedule mandatory on elements of the Department of Defense shall be forwarded to the Executive Director, Procurement and Production, Defense Supply Agency for coordination with the Military Departments. Such proposals normally shall be forwarded in sufficient time to provide three months for consideration by all interested elements of the Department of Defense and General Services Administration prior to the desired effective date. In the event action on such proposals is desired in a shorter period of time, a minimum of thirty-five days for consideration should be anticipated. These proposals will be distributed to the representatives of the Military Departments and General Services Administration engaged in the Federal Supply Schedule review program, as appropriate, for comment or concurrence. Any questions will be jointly considered before final action is taken. If the Military Departments and General Services Administration representatives cannot reach agreement on a question raised, the question will be forwarded to the Assistant Secretary of Defense (Installations and Logistics) for resolution.

§ 5.103 Federal Supply Schedules not mandatory upon the Department of Defense.

In addition to the Federal Supply Schedules listed in § 5.102, there are other Schedules mandatory for use by one or more civilian agencies of the Government but not mandatory on the Department of Defense. Any item which has been decentralized for local purchase and listed in a non-mandatory Schedule shall be ordered therefrom if (a) the Schedule or the contractor's price list identifies the item by Federal stock number, (b) delivery requirements can be met and (c) the order is within the minimum and maximum limitations of the Schedule. Exception from the foregoing is permitted only where the contracting office has actual knowledge that the purchase can be made more advantageously to the Government from a source other than the Supply Schedule, after allowing for the burdens and cost of a new procurement under applicable prescribed procedures. The contracting office shall not solicit bids, proposals, quotations, or otherwise test the market for comparison with the Schedule price. Where a procurement from a source of supply other than the non-mandatory Schedule indicates that such source might be more advantageous to the Government as a general source, the name and address of the supplier together with other details of the procurement action shall be forwarded to the General Services Administration through the Regional Office of the GSA region in which the procuring activity is located. The provisions of § 5.102-2 are applicable when determining whether a contractor can meet delivery requirements.

§ 5.104 Other Federal Supply Schedules.

§ 5.104-1 Completely optional Federal Supply Schedules.

In addition to the Federal Supply Schedule contracts described in §§ 5.102 and 5.103, there are Federal Supply Schedules which are completely optional for use by any Government purchasing activity and on which vendors are not required to accept orders. Such Schedules currently exist in the following areas:

FSC group	
25-28-29-38	Motor-Vehicle Parts and Accessories, Engine and Generator Parts, and Road Building Machinery Parts.
74	Office Machines (other than typewriters), Rental, Repair and Maintenance.

When an order is contemplated from such schedules the contracting officer shall assure himself prior to ordering that use of the Schedule is reasonably justifiable as being more advantageous to the Government than a purchase from other sources, price, delivery, service and administrative expense considered.

§ 5.104-2 Regional Federal Supply Schedules.

There are certain Federal Supply Schedules issued by the GSA that are for use in a specific geographical region. These Schedules apply to activities within the specified region to the extent prescribed therein.

§ 5.105 Order for supplies or services.

DD Form 1155 should be used as a delivery order in purchasing supplies or services from Federal Supply Schedule contractors.

§ 5.106 Federal Supply Schedules with Multiple Source Provisions.

Certain of the Federal Supply Schedules, listed in § 5.102-3, provide several sources for certain requirements. When orders in excess of $2,500 are placed at other than the lowest price available for type of services or supplies required, the purchasing activity shall include in the contract file a memorandum for record setting forth the facts and conclusions justifying the order. The justification may be based on considerations such as time of delivery, service, and administrative expense. Where the Federal Supply Schedule indicates that the multiple awards were made in order to make available a selection of services and supplies to meet a specific requirement, the justification may, in addition to the considerations stated above, be based on differences in performance characteristics, and compatibility with existing equipment or systems.

14. Subparts B, C, and E of Part 5 are revised to read as follows:

Subpart B—Procurement From General Services Administration Stores Depot

AUTHORITY: §§ 5.200 to 5.204 issued under sec. 2203, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314.

§ 5.200 Applicability.

This part applies only to the procurement of supplies available from General Services Administration Stores Depots for delivery in the United States, its possessions or Puerto Rico. It does not apply to any item which:

(a) Is under the cognizance of the Defense Subsistence Supply Center or the Defense Medical Supply Center;

(b) Is being purchased for resale; or

(c) Costs $25.00 or less.

§ 5.201 General.

It is the policy of the Department of Defense that for an item which has been decentralized for local purchase and which is available from the General Services Administration Stores Depots, such items will be ordered from the depots unless delivery requirements cannot be met. The mandatory provisions of Department of Defense, General Services Administration Interagency Purchase Assignments (§ 5.1201–4) are not applicable to decentralized items which are within these assignments and which are available from the Stores Depots. Such items will be ordered in accordance with the above stated policy.

§ 5.202 GSA Stores Stock Catalog.

The General Services Administration "Stores Stock Catalog" sets forth, among other things, information with respect to items of supply carried in stock by the Stores Depots, prices and delivery information and a listing of the Stores Depots and General Services Administration Regional Offices. Copies of the Catalog may be obtained from any of the depots or offices listed in § 5.203.

§ 5.203 General Services Administration Stores Depots and Regional Offices.

The General Services Administration operates stores depots and regional offices located in or near the cities listed below, serving the areas indicated on the back cover page of the "Stores Stock Catalog". The addresses shown are the mailing addresses to which all orders and correspondence should be forwarded.

GSA Region	*Address*
1. Boston, Mass	620 Post Office and Court House Building, Boston 9, Mass.
2. New York, N.Y	250 Hudson Street, New York 13, N.Y.
3. Washington, D.C	General Services Regional Office Building, Seventh and D Street SW., Washington 25, D.C.
4. Atlanta, Ga	Peachtree Seventh Building, 50 Seventh Street N.E., Atlanta 23, Ga.
5. Chicago, Ill	575 U.S. Court House, Chicago 4, Ill.
6. Kansas City, Mo	2306 East Bannister Road, Kansas City, Mo.
7. Dallas, Tex	P.O. Box 2488, Fort Worth, Tex.
8. Denver, Colo	Denver Federal Center, Denver 25, Colo.
9. San Francisco, Calif	49 Fourth Street, San Francisco 3, Calif. Orders for shipment by this depot should be directed to the San Francisco address.
10. Seattle, Wash	c/o Naval Air Station, Seattle 15, Wash.

§ 5.204 Order for supplies.

Either DD Form 1155 or the DD Form 1348 series shall be used to obtain supplies from General Services Administration Stores Depots.

Subpart C—Procurement Through Federal Supply Service Consolidated Purchasing Programs

AUTHORITY: §§ 5.300 to 5.303 issued under sec. 2203, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314.

§ 5.300 Applicability.

This subpart is applicable to the procurement of supplies and services within the United States.

§ 5.301 Federal Supply Service Consolidated Purchase Program.

In addition to providing supply sources through Federal Supply Schedules, the General Services Administration conducts the National Buying Program through which purchase is made of definite quantities of selected items for direct delivery from vendors to receiving activity or to transhipping point for overseas delivery. If the items are not obtainable from Federal Supply Schedules or the General Services Administration Stores Depots in accordance with Subparts A and B of this part, requirements for items decentralized for local purchase within the following categories set forth below shall be placed with the General Services Administration Regional Office serving the ordering activity unless delivery requirements cannot be met:

(a) Items identified in § 5.1201–4 as being covered by the Department of Defense/General Services Administration Interagency Purchase Assignments; and

(b) Items covered by an agreement between the Administrator of the General Services Administration and the Secretary of the Department having management control of the items.

§ 5.302 DOD–GSA Interagency Purchase Assignments.

Mandatory use of the General Services Administration consolidated purchasing program is required for those centrally managed items covered by the interagency purchase assignments held by the General Services Administration as listed in § 5.1201–4.

§ 5.303 Order for supplies or services.

Purchasing activities shall submit a DD Form 1155 to the General Services Administration Regional Office of the region in which the activity is located when requesting purchase action in accordance with this subpart.

Subpart E—Procurement of Blind-Made Products

AUTHORITY: §§ 5.500 to 5.506 issued under sec. 2203, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314.

§ 5.500 Applicability.

This subpart is applicable to supplies procured within the United States.

§ 5.501 General.

Supplies listed in the Schedule of Blind-Made Products shall be procured in accordance with the policies and procedures set forth in this subpart.

§ 5.502 Schedule of supplies which are blind-made.

Supplies manufactured by agencies for the blind are listed in the Schedule of Blind-Made Products, hereinafter referred to as the Schedule, copies of which may be obtained from any of the General Services Administration Regional Offices or Depots listed in § 5.203. Items available from stocks at General Services Administration Stores Depots are so identified in the Schedule.

§ 5.503 Mandatory procurement of blind-made supplies.

Except as provided in § 5.402, supplies listed in the Schedule shall be procured as follows:

(a) Orders for centrally managed supplies shall be placed through the National Industries for the Blind in accordance with § 5.504–1.

(b) Orders for supplies which have been decentalized for local purchase shall be submitted to the General Services Administration Stores Depot which can best serve the procuring activity or installation, except that when one of the conditions set forth below is present, procurement shall be through the National Industries for the Blind:

(1) Supplies require overseas packaging or packing;

(2) Supplies are required in carload lots, as described in the Consolidated Freight Classification for the Commodity concerned;

(3) Supplies are stocked by General Services Administration Stores Depots, but the procuring activity or installation is so located that it is more practical and economical to purchase directly from the agency for the blind which manufactures the supplies, rather than from the stores depot;

(4) The Schedule indicates that the supplies are not stocked by General Services Administration Stores Depots; or

(5) Delivery requirements cannot be met.

(c) Supplies listed in the Schedule may be procured from commercial sources under any of the conditions set forth below without securing clearance:

(1) Military necessity requires delivery within two weeks and the NIB cannot give assurance of positive availability; or

(2) The procurement is for $25 or less.

§ 5.504 Procurement procedure.

§ 5.504–1 Through National Industries for the Blind.

When procurement of blind-made supplies is to be effected through the National Industries for the Blind, such procurement shall be made by submitting directly to the National Industries for the Blind, 15 West 16th Street, New York 11, N.Y., a request, in letter form, for an allocation. Upon receipt of the request, requirements will be allocated by the National Industries for the Blind, and the procuring activity will be notified of the name and location of the agency designated to manufacture the requirements. Upon receipt of such notification, a delivery order (DD Form 1155) shall be issued to the designated agency for the blind and a copy thereof will be forwarded to the National Industries for the Blind. Such orders may be issued without limitation as to dollar amount and shall be recorded as obligations upon issuance.

§ 5.504–2 From General Services Administration Stores Depots.

When procurement of blind-made supplies is to be effected from a General Services Administration Stores Depot, such procurement shall be made by submitting a delivery order on DD Form 1155 (see § 16.303 of this chapter) to the General Services Administration Stores Depot which can best serve the procuring activity or installation.

§ 5.505 Clearances.

Except as provided in § 5.503(c), a purchasing activity may procure supplies of the types listed in the Schedule from commercial sources only to the extent that such procurement is specifically authorized in clearances issued by National Industries for the Blind, and then only if purchase action is initiated within thirty days from the date of the authorization or such additional period as may be authorized by the National Industries for the Blind.

§ 5.506 Optional procurement of blind-made supplies.

Supplies of any type or classification may be procured from agencies for the blind in any quantity, including less than carload lots, when such agency is the low bidder or offeror in response to an invitation for bids or request for proposals.

15. Section 5.901 is revised to read as follows:

§ 5.901 Policy.

In appropriate cases, the contracting officer should authorize the contractor to utilize General Services Administration supply sources in performing a cost-reimbursement type contract. Before issuing such an authorization, the contracting officer shall determine that it is in the best interests of the Government, considering price, delivery, contract administration, and recommendations of the contractor.

§ 5.903–3 [Amendment]

16. In § 5.903–3, change reference to "§ 5.204" to read "§ 5.203."

17. Section 5.905 and the introductory portion of § 5.907 are revised to read as follows:

§ 5.905 Furnishing information to contractors.

Contracting officers shall assist contractors in obtaining pertinent Federal Supply Schedules (see § 5.101), the General Services Administration Stores Stock Catalog (see § 5.203), and other relevant information.

§ 5.907 Contract clause.

Insert the following clause in all cost-reimbursement type contracts under which the contractor may acquire supplies for the account of the Government.

* * * * *

PART 6—FOREIGN PURCHASES

18. Section 6.401–1 is revised; add "Cuba" to the list of countries in § 6.401–2; and revise § 6.403, as follows:

§ 6.401–1 General policy.

It is the general policy of the Department of Defense that supplies originating from sources within Soviet-controlled areas (except supplies which have been lawfully imported into the United States, its possessions, or Puerto Rico), shall not be acquired for public use, notwithstanding the provisions of any subpart of this part, and that Government contractors and subcontractors shall not acquire for use in the performance of any Government contract or subcontract thereunder any such supplies or services originating from Soviet-controlled areas.

§ 6.401–2 Soviet-controlled areas.

For the purpose of this subpart, Soviet-controlled areas are the following:

* * * * *

Cuba.

§ 6.403 Contract clause.

(a) Except as provided in paragraph (b) of this section, in contracts for supplies, services, or construction, where acceptance is to take place outside the United States, its possessions, or Puerto Rico, the Soviet-controlled areas listed in § 6.401–2 shall set forth in the contract schedule, and the following clause shall be included in the contract:

SOVIET-CONTROLLED AREAS (APR. 1962)

(a) The Contractor shall not acquire for use in the performance of this contract any supplies or services originating from sources within Soviet-controlled areas, as listed in the Schedule of this contract, or transported from or through Hong Kong or Macao, without the written approval of the Contracting Officer.

(b) The Contractor agrees to insert the provisions of this clause, including this subparagraph (b) and the Soviet-controlled areas listed in the Schedule, in all subcontracts hereunder.

(b) The requirements of paragraph (a) of this section do not apply to purchase orders for small purchases (see Subpart F, Part 3 of this chapter) where there is other reasonable assurance of compliance with the policy set forth in this subpart.

PART 7—CONTRACT CLAUSES

19. Section 7.102 is revised; new § 7.104–40 is added; and in § 7.203–7, revise clause heading in paragraph (a) and add new paragraph (c), as follows:

§ 7.102 Applicability.

As used throughout this subpart, the terms "fixed-price supply contract" shall mean any contract (a) entered into either by formal advertising or by negotiation, other than (1) purchase orders (but see §§ 7.104–15 and 7.104–16), (2) short form negotiated supply contracts (see § 16.202(b) of this chapter), (3) letter contracts, (4) notices of award, and (5) supplemental agreements to contracts or purchase orders, which do not effect new procurement; (b) at a fixed price (with or without provision for price redetermination, escalation or other form of price revision as covered in § 3.404 of this chapter; and (c) for supplies other than (1) the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property, (2) experimental, developmental or research work, or (3) facilities to be provided by the Government under a "Facilities Contract" as defined in Part 13 of this chapter.

§ 7.104–40 Competition in subcontracting.

The following clause shall be included in all negotiated contracts over $10,000, except in firm fixed-price contracts where award is on the basis of effective price competition or where prices are established by law or regulation.

COMPETITION IN SUBCONTRACTING (APR. 1962)

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

§ 7.203-7 Records.

RECORDS (APR. 1962)

* * * * *

(c) In the case of existing and completed contracts containing a record retention clause providing for a six-year period of retention, such contracts may be amended, or in the alternative, the retention of records may be administered in accordance with the following procedures.

(1) Upon request of the Contractor for a reduction in the retention requirement in designated existing contracts, individually or by blanket agreement, by substituting the appropriate clause from paragraphs (a) and (b) of this section. If the Contracting Officer deems it more expedient, he may instead notify the Contractor by letter, with copies to the Comptroller General, that with respect to designated contracts the purchasing activity thereby waives any requirement for retention of records beyond three years after the date of final payment under the contract (or, in the case of records relating to a separate period of performance of the kind referred to in the alternate subparagraph (a)(4) of the clause, set forth in paragraph (b) of this section, beyond three years from the date of payment of the voucher or invoice submitted by the Contractor after the completion of the work performed during any such separate period of performance).

(2) Where new procurement is being added to a contract or its completion or delivery date is being extended for other purposes, the appropriate clause from paragraphs (a) and (b) of this section may also be included and made applicable retroactively to the entire contract.

(3) With respect to any contract containing a six year record retention requirement, which has been completed for a period of not less than three years from the date of final payment thereunder, the Contractor is authorized to dispose of records under any such contract, except that records which relate to (i) appeals under the Disputes clause of the contract, (ii) litigation or the settlement of claims arising out of the performance of the contract, or (iii) cost and expenses of the contract as to which the Contractor has been notified in writing that questions have been raised by the Comptroller General or any of his duly authorized representatives, shall be retained by the Contractor until such appeals, litigation, claims, or such questions have been resolved.

20. Section 7.203-8 is revised; new § 7.203-28 is added; and §§ 7.204-9 and 7.302-24 are revised, as follows:

§ 7.203-8 Subcontracts.

SUBCONTRACTS (APR. 1962)

(a) The Contractor shall give advance notification to the Contracting Officer of any proposed subcontract hereunder which (i) is on a cost, cost-plus-a-fee, time and material, or labor-hour basis, or (ii) is on a fixed-price basis exceeding in dollar amount either $25,000 or five percent (5%) of the total estimated cost of this contract.

(b) In the case of a proposed subcontract which (i) is on a cost, cost-plus-a-fee, time and material, or labor-hour basis and which would involve an estimated amount in excess of $10,000, including any fee; or (ii) is proposed to exceed $100,000; or (iii) is one of a number of subcontracts under this contract with a single subcontractor for the same or related supplies or services which, in the aggregate are expected to exceed $100,000; the advance notification required by (a) above shall include:

(1) A description of the supplies or services to be called for by the subcontract;

(2) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained;

(3) The proposed subcontract price, together with the Contractor's cost or price analysis thereof, including current, complete and correct cost or pricing data accompanied, except when the requirement is specifically waived by the Contracting Officer, by a certificate from the subcontractor to the effect that all cost or pricing data has been considered by the subcontractor in preparing his proposal and that such data is current, and has been provided the Contractor; and

(4) Identification of the type of contract proposed to be used.

(c) The Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which (i) is on a cost or cost-plus-a-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either $25,000 or five percent (5%) of the total estimated cost of this contract, or (iii) provides for the fabrication, purchase, rental, installation or other acquisition, of any item of industrial facilities, or of special tooling having a value in excess of $1,000, or (iv) is on a time and material or labor-hour basis. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (c).

(d) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.

(f) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which, in the opinion of the Contractor, may result in litigation, related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

(g) Notwithstanding (c) above, the Contractor may enter into subcontracts within (ii), or, if the subcontract is for special tooling, within (iii), of (c) above, without the prior written consent of the Contracting Officer if the Contracting Officer has, in writing, approved the Contractor's purchasing system and the subcontract is within the limitations of such approval.

(h) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of the "Limitation on Payments" provision set forth in paragraph (j) of the clause prescribed by paragraph 7-108 of the Armed Services Procurement Regulation, including subparagraph (4) thereof, modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) thereof relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of the "Limitation on Payments" provision, including subparagraph (4) thereof, modified as outlined in (i) above.

In paragraph (a) of the foregoing clause, the percentage and amount set forth therein may be revised downward only in accordance with Departmental procedures. In paragraph (c) of the foregoing clause, the percentage and amount set forth in (ii) thereof may be varied, the dollar amount set forth in (iii) may be increased, and in (i) and (iv) thereof dollar amounts not in excess of $10,000 may be established below which the prior written consent of the contracting officer need not be obtained, in accordance with Departmental procedures. The requirement for the certificate prescribed by paragraph (b)(3) of the clause may be waived at the discretion of the contracting officer if he is satisfied that the price has been based on effective competition, established catalog or market prices, or prices set by law or regulation. When required, the certificate shall be in the form set forth in § 3.807-7 of this chapter appropriately modified to reflect that it is a certificate to a prime contractor, rather than to the Government.

§ 7.203-28 Competition in subcontracting.

Insert the contract clause set forth in § 7.104-40.

§ 7.204-9 Rights in data.

In accordance with the requirements of Subpart B, Part 9 of this chapter, insert one of the contract clauses set forth in §§ 9.203-1, 9.204-2, or 9.206, as appropriate. When the contract clause in § 9.203-1 is used, the appropriate additional provisions shall be added in accordance with the requirements of §§ 9.203, 9.203-2, 9.203-3, or 9.203-4; and the additional provision in § 9.204-1 may be added under the circumstances set forth in § 9.204-1. When the clause in § 9.203-1 is used, the appropriate "Data—Withholding of Payment" clause in § 9.207 shall also be used.

§ 7.302-24 Basic Data Clause.

In accordance with the requirements of § 9.202 of this chapter, insert the clause set forth in § 9.203-1 of this chapter with appropriate additional or alternate paragraphs as prescribed by the instructions in §§ 9.203 and 9.204-1 of this chapter, and the appropriate "Data—Withholding of Payment" clause as set forth in § 9.207 of this chapter.

21. New § 7.303-27 is added; in § 7.402-8, revise the contract clause in paragraph (a) and revise paragraph (b); and revise § 7.402-23, as follows:

§ 7.303-27 Competition in subcontracting.

In accordance with the requirements of § 7.104-40, insert the contract clause set forth therein.

§ 7.402–8 Subcontracts.

(a) * * *

SUBCONTRACTS (APR. 1962)

(a) The Contractor shall give advance notification to the Contracting Officer of any proposed subcontract hereunder which (i) is on a cost, cost-plus-a-fee, time and material, or labor-hour basis, or (ii) is on a fixed-price basis exceeding in dollar amount either $25,000 or five percent (5%) of the total estimated cost of this contract.

(b) In the case of a proposed subcontract which (i) is on a cost-plus-a-fee, time and material, or labor-hour basis and which would involve an estimated amount in excess of $10,000, including any fee; or (ii) is proposed to exceed $100,000; or (iii) is one of a number of subcontracts under this contract with a single subcontractor for the same or related supplies or services which, in the aggregate are expected to exceed $100,000; the advance notification required by (a) above shall include:

(1) A description of the supplies or services to be called for by the subcontract;

(2) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained;

(3) The proposed subcontract price, together with the Contractor's cost of price analysis thereof, including current, complete and correct cost or pricing data accompanied, except when the requirement is specifically waived by the Contracting Officer, by a certificate from the subcontractor to the effect that all cost or pricing data has been considered by the subcontractor in preparing his proposal and that such data is current, and has been provided the Contractor; and

(4) Identification of the type of contract proposed to be used.

(c) The Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which (i) is on a cost or cost-plus-a-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either $25,000 or five percent (5%) of the total estimated cost of this contract, or (iii) provides for the fabrication, purchase, rental, installation, or other acquisition, of any item of industrial facilities, or of special tooling having a value in excess of $1,000, or (iv) is on a time and material or labor-hour basis, or (v) has experimental, developmental, or research work as one of its purposes. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (c).

(d) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.

(f) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which, in the opinion of the Contractor, may result in litigation, related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

(g) Notwithstanding (c) above the Contractor may enter into subcontracts within (ii), or, if the subcontract is for special tooling, within (iii), of (c) above, without the prior written consent of the Contracting Officer if the Contracting Officer has, in writing, approved the Contractor's purchasing system and the subcontract is within the limitations of such approval.

(h) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of the "Limitation on Payments" provision set forth in paragraph (j) of the clause prescribed by paragraph 7–108 of the Armed Services Procurement Regulation, including subparagraph (4) thereof, modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) thereof relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of the "Limitation on Payments" provision, including subparagraph (4) thereof, modified as outlined in (i) above.

(b) In paragraph (a) of the foregoing clause, the percentage and amount set forth therein may be revised downward only in accordance with Departmental procedures. In paragraph (c) of the foregoing clause, the percentage and amount set forth in (ii) thereof may be varied, the dollar amount set forth in (iii) may be increased, and, in (i), (iv), and (v) thereof, dollar amounts not in excess of $10,000 may be established below which the prior written consent of the contracting officer need not be obtained, in accordance with Departmental procedures. The requirement for the certificate prescribed by paragraph (b) (3) of the clause may be waived at the discretion of the contracting officer if he is satisfied that the price has been based on effective competition, established catalog or market prices, or prices set by law or regulation. When required, the certificate shall be in the form set forth in § 3.807–7 appropriately modified to reflect that it is a certificate to a prime contractor, rather than to the Government.

§ 7.402–23 Basic Data Clause.

In accordance with the requirements of § 9.202 of this chapter, insert the clause set forth in § 9.203–1 of this chapter with appropriate additional or alternate paragraphs as prescribed by the instructions set forth in §§ 9.203 and 9.204–1 of this chapter, and the appropriate "Data—Withholding of Payment" clause as set forth in § 9.207 of this chapter.

22. New § 7.402–29 is added; § 7.603–5 is revised; and new § 7.603–18 is added, as follows:

§ 7.402–29 Competition in subcontracting.

Insert the contract clause set forth in § 7.104–40.

§ 7.603–5 Rights in data.

In accordance with the requirements in Subpart B, Part 9 of this chapter, insert one of the contract clauses set forth in §§ 9.203–1, 9.204–2, or 9.206 of this chapter, as appropriate. When the contract clause in § 9.203–1 is used, the appropriate additional provisions shall be added in accordance with the requirements in §§ 9.203, 9.203–2, 9.203–3, or 9.203–4; and the additional provision in § 9.204–1, may be added under the circumstances set forth in § 9.204–1. When the clause in § 9.203–1 is used, the appropriate "Data—Withholding of Payment" clause in § 9.207 shall also be used.

§ 7.603–18 Competition in subcontracting.

In accordance with the requirements of § 7.104–40, insert the contract clause set forth therein.

PART 9—PATENTS, DATA AND COPYRIGHTS

23. In § 9.107–1, revise paragraph (d); in § 9.107–2(b), revise clause paragraphs (b)(1), (g), (h) and (i), and revoke clause paragraph (j); and new §§ 9.107–8, 9.207, 9.207–1, and 9.207–2 are added, as follows:

§ 9.107–1 General.

* * * * *

(d) *Contracting officer's duties.* (1) When a contract or modification thereof having experimental, developmental, or research work as one of its purposes is proposed, the contracting officer, in consultation with his technical and patent advisors, shall consider whether the contemplated project should entail Government acquisition of title in keeping with paragraph (c) of this section or similar considerations. If in his opinion it should, he shall refer the matter, with supporting information (including identification of any inventions on which patent applications are on file and which are expected to be actually reduced to practice under the proposed project), to higher authority, in accordance with the deviation procedures of § 1.109 of this chapter. If a deviation is authorized, the contracting officer shall insert in the contract the clause specified in § 9.107–2(c).

(2) In all cases not involving the acquisition of title in keeping with paragraph (c) of this section, the contracting officer shall include in the contract the clause specified in § 9.107–2(b), except as provided in § 9.107–3, concerning foreign contracts (unless the clause specified in § 9.107–2(c) has been authorized); § 9.107–4, concerning contracts relating to Atomic Energy; § 9.107–5, concerning contracts relating to Civil Defense; § 9.107–7, concerning contracts placed for the National Aeronautics and Space Administration; and § 9.107–8, concerning contracts relating to Space. In cases falling within these exceptions, the contracting officer shall follow the instructions stated in the applicable paragraph.

§ 9.107–2 Patent rights—Domestic contracts.

* * * * *

(b) *Contract clause (License).* * * *

PATENT RIGHTS (LICENSE) (APR. 1962)

* * * * *

(b)(1) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, and royalty-free license to practice, and cause to be practiced by or for the United States Government, throughout the world, each Subject Invention in the manufacture, use, and disposition according to law, of any article or material, and in the use of any method. Such license (i) shall be nontransferable, except that the Government shall have the right to grant sublicenses to any foreign government or international organization specifically for use in progress established by International Agreements for research, development or production of weapons or equipment for mutual defense, and (ii) shall include the practice of Subject Invention in the manufacture, use, and disposition of any article or material, in the use of any method, or in the performance of any service acquired by or for the Government or with funds derived through the Military Assistance Program of the Government or otherwise through the Government.

* * * * *

(g) The Contractor shall, unless otherwise authorized by the Contracting Officer as hereafter provided, include a patent rights clause containing all the provisions of this Patent Rights Clause except provision (f) in any subcontract hereunder of three thousand dollars ($3,000) or more having experimental, development, or research work as one of its purposes. In the event of refusal by a subcontractor to accept such a patent rights clause, the Contractor (i) shall promptly submit a written report to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information which may expedite disposition of the matter, and (ii) shall not proceed with the subcontract without the written authorization of the Contracting Officer. Reports, instruments, and other information required to be furnished by a subcontractor to the Contracting Officer under the provisions of such patent rights clause in a subcontract hereunder may, upon mutual consent of the Contractor and the subcontractor (or by direction of the Contracting Officer) be furnished to the Contractor for transmission to the Contracting Officer.

(h) The Contractor shall, at the earliest practicable date, notify the Contracting Officer in writing of any subcontract containing one or more patent rights clauses; furnish the Contracting Officer a copy of each of such clauses; and notify the Contracting Officer when such subcontract is completed. It is understood that with respect to any subcontract clause granting rights to the Government in Subject Inventions, the Government is a third party beneficiary; and the Contractor hereby assigns to the Government all the rights that the Contractor would have to enforce the subcontractor's obligations for the benefit of the Government with respect to Subject Inventions. If there are no subcontracts containing patent rights clauses, a negative report is required. The Contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to the obligations of the subcontractor to the Government in regard to Subject Inventions.

(i) The Contractor recognizes that the Government, or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for royalties for the use of a Subject Invention on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for use of patents in which the Government holds a royalty-free license. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges for such contracts or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(j) [Revoked]

§ 9.107–8 Contracts relating to space.

In order that inventions arising out of Department of Defense sponsored space research and development may be available for use for the benefit of the general public in communications satellite systems, whether such systems are operated by or for the Government or by private enterprise for the transmission of commercial or Government traffic, the paragraph set forth below, in lieu of paragraph (b)(1) of the Patent Rights clause prescribed in § 9.107–2(b) shall be inserted, except as provided in § 9.107–7, in any contract having as one of its purposes the performance of research and devolpment work under a space program, project, or task:

(b)(1) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, and royalty-free license to practice, and cause to be practiced by or for the United States Government, throughout the world, each Subject Invention in the manufacture, use, and disposition according to law, of any article or material, and in the use of any method. Such license (i) shall be nontransferable, except that the Government shall have (a) the right to grant sublicenses to any foreign government or international organization specifically for use in programs established by International Agreements for research, development or production of weapons or equipment for mutual defense and (b) the right to grant sublicenses to others, under such terms and conditions as may be prescribed, for the practice of any Subject Invention throughout the world in the design, development, manufacture, operation, maintenance and testing of communications satellite systems, and of equipment, components, and ground tracking, transmitting and receiving facilities therefor, and (ii) shall include the practice of Subject Invention in the manufacture, use, and disposition of any article or material, in the use of any method or in the performance of any service acquired by or for the Government or with funds derived through the Military Assistance Program of the Government or otherwise through the Government.

§ 9.207 Data—Withholding of payment.

§ 9.207–1 General.

Timely delivery of required data is particularly important for competitive procurement of follow-on quantities of the contract items and of items broken out from an assembly or equipment. The clauses set forth in § 9.207–2 are designed to insure timely delivery of complete and current data. The clauses provide for a withholding of ten percent (10%) of the contract price, but the contracting officer may specify a lesser amount in the schedule if circumstances warrant. To insure effective enforcement of the clause, a case-by-case determination shall be made by the contracting officer after considering all pertinent factors, including whether the failure to make timely delivery, in accordance with the delivery schedule as originally provided or as modified, arises out of causes beyond the control and without the fault or negligence of the contractor.

§ 9.207–2 Clauses.

(a) The following clause shall be inserted in all fixed-price contracts (except contracts with educational institutions) containing the clause set forth in § 9.203–1:

DATA—WITHHOLDING OF PAYMENT (APR. 1962)

If "Subject Data" (as defined in the clause of this contract entitled "Data"), or any part thereof, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not specifically authorized by this contract), the Contracting Officer may, until such data is delivered or deficiencies are corrected, withhold payment to the Contractor of ten percent (10%) of the contract price unless a lesser withholding is specified in the schedule. Payments shall not be withheld nor any other action taken pursuant to this clause where the Contractor's failure to make timely delivery or to deliver data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor within the meaning of the clause hereof entitled "Default". The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

(b) The following clause shall be used in all cost-reimbursement type contracts (except contracts with educational institutions) containing the clause set forth in § 9.203–1:

DATA—WITHHOLDING OF PAYMENT (APR. 1962)

If "Subject Data" (as defined in the clause of this contract entitled "Data"), or any part thereof, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not specifically authorized by the contract), the Contracting Officer may, until such data is delivered or deficiencies are corrected, withhold payment due the Contractor on account of allowable costs and fixed fee, of ten percent (10%) of the contract price, unless a lesser withholding is specified in the schedule. Payments shall not be withheld nor any other action taken pursuant to this clause where the Contractor's failure to make timely delivery or to deliver data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor within the meaning of the clause thereof entitled "Excusable Delays." The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

PART 11—FEDERAL, STATE AND LOCAL TAXES

24. Sections 11.101–6, 11.102–2 (b) and (c), and 11.102–3 are revised, as follows:

§ 11.101–6 Special fuels.

(a) *Diesel fuel.* A tax at the indicated rates is imposed upon diesel fuel, other than that taxable as gasoline under section 4081 of the Internal Revenue Code (see § 11.102–4) which is (*a*) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle, for use as a fuel in such vehicle, or (*b*) used by any person as a fuel in a diesel-powered highway vehicle unless there was a taxable sale of such liquid pursuant to (*a*) above, as follows:

(1) At 4 cents per gallon, if sold for use or if used as fuel in a diesel-powered highway vehicle;

(i) Which, at the time of such sale or use, is registered, or is required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is used on the highways; or

(2) At 2 cents per gallon, if sold for use or if used as fuel in a diesel-powered highway vehicle;

(i) Which, at the time of such sale or use, is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is not used on the highway; and

(3) At an additional 2 cents per gallon, if fuel on which a tax of 2 cents was paid pursuant to subparagraph (2) of this paragraph, is used as fuel in a diesel-powered highway vehicle:

(i) Which, at the time of such use, is registered, or is required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is used on the highway.

No tax is imposed on diesel fuel sold for use or used as fuel in a nonhighway vehicle, such as certain military vehicles, construction equipment, and equipment designed for use at mines, factories, railroad stations, and farms.

(b) *Special motor fuels.* A tax at the rates indicated below is imposed upon benzol, benzene, naphtha, liquefied petroleum gas, or any other liquid (other than kerosene, gas oil, fuel oil, or a product taxable as diesel fuel under paragraph (a) of this section, or as gasoline under section 4081 of the Internal Revenue Code (see § 11.102-4)), which is (*a*) sold by any person to an owner, lessee, or other operator of a motor vehicle, motorboat, or airplane for use as a fuel for the propulsion thereof, or (*b*) used by any person as a fuel for the propulsion of a motor vehicle, motorboat, or airplane, unless there was a taxable sale of such liquid pursuant to (*a*) above, as follows:

(1) At 4 cents per gallon, if such liquid is sold for use or is used as a fuel for a highway vehicle:

(i) Which, at the time of such sale or use, is registered, or is required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is used on the highway, or

(2) At 2 cents per gallon, if such liquid is sold for use or is used as a fuel for the propulsion of a motorboat or airplane, or motor vehicle:

(i) Which, at the time of such sale or use, is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is not used on the highway; and

(3) At an additional 2 cents per gallon, if a liquid on which a tax of 2 cents was paid pursuant to subparagraph (2) of this paragraph, is used as fuel in a highway vehicle:

(i) Which, at the time of such use, is registered, or required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States is used on the highway.

(c) *Refunds and credits.* (1) A retailer, who has paid a tax on diesel fuel or special motor fuel, is entitled to a refund or credit of the tax paid, if such retailer has not included the tax in the sales price or otherwise collected the tax from the purchaser, has repaid the tax to the purchaser, or has the purchaser's written consent to take the refund or credit, as follows:

(i) A refund or credit of 4 cents or 2 cents per gallon, as appropriate, if a liquid upon which a tax of either 4 cents or 2 cents per gallon has been paid, is not used as fuel in a diesel-powered highway vehicle or to propel a motor vehicle, motorboat, or airplane;

(ii) A refund or credit of 2 cents per gallon, if diesel fuel, upon which a tax of 4 cents per gallon has been paid pursuant to paragraph (a)(1) of this section, is used as a fuel for a diesel-powered highway vehicle:

(*a*) Which, at the time of such use is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country; or

(*b*) Which, if owned by the United States, is not used on the highway; or

(iii) A refund of 2 cents per gallon, if special motor fuel, upon which a tax of 4 cents per gallon has been paid pursuant to paragraph (b)(1) of this section, is used to propel a motorboat or airplane, or motor vehicle:

(*a*) Which, at the time of such use is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country; or

(*b*) Which, if owned by the United States, is not used on the highway.

These refunds or credits shall be utilized, in accordance with Departmental procedures, by adjustment of the contract price whenever it is economically advantageous to do so.

(2) If the manufacturers excise tax on gasoline (see § 11.102-4) has been paid on any material used in the production of a special motor fuel taxable under paragraph (b) of this section, the manufacturer of the gasoline is entitled to a refund or credit of such tax, subject to the conditions similar to those stated in the opening lines of subparagraph (1) of this paragraph. The contract price for special motor fuels purchased by any Department shall not include an amount for manufacturers excise tax on gasoline used in the production of such special motor fuel.

§ 11.102-2 Motor vehicles.

* * * * *

(b) Chassis and bodies of automobiles, and of trailers and semitrailers (other than house trailers) suitable for use with passenger automobiles—10 percent; and

(c) Parts or accessories—when sold separately from an automobile, truck, or other item taxable as indicated in paragraphs (a) and (b) of this section—8 percent. Parts or accessories are defined to include any article:

(1) The primary use of which is to improve, repair, replace or serve as a component part of a motor vehicle;

(2) Designed to be attached to or used in connection with a motor vehicle or to add to its utility or ornamentation; or

(3) The primary use of which is in connection with a motor vehicle whether or not essential to its operation or use.

§ 11.102-3 Tires and tubes.

(a) A tax at the rates indicated below is imposed on the following supplies, made wholly or in part of rubber, including synthetic and substitute rubber, sold by a manufacturer, producer, or importer:

(1) Tires of the type used on highway vehicles, which includes motor vehicles which are highway vehicles, and vehicles of the type used with motor vehicles which are highway vehicles—10 cents per pound;

(2) Other tires, which are designed to fit the wheel of any type of vehicle capable of transporting a person or burden (other than laminated tires which consist wholly of scrap rubber from used tire casings with an internal metal fastening agent)—5 cents per pound;

(3) Inner tubes, which include any type of air container for pneumatic tires—10 cents per pound on total weight, including air valves and stems;

(4) Laminated tires (not of the type used on highway vehicles) which consist wholly of scrap rubber from used tire casings with an internal metal fastening agent—1 cent per pound; and

(5) Tread rubber, which includes any material commonly or commercially known as tread rubber or camelback of a type used in retreading or recapping tires—5 cents per pound. An exemption exists for the sale of tread rubber or camelback by a manufacturer to a purchaser for use by that purchaser other than for recapping or retreading tires of the type used on highway vehicles. In addition, if tread rubber, upon which the tax has been paid, is sold for use or is used other than for recapping or retreading tires of the type used on highway vehicles, the manufacturer is entitled to a refund or credit of the tax, provided, that the credit under paragraph (b) of this section is not available. The contract price for supplies purchased by any Department will not include an amount for the manufacturers excise tax on tread rubber to the extent that this exemption of refund or credit is available to the manufacturer. In determining weight of taxable tires under subparagraphs (1) and (2) of this paragraph, metal rims or rim bases are excluded, but any other material or fastening device that forms a part of the tire is included. The tax imposed under subparagraphs (1) and (2) of this paragraph, does not apply to tires which are not more than 20 inches in diameter and not more than 1¾ inches in cross-section, if such tires

are of all-rubber construction without fabric or metal reinforcement, nor does it apply to tires of extruded tiring with an internal wire fastening agent.

(b) The exemption for sales for further manufacture does not apply to taxable tires and tubes (see § 11.202). However, if tax-paid tires and tubes normally sold in connection with the sale by a manufacturer of a taxable motor vehicle are sold therewith, a credit against the tax on the motor vehicle is allowed to the extent of the motor vehicle tax rate applied to the manufacturers purchase price on the tires and tubes. The contract price for supplies purchased by any Department shall not include an amount for manufacturers excise tax on tires and tubes to the extent that this credit is available to the manufacturer.

25. Sections 11.102-4, 11.102-13, 11.104(a), and 11.302 are revised, as follows:

§ 11.102-4 Gasoline.

(a) A tax of 4 cents per gallon is imposed on gasoline sold by a producer or importer. Gasoline means all products commonly or commercially known as gasoline, including casinghead and natural gasoline, but excluding kerosene, gas oil, or fuel oil, and also excluding any product taxable as a special motor fuel under section 4041 of the Internal Revenue Code (See § 11.101-6). The tax does not apply to the sale of gasoline to a producer, which is defined to include a refiner, compounder, blender, or dealer who sells gasoline exclusively to producers of gasoline.

(b) The ultimate purchaser of gasoline is entitled to a refund of 2 cents per gallon for gasoline used otherwise than as fuel in a highway vehicle; for example, gasoline used in stationary engines, in cleaning tools, in motorboats, aircraft, fork lift trucks, bulldozers and earth movers. Refunds will also be made on gasoline used as fuel in a highway vehicle:

(1) Which, at the time of such use is not registered, nor required to be registered, for highway use under the laws of any State or foreign country; or

(2) Which, if owned by the United States is not used on the highway.

In accordance with Departmental procedures, necessary data shall be compiled, to the extent economically advantageous, to support a direct application to the Internal Revenue Service for refund. Such application shall be in accord with pertinent requirements of the Internal Revenue Service.

§ 11.102-13 Pens, mechanical pencils, and lighters.

(a) A tax at the rates indicated below is imposed upon the sale by the manufacturer, producer, or importer of the following articles:

(1) Mechanical pencils, fountain pens and ballpoint pens—10 percent;

(2) Mechanical lighters for cigarettes, cigars, and pipes—10 cents for each lighter but not more than 10 percent of the price for which so sold.

(b) The tax on pens, mechanical pencils, and lighters does not apply if the article also is subject to the retailers excise tax on jewelry imposed by section 4001 of the Internal Revenue Code. If the manufacturers excise tax has been paid, but the article is further processed so as to subject it to the retailers excise tax, the retailer (but not the manufacturer who originally paid the tax) is entitled to a credit to the extent of the manufacturers excise tax paid on the article. (See § 11.101-2.)

§ 11.104 Use tax on highway motor vehicles.

(a) A tax of $3.00 a year for each 1,000 pounds of taxable gross weight, or fraction thereof, is imposed upon the use of any highway motor vehicle which, together with semitrailers and trailers customarily used in connection with a vehicle of this type, has a taxable gross weight in excess of 26,000 pounds. The full tax is due for any vehicle which is used on the public highways of the United States at any time during the month of July, irrespective whether the vehicle is later removed from highway use. If the first use of a taxable vehicle occurs after the end of July, the tax is computed proportionately from the first day of the month in which the vehicle is first used, through the end of the following June. For example, if a vehicle is placed in use during August, $\frac{11}{12}$ of the total tax is payable. No tax applies to vehicles, even though of a highway type, which are never used on the public highways during the taxable year.

§ 11.302 Tax exemption forms.

Except when a different form is required by a particular State or local tax jurisdiction, Standard Form 1094 Revised (U.S. Government Tax Exemption Certificate) shall be used in accordance with agency procedures. Unless the contract under which the exemption is claimed otherwise requires, an exemption certificate will not be issued if the amount of the taxes on any one invoice or purchase is one dollar or less.

PART 12—LABOR

26. Section 12.603(d) is revised to read as follows:

§ 12.603 Responsibilities of contracting officers.

* * * * *

(d) Prepare and transmit three copies of DD Form 350 (top portion), as provided in §§ 16.803-2(c) and 16.901-4(p) of this chapter; where a contract of $10,000 or less is modified to exceed $10,000 the report on DD Form 350 shall be prepared and transmitted in accordance with § 16.901-4(p) of this chapter.

PART 13—GOVERNMENT PROPERTY

27. Section 13.101-17 is revised, and in § 13.102-3, paragraphs (a) and (c) are revised and new paragraph (d) is added, as follows:

§ 13.101-17 Educational or other nonprofit organization.

Educational or other nonprofit organization means any corporation, foundation, trust, or institution operated for scientific, educational, or medical purposes, not organized for profit, no part of the net earnings of which inures to the profit of any private shareholder or individual.

§ 13.102-3 Facilities.

(a) (1) It is the policy of the Department of Defense that contractors will furnish all industrial facilities required for the performance of Government contracts, except in the limited situations described in subparagraph (2) of this paragraph. Accordingly, the Government shall not include in competitive solicitations an offer to purchase and furnish industrial facilities or to have them acquired for its account. This does not preclude the Government from offering to furnish existing Government-owned industrial facilities.

(2) Industrial facilities may be provided by the Government only when it is determined that:

(i) It is not possible to obtain contract performance without Government-owned industrial facilities; or

(ii) Contractor-furnished industrial facilities would likely result in allocations of costs to the contract in excess of reasonable depreciation costs; or

(iii) Furnishing of existing Government-owned industrial facilities will most likely result in substantially lower cost to the Government of the items produced, after taking into account transportation costs, maintenance costs, reactivation costs, and any other costs for the furnishing of such facilities; and

that it is otherwise in the best interest of the Government. Before the Government agrees to provide industrial facilities, the contractor shall be required to show that subcontractors possessing adequate and available capacity to meet military production requirements have been or will be appropriately and fully utilized.

(3) In the case of industrial facilities having an acquisition cost of 41,000,000 or more, the determination required by subparagraph (2) of this paragraph shall be made by the cognizant Secretary, subject to paragraph (d) of this section.

* * * * *

(c) The policy for authorizing special use allowances for research facilities acquired by educational institutions is contained in § 4.209 of this chapter.

(d) All proposed purchases or acquisitions of industrial facilities involving an expenditure of $1,000,000 or more shall be forwarded to the Secretary of Defense for his approval through the Office of the Assistant Secretary of Defense (I&L).

28. In § 13.505, revise clause heading and the introductory statement for alternative paragraph (c), as follows:

§ 13.505 Government-furnished property clause for fixed-price type contracts with nonprofit institutions.

* * * * *

GOVERNMENT-FURNISHED PROPERTY (APR. 1962)

* * * * *

In accordance with 4–214.4(d), the following alternative paragraph (c) may be used:

* * * * *

29. In § 13.506, revise clause heading and the explanatory note in clause paragraph (c); and revise clause paragraph (i)(5) and the footnote, as follows:

§ 13.506 Government property clause for cost-reimbursement type research and development contracts with nonprofit institutions.

* * * * *

GOVERNMENT PROPERTY (APR. 1962)

* * * * *

In accordance with 4–214.4(d), the following additional language may be added to paragraph (c):

* * * * *

(i) * * *

*(5) If this contract is for the development, production, modification, maintenance or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the clause of this contract entitled "Flight Risks" shall control, to the extent it is applicable, in the case of loss or destruction of, or damage to, aircraft.

*This subparagraph may be omitted where it is clearly inapplicable.

* * * * *

30. Subpart H, Transfer of Title to Equipment to Nonprofit Education or Research Institutions, is revoked.

PART 15—CONTRACT COST PRINCIPLES AND PROCEDURES

§ 15.304 [Amendment]

31. In § 15.304, the reference to "§ 3.812" in paragraph (e) is changed to read: "§ 4.209."

PART 16—PROCUREMENT FORMS

32. Section 16.810–2 is revised, as follows:

§ 16.810–2 Conditions for use.

The application shall be submitted and signed by the supplier (the manufacturer or regular dealer), as distinguished from an agent of the supplier. However, suppliers are not precluded from designating, in the Standard Form 129, their agents to receive Invitations for Bids and Requests for Proposals.

PART 17—EXTRAORDINARY CONTRACTUAL ACTIONS TO FACILITATE THE NATIONAL DEFENSE

33. Section 17.201 is revised; the last sentence of paragraph (a), § 17.203, is revised; and a new paragraph (d) is added to §§ 17.207–1 and 17.207–3, as follows:

§ 17.201 Authority of the Secretaries and the Director, DSA.

(a) The Secretary of each Department may delegate in writing his authority under the Act and the Executive Order, subject to the following limitations:

(1) Authority to approve actions under the Act obligating the United States in an amount in excess of $50,000 shall not be delegated below the Secretarial level; and

(2) Authority to approve any amendment without consideration which increases the stated contract price or unit price may not be delegated below the Secretarial level except in extraordinary cases or classes of cases as to which the Secretary involved finds that there are special circumstances clearly justifying delegation to a lower level.

(b) The Director of the Defense Supply Agency may exercise authority under the Act and the Executive Order in all cases obligating the United States in the amount of $50,000 or less, and in disapproving proposed action in any amount. This authority may be redelegated, consistent with the provisions of this Section. Recommendations for payments in excess of $50,000 will be submitted by the Director to the Assistant Secretary of Defense for Installations and Logistics for approval.

(c) The delegations described in §§ 17.202 and 17.203 shall not be construed as limiting the authority of the Secretaries or the Director to modify or make other delegations. Copies of all delegations and successive redelegations shall be transmitted to the Assistant Secretary of Defense for Installations and Logistics at the time of issuance.

§ 17.203 Authority of other officers and officials.

(a) * * * The foregoing authority may be redelegated only with the written approval of the Secretary concerned or the Director.

§ 17.207–1 Filing requests.

* * * * *

(d) In the Defense Supply Agency, Commanders of the Defense Supply Centers concerned.

§ 17.207–3 Records.

* * * * *

(d) Defense Supply Agency activities, to Headquarters, DSA.

34. In § 17.208–3(c), add new subparagraph (3); and revise §§ 17.208–5, 17.301, and 17.304, as follows:

§ 17.208–3 Submission of cases to the Contract Adjustment Board.

* * * * *

(c) *Forwarding to Boards.* Cases to be submitted to the boards shall be forwarded through the following channels:

* * * * *

(3) In the Defense Supply Agency, each case shall be sent to Headquarters, DSA for further processing.

§ 17.208–5 Maintenance of records.

The records required by §§ 17.207–3, 17.208–2(b), and 17.208–4 (a) and (b) shall be maintained in the Army by DCSLOG, in the Navy and Air Force, by the respective Boards, and in the Defense Supply Agency, by Headquarters, DSA.

§ 17.301 Delegations of authority.

Authority to take actions under the residual powers of the Act is vested in the Secretary of each Department and may be defined and delegated in writing by him within his Department; provided, however, that authority to approve actions obligating the United States in excess of $50,000 shall not be delegated below the Secretarial level, and authority to approve actions obligating $50,000 or less shall not be delegated below the Head of a Procuring Activity in the Army, the Navy and the Defense Supply Agency and, in the Air Force, the Director of Procurement and Production, Headquarters, AMC. Copies of all delegations and successive redelegations shall be transmitted to the Assistant Secretary of Defense for Installations and Logistics at the time of issuance.

§ 17.304 Maintenance of records.

DCSLOG in the Army, the respective Contract Adjustment Boards in the Navy and the Air Force, and Headquarters, DSA in the Defense Supply Agency, shall be responsible for maintaining two copies of each Memorandum of Approval required by § 17.303(b).

PART 30—APPENDIXES TO ARMED SERVICES PROCUREMENT REGULATIONS

35. In § 30.1, Part 1 is revised as follows:

§ 30.1 Appendix A—Armed Services Board of Contract Appeals.

PART 1—CHARTER

1. There is created the Armed Services Board of Contract Appeals which is hereby designated as the authorized representative of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy and the Secretary of the Air Force, in hearing, considering and determining as fully and finally as might each of the Secretaries appeals by contractors from decisions of contracting officers or their authorized representatives or other authorities on disputed questions. These appeals may be taken (a) pursuant to the provisions of contracts requiring the decision of appeals by the Secretary of Defense or by a Secretary of a Military Department or their duly authorized representative or board, or (b) pursuant to the provisions of any directive whereby the Secretary of Defense or the Secretary of a Military Department has granted a right of appeal not contained in the contract. The Board shall operate under general policies established or approved by the Assistant Secretary of Defense (Installations and Logistics).

(2) Membership of the Board shall consist of qualified attorneys who have been admitted to practice before the highest court of any State or the District of Columbia. There shall be appointed from members of the Board a chairman and two vice-chairmen. Appointment of the chairman and vice-chairman and other members of the Board shall be made jointly by the Assistant Secretary of Defense (I&L) and the Assistant Secretaries of the Military Departments responsible for procurement. The chairman and vice-chairman shall serve in that capacity for a two-year term unless sooner removed or reappointed for an additional term or terms. The Assistant Secretaries will also designate the order in which the two vice-chairmen will act for the chairman in his absence. In the absence of a vice-chairman, the chairman or acting chairman will designate a member of the Board to serve as a temporary vice-chairman.

(3) It shall be the duty and obligation of the members of the Armed Services Board of Contract Appeals to decide appeals on

the record of the appeal to the best of their knowledge and ability in accordance with applicable contract provisions and in accordance with law and regulation pertinent thereto.

(4) The chairman of the Board shall be responsible for establishing appropriate divisions of the Board in such manner as to provide for the most effective and expeditious handling of appeals. He shall be responsible for assigning appeals to the divisions for decision without regard to the Military Department or other procuring agency which entered into the contract involved. A division may consist of one or more members of the Board. A majority of the members of a division shall constitute a quorum for the transaction of the business of the division and the decision of a majority of the division shall constitute the decision of the Board provided that the chairman and two vice-chairmen jointly signify their approval of the decision. If a majority of the members of a division are unable to agree on a decision, or if the chairman or one or more of the vice-chairmen do not signify approval of the decision, determination of the appeal shall be made by the chairman and vice-chairmen. A decision by a majority of those individuals will constitute the decision of the Board. On request of the appellant, an appeal involving $5,000 or less shall be decided under accelerated procedures as provided by the Rules of the Board.

5. When an appeal is taken pursuant to a disputes clause in a contract which limits appeals to disputes concerning questions of fact, the Board may nevertheless in its discretion hear, consider, and decide all questions of law necessary for the complete adjudication of the issue. When in the consideration of an appeal it appears that a claim is involved which is not cognizable under the terms of the contract, the Board may, insofar as the evidence permits, make findings of fact with respect to such a claim without expressing an opinion on the question of liability.

6. When a contract requires the Secretary of Defense or the Secretary of a Military Department, personally, to render a decision on the matter in dispute, the Armed Services Board of Contract Appeals, in accordance with the procedure set forth in paragraph 4, shall make findings and recommendations to the appropriate Secretary with respect thereto.

7. The Board shall have all powers necessary and incident to the proper performance of its duties. Subject to the approval of the Assistant Secretary of Defense (I&L) and the Assistant Secretaries of the Military Departments responsible for procurement, the Board shall adopt its own methods of procedure, and rules and regulations for its conduct and for the preparation and presentation of appeals and issuance of opinions. The Military Departments and other procuring agencies of the Department of Defense shall provide legal personnel to prepare and present the contentions of the departments or agencies in relation to appeals filed with the Board. It shall not be necessary for the Board, unless it otherwise desires, to communicate with more than one trial attorney in each of the departments or agencies concerning the preparation and presentation of appeals and the obtaining of all records deemed by the Board to be pertinent thereto.

8. Any member of the Board or any examiner, designated by the chairman of the Board, shall be authorized to hold hearings, examine witnesses, receive evidence and argument, and report the evidence and argument, to the designated division for consideration and determination of the appeal.

9. The chairman shall be responsible for the internal organization of the Board and for its administration. He shall provide within approved ceilings for the staffing of the Board with nonmember personnel, including hearing examiners, as may be required for the performance of the functions of the Board. The chairman shall appoint a recorder of the Board. Such personnel shall be responsible to and shall function under the direction, supervision and control of the chairman.

10. Financing of the operations of the Board as authorized herein will be provided through the use of the Navy Management Fund in accordance with Department of Defense Regulations Covering the Operation of Management Funds.

11. The chairman of the Board will furnish to the Secretary of Defense and to the Secretaries of the Military Departments by July 31 of each year a report containing an account of the Board's transactions and proceedings for the preceding fiscal year. Within 30 days following the close of a calendar quarter, the chairman shall forward a report of the Board's proceedings for the quarter to the Assistant Secretary of Defense (I&L), the Assistant Secretaries of the Military Departments responsible for procurement, and to the Director of the Defense Supply Agency. Such reports shall disclose the number of appeals received, cases heard, opinions rendered, current reserve of pending matters, and such other information as may be required.

12. The Board shall have a seal bearing the following inscription: "Armed Services Board of Contract Appeals". This seal shall be affixed to all authentications of copies of records and to such other instruments as the Board may determine.

13. All appeals pending before the Board under the "Charter for the Armed Services Board of Contract Appeals", which became effective on February 1, 1959, shall continue to be subject to the jurisdiction of the Board as established hereunder.

14. This charter will become effective May 1, 1962.

[ASPR, Rev. 9, 15 April 1962] (Sec. 2203, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314)

J. C. LAMBERT,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 62-6252; Filed, June 28, 1962; 8:45 a.m.]

Chapter V—Department of the Army

SUBCHAPTER D—MILITARY RESERVATIONS AND NATIONAL CEMETERIES

PART 552—REGULATIONS AFFECTING MILITARY RESERVATIONS

Acquisition of Real Estate and Interests Therein; Miscellaneous Amendments

1. Section 552.34 is revised to read as follows:

§ 552.34 Policies relative to new acquisition.

(a) *Present holdings inadequate for essential mission.* No request to acquire real estate by transfer from Navy or Air Force or from another Government agency, or by purchase, lease or condemnation will be considered or approved unless it is established that:

(1) The activity to be accommodated is essential to an assigned mission.

(2) Real property under the control of the Army is inadequate to satisfy these requirements.

(3) No real property under the control of the Navy or Air Force or other Federal agencies is suitable and available for use by the Army on a permit or joint use basis.

(b) *Order of priority for method of acquisition.* If the activity qualifies as essential to an assigned mission but the need cannot be filled by the use of other Army property or other Federal property on a permit or joint use basis, the following alternatives will be considered in the order listed:

(1) Donation or long-term nominal rental lease.

(2) Transfer from Navy or Air Force. Acquisition of lands excess to the requirements of other military departments.

(3) Recapture of use.

(4) Public Domain. Withdrawal from the public domain for military use. (Public Law 85–337, Feb. 28, 1958 (72 Stat. 28) requires that an Act of Congress be obtained to withdraw, reserve, or restrict for defense purposes more than 5,000 acres of the public domain.)

(5) Acquisition by exchange. Exercise of existing authorities for the exchange of Government-owned real property for non-Government-owned real property that is by type or location adaptable to the military need.

(6) Transfer from other Federal agencies. Acquisition of lands excess to the requirement of Federal agencies other than military departments.

(7) Acquisition by purchase, lease or condemnation.

(c) *Current requirements given preference.* In considering the use of Army real property by another military department, current requirements will, in the absence of unusual circumstances, be given preference over future needs and mobilization requirements. If the current requirement will not continue through mobilization, care must be exercised to avoid modification of the property in a manner that would prevent its timely return to the holding department to meet the mobilization requirement. If it is contemplated that the current requirement will continue through mobilization, the property may be modified as required and the mobilization plans of the military departments concerned should be changed accordingly.

(d) *Firm requirements and minimum acquisition.* Requirements in each individual case will be firmly determined and only the minimum amount of property necessary will be acquired.

(e) *Factors considered insufficient justification for acquisition by lease.* Desirability of location in an urban area, reduced travel time for employees or business representatives, nominal savings in transportation costs, environmental considerations (such as noise or traffic), or desirability of single unit offices instead of split locations in close proximity will not be considered sufficient justification for acquiring leased space or facilities when Government-owned property is available. For exceptions, see paragraph (f) of this section.

(f) *Special location considerations.* Acquisition of title or a leasehold interest in real property may be justified where it is demonstrated that the function to be accommodated is an essential activity and the geographic location thereof in other than Government-owned space is vital to the accomplishment of the assigned mission. Examples that may fall in this group are recruiting stations (exclusive of kindred examining and induction units), airbases, air defense sites, and sites for construction of facilities for Reserve Components of the Armed Forces.

(g) *Army Reserve training sites.* In general, title to lands will not be acquired for exclusive use as training sites. Training sites will be acquired by one of the following means in the order listed:

(1) Use of lands under the control of the Department of the Army regardless of the agency maintaining jurisdiction, to include class II and industrial installations and other Reserve Component facilities, see title 10 U.S.C. 2331 and 2237.

(2) Use of reservoir lands of Civil Works Projects. By informal agreement with the Resident Engineer or Manager (when training activities do not involve exclusive use, construction, or destruction of vegetation) or by permit from the District Engineer (for other activities when such activities are compatible with the operation and maintenance of the project and will not endanger the use by the general public of public access areas).

(3) Use of lands, by permit or otherwise, under the control of the other military departments.

(4) Use of lands by permit of other Government-owned land, including the public domain.

(5) Use by license or nominal rental lease of local, county, or State-owned public lands.

(6) Use of privately owned land by short-term co-use lease under the authority granted in § 552.39.

(7) Use of non-Government-owned land by lease.

(8) Acquisition of lands excess to the requirements of the other military departments.

(9) Acquisition of lands excess to the requirements of Federal agencies other than the military departments.

(10) Acquisition of the non-Government-owned land.

(11) As a rule of thumb, lands will not be acquired for training from any source when the value of the land exceeds that of rural farm land in the area.

(h) *Public notice and release of information relative to proposed real estate acquisitions.* It is the policy of the Department of the Army to give notice to the public and to release information to the public as early as possible (at the site selection stage) and as completely as possible, consistent with existing regulations. Even though opposition may develop in some cases because of early release of information as to proposed acquisitions, application of this policy should more often result in favorable public relations, general public support of proposed acquisitions, and material assistance in the selection of sites which will fulfill the military requirement and still have the least impact on the civilian economy. This policy will permit consideration of public preferences in the establishment of military facilities. Section 302 of the Act of July 14, 1960; Public Law 86-645, which is applicable to military as well as water resources public works projects, provides for dissemination of information on large new installations.

(1) *Restrictions relating to Agency Budget Estimates and Presidential Budget Recommendations.* Bureau of the Budget Circular No. A-10, as revised, places restrictions on disclosure of Agency Budget Estimates and Presidential Budget Recommendations. It provides that budget recommendations and estimates are administratively confidential until made public through formal transmittal of the budget to Congress. Public notice and release of information relative to proposed real property acquisitions will, therefore, exclude any information as to whether the proposed acquisition has been included in a pending budget not yet formally transmitted to the Congress or is to be included in a future budget. Public notice and release of information will be on the basis of "advance planning."

(2) *General application and exceptions.* Non-Government-owned real property generally is acquired by negotiations, based on its fair market value, as established by Government appraisal and regardless of who the owner is, how much the owner paid for the property, and how long the owner has owned the property. For this reason, public notice and release of information should not tend normally to increase the value of the land involved or create speculation therein. Experience has proved that interest of the Government in specific real property normally tends to discourage trafficking therein. Though normally the release of information should not result in subsequent disadvantage to the Government, information will not be released in any specific case where it might have that result. AR 345-15 applies to the acquisition of real property only in those instances in which the release of advance information on proposed plans might provide undue discriminatory advantage to private or personal interests.

(3) *Application to Army Reserve facilities.* During the preliminary site selection stage for Army Reserve facilities, the Army commander's representative will contact responsible local public officials to explain the nature of the proposed facility and to obtain their concurrence in the Army's acquisition and use of the site tentatively selected. Such a statement, including the names and titles of officials contacted, will be furnished by the Army commander to the District Engineer for inclusion in the Real Estate Planning Report. Release of information on Army Reserve centers will be made only by an authorized representative of the Army commander.

(i) *Use of unappropriated and nonnavigable water.* It is the policy of the Department of the Army to utilize unappropriated and nonnavigable water upon or under lands under jurisdiction in such a manner as is consonant with the purposes of water laws which have been enacted by the several States.

(j) *Permanent construction.* If permanent construction, defined as that which produces a building suitable and appropriate to serve a specific purpose for a maximum period of time (at least 25 years) and with a minimum of maintenance, is to be constructed by the Government, the Government must either hold or acquire title to the land (inclusive of all mineral rights and improvements) or a permanent easement interest, with the following exceptions:

(1) *Right of reuse by exercise of National Security Clause.* Property, including land or buildings, over which the Government currently holds the right of reuse by exercise of the National Security Clause.

(2) *Right of reuse by exercise of National Emergency Use Provision.* Property, including land or buildings, over which the Government holds the right of reuse by exercise of a National Emergency Use Provision. Inasmuch as such rights inure to the Government only during the period or periods of national emergency as may be declared by the President or the Congress and are extinguished by the termination thereof, every effort will be made to negotiate a lease covering such property under terms that would provide for the right of continuous possession by the Government for a minimum of 25 years.

(3) *Rights-of-way.* Property required as a site for installation of utility lines and necessary appurtenances thereto, provided a long-term easement or lease can be secured at a consideration of $1 per term or per annum.

(4) *Airbase.* Property required for airbases, provided such property can be acquired by lease containing provisions for:

(i) Right of continuous use by the Government under firm term or right of renewal, for a minimum of 50 years.

(ii) A rental consideration of $1 per term or per annum.

(iii) Reserving to the Government title to all improvements to be placed on the land and the right to dispose of such improvements by sale or abandonment.

(iv) Waiver by the lessor of any and all claims for restoration of the leased premises.

(v) Use of the property for "Government purposes" rather than for a specific purpose.

(5) *Reserve Components facilities.* Property required for facilities for the Reserve Components of the Armed Forces, provided such property can be acquired by lease containing provisions detailed in subparagraph (4) (i), (ii), (iii), and (iv) of this paragraph. When possible the insertion in a lease of provision restricting the use of the land to a specific purpose will be avoided; use of a term as "Government purposes" should be employed, whenever possible.

(6) *Air defense sites.* Property required for air defense sites provided such property can be acquired by lease containing provisions detailed in subparagraph (4) (i), (ii), and (iv) of this paragraph and in addition thereto a right of continuous use by the Government under a firm term or right of re-

newal for as long as required for defense purposes.

(7) *Exception by Assistant Secretary of Defense (Installations and Logistics).* Where leases (for airbases, facilities for Reserve Components of the Armed Forces, or air defense sites) can be obtained containing some but not all of the above-listed provisions or where leases (for all other types of installations upon which permanent construction is to be placed by the Government) can be obtained containing similar provisions and it is considered to be to the best interest of the Government to acquire a lesser interest than fee title, it will be necessary to obtain approval from the Assistant Secretary of Defense (Installations and Logistics) prior to placing permanent construction thereon.

(8) *Construction projects not in excess of $25,000.* Construction projects estimated to cost not in excess of $25,000 will not be considered as permanent construction for purposes of applying the above policy.

(9) *Industrial installations.* See paragraph (l) of this section.

(k) *No permanent construction.* Where temporary construction or no construction is to be placed by the Government, acquisition of a lesser interest (leasehold, easement, license, as appropriate) will generally be considered to be in the best interest of the Government, with the following exceptions:

(1) *Cost of construction.* Where any proposed temporary construction to be placed by the Government has an estimated cost equal to or in excess of the current market value of the property.

(2) *Rent plus restoration.* Where the calculated period of required use is of sufficient duration that the sum expended for rentals over this period plus restoration, if required, would exceed 50 percent of the current market value of the property. (Apply calculated period of required use or 20 years, whichever is less.)

(3) *Easement costing 75 percent of fee value.* Where the cost of acquiring an easement right exceeds 75 percent of the current fair market value of the property.

(l) *Industrial installations*—(1) *Definitions.* Industrial facilities as used herein are defined as plants, buildings, utilities, improvements, and additions and appurtenances thereto used for military production and related purposes, including testing and development. Nonseverable industrial facilities as used herein are defined as industrial facilities located on other than Government-owned land, and which, after erection or installation, cannot be removed without substantial loss of value or damage thereto, or to the premises where installed.

(2) *Policy.* Industrial facilities will be located on land owned by the Government or in which the Government has a permanent, disposable interest. Nonseverable industrial facilities will be located on land in which the Government has a disposable interest equal in term to the estimated useful life of the facilities, unless the Head of a Procuring Activity, with consideration to any nonrecoverable costs involved, determines that such location is not feasible. If the Head of a Procuring Activity makes this determination, he may authorize the location of such facilities on other land, provided:

(i) The estimated useful life of the facilities will not extend beyond the contract under which the facilities are installed or the completion of the work for which the facilities are provided; or

(ii) The contractor agrees to purchase the facilities upon the end of the facilities contract at the acquisition cost of the facilities, less depreciation; or

(iii) The Secretary approves other provisions as being in the interest of national defense.

(iv) If location on land in which the Government does not have a disposable interest, as above set out, is authorized under subdivision (i), (ii), or (iii) of this subparagraph, the Government must have the right to abandon the facilities in place, with no obligation to restore or rehabilitate the facilities or the premises on which they are located.

(m) *Commercial and industrial type facilities*—(1) *Policy.* Privately owned or Government-owned and privately operated commercial and industrial type facilities will be used to the greatest extent practicable, recognizing the basic military necessity for integrated, self-sustaining units responsible to command and the necessity for operating anywhere in the world. It is the policy of the Department of the Army not to engage in the operation of industrial or commercial type facilities unless it can be demonstrated that it is necessary for the Government itself to perform the required work or service.

(2) *Definition.* Commercial and industrial type facilities are defined as those devoted to an activity which normally might be performed by private industry (except commissaries, post exchanges, and nonappropriated fund activities) including, but not limited to, warehouses, motor repair shops, bakeries, laundries, and drycleaning facilities.

(n) *Department of Defense policy relative to liaison with Governor of Commonwealth of Puerto Rico.* By letter dated August 19, 1953, the Secretary of Defense informed the Governor of the Commonwealth of Puerto Rico that the Department of Defense would establish liaison with the Governor to coordinate all military requirements for land acquisition in Puerto Rico. By memorandum dated August 19, 1953, the Secretary of Defense instructed that such liaison would be established under the direction of the Department of the Army, in coordination with the other interested services. On September 8, 1953, the Department of the Army requested the Commander in Chief, Caribbean Command, to establish such liaison. Liaison is being maintained locally between the Commandant of the Caribbean Sea Frontier and the Chairman of the Puerto Rico Planning Board. The liaison applies to the proposed acquisition of title or any interest in land which is other than (Federal) Government-owned land. In all cases, liaison action will be initiated during the advance planning or site selection stages. The purpose is to give Puerto Rican officials advance notice of military real property requirements and to give them an opportunity to suggest suitable alternatives in an effort to improve public relations with Puerto Rican officials, landowners, and the general public.

2. In § 552.37, paragraphs (a), (c)(2), and (e) are revised, as follows:

§ 552.37 Acquisition by Chief of Engineers.

(a) *Statutory authority.* The Chief of Engineers, under the direction of the Secretary of the Army, is charged with the acquisition of all real estate for the use of the Department of the Army (10 U.S.C. 3038).

* * * * *

(c) *Delegated authority.* * * *

(2) Leasehold acquisition where the estimated annual rental for any single leasehold does not exceed $25,000 and the acquisition is not contraversial, unusual, or inconsistent with Department of Army policies.

* * * * *

(e) *Responsibility for all negotiations.* To avoid any possibility of misunderstanding by property owners and resultant embarrassment to the Department of the Army, under no circumstances will commitments be made either by negotiation or by dissemination of information to property owners, by any authority other than the Chief of Engineers. This is not intended to restrict the public notice and release of general information as set forth in § 552.34(h).

([AR 405-10, May 28, 1962] (Sec. 3012, 70A Stat. 157; 10 U.S.C. 3012))

J. C. LAMBERT,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 62-6291; Filed, June 28, 1962; 8:45 a.m.]

Title 41—PUBLIC CONTRACTS

Chapter 5—General Services Administration

MISCELLANEOUS AMENDMENTS TO CHAPTER

Chapter 5 of Title 41 is amended as follows:

PART 5-1—GENERAL

Sections 5-1.602(b)(1), 5-1.605(a), 5-1.606-55, 5-1.606-56, 5-1.606-57, are revised, to read as follows:

§ 5-1.602 Establishment and maintenance of a list of firms or individuals debarred or ineligible.

* * * * *

(b) * * *

(1) Publication of the GSA Debarred Bidders List shall be based, in the case of GSA administrative debarments, on determinations made by the service performing the debarment, or confirmation of such debarment by the Administrator (or his designee); and in the case of statutory debarments on appropriate notification by the Comptroller General, the Secretary of Labor, or other debarring agency.