

the group of 99 LEAs serving K-8. The LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

Option 2: Instead of selecting the group of 99, the LEA may select as its generally comparable group only those LEAs within the 99 that have an ADA above the median ADA for the 99; that is, the group of 49. The LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

Option 3: Instead of selecting either of the groups described in Options 1 and 2, the LEA may select as its generally comparable group only those LEAs within the 99 that are outside an SMSA; that is, the group of 36. The LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

Option 4: Instead of selecting any of the groups described in Options 1, 2, and 3, the LEA may select as its generally comparable group only those LEAs that *both* have an ADA above the median ADA for the 99 *and* are outside an SMSA; that is, the group of 13. The LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

However, as provided in § 222.339(b)(2), if the SEA were to have identified fewer than 10 LEAs under any factor or combination of factors, the SEA would not have established a group for this factor or combination of factors, and the LEA would be precluded from using this factor or combination of factors in recommending its local contribution rate to the Secretary.

(20 U.S.C. 238(d)(3)(A))

§ 222.35 Computation of local contribution rates.

Except as otherwise specified in the Act, if an LEA wishes to recommend to the Secretary a local contribution rate based on generally comparable LEAs within its State, the LEA selects the group of generally comparable LEAs, and the SEA, subject to the Secretary's review and approval, computes the LEA's local contribution rate as follows:

(a)(1) The SEA shall compile the aggregate current expenditures of the comparable LEAs during the second fiscal year preceding the fiscal year for which the computation is made.

(2) For purposes of this section, the SEA shall consider only those aggregate current expenditures made by the comparable LEAs from revenues derived from local sources.

(b) The SEA shall compile the aggregate number of children in ADA to whom the generally comparable LEAs provided free public education during the second fiscal year preceding the fiscal year for which the computation is made.

(c) The SEA shall divide—

(1) The aggregate current expenditures determined under paragraph (a) of this section; by

(2) The aggregate number of children determined under paragraph (b) of this section.

(d) If a rate computed under this section is lower than the rate guaranteed by the Act, the Secretary

bases the LEA's payment on the guaranteed rate.

(20 U.S.C. 238(d)(3)(A))

§ 222.36 Determination of additional assistance.

(a) The provisions of this section govern an LEA that applies to the Secretary for assistance under section 3(d)(2)(B) of the Act, in addition to apply for a regular payment under section 3.

(b) If the LEA is applying for a regular payment under section 3 based on a local contribution rate guaranteed by the Act or a rate previously determined for the LEA under § 222.31(a)(2), the Secretary—

(1) In determining the amount of additional assistance, considers the LEA comparable to all LEAs in its State; and

(2) Establishes a rate of the additional assistance.

(c) If the LEA, in applying for a regular payment under section 3, recommends to the Secretary a local contribution rate based on generally comparable LEAs in its State, the Secretary—

(1) In determining the amount of the additional assistance, considers as comparable LEAs the same LEAs that the applicant identifies as comparable in its application for a regular payment under section 3; and

(2) Establishes a rate for additional assistance.

(20 U.S.C. 238(d)(2)(B))

[FR Doc. 84-8637 Filed 3-29-84; 8:45 am]

BILLING CODE 4000-01-M

Federal Register

Friday
March 30, 1984

Part X

Department of Commerce

48 CFR Ch. 13

Acquisition Regulations; Final Rule

DEPARTMENT OF COMMERCE

48 CFR Ch. 13

Acquisition Regulations; Establishment of Chapter

AGENCY: Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce (DOC) issues this rule to be known as the Commerce Acquisition Regulation (CAR). This rule is established as Chapter 13 of Title 48 of the Code of Federal Regulations. The purpose of the CAR is to implement and supplement the Federal Acquisition Regulation (FAR) which has been separately promulgated by the General Services Administration, Department of Defense, and National Aeronautics and Space Administration as Chapter 1 of Title 48 of the Code of Federal Regulations. The FAR was published in the September 19, 1983 issue of the *Federal Register*. The FAR is promulgated as the uniform, simplified acquisition regulation called for by Executive Order 12352, Federal Procurement Reforms.

The FAR will supersede the Defense Acquisition Regulation, the Federal Procurement Regulations, and the National Aeronautics and Space Administration Procurement Regulation. Civilian agency implementations of the Federal Procurement Regulations will become obsolete as a result of the promulgation of the FAR. For this reason, the Department of Commerce Procurement Regulations (DOCPR), codified as Chapter 13 of Title 41 of the Code of Federal Regulations, and all related implementation and supplementation thereof is superseded by this final rule.

The intended effect of the FAR is to simplify the Federal procurement process by adopting a uniform regulation for all agencies. The uniform regulation will eliminate the confusion caused contractors by differing policies among the various Federal agencies. The intended effect of the CAR is to implement the FAR where required and to supplement the FAR in areas where there is no FAR coverage of Commerce unique policy.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: John Dammeyer, Office of Procurement Management, U.S. Department of Commerce, 14th & Constitution Ave., NW., Washington, D.C. 20230, Telephone: (202) 377-4248

SUPPLEMENTARY INFORMATION: The Notice of Proposed Rulemaking was

published on Page 6508 of the *Federal Register* on February 22, 1984 and invited comments by March 23, 1984.

Executive Order 12291

This rule is exempt from the provisions of Executive Order 12291. The application of this exemption to this rule has been agreed to by the Office of Management and Budget.

Regulatory Flexibility Act

DOC certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

Paperwork Reduction Act

This rule does not impose information collection and recordkeeping requirements on the public beyond those requirements established by the FAR. This rule was reviewed by the Office of Management and Budget (OMB) in accordance with section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq.

National Environmental Policy Act

DOC has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 et seq. 1976) and the regulations (40 CFR Parts 1500-1508) and therefore does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

List of Subjects in 48 CFR Chapter 13

Government procurement, Commerce acquisition regulations.

For the reasons set forth in the preamble, Title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, D.C., March 27, 1984.

Hugh L. Brennan,

Director, Office of Procurement and Federal Assistance.

Title 48 of the CFR is amended by establishing Chapter 13 to read as follows:

Chapter 13—Department of Commerce

SUBCHAPTER A—GENERAL

Part

- 1301—General
- 1302—Definitions of words and terms
- 1303—Improper business practices and personal conflicts of interest
- 1305—Publicizing contract actions

SUBCHAPTER B—ACQUISITION PLANNING

- 1307—Acquisition planning

Sec.

- 1308—Required sources of supplies and services
- 1309—Contractor qualifications

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

- 1313—Small purchase and other simplified purchase procedures
- 1314—Formal advertising
- 1315—Contracting by negotiation
- 1316—Types of contracts
- 1317—Special contracting methods

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

- 1319—Small business and small disadvantaged business concerns
- 1322—Application of labor laws to government acquisitions
- 1324—Protection of privacy and freedom of information
- 1325—Foreign acquisition

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

- 1331—Contract cost principles and procedures
- 1332—Contract financing
- 1333—Disputes and appeals

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

- 1334—Major system acquisition
- 1336—Construction and architect-engineer contracts
- 1337—Service contracting

SUBCHAPTER G—CONTRACT MANAGEMENT

- 1342—Contract administration
- 1345—Government property

SUBCHAPTER H—CLAUSES AND FORMS

- 1352—Solicitation provisions and contract clauses
- 1353—Forms

SUBCHAPTER A—GENERAL

PART 1301—GENERAL

Subpart 1301.1—Purpose, Authority, Issuance

Sec.

- 1301.100 Scope of subpart.
- 1301.101 Purpose.
- 1301.102 Authority.
- 1301.103 Applicability.
- 1301.104 Issuance.
- 1301.104-1 Publication and code arrangement.
- 1301.104-2 Arrangement of regulations.
- 1301.104-3 Copies.

Subpart 1301.2—Administration

- 1301.201-1 The two FAR councils.

Subpart 1301.3—Agency Acquisition Regulations

- 1301.301 Policy.
- 1301.303 Codification and public participation.

Subpart 1301.4—Deviations

- 1301.402 Policy.

Subpart 1301.5—Agency and Public Participation.**Sec.**

1301.501 Solicitation of agency and public views.

Subpart 1301.6—Contracting Authority and Responsibilities

1301.601 General.

1301.601-70 Responsibilities of Heads of Contracting Activities.

1301.601-71 Responsibilities of the Office of Procurement and Federal Assistance.

1301.603 Selection, appointment, and termination of appointment.

1301.603-70 Ratification of unauthorized contract awards.

1301.603-71 Responsibility of other Government personnel.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486 (c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1301.1—Purpose, Authority, Issuance**1301.100 Scope of subpart.**

This subpart states the relationship of the Commerce Acquisition Regulation (CAR) to the Federal Acquisition Regulation (FAR). This subpart also explains the purpose, authority and issuance of the CAR.

1301.101 Purpose.

(a) Chapter 13 of Title 48 of the Code of Federal Regulations shall be known as the Commerce Acquisition Regulation (CAR).

(b) The purpose of the CAR is to implement and supplement the FAR within the Department of Commerce. Since the CAR is intended to supplement and implement the FAR without paraphrasing or duplicating FAR language, the CAP should be read in relation to the FAR.

1301.102 Authority.

The CAR is prescribed by the Department Procurement Executive pursuant to a delegation initiating from the Secretary of Commerce in accordance with the Federal Property and Administrative Services Act of 1949, as amended, and other applicable law and regulation.

1301.103 Applicability.

The FAR and CAR apply to all acquisitions within the Department of Commerce.

1301.104 Issuance.**1301.104-1 Publication and code arrangement.**

(a) The CAR is published in (1) daily issues of the **Federal Register**, (2) cumulative form in the Code of Federal

Regulations (CFR), and (3) a separate loose-leaf edition.

(b) The CAR is issued as Chapter 13 of Title 48 of the CFR.

1301.104-2 Arrangement of regulations.

(a) *General.* The CAR is divided into the same parts, subparts, sections, subsections and paragraphs as the FAR. When FAR coverage is adequate by itself, there will be no corresponding CAR coverage.

(b) *Numbering.* Where the CAR implements the FAR, the CAR part, subpart, section or further subdivision will be numbered the same as the corresponding FAR part, subpart, section, or further subdivision except that the CAR implementation will be preceded by a 13 or 130 so that there are four numbers to the left of the first decimal. Where the CAR supplements the FAR, supplementing material will be preceded by the number 70 and above. The placement of the sequence of 70 numbers in relation to the decimal point will depend on what division of the FAR is supplemented.

(c) *References and citations.* (2) This regulation may be referred to as the Commerce Acquisition Regulation (CAR).

(3) References to FAR materials will include FAR and the identifying number, for example, FAR 1.402. Reference to CAR materials will consist of the identifying number, for example 1301.402.

1301.104-3 Copies.

(a) Copies of the CAR in Federal Register or CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, D.C. 20402. Requests should reference the CAR as Chapter 13 of Title 48 of the Code of Federal Regulations.

(b) Loose-leaf copies of the CAR are distributed within the Department by the Office of Procurement Management, Office of Procurement and Federal Assistance.

Subpart 1301.2—Administration**1301.201-1 The two FAR councils.**

(b) The Department representative to the Civilian Agency Acquisition Council will be a staff member of the Office of Procurement and Federal Assistance who will be appointed for that purpose by the Procurement Executive. The Office of Procurement and Federal Assistance (OPFA) will be responsible for coordinating and advocating Department proposed revisions to the FAR.

Subpart 1301.3—Agency Acquisition Regulations**1301.301 Policy.**

(a) The Procurement Executive will issue Department acquisition policy and procedure in the CAR when necessary to implement or supplement the FAR.

(b) The Office of Procurement and Federal Assistance may issue internal Department guidance in the form of Procurement Letters, policy manuals, or model operating procedures.

(c) Heads of Contracting Activities may issue internal operating procedures for their contracting activities. These internal operating procedures may include routine office procedures, procedures which implement policy prescribed by the Office of Procurement and Federal Assistance, and the dissemination of guidance or information to program officials who may be affected by the policy. Heads of Contracting Activities shall not prescribe policy and shall not issue any procedures which appear to be in conflict with policy issued by the Office of Procurement and Federal Assistance.

1301.303 Codification and public participation.

(a) The CAR is published as Chapter 13 of Title 48 of the Code of Federal Regulations.

(b) Public participation procedure is described in 1301.5.

Subpart 1301.4—Deviations**1301.402 Policy.**

Requests for authority to deviate from the provisions of the FAR or the CAR shall be submitted to the Office of Procurement and Federal Assistance as soon as the need to deviate is known. Requests shall be in writing and reasonably describe the deviation desired, the reason for the deviation, and the time by which a decision is needed. When timing is crucial, the written request should be preceded by a telephone request to the Office of Procurement and Federal Assistance. Requests for both individual deviations and class deviations shall be considered and decided upon by the Procurement Executive. When requests are received for class deviations from FAR provisions, the Procurement Executive shall consult with the chairperson of the Civilian Agency Acquisition Council. (see FAR 1.404). Individuals responsible for unauthorized deviations may be considered for disciplinary action as described in the Department Administrative Order on *Discipline* (DAO 202-751).

Subpart 1301.5—Agency and Public Participation

1301.501 Solicitation of agency and public views.

The initial CAR was published with a notice of proposed rulemaking inviting public comments, review and analysis of comments received, and publication of a final rule. The final rule included a discussion of the public comments received and described any changes made as a result of the comments. A future issuance under this title may or may not require publication for public participation, depending on whether the issuance is a significant revision of the FAR which alters the substantive meaning of any coverage in the FAR having a substantive impact on the public. Each future issuance will be considered on a case-by-case basis. If a future issuance is determined by the Procurement Executive to be a significant revision of the FAR, that issuance shall be published for public participation. Any issuance under this title shall be done by or with the concurrence of the Office of Procurement and Federal Assistance.

Subpart 1301.6—Contracting Authority and Responsibilities

1301.601 General.

Contracting authority vests with the Secretary of Commerce. The Secretary has delegated this authority to the Assistant Secretary for Administration who has delegated this authority, with the right to redelegate, to the Procurement Executive, as prescribed in the Department Administrative Order on *Procurement Authority* (DAO 208-2).

1301.601-70 Responsibilities of heads of contracting activities.

Heads of Contracting Activities shall be responsible for directing and maintaining efficient contract operations within their contracting activities. Adequate controls shall be established to assure compliance with applicable laws, regulations, and policy guidance from the Office of Procurement and Federal Assistance. Heads of Contracting Activities shall provide the necessary coordination and cooperation required for periodic oversight reviews conducted by the Office of Procurement and Federal Assistance.

1301.601-71 Responsibilities of the Office of Procurement and Federal Assistance.

The Office of Procurement and Federal Assistance shall establish Department-wide policy for contracting activities. Also, the Office of Procurement and Federal Assistance shall conduct periodic oversight reviews

of Department contracting activities to assure that Department contracting activities are operating efficiently and in accordance with the provisions of the FAR, the CAR, and OPFA policy.

1301.603 Selection, appointment, and termination of appointment.

The Department's systems for selection, appointment and termination of appointment of contracting officers is contained in the *Contracting Officer Certification/Warrant Program*.

1301.603-70 Ratification of unauthorized contract awards.

(a) The Department is not bound by any formal or informal type of agreement or contractual commitment which is made by persons who are not delegated contracting authority. When these unauthorized acts are discovered they shall be immediately reported to the Head of the Contracting Activity concerned. The Head of the Contracting Activity shall:

- (1) Immediately inform any person who is performing work as a result of an unauthorized commitment that the work is being performed at that person's risk;
- (2) Inform the person who made the unauthorized commitment of the seriousness of the act and the possible consequences;
- (3) Ensure receipt of documentation detailing the actions taken and the reasons for those actions; and
- (4) Decide whether ratification of the unauthorized act is proper, and take appropriate action.

1301.603-71 Responsibility of other Government personnel.

The responsibility of other Government personnel is generally described in the Department's procurement requisitioning guides and the Department Administrative Order on the *Procurement Planning System* (DAO 208-15). These documents are designed for internal Department use.

PART 1302—DEFINITIONS OF WORDS AND TERMS

Subpart 1302.1—Definitions

1302.1-1 Definitions.

Acquisition Executive The Acquisition Executive, as defined in OMB Circular A-109, means the Assistant Secretary for Administration. The Acquisition Executive monitors the development of major systems and reviews their progress through the major systems acquisition process.

Department When used in the CAR, Department means the Department of Commerce.

Head of the Agency means the Secretary of Commerce and those designees which have been delegated the authority to act for the Secretary of Commerce in specifically delegated areas. The head of the agency for procurement matters is the Assistant Secretary for Administration. This authority for procurement matters has been further delegated to the Procurement Executive pursuant to the Department Administrative Order on *Procurement Authority* (DAO 208-2). Where the term "Agency head or designee" is used, that term shall mean the Procurement Executive unless otherwise indicated in the CAR.

Head of the Contracting Activity means the official who has overall responsibility for managing the contracting activity, as more fully described in the Department Administrative Order on *Procurement Authority* (DAO 208-2).

Head of the contracting office means the official who heads the office that awards and administers contracts, as more fully described in the Department Administrative Order on *Procurement Authority* (DAO 208-2).

Procurement Executive means the official delegated broad procurement authority under the Department Administrative Order on *Procurement Authority* (DAO 208-2). Duties of the Procurement Executive include the following:

- (a) Prescribe and publish Department procurement policies, regulations and procedures;
- (b) Enter into, make determinations and decisions and take other actions, consistent with appropriate policies, regulations and procedures with respect to purchases, contracts, leases, sales, agreements and other transactions, except those required by law or regulation to be made by other authority;
- (c) Designate contracting officers and representatives thereof;
- (d) Establish clear lines of contracting authority;
- (e) Exercise priorities authority concerning the internal procurement needs of the Department, in accordance with the provisions of the Defense Production Act of 1950 (50 U.S.C. App. 2071, et seq.), Department of Defense Delegation of Priorities Authority, dated October 21, 1958, and applicable policies and regulations;
- (f) Evaluate and monitor the Department's procurement system performance;
- (g) Manage and enhance career development of the procurement work force;

(h) Examine, in coordination with the OFPP, the procurement system to determine specific areas where Government-wide performance standards should be established and applied and participate in the development of Government-wide procurement policies, regulations and standards;

(i) Determine areas for Department unique standards and develop unique Department-wide standards;

(j) Be the advocate for competition; and

(k) Certify to the Department head that the procurement system meets approved standards.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2)

PART 1303—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1303.1—Safeguards

Sec.
1303.101-3 Agency regulations.

Subpart 1303.2—Contractor Gratuities to Government Personnel

1303.203 Reporting procedures.

Subpart 1303.3—Reports of Identical Bids and Suspected Antitrust Violations

1303.302-70 Reporting requirements.

Subpart 1303.4—Contingent Fees

1303.409 Misrepresentations or Violations of the Covenant Against Contingent Fees.

Subpart 1303.5—Other Improper Business Practices

1303.502 Subcontractor kickbacks.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1303.1—Safeguards

1303.101-3 Agency regulations.

The agency rules implementing Executive Order 11222 are contained in the Department Administrative Order on *Employee Responsibilities and Conduct* (DAO 202-735).

Subpart 1303.2—Contractor Gratuities to Government Personnel

1303.203 Reporting procedures.

Suspected violations of the Gratuities clause shall be reported to the head of the contracting office in writing detailing the circumstances. The head of the contracting office will evaluate the

report and if the allegations appear to support a violation the matter will be referred to the Office of Inspector General in accordance with the Department Administrative Order on *Inspector General Investigations* (DAO 207-10).

Subpart 1303.3—Reports of Identical Bids and Suspected Antitrust Violations

1303.302-70 Reporting requirements.

(a) Executive Order 12430 revoked the requirement of Executive Order 10936 to submit a report to the Attorney General on identical bids.

(b) Suspected anti-competitive practices and antitrust law violations as described in FAR 3.301 and FAR 3.303 shall be reported to the general counsel through the Head of the Contracting Activity. A copy of the report shall be sent to the Procurement Executive concurrently with the submission to the general counsel.

Subpart 1303.4—Contingent Fees

1303.409 Misrepresentations or Violations of the Covenant Against Contingent Fees.

Suspected violations of the Covenant Against Contingent Fees shall be reported to the Office of Inspector General in accordance with the Department Administrative Order on *Inspector General Investigations* (DAO 207-10).

Subpart 1303.5—Other Improper Business Practices

1303.502 Subcontractor kickbacks.

Suspected violations of the Anti-Kickback Act shall be reported to the Office of Inspector General in accordance with the Department Administrative Order on *Inspector General Investigations* (DAO 207-10).

PART 1305—PUBLICIZING CONTRACT ACTIONS

Subpart 1305.5—Paid Advertisements

1305.502 Authority.

The authority to approve the publication of paid advertisements in newspapers for recruitment of personnel was delegated to personnel managers pursuant to the Department Administrative Order on *Recruitment, Selection and Placement* (DAO 202-330). The authority to approve the publication of paid advertisements in newspapers for other than recruitment of personnel is delegated to the heads of contracting offices.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2)

SUBCHAPTER B—ACQUISITION PLANNING

PART 1307—ACQUISITION PLANNING

Subpart 1307.1—Acquisition Plans

Sec.
1307.103 Agency-head responsibilities.

Subpart 1307.3—Contractor Versus Government Performance

1307.307 Appeals.

Subpart 1307.4—Equipment Lease or Purchase

1307.401 Acquisition considerations.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1307.1—Acquisition Plans

1307.103 Agency-head responsibilities.

The Department's procedures for acquisition planning are contained in the Department Administrative Order on the *Procurement Planning System* (DAO 208-15) and the Department Administrative Order on *Management of Automatic Data Processing Resources* (DAO 212-1).

Subpart 1307.3—Contractor Versus Government Performance

1307.307 Appeals.

The Department's appeals procedures of the cost-comparison is contained in the Department Administrative Order on the *Acquisition of Commercial or Industrial Products and Services Needed by the Department of Commerce* (DAO 201-41).

Subpart 1307.4—Equipment Lease or Purchase

1307.401 Acquisition considerations.

The contracting officer shall decide whether to acquire equipment by lease or purchase.

PART 1308—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 1308.1—Excess Personal Property

Sec.
1308.101 Definition.

Subpart 1308.3—Acquisition of Printing and Related Services

1308.302 Policy.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1308.1—Excess Personal Property

1308.101 Definition.

The authority to designate personal property as excess is delegated to the Director of the Office of Property and Building Management or designee.

Subpart 1308.8—Acquisition of Printing and Related Services

1308.802 Policy.

The Director of the Office of Information Services is the central printing authority for liaison with the Joint Committee on Printing and the Public Printer.

PART 1309—CONTRACTOR QUALIFICATIONS

Subpart 1309.4—Debarment, Suspension and Ineligibility

Sec.

1309.403 Definitions.

1309.470 Procedures for debarment, suspension and ineligibility.

1309.470-1 Scope of section.

1309.470-2 Consolidated list of debarred, suspended, and ineligible contractors.

1309.470-3 Agency records.

1309.470-4 Procedures on debarment.

1309.470-5 Period of debarment.

1309.470-6 Scope of debarment.

1309.470-7 Procedures on suspension.

1309.470-8 Period of suspension.

1309.470-9 Scope of suspension.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1309.4—Debarment, Suspension and Ineligibility

1309.403 Definitions.

"Debarment official" means the Procurement Executive.

"Suspension official" means the Procurement Executive.

1309.470 Procedures for debarment, suspension and ineligibility.

1309.470-1 Scope of section.

This section prescribes Department procedures for: (a) Distribution, use and maintenance of GSA's consolidated list of debarred, suspended, and ineligible contractors; and (b) debarment and suspension of Government contractors.

1309.470-2 Consolidated list of debarred, suspended, and ineligible contractors.

The following procedures apply to GSA's consolidated list of debarred, suspended, and ineligible contractors:

(a) The Procurement Executive shall notify GSA of any Department imposed debarments or suspensions of a contractor or any modification or rescission of these actions.

(b) GSA's consolidated list shall be distributed to the Department contracting activities by the Office of Small and Disadvantaged Business Utilization (OSDBU).

(c) Preliminary and ordinary inquiries concerning GSA's consolidated list should be made from the contracting office to the agency or authority which took the action. When unique or complex matters are concerned, the contracting office shall also inform the Office of Procurement and Federal Assistance.

(d) Personnel in all contracting offices should be familiar with GSA's consolidated list and all updates.

1309.470-3 Agency records.

The Office of Small and Disadvantaged Business Utilization (OSDBU) shall maintain records relating to each suspension or debarment action taken by the Department.

1309.470-4 Procedures on debarment.

(a) *Investigation and referral.* Personnel in all contracting offices shall be familiar with the causes for debarment (FAR 9.406-2) and shall be alert to information which indicates that a contractor (to which the Department plans to award a contract) has committed an action which is a cause for debarment. If a contractor not on the list has committed an action which is a cause for debarment, heads of contracting offices shall determine which other agencies award contracts to this firm and if any of these agencies have initiated, or plan to initiate debarment actions.

(1) If another agency is considering debarment, the Head of the Contracting Activity shall promptly report this fact and recommend action to the Procurement Executive after discussions with general counsel. Within 30 days after receipt of notice, the Procurement Executive shall decide whether it is necessary for the Department to proceed with a debarment action.

(2) If another agency is not considering debarment, the Head of the Contracting Activity shall promptly report this fact and recommend action to the Procurement Executive after discussions with general counsel. The Head of the Contracting Activity shall

attach all available documenting evidence to support the recommendation. The mere existence of a cause for debarment does not require that a contractor be debarred. The seriousness of the contractor's acts or omissions and any mitigating factors shall be considered in recommendations for action and any debarment decision.

(b) *Decision making process.* Upon receipt of a debarment recommendation, the Procurement Executive shall review all available evidence and shall promptly determine whether or not to proceed with debarment. The Procurement Executive may refer the matter to the Office of Inspector General for further investigation. After completion of any additional review or investigations, the Procurement Executive shall make a written determination. A copy of this determination shall be promptly sent to the initiating contracting office. (See FAR 9.406-3(b).)

(c) Notice of proposal to debar. (See FAR 9.406-3(c).)

(d) Debarment official's decision. (See FAR 9.406-3(d).)

(e) Notice of debarment official's decision. (See FAR 9.406-3(e).)

1309.470-5 Period of debarment.

(See FAR 9.406-4)

1309.470-6 Scope of debarment.

(See FAR 9.406-5)

1309.470-7 Procedures on suspension.

(a) *Investigation and referral.* Heads of contracting offices may recommend suspension of a firm or individual based on the causes for suspension listed in FAR 9.407-2. The procedures for investigation and referral of suspension are the same as those contained in 1309.470-4(a). When using that subsection for suspension procedures, substitute the word "suspension" for the word "debarment".

(b) *Decision making process.* Procedures for the decision making process of suspensions are the same as those contained in 1309.470-4(b) except that an initial decision by the Procurement Executive regarding debarment results in a proposal to debar, whereas the initial decision for suspension results in immediate suspension. (See FAR 9.407-3(b).)

(c) Notice of suspension. (See FAR 9.407-3(c).)

(d) Suspending official's decision. (See FAR 9.407-3(d).)

1309.470-8 Period of suspension.

(See FAR 9.407-4)

1309.470-9 Scope of suspension.

(See FAR 9.407-5)

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES**PART 1313—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES****Subpart 1313.1—General****1313.106-70** Technical evaluation and written or oral discussion procedure for negotiated small purchases.**Subpart 1313.1—General****1313.106-70** Technical evaluation and written or oral discussion procedure for negotiated small purchases.

(a) *Technical evaluation.* A technical evaluation may be requested for negotiated small purchases, at the discretion of the contracting officer. The manner and extent of the technical evaluation shall be determined by the contracting officer, except that the technical evaluation shall not be as formal or as extensive as required for procurements above the small purchase dollar threshold.

(b) *Written or oral discussions.* Written or oral discussions may be conducted with all qualified sources which submit quotations for negotiated small purchases. The contracting officer shall determine the manner, extent, and need for written or oral discussions, except that discussions shall not be as formal or as extensive as required for procurements above the small purchase dollar threshold.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2)

PART 1314—FORMAL ADVERTISING**Subpart 1314.4—Opening of Bids and Award of Contract**

Sec.

1314.406-3 Other mistakes disclosed before award.**1314.407-8** Protests against award.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1314.4—Opening of Bids and Award of Contract**1314.406-3** Other mistakes disclosed before award.

(e) The authority to make the determinations listed in FAR 14.406-3(e)

concerning mistakes in bids was delegated to the Heads of Contracting Activities.

1314.407-8 Protests against award.(a) *General.*

(1) Protests must be received within ten working days after the basis for protest is known or should have been known unless good cause is shown to extend the time limit. However, protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing time for receipt of initial proposals shall be filed prior to bid opening or the closing time for receipt of initial proposals.

(2) The Department-wide contact point for protests to GAO against an award of a contract is the Office of the Assistant General Counsel for Administration. This office shall represent the Department before the GAO on protests against award. This office shall furnish all necessary correspondence concerning protests to GAO, including the Department's report in response to the protest to GAO.

(b) *Protests before award.* The head of the contracting office is the designated official to approve award of a contract before a protest against award is resolved.

PART 1315—CONTRACTING BY NEGOTIATION**Subpart 1315.3—Determinations and Findings to Justify Negotiation**

Sec.

1315.307 Signatory authority.**Subpart 1315.4—Solicitation and Receipt of Proposals and Quotations****1315.413-2** Alternate II.**Subpart 1315.5—Unsolicited Proposals****1315.501** Definitions.**1315.504** Advance guidance.**1315.506** Agency procedures.**Subpart 1315.6—Source Selection****Subpart 1315.612—Formal source selection.****Subpart 1315.8—Price Negotiation****1315.804-3** Exemptions from or waiver of submission of certified cost or pricing data.**1315.805-70** Audit as an aid in proposal analysis.**Subpart 1315.9—Profit****1315.902** Policy.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1315.3—Determinations and Findings to Justify Negotiation**1315.307 Signatory authority.**

Determinations and findings for contracts negotiated under 41 U.S.C. 252(c)(11) shall be signed by the Assistant Secretary for Administration when more than \$25,000 will be obligated. Determinations and findings for contracts negotiated under 41 U.S.C. 252(c)(11) which obligate \$25,000 or less may be signed by the head of the contracting office.

Subpart 1315.4—Solicitation and Receipt of Proposals and Quotations**1315.413-2 Alternate II.**

The procedures described in FAR 15.413-2 may be used if approved by the Head of the Contracting Activity or designee.

Subpart 1315.5—Unsolicited Proposals**1315.501 Definitions.**

"Coordinating office" means the head of the contracting office.

1315.504 Advance guidance.

(a) Department employees should encourage inquiries on Department missions, needs and methods of operation and refer inquiries to the program office concerned with the subject matter of the inquiry. Any inquiry which could reasonably lead to a procurement action should be promptly coordinated with the appropriate head of the contracting office.

(b) When it appears that a person or firm is interested in making a proposal, that person or firm should be referred to the head of the contracting office concerned who will provide instructions for submission of an unsolicited proposal.

(c) Heads of contracting offices shall provide instructions for submission of unsolicited proposals to each person or firm which expresses an interest in submitting an unsolicited proposal.

1315.506 Agency procedures.

(a) The head of the contracting office is the contact point to coordinate the receipt and handling of unsolicited proposals.

(b) The head of the contracting office shall promptly acknowledge receipt of unsolicited proposals by letter.

(c) The head of the contracting office shall comply with FAR 15.509 concerning the limited use of data.

(d) Promptly after receipt of an unsolicited proposal which conforms to this regulation, the head of the

contracting office shall forward a copy of the proposal along with instructions for technical evaluation of unsolicited proposals to the appropriate program office for technical evaluation. If more than one Department activity has an interest in a proposal, copies of the proposal shall be circulated to each interested office.

(e) Program offices receiving unsolicited proposals for evaluation shall conduct the evaluation in accordance with this Subpart 1315.5, FAR Subpart 15.5, and any additional guidance provided by the Office of Procurement and Federal Assistance.

(f) Program offices shall complete the recommendation and evaluations and submit them along with all copies of the unsolicited proposal, and a written justification for a noncompetitive procurement action if appropriate, to the head of the appropriate contracting office within 60 days of receipt of a proposal for evaluation.

(g) No part of an unsolicited proposal shall be duplicated or circulated outside of the evaluation office. Each unsolicited proposal shall be closely safeguarded to prevent disclosure of any restricted data. Only heads of contracting offices or their designees may duplicate unsolicited proposals and then only to facilitate evaluation by more than one technical evaluation office.

Subpart 1315.6—Source Selection

1315.612 Formal source selection.

(e) *Safeguarding information.* The contracting officer is designated as the releasing authority for source selection information.

Subpart 1315.8—Price Negotiation

1315.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(i) *Waiver for exceptional cases.* The head of the contracting office is delegated the authority to waive the requirement for submission of certified cost or pricing data in exceptional cases.

1315.805-70 Audit as an aid in proposal analysis.

(a) Preaward audit services include:

(1) The submission of an auditor's report which sets forth the results of review and analysis of cost data submitted by contractors as part of their pricing proposals, reviews of contractors' accounting systems, recorded contract costs, and other related matters; and

(2) Personal consultation and advice regarding the use of the auditor's report in the negotiation and award of a contract.

(b) Requests for audit services should be sent to the External Audit Division, Office of Inspector General, Herbert C. Hoover Building.

(c) Preaward audits should not be routinely requested for actions below the dollar threshold specified in FAR 15.805-5. Before requesting audits below the dollar threshold, the contracting office should consider using price or cost analysis techniques, recent audit reports, price negotiation memoranda, and other relevant information regarding the offer to establish the reasonableness of price. However, audits should be considered for proposals below the specified dollar thresholds in the following circumstances:

(1) The contracting officer has reason to doubt the adequacy of the contractor's accounting policies or cost systems;

(2) The contractor has substantially changed its methods or levels of operation;

(3) Previous unfavorable experience indicates that the contractor's estimating, accounting, or purchasing methods may be unreliable; or

(4) The proposal concerns a new product for which cost experience is lacking.

Subpart 1315.9—Profit

1315.902 Policy.

(a) Except as provided in (b) and (c) below, a structured approach for determining profit or fee prenegotiation objectives shall be used in the negotiation of all contracts, subcontracts, and contract modifications above \$100,000 where adequate price competition does not exist. A structured approach for determining profit or fee prenegotiation objectives may be used at lower dollar thresholds.

(b) Regardless of whether price competition exists, the structured approach for determining profit or fee prenegotiation objectives is not required for negotiation of contracts, subcontracts, and contract modifications for the following:

(1) Architect-engineering contracts;

(2) Management contracts for operation or maintenance of Government facilities;

(3) Construction contracts;

(4) Contracts primarily requiring delivery of material supplied by subcontractors;

(5) Termination settlements;

(6) Cost-plus-award-fee contracts; and

(7) Unusual pricing situations where the structured approach has been determined to be unsuitable. This exception must be justified in writing

and signed by the head of the contracting office.

(c) In many circumstances, an examination of cost and profits is not required. Where adequate price competition exists and in other situations where cost analysis is not required (e.g., established catalog or market prices of commercial items sold in substantial quantities to the general public or prices set by law or regulation), contracts may be awarded without regard to the amount of profit involved.

(d) Additional internal instruction on the use of the structured approach can be found in Procurement Letters or policy manuals issued by the Office of Procurement and Federal Assistance.

PART 1316—TYPES OF CONTRACTS

Subpart 1316.3—Cost-Reimbursement Contracts

Sec.

1316.306 Cost-plus-fixed-fee contracts.

Subpart 1316.4—Incentive Contracts

1316.404-2 Cost-plus-award-fee contracts.

Subpart 1316.6—Time-and-Materials, Labor-Hour and Letter Contracts

1316.603-3 Limitations.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1316.3—Cost-Reimbursement Contracts

1316.306 Cost-plus-fixed-fee contracts.

The contracting officer is delegated the authority to sign a determination and findings establishing the basis for application of the statutory fee limitation.

Subpart 1316.4—Incentive Contracts

1316.404-2 Cost-plus-award-fee contracts.

(d) *Fee determination plans.* The award fee determination plan shall include both technical performance (including scheduling as appropriate) and business management consideration tailored to the needs of the particular situation. The goals and evaluation criteria should be results-oriented. The award fee should concentrate on the end product of the contract. However, equal employment opportunity, small business programs, and functional management areas, such as safety and security, cannot be disregarded and may be appropriately part of the criteria upon which to base the award fee. Specific

goals or objectives should be established in relation to each performance evaluation criterion against which contractor performance is measured.

Subpart 1316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1316.603-3 Limitations.

The head of the contracting office is the designated official for executing a determination and findings that no contract other than a letter contract is suitable.

PART 1317—SPECIAL CONTRACTING METHODS

Subpart 1317.4—Leader Company Contracting

Sec.
1317.402 Limitations.

Subpart 1317.5—Interagency Acquisitions Under the Economy Act

1317.502 General.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1317.4—Leader Company Contracting

1317.402 Limitations.

Leader company contracting is authorized by the Department only when approved in writing by the Procurement Executive.

Subpart 1317.5—Interagency Acquisitions Under the Economy Act

1317.502 General.

The head of the contracting office is delegated the authority to determine if it is in the Government's interest to place orders for supplies or services with another agency.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1319—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 1319.2—Policies

1319.201 General policy.

(c) The Director of the Office of Small And Disadvantaged Business Utilization (OSDBU) is responsible for administering the Department's small and small disadvantaged business programs.

(d) The Head of the Contracting Activity or designee shall appoint a small business and disadvantaged

business specialist for the contracting activity concerned.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2)

PART 1322—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1322.1 Basic-Labor Policies

Sec.
1322.103-4 Approvals.

Subpart 1322.6—Walsh-Healey Public Contracts Act

1322.608-4 Award pending final determination.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1322.1—Basic Labor Policies

1322.103-4 Approvals.

The contracting officer is the designated official for approving the total dollar amount and use of overtime for contract performance.

Subpart 1322.6—Walsh-Healey Public Contracts Act

1322.608-4 Award pending final determination.

If the contracting officer determines that award must be made before a determination of the offeror's eligibility as a manufacturer or regular dealer by DOL or SBA, that decision must be approved by the head of the contracting office.

PART 1324—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1324.1—Protection of Individual Privacy

Sec.
1324.103 Procedures.

Subpart 1324.2—Freedom of Information Act

1324.202 Policy.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1324.1—Protection of Individual Privacy

1324.103 Procedures.

(b)(2) The Department's procedures for implementing the Privacy Act are contained in 15 CFR Commerce and Foreign Trade, Subtitle A, Part 4b (Privacy Act) and the Department Administrative Order on *Implementing the Privacy Act of 1974* (DAO 205-15).

Subpart 1324.2—Freedom of Information Act

1324.202 Policy.

The Department's procedures for implementing the Freedom of Information Act (the Act) are contained in 15 CFR Commerce and Foreign Trade, Subtitle A, Part 4 (Public Information) and the Department Administrative Order on *Public Information* (DAO 205-12).

PART 1325—FOREIGN ACQUISITION

Subpart 1325.1—Buy American Act-Supplies

1325.102 Policy.

(a)(4) The contracting officer is authorized to make the written determination described by FAR 25.102(a)(4). If the contract is estimated to exceed \$1 million, the Head of the Contracting Activity must approve the determination.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486 (c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2)

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1331—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1331.2—Contracts With Commercial Organizations

1331.205-32 Precontract costs.

The payment of precontract costs must be approved in writing by the Head of the Contracting Activity.

PART 1332—CONTRACT FINANCING

Subpart 1332.1—General

Sec.
1332.102 Description of contract financing methods.

Subpart 1332.4—Advance Payments

1332.402 General.

Subpart 1332.6—Contract Debts

Sec.

1332.605 Responsibilities and cooperation among Government officials.

1332.616 Compromise actions.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1332.1—General**1332.102 Description of contract financing methods.**

(e)(2) Progress payments based on a percentage or stage of completion are authorized for use as a payment method under Department contracts and subcontracts for construction, alteration, repair, ship construction, ship alteration, and ship repair. For all other contracts, progress payments shall be based on costs except when the head of the contracting office determines that progress payments based on costs cannot be practically employed. In those cases, progress payments based on a percentage or stage of completion may be authorized when the head of the contracting office also determines that adequate safeguards are provided for the administration of those payments.

Subpart 1332.4—Advance Payments**1332.402 General.**

(e)(1) The Head of the Contracting Activity is delegated the authority to make findings and determinations and to approve contract terms concerning any advance payments, regardless of dollar amount.

(e)(2) Before authorizing advance payments, the Head of the Contracting Activity shall coordinate with the servicing finance office.

Subpart 1332.6—Contract Debts**1332.605 Responsibilities and cooperation among Government officials.**

(b) The contracting officer has primary responsibility for determining the amount of contract debt and notifying the servicing finance office of the debt due to the Government. The servicing finance office has primary responsibility for debt collection and reporting of all contract debts under the Debt Collection Act of 1982.

1332.616 Compromise actions.

The Department's policy on compromise actions is contained in the Department Administrative Order on *Collection and Other Disposition of Claims of the United States* (DAO 203-23).

PART 1333—DISPUTES AND APPEALS**Subpart 1333.70—Department Board of Contract Appeals**

Sec.

1333.70-1 Department Board of Contract Appeals.

The General Services Administration (GSA) Board of Contract Appeals serves as the Board of Contract Appeals for the Department.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2)

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING**PART 1334—MAJOR SYSTEM ACQUISITION****§ 1334.003 Responsibilities.**

(a) The Department's policy, procedures and responsibilities for implementing OMB Circular A-109 are contained in the Department Administrative Order on *Major System Acquisitions for the Department of Commerce* (DAO 208-3).

(b) When the Secretary approves a mission need, the Acquisition Executive shall designate the servicing contracting office for all phases of the major systems acquisitions.

(c) Within 60 days after identification of the servicing contracting office, the program manager shall complete and submit the overall acquisition plan to the Acquisition Executive for approval. The servicing contracting office shall assist in developing the overall acquisition plan. The overall acquisition plan shall include for each of the major systems acquisition phases (i.e., exploration of alternative systems, competitive demonstrations, full-scale development and production) a schedule for completion of at least each of the following functions:

- (1) Solicitation development in terms of mission need;
- (2) Advance publicity for the initial, exploration phase;
- (3) Issuance of requests for proposals (RFPs)
- (4) Closing dates for RFPs; and
- (5) Evaluation and award.

(d) The program manager shall submit all changes in the overall acquisition plan to the Acquisition Executive along with a written explanation of the need for each change. (See 1307.1 for acquisition planning, in general).

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order

10-5 and Department Administrative Order 208-2)

PART 1336—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**Subpart 1336.2—Special Aspects of Contracting for Construction**

Sec.

1336.209 Construction contracts with architect-engineer firms.

Subpart 1336.6—Architect-Engineer Services

1336.602-4 Selection authority.

1336.602-5 Short selection processes for contracts not to exceed \$10,000.

1336.603 Collecting data on and appraising firms' qualifications.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1336.2—Special Aspects of Contracting for Construction**§ 1336.209 Construction contracts with architect-engineer firms.**

The head of the contracting office is delegated the authority to approve the exceptional circumstance of awarding a contract for construction of a project to the firm that designed the project. Any approval of this type of award must be justified in writing and signed by the head of the contracting office.

Subpart 1336.6—Architect-Engineer Services**§ 1336.602-4 Selection authority.**

(a) The Head of the Contracting Activity is the designated selection authority for architect-engineer service contracts over the small purchase dollar threshold.

§ 1336.602-5 Short selection processes for contracts not to exceed \$10,000.

Both short selection processes prescribed in FAR 36.602-5 may be used for contracts not to exceed \$10,000. However, in either case the contracting officer shall review the report, approve it and commence negotiations or return it for appropriate revision.

§ 1336.603 Collecting data on and appraising firms' qualifications.

(a) *Establishing offices.* The Office of Small and Disadvantaged Business Utilization (OSDBU) is responsible for Department-wide receipt and maintenance of data on firms wishing to be considered for architect-engineer service contracts.

PART 1337—SERVICE CONTRACTING**Subpart 1337.2—Consulting Services**

Sec.

1337.202 General.

1337.205 Management controls.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1337.2—Consulting Services**§ 1337.202 General.**

The Department's contracts for consulting and related services are governed by FAR 37.2.

§ 1337.205 Management controls.

(b) The Department's management controls for acquisition of consulting and related services are contained in FAR 37.2.

SUBCHAPTER G—CONTRACT MANAGEMENT**PART 1342—CONTRACT ADMINISTRATION****Subpart 1342.1—Interagency Contract Administration and Audit Services****§ 1342.102-70 Post award audit reviews.**

(a) Generally, the final invoice shall not be approved until a close-out audit has been performed and all outstanding issues have been negotiated or resolved on the following types of contracts of \$100,000 and above:

- (1) Cost-reimbursement type contracts;
- (2) The cost-reimbursement portion of fixed-price contracts;
- (3) Letter contracts which provide for reimbursement of costs;
- (4) Time and materials contracts; and
- (5) Labor-hour contracts.

(b) Even though the \$100,000 postaward audit threshold generally applies, an audit may be requested regardless of the dollar amount when the contracting officer determines that an audit is justified under one of the following circumstances:

- (1) There is some evidence of fraud or waste;
- (2) The contractor's performance under the contract has been questionable;
- (3) The contractor had a high incidence of unallowable costs under a previous contract;
- (4) The contract is with a newly established firm, or a firm which has just begun dealing with the Government.

(c) All requests for audit services and all relevant documents shall be sent to the address listed in 1315.805-70(b). To ensure receipt and planned action on

audit requests, all requests should include a request for confirmation of receipt of the request and the date planned for delivery of the audit report.

(d) See the Department's *Model Procedures for Closeout of Completed Contracts* for further information on audits, including desk audits for contracts of less than \$100,000, and waiver of the need for post award audits.

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2)

PART 1345—GOVERNMENT PROPERTY**Subpart 1345.1—General****1345.102 Policy.**

The Department's policy and procedures on government property are contained in the *Property Management Policy Manual*, the *Property Management Procedure Handbook*, and the Department Administrative Order on *Property Management* (DAO 208-17).

(Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2)

SUBCHAPTER H—CLAUSES AND FORMS**PART 1352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES****Subpart 1352.0—General**

Sec.

1352.000 Scope of part.

1352.001 General policy.

Subpart 1352.1—Instructions for Using Provisions and Clauses

1352.100 Incorporation by reference.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1352.0—General**1352.000 Scope of part.**

This part implements and supplements FAR Part 52 by prescribing specific modifications, alterations, and deviations to FAR solicitation provisions and contract clauses for Department-wide use.

1352.001 General policy.

The Department's policy is to use the FAR and CAR prescribed solicitation

provisions and contract clauses unless specific authority for deviations has been obtained. (See 1301.4 for authority to deviate.) The use of uniform solicitation provisions and contract clauses should: provide a less burdensome way for potential contractors to respond to the Government's request for information concerning the evaluation of bids and proposals; expedite solicitation and contract preparation; and facilitate contract negotiation, administration and review. Each solicitation which incorporates contract clauses or solicitation provisions which deviate from those prescribed by the FAR and the CAR must be submitted to the Office of Procurement and Federal Assistance for prior review. The Office of Procurement and Federal Assistance will coordinate requests for approval of these solicitations by the Office of Management and Budget, in accordance with the Paperwork Reduction Act of 1980 and 5 CFR Part 1320.

Subpart 1352.1—Instructions for Using Provisions and Clauses**1352.100 Incorporation by reference.**

Contracting officers within the Department shall incorporate solicitation provisions and contract clauses by reference in solicitations and contracts to the maximum extent provided by applicable law and regulation. Incorporation by reference is the listing only by title, regulatory citation, and date of the provision or clause rather than the full text. The full text of the referenced solicitation provision or contract clause is contained in the Code of Federal Regulations (CFR); Chapter 1 of Title 48 for FAR provisions and clauses; and Chapter 13 of Title 48 for CAR provisions and clauses.

PART 1353—FORMS

Sec.

1353.000 Scope of part.

Subpart 1353.1—General

1353.103 Exceptions.

Subpart 1353.2—Prescription of Forms

1353.200 Scope of subpart.

1353.204 Administrative matters.

1353.204-2 Contract reporting (CD 338).

1353.232 Contract financing.

1353.232-2 (CD-45).

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

1353.000 Scope of part.

This part supplements FAR Part 53 by prescribing specific exceptions to FAR prescribed forms for Department-wide use.

Subpart 1353.1—General**1353.103 Exceptions.**

The Department's policy is to use the FAR and CAR prescribed forms unless prior specific authority for exceptions or alterations has been obtained. Requests for exceptions to FAR or CAR forms shall be submitted to the Office of Procurement and Federal Assistance in

the form prescribed by FAR 53.103 (See 1301.4 for authority to deviate).

Subpart 1353.2—Prescription of Forms**1353.200 Scope of subpart.**

This subpart prescribes forms for Department-wide use which are exceptions to FAR prescribed forms. This subpart is arranged by subject matter, in the same order and keyed to the parts of the FAR or CAR in which the form use requirements are addressed.

1353.204 Administrative matters.**1353.204-2 Contract reporting (CD 338).**

(a) *CD 338 (9/82) FPDS Code Sheet.*

CD 338 is prescribed for Department-wide use in reporting individual contract actions above the small purchase dollar threshold, in lieu of SF 279.

1353.232 Contract financing.**1353.232-2 (CD 45).**

CD 45 (3/76) Requisitioning Form. CD 45 is prescribed for Department-wide use in requesting action from the servicing contract office. This form is the vehicle for administrative approvals, clearances, and certification of the availability of adequate funds as specified in FAR 32.702.

Note.—This Appendix A will not appear in the Code of Federal Regulations.

BILLING CODE 3510-03-M

Appendix A—Forms

FORM CD-338 (REV. 9-82)		BATCH NUMBER U.S. DEPARTMENT OF COMMERCE	
FEDERAL PROCUREMENT DATA SYSTEM CODE SHEET			
DE2	<div style="border: 1px solid black; padding: 2px;"> <div style="display: flex; justify-content: space-between;"> Oper. U. FY C.O. TT </div> <div style="border-top: 1px solid black; height: 15px; width: 100%;"></div> </div>	Contract Number (5-19) (Order Number)	5-6 Oper. Unit Procured For, Table 1; 7-8 FY issued; 9-10 P or C Off., Table 1, 11 - TranType - Table 1A (DOC Proc. Data System Handbook.); 12-16 - Sequential No. 5 digits. (12 may be alpha for OS and NBS only). Left justified zero filled (e.g., 00012); 17-19 Leave blank.
DE3	<div style="border: 1px solid black; padding: 2px;"> <div style="display: flex; justify-content: space-between;"> Mod. No. (20-23) </div> <div style="border-top: 1px solid black; height: 15px; width: 100%;"></div> </div>	For Mods. - Use a sequential No. to identify 1st, 2nd, 3rd, etc. mod. to parent DOC contracts or to modify delivery orders against DOC or other agency contracts. Begin at right and leave unneeded spaces blank. On original contract leave blank.	
DE4	<div style="border: 1px solid black; padding: 2px;"> <div style="display: flex; justify-content: space-between;"> </div> <div style="border-top: 1px solid black; height: 15px; width: 100%;"></div> </div>	Contract Number (24-38) (See DOC Proc. Data System Handbook.)	
DE6	<div style="border: 1px solid black; padding: 2px;"> <div style="display: flex; justify-content: space-between;"> CY MO </div> <div style="border-top: 1px solid black; height: 15px; width: 100%;"></div> </div>	Effective Date of Award (44-47) Use 2 digits for Month	
DE7	<div style="border: 1px solid black; padding: 2px;"> <div style="display: flex; justify-content: space-between;"> Type Data Entry (48) </div> <div style="border-top: 1px solid black; height: 15px; width: 100%;"></div> </div>	0 - Original Record, 1 - Reversing Record, 2 - Correcting Record. (See DOC Proc. Data System Handbook for clarification)	
DE8	<div style="border: 1px solid black; padding: 2px;"> <div style="display: flex; justify-content: space-between;"> </div> <div style="border-top: 1px solid black; height: 15px; width: 100%;"></div> </div>	Report Period FY-Qtr. (49-51) For Reversing or Correcting Report enter for current fiscal year. For Qtr. use 1 - 4.	
DE10	<div style="border: 1px solid black; padding: 2px;"> <div style="display: flex; justify-content: space-between;"> State or Country (61-62) City or Place (County) (63-67) </div> <div style="border-top: 1px solid black; height: 15px; width: 100%;"></div> </div>	Principal Place of Performance (61-67) See FIPS CODE 55 (ANS X3.47)	
DE11	<div style="border: 1px solid black; padding: 2px;"> <div style="display: flex; justify-content: space-between;"> \$ </div> <div style="border-top: 1px solid black; height: 15px; width: 100%;"></div> </div>	Total Dollars Obligated or Deobligated (68-75) (Round to nearest dollar)	
DE14	<div style="border: 1px solid black; padding: 2px;"> <div style="display: flex; justify-content: space-between;"> </div> <div style="border-top: 1px solid black; height: 15px; width: 100%;"></div> </div>	Kind of Procurement Action (79) 1 - New Letter Contract, 2 - Definitive Contract Superseding Letter Contract, 3 - New Definitive Contract, 4 - Order under DOC Contract, 5 - Modification, 6 - GSA Supply Schedule, 7 - Order Under Another Agency's Contract, 8 - Termination for Cause, 9 - Termination for Convenience.	
DE16	<div style="border: 1px solid black; padding: 2px;"> <div style="display: flex; justify-content: space-between;"> Labor Surplus Area (81) </div> <div style="border-top: 1px solid black; height: 15px; width: 100%;"></div> </div>	1 - Labor Surplus Area - No Preference, 3 - Labor Surplus Area - Tie Bid Preference, 4 - (Reserved - Do Not Use), 5 - Not a Labor Surplus Area Preference Award, 6 - Combined Small Business/Partial Labor Surplus Area Set-Aside Preference, 7 - Total Labor Surplus/Small Business Set-Aside Preference (P.L. 95-89), 8 - Total Labor Surplus Set-Aside Preference (P.L. 95-89)	
DE17	<div style="border: 1px solid black; padding: 2px;"> <div style="display: flex; justify-content: space-between;"> Consultant Type Award (82) </div> <div style="border-top: 1px solid black; height: 15px; width: 100%;"></div> </div>	1 - Yes 2 - No	
DE18	<div style="border: 1px solid black; padding: 2px;"> <div style="display: flex; justify-content: space-between;"> </div> <div style="border-top: 1px solid black; height: 15px; width: 100%;"></div> </div>	Prod./Service Code (83-86) See DOC Proc. Data System Handbook, Encl. E, Appendix I.	
DE19	<div style="border: 1px solid black; padding: 2px;"> <div style="display: flex; justify-content: space-between;"> Procurement Method (87) </div> <div style="border-top: 1px solid black; height: 15px; width: 100%;"></div> </div>	1 - Two-step Formal Advertising, 2 - Other Formal Advertising, 3 - Negotiated Competitive, 4 - Negotiated Noncompetitive, 5 - Directed Proc. for Foreign Govts. If codes 1 or 2 are used, then DE20 - Extent of Competition and DE21 - Negotiation Authority do not apply and entries must be left blank.	
DE20	<div style="border: 1px solid black; padding: 2px;"> <div style="display: flex; justify-content: space-between;"> Extent of Competition (88-89) </div> <div style="border-top: 1px solid black; height: 15px; width: 100%;"></div> </div>	Competitive Negotiated: A1 - Small Business Total Set-Aside, A2 - Small Business Partial Set-Aside, A3 - Labor Surplus Set-Aside, A4 - Labor Surplus/Small Business Total Set-Aside, A9 - Other Negotiated Competitive. Non-Competitive Negotiated: B1 - Buy Indian, B2-8(a) Program, B3 - Follow-on After Competition, B9 - Other Negotiated Non-Competitive.	
DE21	<div style="border: 1px solid black; padding: 2px;"> <div style="display: flex; justify-content: space-between;"> Negotiation Authority (90-92) </div> <div style="border-top: 1px solid black; height: 15px; width: 100%;"></div> </div>	C01 - National Emergency C02 - Public Exigency C03 - Purchases not more than \$10,000 C04 - Personal or Professional Services C05 - Services of Educational Institutions C06 - Purchases Outside U.S. C07 - Medicine or Medical Supplies C08 - Supplies Purchased for Authorized Resale C09 - Perishable or Non-Perishable Subsistence C10 - Impractical to Secure Competition by Formal Advertising C11 - Experimental, Developmental, Test or Research C12 - Classified Purchases C13 - Technical Equipment Requiring Standardization and Interchangeability of Parts C14 - Negotiation after Advertising C15 - Otherwise Authorized by Law	
DE23	<div style="border: 1px solid black; padding: 2px;"> <div style="display: flex; justify-content: space-between;"> Type of Business (94-95) </div> <div style="border-top: 1px solid black; height: 15px; width: 100%;"></div> </div>	A1 - Small Business-Disadvantaged 8(a) A2 - Small Business-Owned by Minority Group A3 - Other Small Business B1 - Large Minority Business B2 - Other Large Business C1 - Non-Profit-Private Educational Organization C2 - Non-Profit-Hospital C3 - Non-Profit-Research Institution, Foundation, Laboratory C4 - Other Non-Profit Institutions D1 - State/Local Government-Educational D2 - State/Local Government-Hospital D3 - State/Local Government-Research Organization D4 - Other State/Local E1 - Procured and Used Outside U.S./Possessions E2 - Other Procurements Outside U.S./Possessions	
DE24	<div style="border: 1px solid black; padding: 2px;"> <div style="display: flex; justify-content: space-between;"> Women Owned Business (96) </div> <div style="border-top: 1px solid black; height: 15px; width: 100%;"></div> </div>	B - Exempt 1 - Yes 2 - No	
DE26	<div style="border: 1px solid black; padding: 2px;"> <div style="display: flex; justify-content: space-between;"> CY MO </div> <div style="border-top: 1px solid black; height: 15px; width: 100%;"></div> </div>	Estimated Completion Date (98-101) Use 2 digits for Month.	

Name of Preparer

 Telephone Number
 Date Prepared

USCOMM-DC 1978

To Be Completed For Original Transactions Over \$10,000

DE9

 Contractor Establishment Code
(52-60)
See Duns CIC Conversion File

DE12

☐

Subject to Stat. Req. (76)

 A - Walsh-Healy Act, Manufacturer,
B - Walsh-Healy Act, Regular Dealer,
C - Service Contract Act,
D - Davis-Bacon Act,
E - Not subject to above statutory requirements.

DE13A

☐

Affirmative Action Plan on File (77) 1 - Yes 2 - No

DE13B

☐
Previously Held Contract Subject to Affirmative Action Program Requirements (78)
1 - Yes 2 - No

DE15

☐

Multi-Year Procurement (80) 1 - Yes 2 - No

DE22

☐

Type of Contract/Modification (93)

 A - Fixed Price Redetermination
J - Firm Fixed Price
K - Fixed Price Economic
Price Adjustment
L - Fixed Price Incentive
R - Cost Plus Award Fee

 S - Cost No Fee
T - Cost Sharing
U - Cost Plus Fixed Fee
V - Cost Plus Incentive Fee
Y - Time and Materials
Z - Labor Hours

DE25

☐
Cost Accounting Standards Clause (97)
Required 1 - Yes 2 - No

DE27A

☐
No. of Offerors Offering Foreign Item (182) #9
(if none, enter 0, if nine or more, enter 9)

DE27B

Percent Difference (103/104) 81-99. Percent difference between award price and low bidder offering foreign item computed before application of Buy American Act differential.

DE27C

Country of Manufacturer

DE28

Reserved FPDC (107-120)

DE29

☐

Government Furnished Property (121) 1 - Yes 2 - No

DE30

☐

Handicapped Set Aside (See 7(h) and 15(c) SBA Act) (122) 1 - Yes 2 - No

DE31

Reserved OADPM Use (123-128)

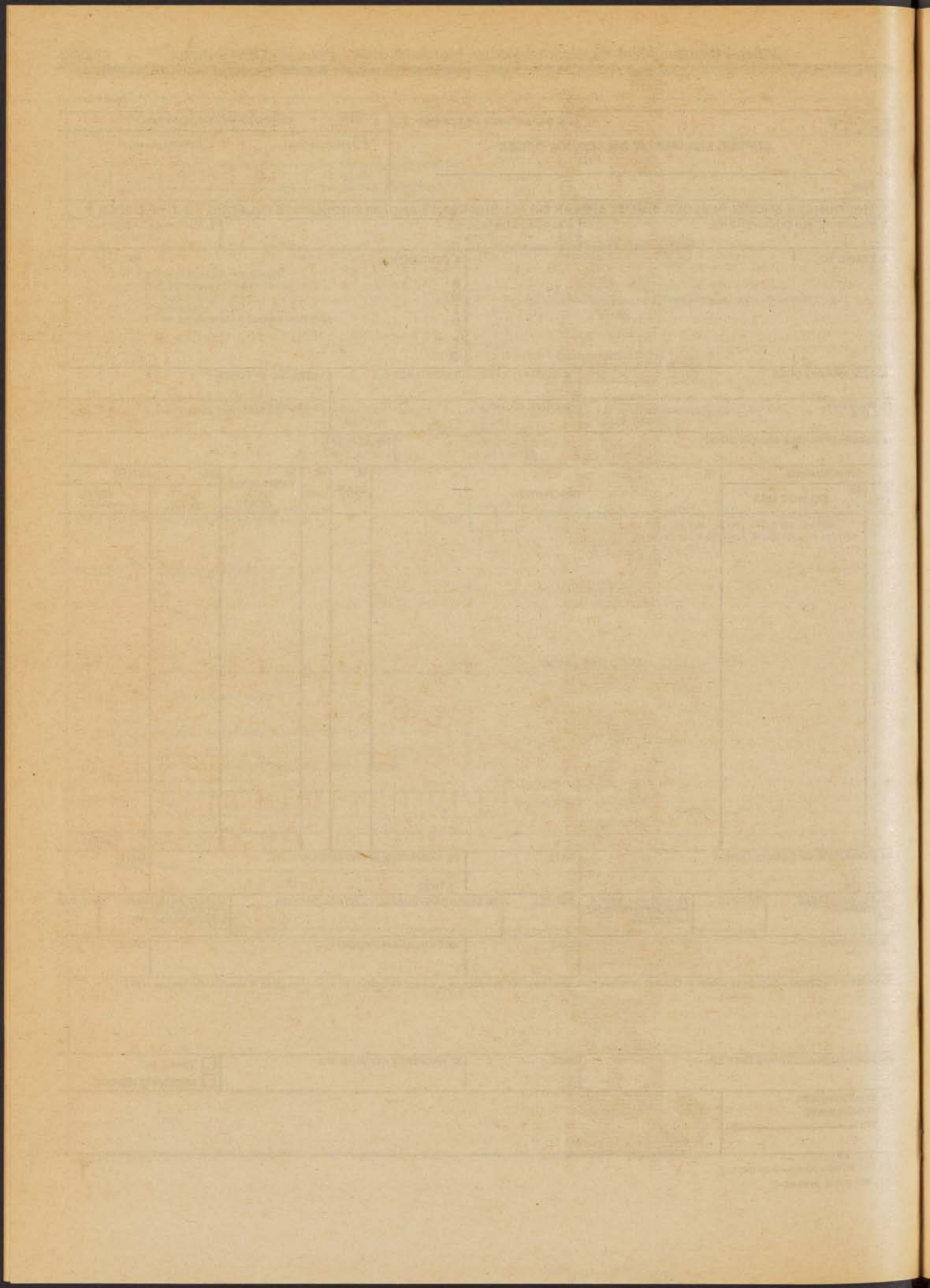
DE32

Reserved OADPM Use (129-144)

Optional

Contractor Name: _____

Address: _____



Friday
March 30, 1984

Part XI

**Department of
Defense
General Services
Administration
National Aeronautics
and Space
Administration**

48 CFR Ch. 1

Federal Acquisition Regulation; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Ch. 1

[Federal Acquisition Circular 84-1]

Federal Acquisition Regulation

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This Federal Acquisition Circular (FAC) amends the Federal Acquisition Regulation (FAR) with respect to the following: OMB approval under the Paperwork Reduction Act, Pub. L. 96-511; deletion of the requirement for reporting of identical bids; increasing the limitation of civilian agencies for the negotiation of contracts using small purchase procedures from \$10,000 to \$25,000; updating coverage pertaining to purchases under the Trade Agreements Act of 1979, 19 U.S.C. 2501-2582; removing the coverage in FAR Subpart 22.10, Service Contract Act of 1965, and the related contract clauses; prescribing policies, procedures, and contract clauses pertaining to patents, data, and copyrights; and revising thresholds requiring advance agreements for independent research and development and bid and proposal costs. Also included in FAC 84-1 are (1) a copy of the Memorandum of Understanding for FAR Maintenance executed by the Defense Acquisition Regulatory/Civilian Agency Acquisition Councils, together with a forwarding letter executed by representatives of DoD, GSA, and NASA, and (2) items concerning procedures to be followed with respect to the following subjects: (a) Publicizing proposed procurements and noncompetitive procurements; (b) revised small business size standards; (c) labor standards for contracts involving construction; (d) implementation of labor standards for Federal service contracts; (e) cost of money for capital employed on facilities in use and capital assets under construction; and (f) leasing of real property (space).

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Roger M. Schwartz, Director, FAR Secretariat, Room 4041, GS Building, Washington, D.C. 20405, Telephone (202) 523-4782.

SUPPLEMENTARY INFORMATION:

Background

The FAR is codified in Chapter 1, Title 48 of the Code of Federal Regulations.

The initial publication of the FAR was contained in Book 2, Volume 48, No. 182 of the Federal Register of September 19, 1983.

FAR 1.501, Solicitation of agency and public views, states that views of agencies and nongovernmental parties or organizations will be considered in formulating acquisition policies and regulations under the FAR, and provides that, normally, at least 60 days will be given for the receipt of comments. However, because it is essential that the coverage in FAC 84-1 be published before the FAR's effective date of April 1, 1984, it has been necessary to proceed to publish FAC 84-1 prior to the solicitation of views other than those of those agencies that are represented at the Defense Acquisition Regulatory and Civilian Agency Acquisition Councils. Consequently, agencies and nongovernmental parties or organizations may submit written comments after the publication of this final rule. Comments will be considered if received by June 1, 1984.

List of Subjects in 48 CFR Chapter 1

Government procurement.

Roger M. Schwartz,
Director, FAR Secretariat.
March 26, 1984.

Federal Acquisition Circular

[Number 84-1]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in this Federal Acquisition Circular is effective April 1, 1984.

Ray Kline

Acting Administrator of General Services.

S. J. Evans,

Assistant Administrator for Procurement.

Harvey J. Gordon,

Assistant Deputy Under Secretary of Defense for Acquisition.

Federal Acquisition Circular (FAC) 84-1 amends the Federal Acquisition Regulation (FAR) and prescribes procedures to be followed pending development of FAR coverage, as specified below. The following is a summary of the amendments and procedures:

Item I—OMB Approval Under the
Paperwork Reduction Act

The Office of Management and Budget (OMB) requires the display of OMB control numbers in the FAR text to

comply with the Paperwork Reduction Act in order to collect information associated with Federal acquisition.

A new Section 1.105 is added to place the appropriate OMB control numbers in the FAR text.

Item II—Reports of Identical Bids

Executive Order 12430, July 6, 1983, revokes the requirement for all Federal agencies to report identical bids to the Attorney General.

Subpart 3.3 is revised to delete the requirement to submit reports. Subparts 53.2 and 53.3 are revised to delete Form DJ-1500, Identical Bid Report for Procurement.

Item III—Procedures for Publicizing
Proposed Procurements and
Noncompetitive Procurements

Pending FAR coverage pertaining to procedures for publicizing proposed procurements and processing noncompetitive procurements under Public Law 98-72, civilian agencies, other than NASA, shall continue to follow policies and procedures in FPR Temporary Regulation 75, Procedures for Publicizing Proposed Procurements and Processing Noncompetitive Procurements, October 1, 1983. DoD and NASA will provide separate direction in accordance with their established procedures.

Item IV—Small Purchase Limitation

Public Law 98-191 amended the Federal Property and Administrative Services Act of 1949 by increasing the limitation of civilian agencies for the negotiation of contracts using small purchase procedures from \$10,000 to \$25,000.

Part 13 is revised to change the amount of the small purchase limitation for civilian agencies from \$10,000 to \$25,000.

Item V—Small Business Size Standards

Pending new FAR coverage pertaining to small business size standards, civilian agencies, other than NASA, shall continue to follow the policies and procedures in FPR Bulletin 63, March 19, 1984, Changes in Small Business Size Standards and Requirements Under the Trade Agreements Act of 1979. DoD and NASA will provide separate direction in accordance with their established procedures.

Item VI—Labor Standards for Contracts
Involving Construction

Pending FAR coverage pertaining to labor standards for contracts involving construction, civilian agencies, other than NASA, shall continue to follow

policies and procedures in FPR Temporary Regulation 70, Labor Standards for Contracts Involving Construction, June 28, 1983, and agency procedures instituted thereunder. DoD and NASA will provide separate direction in accordance with their established procedures.

Item VII—Service Contract Act of 1965

Pending new FAR coverage pertaining to the Service Contract Act of 1965, civilian agencies, other than NASA, shall continue to follow policies and procedures in FPR Temporary Regulation 76, Revision of Labor Standards for Federal Service Contracts, February 23, 1984, and agency procedures instituted thereunder. DoD and NASA will provide separate direction in accordance with their established procedures.

The coverage in Subpart 22.10, Service Contract Act of 1965, and the contract clauses at 52.222-40 through 52.222-44 are removed.

Item VIII—Purchases Under the Trade Agreements Act of 1979

The FAR text and clause concerning Purchases Under the Trade Agreements Act of 1979 have been updated to implement actions taken by the U.S. Trade Representative and to eliminate references in the contract clause that are made obsolete by final editing of the FAR text.

Item IX—Patents, Data, and Copyrights

Part 27, Patents, Data, and Copyrights, has been added to prescribe policies, procedures, and contract clauses pertaining to patents, and to provide a general statement of policy for rights in data and copyrights.

General coverage on the subjects of rights in data and copyrights is being provided at this time. It was not possible to develop uniform coverage in more detail for use on the FAR's effective date, based on the public and agency comments received on the proposed FAR coverage published in the Federal Register. Additional coverage in this area is being developed and will be published as soon as it is available. In the interim, agency supplements to the FAR will contain regulations on rights in data and copyrights.

Item X—Cost of Money for Capital Employed on Facilities in Use and Capital Assets Under Construction

Pending FAR coverage pertaining to cost of money for capital employed on facilities in use and capital assets under construction, civilian agencies, other than NASA, shall continue to follow policies and procedures in FPR 1-3.13,

and agency procedures instituted thereunder.

Item XI—Revised Thresholds Requiring Advance Agreements for Independent Research and Development and Bid and Proposal Costs (IR&D and B&P)

The DoD Authorization Act of 1981 provided that the Department of Defense may periodically adjust the threshold amounts in 31.205-18 based on economic changes. Accordingly, the \$4,000,000 threshold and the \$500,000 threshold in 31.205-18 are adjusted to \$4,400,000 and \$550,000, respectively.

Item XII—Leasing of Real Property (Space)

Pending consideration by the Defense Acquisition Regulatory/Civilian Agency Acquisition Councils of the need for coverage on the subject of leasing of real property (space) in the FAR, civilian agencies, other than NASA, shall continue to use as guidelines the policies and procedures in FPR Temporary Regulation 68, Leasing of Real Property (Space), March 14, 1983.

Item XIII—Memorandum of Understanding for FAR Maintenance

The attached Memorandum of Understanding for FAR Maintenance (Appendix A) provides a uniform and orderly basis for the processing of FAR cases and the maintenance of the FAR. It contains procedures for processing recommendations for FAR changes, establishing FAR cases, and resolving disagreements.

Therefore, 48 CFR is amended as set forth below. Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1. Part 1 is amended by adding § 1.105 to read as follows:

1.105 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from ten or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The following OMB control numbers apply.

FAR segment	OMB control No.
4.102	3090-0158
4.7	3090-0190
5.405	3090-0162
8.203-2	3090-0129
9.506	3090-0128
14.101(c)	3090-0169
14.201	3090-0160
14.201-6(b)(2)	3090-0173
14.201-6	3090-0174
14.202-4	3090-0167
14.202-5	3090-0166
14.205-4(c)	3090-0164
14.406	3090-0165
14.5	3090-0168
15.106	3090-0160
15.404	3090-0164
15.404(c)(2)	3090-0173
15.407(h)	3090-0174
15.804	3090-0116
19.301	3090-0177
19.7	3090-0052
20	3090-0178
28.1	3090-0172
28.2	3090-0172
33	3090-0161
36.302	3090-0164
42.705-1(b)(5)	3090-0116
42.1406-1	3090-0166
48.1	3090-0146
48.2	3090-0146
49.1	3090-0152
49.2	3090-0152
49.3	3090-0152
49.4	3090-0152
49.5	3090-0152
49.6	3090-0152
50	3090-0153
52.203-2	3090-0127
52.203-4	3090-0017
52.208-1	3090-0126
52.208-2	3090-0126
52.209-1	3090-0129
52.210-5	3090-0155
52.210-6	3090-0155
52.212-1	3090-0170
52.212-2	3090-0170
52.214-2	3090-0173
52.214-5	3090-0169
52.214-8	3090-0127
52.214-14	3090-0174
52.214-15	3090-0171
52.214-16	3090-0171
52.215-1	3090-0160
52.215-2	3090-0160
52.215-6	3090-0173
52.215-11	3090-0175
52.215-19	3090-0171
52.215-20	3090-0174
52.215-24	3090-0116
52.215-25	3090-0116
52.215-26	3090-0160
52.219-1	3090-0177
52.219-2	3090-0179
52.219-3	3090-0176
52.222-4	1215-0119
52.222-21	1215-0072
52.222-22	1215-0072
52.222-23	1215-0072
52.222-25	1215-0072
52.222-26	1215-0072
52.222-27	1215-0072
52.222-35	1215-0072
52.222-36	1215-0072
52.222-41	1215-0017
	1215-0150
52.223-1	3090-0130
52.225-1	3090-0139
52.225-6	3090-0136
52.225-8	3090-0140
52.225-10	3090-0131
52.228	3090-0172
52.242-12	3090-0166
52.243-6	3090-0144
52.248	3090-0140
52.247-2	3090-0181
52.247-51	3090-0187
52.247-53	3090-0185
52.247-63	3090-0182
52.249	3090-0152
52.250	3090-0153
SF 18	3090-0075
SF 24	3090-0172
SF 25	3090-0172

FAR segment	OMB control No.
SF 25-A	3090-0172
SF 25-B	3090-0172
SF 28	3090-0005
SF 33	3090-0074
SF 34	3090-0172
SF 35	3090-0172
SF 119	3090-0017
SF 129	3090-0009
SF 254	3090-0028
SF 255	3090-0029
SF 273	3090-0172
SF 274	3090-0172
SF 275	3090-0172
SF 294	3090-0052
SF 295	3090-0053
SF 1403	3090-0110
SF 1404	3090-0110
SF 1405	3090-0110
SF 1406	3090-0110
SF 1407	3090-0110
SF 1408	3090-0110
SF 1411	3090-0116
SF 1412	3090-0116
SF 1413	3090-0119
SF 1416	3090-0172
SF 1417	3090-0164
SF 1423	3090-0120
SF 1424	3090-0120
SF 1426	3090-0120
SF 1427	3090-0120
SF 1428	3090-0120
SF 1429	3090-0120
SF 1430	3090-0120
SF 1431	3090-0120
SF 1432	3090-0120
SF 1433	3090-0120
SF 1434	3090-0120
SF 1435	3090-0115
SF 1436	3090-0115
SF 1437	3090-0115
SF 1438	3090-0115
SF 1439	3090-0115
SF 1440	3090-0115
SF 1443	3090-0105
All other requirements	3090-0194

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. The heading for Subpart 3.3 is revised to read as follows:

Subpart 3.3—Reports of Suspected Antitrust Violations

3. Section 3.302 is revised to read as follows:

3.302 Definitions.

"Identical bids" means bids for the same line item that are determined to be identical as to unit price or total line item amount, with or without the application of evaluation factors (e.g., discount or transportation cost).

"Line item" means an item of supply or service, specified in an invitation for bids, for which the bidder must bid a separate price.

3.302-1 and 3.302-2 [Removed]

4. Subsections 3.302-1 and 3.302-2 are removed.

5. In section 3.303, paragraph (d) is revised to read as follows:

3.303 Reporting suspected antitrust violations.

(d) Identical bids shall be reported under this section if the agency has some reason to believe that the bids resulted from collusion.

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

6. Section 13.000 is revised to read as follows:

13.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies, nonpersonal services, and construction from commercial sources, the aggregate amount of which does not exceed \$25,000.

7. In section 13.101, the definition of "Small purchase" is revised to read as follows:

13.101 Definitions.

"Small purchase" means an acquisition of supplies, nonpersonal services, and construction in the amount of \$25,000 or less using the procedures prescribed in this part.

8. In section 13.302, paragraph (a) is revised to read as follows:

13.302 Conditions for use.

(a) Individual orders do not exceed \$25,000, except that executive agencies may establish higher dollar limitations for specified activities or items.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 22.10—[Reserved]

9. The title and text of Subpart 22.10, consisting of sections 22.1000 through 22.1015, are removed, and the subpart is reserved.

PART 25—FOREIGN ACQUISITION

25.401 [Amended]

10. In section 25.401, the table in "Designated country" is amended by adding "Israel" to the list.

11. Section 25.402 is amended as follows:

In paragraphs (a) and (c) change "\$169,000" to read "161,000".

Paragraph (b) is revised to read as follows:

25.402 Policy.

(b) Except when waived under section 302(b)(2) of the Trade Agreements Act, there shall be no purchases of foreign end products subject to the Act unless the foreign end products are designated country end products.

25.403 [Amended]

12. In section 25.403, paragraph (a) is amended by changing "\$169,000" to read "161,000".

25.405 [Amended]

13. In section 25.405, the introductory text and paragraph (e) are amended by changing "\$169,000" to read "161,000".

25.406 [Amended]

14. Section 25.406 is amended by alphabetically inserting "Maritime Administration of the Department of Transportation" and "Peace Corps" to the list.

15. A new Part 27 is added to read as follows:

TABLE OF CONTENTS

27.000	Scope of part.
SUBPART 27.1—GENERAL	
27.101	Applicability.
27.102	Reserved.
27.103	Policy.
27.104	General guidance.
SUBPART 27.2—PATENTS	
27.200	Scope of subpart.
27.201	Authorization and consent.
27.201-1	General.
27.201-2	Clauses on authorization and consent.
27.202	Notice and assistance.
27.202-1	General.
27.202-2	Clause on notice and assistance.
27.203	Patent indemnification of Government by contractor.
27.203-1	General.
27.203-2	Clauses for formally advertised contracts (excluding construction).
27.203-3	Negotiated contracts (excluding construction).
27.203-4	Clauses for negotiated contracts (excluding construction).
27.203-5	Clause for construction contracts and for dismantling, demolition, and removal of improvements contracts.
27.203-6	Clause for Government waiver of indemnity.
27.204	Reporting of royalties—anticipated or paid.
27.204-1	General.
27.204-2	Solicitation provision for royalty information.

- 27.204-3 Patents—notice of Government as a licensee.
- 27.204-4 Clause for reporting of royalties (foreign).
- 27.205 Adjustment of royalties.
- 27.206 Refund of royalties.
- 27.206-1 General.
- 27.206-2 Clause for refund of royalties.
- 27.207 Classified contracts.
- 27.207-1 General.
- 27.207-2 Clause for classified contracts.

SUBPART 27.3—PATENT RIGHTS UNDER GOVERNMENT CONTRACTS

- 27.300 Scope of subpart.
- 27.301 Definitions.
- 27.302 Policy.
- 27.303 Contract clauses.
- 27.304 Procedures.
- 27.304-1 General.
- 27.304-2 Contracts placed by or for other Government agencies.
- 27.304-3 Contracts for construction work or architect-engineer services.
- 27.304-4 Subcontracts.
- 27.304-5 Appeals.
- 27.305 Administration of patent rights clauses.
- 27.305-1 Patent rights follow-up.
- 27.305-2 Follow-up by contractor.
- 27.305-3 Follow-up by Government.
- 27.305-4 Conveyance of invention rights acquired by the Government.
- 27.305-5 Publication or release of invention disclosures.
- 27.306 Licensing background patent rights to third parties.

SUBPART 27.4—RIGHTS IN DATA AND COPYRIGHTS

- 27.401 General.

SUBPART 27.5—RESERVED

SUBPART 27.6—FOREIGN LICENSE AND TECHNICAL ASSISTANCE AGREEMENTS

- 27.601 General.

AUTHORITY: 40 USC 486(c); Chapter 137, 10 USC; and 42 USC 2453(c).

27.000 Scope of part.

This part prescribes policies, procedures, and contract clauses pertaining to patents and directs agencies to develop coverage for Rights in Data and Copyrights.

SUBPART 27.1—GENERAL

27.101 Applicability.

The policies, procedures, and clauses prescribed by this Part 27 are applicable to all agencies. Agencies are authorized to adopt alternate policies, procedures, and clauses, but only to the extent determined necessary to meet the specific requirements of laws, executive orders, treaties, or international agreements. Any agency action adopting such alternate policies, procedures, and clauses shall be covered in published agency regulations.

27.102 Reserved.

27.103 Policy.

The policies pertaining to patents, data, and copyrights are set forth in this Part 27 and the related clauses in Part 52.

27.104 General guidance.

(a) The Government encourages the maximum practical commercial use of inventions made while performing Government contracts.

(b) Generally, the Government will not refuse to award a contract on the grounds that the prospective contractor may infringe a patent.

(c) Generally, the Government encourages the use of inventions in performing contracts and, by appropriate contract clauses, authorizes and consents to such use, even though the inventions may be covered by U.S. patents and indemnification against infringement may be appropriate.

(d) Generally, the Government should be indemnified against infringement of U.S. patents resulting from performing contracts when the supplies or services acquired under the contracts normally are or have been sold or offered for sale by any supplier to the public in the commercial open market or are the same as such supplies or services with relatively minor modifications.

(e) The Government acquires supplies or services on a competitive basis to the maximum practical extent, but it is important that the efforts directed toward increasing competition not improperly demand or use data relating to private developments.

(f) The Government honors the rights in data resulting from private developments and limits its demands for such rights to those essential for Government purposes.

(g) The Government honors rights in patents, data, and copyrights, and complies with the stipulations of law in using or acquiring such rights.

(h) Generally, the Government requires that contractors obtain permission from copyright owners before including privately-owned copyrighted works in data required to be delivered under Government contracts.

SUBPART 27.2—PATENTS

27.200 Scope of subpart.

This subpart prescribes policy with respect to—

(a) Patent infringement liability resulting from work performed by or for the Government;

(b) Royalties payable in connection with performing Government contracts; and

(c) Security requirements covering patent applications containing classified subject matter filed by contractors.

27.201 Authorization and consent.

27.201-1 General.

(a) In those cases where the Government has authorized or consented to the manufacture or use of an invention described in and covered by a patent of the United States, any suit for infringement of the patent based on the manufacture or use of the invention by or for the United States by a contractor (including a subcontractor at any tier) can be maintained only against the Government in the U.S. Claims Court and not against the contractor or subcontractor (28 U.S.C. 1498). To ensure that work by a contractor or subcontractor under a Government contract may not be enjoined by reason of patent infringement, the Government shall give authorization and consent in accordance with this regulation. The liability of the Government for damages in any such suit against it may, however, ultimately be borne by the contractor or subcontractor in accordance with the terms of any patent indemnity clause also included in the contract, and an authorization and consent clause does not detract from any patent indemnification commitment by the contractor or subcontractor. Therefore, both a patent indemnity clause and an authorization and consent clause may be included in the same contract.

(b) The contracting officer shall not include in any solicitation or contract—

(1) Any clause whereby the Government expressly agrees to indemnify the contractor against liability for patent infringement; or

(2) Any authorization and consent clause when both complete performance and delivery are outside the United States, its possessions, and Puerto Rico.

27.201-2 Clauses on authorization and consent.

(a) The contracting officer shall insert the clause at 52.227-1, Authorization and Consent, in solicitations and contracts (including those for construction; architect-engineer services; dismantling, demolition, or removal of improvements; and noncommon carrier communication services), except when small purchase procedures apply or both complete performance and delivery are outside the United States, its possessions, and Puerto Rico. Although the clause is not required when small purchase procedures apply, it may be used with them.

(b) The contracting officer shall insert the clause with its Alternate I in all R&D solicitations and contracts (including those for construction and architect-engineer services calling exclusively for R&D work or exclusively for experimental work), unless both complete performance and delivery are outside the United States, its possessions, and Puerto Rico. When a proposed contract involves both R&D work and supplies or services, and the R&D work is the primary purpose of the contract, the contracting officer shall use this alternate. In all other proposed contracts involving both R&D work and supplies or services, the contracting officer shall use the basic clause. Also, when a proposed contract involves either R&D or supplies and materials, in addition to construction or architect-engineer work, the contracting officer shall use the basic clause.

(c) If the solicitation or contract is for communication services with a common carrier and the services are unregulated and not priced by a tariff schedule set by a regulatory body, the contracting officer shall use the clause with its Alternate II.

27.202 Notice and assistance.

27.202-1 General.

The contractor is required to notify the contracting officer of all claims of infringement that come to the contractor's attention in connection with performing a Government contract. The contractor is also required, when requested, to assist the Government with any evidence and information in its possession in connection with any suit against the Government, or any claims against the Government made before suit has been instituted, on account of any alleged patent or copyright infringement arising out of or resulting from the contract performance.

27.202-2 Clause on notice and assistance.

The contracting officer shall insert the clause at 52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement, in supply, service, or research and development solicitations and contracts (including construction and architect-engineer contracts) which anticipate a contract value above the dollar limit set forth at 13.000, except when small purchase procedures apply or both complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless the contracts indicate that the supplies or other deliverables are ultimately to be shipped into one of those areas.

27.203 Patent indemnification of Government by contractor.

27.203-1 General.

(a) To the extent set forth in this section, the Government requires reimbursement for liability for patent infringement arising out of or resulting from performing construction contracts or contracts for supplies or services that normally are or have been sold or offered for sale by any supplier to the public in the commercial open market or that are the same as such supplies or services with relatively minor modifications. Appropriate clauses for indemnification of the Government are prescribed in the following subsections.

(b) A patent indemnity clause shall not be used in the following situations:

(1) When the clause at 52.227-1, Authorization and Consent, with its Alternate I, is included in the contract, except that in contracts calling also for supplies of the kind described in paragraph (a) above, a patent indemnity clause may be used solely with respect to such supplies.

(2) When the contract is for supplies or services (or such items with relatively minor modifications) that clearly are not or have not been sold or offered for sale by any supplier to the public in the commercial open market. However, a patent indemnity clause may be included in (i) formally advertised contracts to obtain an indemnity regarding specific components, spare parts, or services so sold or offered for sale (see 27.203-2(b) below), and (ii) contracts to be awarded (either by formal advertising or negotiation) if a patent owner contends that the acquisition would result in patent infringement and the prospective contractor, after responding to a solicitation that did not contain an indemnity clause, is willing to indemnify the Government against such infringement either (A) without increase in price on the basis that the patent is invalid or not infringed, or (B) for other good reasons.

(3) When both performance and delivery are to be outside the United States, its possessions, and Puerto Rico, unless the contract indicates that the supplies or other deliverables are ultimately to be shipped into one of those areas.

(4) When the contract is awarded by small purchase procedures.

(5) When the contract is solely for architect-engineer work (see Part 36).

27.203-2 Clauses for formally advertised contracts (excluding construction).

(a) Except when prohibited by 27.203-1(b) above, the contracting officer shall

insert the clause at 52.227-3, Patent Indemnity, in formally advertised contracts for supplies or services (excluding construction and dismantling, demolition, and removal of improvements), if the contracting officer determines that the supplies or services (or such items with relatively minor modifications) normally are or have been sold or offered for sale by any supplier to the public in the commercial open market. Also the clause may be included as authorized in 27.203-1(b)(2)(i).

(b) In solicitations and contracts (excluding those for construction) that call in part for specific components, spare parts, or services (or such items with relatively minor modifications) that normally are or have been sold or offered for sale by any supplier to the public in the commercial open market, the contracting officer may use the clause with its Alternate I or II, as appropriate. The choice between Alternate I (identification of excluded items) and Alternate II (identification of included items) should be based upon simplicity, Government administrative convenience and ease of identification of the items.

(c) In solicitations and contracts for communication services and facilities where performance is by a common carrier, and the services are unregulated and are not priced by a tariff schedule set by a regulatory body, use the basic clause with its Alternate III.

27.203-3 Negotiated contracts (excluding construction).

A patent indemnity clause is not required in negotiated contracts, (except construction contracts covered at 27.203-5), but may be used as discussed in 27.203-4 below. A decision to omit a patent indemnity clause in a negotiated fixed-price contract described in this subsection should be based on a price consideration to the Government for the foregoing indemnification rights normally received by commercial purchasers of the same supplies or services.

27.203-4 Clauses for negotiated contracts (excluding construction).

(a) The contracting officer may insert the clause at 52.227-3, Patent Indemnity—

(1) As authorized in 27.203-1(b)(2)(ii); and

(2) Except as prohibited by 27.203-1(b), in solicitations anticipating negotiated contracts (and such contracts) for supplies or services (excluding construction and dismantling, demolition, and removal of

improvements), if the contracting officer determines that the supplies or services (or such items with relatively minor modifications) normally are or have been sold or offered for sale by any supplier to the public in the commercial open market. Ordinarily, the contracting officer, in consultation with the prospective contractor, should be able to determine whether the supplies or services being purchased normally are or have been sold or offered for sale by any supplier to the public in the commercial open market. (For negotiated construction contracts, see 27.203-5).

(b) In solicitations and contracts that call in part for specific components, spare parts, or services (or such items with relatively minor modifications) that normally are or have been sold or offered for sale by any supplier to the public in the commercial open market, the contracting officer may use the clause with its Alternate I or II, as appropriate. The choice between Alternate I (identification of excluded items) and Alternate II (identification of included items) should be based upon simplicity, Government administrative convenience, and the ease of identification of the items.

(c) In solicitations and contracts for communication services and facilities where performance is by a common carrier, and the services are unregulated and are not priced by a tariff schedule set by a regulatory body, the clause shall be used with its Alternate III.

27.203-5 Clause for construction contracts and for dismantling, demolition, and removal of improvements contracts.

Except as prohibited by 27.203-1(b), the contracting officer shall insert the clause at 52.227-4, Patent Indemnity—Construction Contracts, in solicitations and contracts for construction or that are fixed-price for dismantling, demolition, or removal of improvements. If it is determined that the construction will necessarily involve the use of structures, products, materials, equipment, processes, or methods that are nonstandard, noncommercial, or special, the contracting officer may expressly exclude them from the patent indemnification by using the basic clause with its Alternate I.

27.203-6 Clause for Government waiver of indemnity.

If, in the Government's interest, it is appropriate to exempt one or more specific United States patents from the patent indemnity clause, the contracting officer shall obtain written approval from the agency head or designee and shall insert the clause at 52.227-5,

Waiver of Indemnity, in solicitations and contracts in addition to the appropriate patent indemnity clause. The contracting officer shall document the contract file with a copy of the written approval.

27.204 Reporting of royalties—anticipated or paid.

27.204-1 General.

(a) (1) To determine whether royalties anticipated or actually paid under Government contracts are excessive, improper, or inconsistent with any Government rights in particular inventions, patents, or patent applications, contracting officers shall require prospective contractors to furnish certain royalty information and shall require contractors to furnish certain royalty reports. Contracting officers shall take appropriate action to reduce or eliminate excessive or improper royalties.

(2) Royalty information shall not be required (except for information under 27.204-3) in formally advertised contracts unless the need for such information is approved at a level above that of the contracting officer as being necessary for proper protection of the Government's interests.

(b) When it is expected that work may be performed in the United States, its possessions, or Puerto Rico, any solicitation that may result in a negotiated contract for which royalty information is desired or for which cost or pricing data is obtained (see 15.804) should contain a provision requesting information relating to any proposed charge for royalties. If the work is to be performed in the United States, its possessions, or Puerto Rico and the response to the solicitation includes a charge for royalties, the contracting officer shall, before award of the contract, forward the information relating to the proposed payments of royalties to the office having cognizance of patent matters for the contracting activity concerned. The cognizant office shall promptly advise the contracting officer of appropriate action. Before award, the contracting officer shall take action to protect the Government's interest with respect to such royalties, giving due regard to all pertinent factors relating to the proposed contract and the advice of the cognizant office.

(c) The contracting officer, when considering the approval of a subcontract for work to be performed in the United States, its possessions, or Puerto Rico, shall require and obtain the same royalty information and take the same action with respect to such subcontracts in relation to royalties as

required for prime contracts under paragraph (b) above. However, consent need not be withheld pending receipt of advice in regard to such royalties from the office having cognizance of patent matters.

(d) The contracting officer shall forward the royalty information and/or royalty reports received to the office having cognizance of patent matters for the contracting activity concerned for advice as to appropriate action.

27.204-2 Solicitation provision for royalty information.

If it is expected that work may be performed in the United States, its possessions, or Puerto Rico, the contracting officer shall insert a solicitation provision substantially as shown in 52.227-6, Royalty Information, in any solicitation that may result in a negotiated contract for which royalty information is desired or for which cost or pricing data is obtained under 15.804. If the solicitation is for communication services and facilities by a common carrier, use the provision with its Alternate I.

27.204-3 Patents—notice of Government as a licensee.

(a) When the Government is obligated to pay a royalty on a patent because of a license agreement between the Government and a patent owner and the contracting officer knows (or has reason to believe) that the licensed patent will be applicable to a prospective contract, the Government should furnish information relating to the royalty to prospective offerors since it serves the interest of both the Government and the offerors. In such situations, the contracting officer should include in the solicitation a notice of the license, the number of the patent, and the royalty rate recited in the license.

(b) When the Government is obligated to pay such a royalty, the solicitation should also require offerors to furnish information indicating whether or not each offeror is a licensee under the patent or the patent owner. This information is necessary so that the Government may either (1) evaluate an offeror's price by adding an amount equal to the royalty, or (2) negotiate a price reduction with an offeror-licensee when the offeror is licensed under the same patent at a lower royalty rate.

(c) If the Government is obligated to pay a royalty on a patent involved in the prospective contract, the contracting officer shall insert in the solicitation, substantially as shown, the provision at 52.227-7, Patents—Notice of Government Licensee.

27.204-4 Clause for reporting of royalties (foreign).

In solicitations contemplating negotiated contracts (and such contracts) to be performed outside the United States, its possessions, and Puerto Rico, regardless of the place of delivery, the contracting officer shall insert the clause at 52.227-8, Reporting of Royalties (Foreign).

27.205 Adjustment of royalties.

(a) If at any time the contracting officer has reason to believe that any royalties paid, or to be paid, under an existing or prospective contract or subcontract are inconsistent with Government rights, excessive, or otherwise improper, the facts shall be promptly reported to the office having cognizance of patent matters for the contracting activity concerned. The cognizant office shall review the royalties thus reported and such royalties as are reported under 27.204 and 27.206 and, in accordance with agency procedures, shall either recommend appropriate action to the contracting officer or, if authorized, shall take appropriate action.

(b) In coordination with the cognizant office, the contracting officer shall promptly act to protect the Government against payment of royalties on supplies or services—

(1) With respect to which the Government has a royalty-free license;

(2) At a rate in excess of the rate at which the Government is licensed; or

(3) When the royalties in whole or in part otherwise constitute an improper charge.

(c) In appropriate cases, the contracting officer in coordination with the cognizant office shall obtain a refund pursuant to any refund of royalties clause in the contract (see 27.206) or negotiate for a reduction of royalties.

(d) For guidance in evaluating information furnished pursuant to 27.204 and 27.205(a) above, see 31.205-37 and 31.311-34. See also 31.109 regarding advance understandings on particular cost items, including royalties.

27.206 Refund of royalties.**27.206-1 General.**

When a fixed-price contract is negotiated under circumstances that make it questionable whether or not substantial amounts of royalties will have to be paid by the contractor or a subcontractor, such royalties may be included in the target or contract price, provided the contract specifies that the Government will be reimbursed the amount of such royalties if they are not

paid. Such circumstances might include, for example, either a pending Government anti-trust action or prospective litigation on the validity of a patent or patents or on the enforceability of an agreement (upon which the contractor or subcontractor bases the asserted obligation) to pay the royalties to be included in the target or contract price.

27.206-2 Clause for refund of royalties.

The contracting officer shall insert the clause at 52.227-9, Refund of Royalties, in negotiated fixed-price contracts and solicitations contemplating such contracts if the contracting officer determines that circumstances make it questionable whether or not substantial amounts of royalties will have to be paid by the contractor or a subcontractor at any tier.

27.207 Classified contracts.**27.207-1 General.**

(a) Unauthorized disclosure of classified subject matter, whether in patent applications or resulting from the issuance of a patent, may be a violation of 18 U.S.C. 792 et seq. (Espionage and Censorship), and related statutes, and may be contrary to the interests of national security.

(b) Upon receipt from the contractor of a patent application, not yet filed, that has been submitted by the contractor in compliance with paragraph (a) or (b) of the clause at 52.227-10, Filing of Patent Applications—Classified Subject Matter, the contracting officer shall ascertain the proper security classification of the patent application. Upon a determination that the application contains classified subject matter, the contracting officer shall inform the contractor of any instructions deemed necessary or advisable relating to transmittal of the application to the United States Patent Office in accordance with procedures in the Department of Defense Industrial Security Manual for Safeguarding Classified Security Information. If the material is classified "Secret" or higher, the contracting officer shall make every effort to notify the contractor of the determination within 30 days, pursuant to paragraph (a) of the clause.

(c) In the case of all applications filed under the provisions of this section 27.207, the contracting officer, upon receiving the application serial number, the filing date, and the information furnished by the contractor under paragraph (d) of the clause at 52.227-10, Filing of Patent Applications—Classified Subject Matter, shall promptly submit that information to personnel having

cognizance of patent matters in order that the steps necessary to ensure the security of the application may be taken.

(d) A request for the approval referred to in paragraph (c) of the clause at 52.227-10, Filing of Patent Applications—Classified Subject Matter, must be considered and acted upon promptly by the contracting officer in order to avoid the loss of valuable patent rights of the Government or the contractor.

27.207-2 Clause for classified contracts.

The contracting officer shall insert the clause at 52.227-10, Filing of Patent Applications—Classified Subject Matter, in all classified solicitations and contracts and in all solicitations and contracts where the nature of the work or classified subject matter involved in the work reasonably might be expected to result in a patent application containing classified subject matter.

SUBPART 27.3—PATENT RIGHTS UNDER GOVERNMENT CONTRACTS**27.300 Scope of subpart.**

This subpart prescribes policies, procedures, and contract clauses with respect to inventions made in the performance of work under a Government contract or subcontract thereunder if a purpose of the contract or subcontract is the conduct of experimental, developmental, or research work, except to the extent statutory requirements necessitate different agency policies, procedures, and clauses as specified in agency supplemental regulations.

27.301 Definitions.

"Invention," as used in this subpart, means any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the U.S. Code.

"Made," as used in this subpart, when used in relation to any invention, means the conception or first actual reduction to practice of such invention.

"Nonprofit organization," as used in this subpart, means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

"Practical application," as used in this subpart, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a

machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Small business firm," as used in this subpart, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.3-8 for small business contractors and in 13 CFR 121.3-12 for small business subcontractors will be used. See FAR Part 19).

"Subject invention," as used in this subpart, means any invention of the contractor conceived or first actually reduced to practice in the performance of work under a Government contract.

27.302 Policy.

(a) *Introduction.* (1) The policy of this section is based on 35 U.S.C. Chapter 18 (Pub. L. 96-517), OMB Circular A-124, and the Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies dated February 18, 1983. The objectives of this policy are to use the patent system to promote the utilization of inventions arising from federally supported research or development; to encourage maximum participation of industry in federally supported research and development efforts; to ensure that these inventions are used in a manner to promote free competition and enterprise; to promote the commercialization and public availability of the inventions made in the United States by United States industry and labor; to ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions; and to minimize the costs of administering policies in this area.

(2) Some agencies are subject, in whole or in part, to one of the following statutes, which require that information as to uses, products, processes, patents, or other developments "be available to the general public": 31 U.S.C. 666, 22 U.S.C. 2572, 50 U.S.C. 167b, 30 U.S.C. 951(c), 30 U.S.C. 937(b), 40 U.S.C. App. 302(e), 30 U.S.C. 1226, and 15 U.S.C. 1395(c). Such agencies shall generally use the clauses herein allowing title to patents to be retained by the contractor, and the related procedures.

(b) *Contractor right to elect title.* Under the policy set forth in paragraph (a) above, each contractor may, after disclosure to the Government as

required by the patent rights clause included in the contract, elect to retain title to any invention made in the performance of work under the contract. To the extent an agency's statutory requirements necessitate a different policy, or different procedures and/or contract clauses to effectuate the policy set forth in paragraph (a) above, such policy, procedures, and clauses shall be contained in or expressly referred to in that agency's supplement to this subpart. In addition, a contract may provide otherwise (1) when the contract is for the operation of a Government-owned research or production facility, (2) in exceptional circumstances when it is determined by the agency that restriction or elimination of the right to retain title in any subject invention will better promote the policy and objectives of 35 U.S.C. Chapter 18 and the Presidential Memorandum, or (3) when it is determined by a Government authority which is authorized by statute or Executive Order to conduct foreign intelligence or counterintelligence activities that the restriction or elimination of the right to retain title to any subject invention is necessary to protect the security of such activities. In those instances when the Government has the right to acquire title at the time of contracting the contractor may, nevertheless, request greater rights to an identified invention. (See 27.304-1(a).) The right of the contractor to retain title shall, in any event, be subject to the provisions of paragraphs (c) through (g) below unless for contracts with other than small business or nonprofit organizations the agency determines before contract award that all or portions of these provisions may be modified, waived, or omitted. (See 27.304-1(f).)

(c) *Government license.* The Government shall have (unless provided otherwise in accordance with 27.304-1(f)) at least a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on behalf of the United States, any subject invention throughout the world; and may, if provided in the contract (see Alternate I of the applicable patent rights clause), have additional rights to sublicense any foreign government or international organization pursuant to existing treaties or agreements identified in the contract, and any future treaty or agreement.

(d) *Government right to receive title.*

(1) The Government has the right to receive title to any invention if the contract so provides pursuant to a determination made in accordance with subparagraph (b)(1), (2), or (3) above. In addition, to the extent provided in the

patent rights clause, the Government has the right to receive title to an invention—

(i) If the contractor has not disclosed the invention within the time specified in the clause;

(ii) In any country where the contractor does not elect to retain rights or fails to elect to retain rights to the invention within the time specified in the clause;

(iii) In any country where the contractor has not filed a patent application within the time specified in the clause;

(iv) In any country where the contractor decides not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on the patent; and/or

(v) In any country where the contractor no longer desires to retain title.

(2) For the purposes of this paragraph, election or filing in a European Patent Office Region or under the Patent Cooperation Treaty constitutes election or filing in any country covered therein to meet the times specified in the clause, provided that the Government has the right to receive title in those countries not subsequently designated by the contractor.

(e) *Utilization reports.* Unless provided otherwise in accordance with 27.304-1(f), contracts provide that the Government shall have the right to require periodic reporting on the utilization or efforts at obtaining utilization that are being made by the contractor or its licensees or assignees. Such reporting by small business firms and nonprofit organizations may be required in accordance with instructions as may be issued by the Department of Commerce. Agencies should protect the confidentiality of utilization reports to the extent permitted by 35 U.S.C. 205 or other applicable laws and OMB Circular A-124.

(f) *March-in rights.* (1) With respect to any subject invention in which a contractor has acquired title, contracts provide that the agency shall have the right (unless provided otherwise in accordance with 27.304-1(f)) to require the contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such request, to grant such a license itself, if the agency determines that such action is necessary—

(i) Because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(ii) To alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee, or their licensees;

(iii) To meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee, or licensees; or

(iv) Because the agreement required by paragraph (g) below has neither been obtained nor waived, or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of its agreement obtained pursuant to paragraph (g) below.

(2) This right of the agency shall be exercised only after the contractor has been provided a reasonable time to present facts and show cause why the proposed agency action should not be taken, and afforded an opportunity to take appropriate action if the contractor wishes to dispute or appeal the proposed action, in accordance with 27.304-1(g).

(g) *Preference for United States industry.* Unless provided otherwise in accordance with 27.304-1(f), contracts provide that no contractor which receives title to any subject invention and no assignee of any such contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the agency upon a showing by the contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(h) *Minimum rights to contractor.* (1) When the Government acquires title to a subject invention, the contractor is normally granted a revocable, nonexclusive, royalty-free license to that invention throughout the world. The contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the contractor is a part and includes the right to grant sublicenses of the same scope to the extent the

contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the contracting officer except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) The contractor's domestic license may be revoked or modified to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with the applicable provisions in the Federal Property Management Regulations and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified to the extent the contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that country. See the procedures at 27.304-1(e).

(i) *Confidentiality of inventions.* The publication of information disclosing an invention by any party before the filing of a patent application may create a bar to a valid patent. Accordingly, 35 U.S.C. 205 and OMB Circular A-124 provide that Federal agencies are authorized to withhold from disclosure to the public information disclosing any invention in which the Federal Government owns or may own a right, title, or interest (including a nonexclusive license) for a reasonable time in order for a patent application to be filed. Furthermore, Federal agencies shall not be required to release copies of any document which is part of an application for patent filed with the United States Patent and Trademark Office or with any foreign patent office. The Presidential Memorandum on Government Patent Policy specifies that agencies should protect the confidentiality of invention disclosures and patent applications required in performance or in consequence of awards to the extent permitted by 35 U.S.C. 205 or other applicable laws.

27.303 Contract clauses.

In contracts (and solicitations therefor) for experimental, developmental, or research work (but see 27.304-3 regarding contracts for construction work or architect-engineer services), a patent rights clause shall be inserted as follows:

(a) (1) The contracting officer shall insert the clause at 52.227-11, Patent

Rights—Retention by the Contractor (Short Form), if all the following conditions apply:

(i) The contractor is a small business concern or nonprofit organization as defined in 27.301 or, except for contracts of the Department of Defense (DOD), the Department of Energy (DOE), or the National Aeronautics and Space Administration (NASA), any other type of contractor.

(ii) No alternative patent rights clause is used in accordance with paragraphs (c) or (d) below or 27.304-2.

(2) To the extent the information is not required elsewhere in the contract, and unless otherwise specified by agency supplemental regulations, the contracting officer may modify paragraph (f) of the clause to require the contractor to do one or more of the following:

(i) Provide periodic (but not more frequently than annually) listings of all subject inventions required to be disclosed during the period covered by the report.

(ii) Provide a report prior to the closeout of the contract listing all subject inventions or stating that there were none.

(iii) Provide notification of all subcontracts for experimental, developmental, or research work.

(iv) Provide, upon request, the filing date, serial number and title; a copy of the patent application; and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(v) Furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(3) If the acquisition of patent rights for the benefit of a foreign government is required under a treaty or executive agreement or if the agency head or a designee determines at the time of contracting that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement, the contracting officer shall use the clause with its Alternate I.

(b) (1) The contracting officer shall insert the clause at 52.227-12, Patent Rights—Retention by the Contractor (Long Form), if all the following conditions apply:

(i) The contractor is other than a small business firm or nonprofit organization.

(ii) No alternative clause is used in accordance with paragraph (c) or (d) below or 27.304-2.

(iii) The contracting agency is one of those excepted under subdivision (a)(1)(i) above.

(2) If the acquisition of patent rights for the benefit of a foreign government is required under a treaty or executive agreement or if the agency head or a designee determines at the time of contracting that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement, the contracting officer shall use the clause with its Alternate I.

(c) (1) The contracting officer shall insert the clause at 52.227-13, Patent Rights—Acquisition by the Government, if any of the following conditions apply:

(i) No alternative clause is used in accordance with subparagraph (c)(2) or paragraph (d) below or 27.304-2.

(ii) The work is to be performed outside the United States, its possessions, and Puerto Rico by contractors that are not small business firms, nonprofit organizations as defined in 27.301, or domestic firms. For purposes of this subparagraph, the contracting officer may presume that a contractor is not a domestic firm unless it is known that the firm is not foreign owned, controlled, or influenced. (See 27.304-4(a) regarding subcontracts with U.S. firms.)

(2) Pursuant to their statutory requirements, DOE and NASA may specify in their supplemental regulations use of a modified version of the clause at 52.227-13 in contracts with other than small business concerns or nonprofit organizations.

(3) If the acquisition of patent rights for the benefits of a foreign government is required under a treaty or executive agreement or if the agency head or a designee determines at the time of contracting that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement, the contracting officer shall use the clause with its Alternate I.

(d) (1) If one of the following applies, the contracting officer may insert the clause prescribed in paragraph (a) or (b) above as otherwise applicable; agency supplemental regulations may provide another clause and specify its use; or the contracting officer shall insert the clause prescribed in paragraph (c) above:

(i) The contract is for the operation of a Government-owned research or production facility.

(ii) There are exceptional circumstances and the agency head determines that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of

Chapter 18 of Title 35 of the United States Code.

(iii) It is determined by a Government authority which is authorized by statute or executive order to conduct foreign intelligence or counterintelligence activities that restriction or elimination of the right to retain any subject invention is necessary to protect the security of such activities.

(2) Any determination under subdivision (1)(ii) above will be in writing and accompanied by a written statement of facts justifying the determination. The statement of facts will contain such information as the agency deems relevant and, at a minimum, will (i) identify the organization involved, (ii) describe the extent to which agency action restricted or eliminated the right to retain title to a subject invention, (iii) state the facts and rationale supporting the agency action, (iv) provide supporting documentation for those facts and rationale, and (v) indicate the nature of any objections to the agency action and provide any documentation in which those objections appear. In the case of contracts with small business concerns or nonprofit organizations, a copy of each such determination and written statement of facts will be sent to the Comptroller General of the United States within 30 days after the award of the applicable funding agreement. In the case of contracts with small business concerns, copies will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

(e) To qualify for the clause at 52.227-11, a prospective contractor may be required by the agencies excepted under subdivision (a)(1)(i) above to certify that it is either a small business firm or a nonprofit organization. If one of these agencies has reason to question the status of the prospective contractor, the agency may file a protest in accordance with 13 CFR 121.3-5 if small business firm status is questioned or require the prospective contractor to furnish evidence of its status as a nonprofit organization.

(f) The Alternates to the clauses at 52.227-11, 52.227-12, and 52.227-13, as applicable, may be modified by deleting the reference to future treaties or agreements or by otherwise more narrowly defining classes of future treaties or agreements. It may also be modified to make clear that the rights granted to the foreign government or international organization may be for additional rights beyond a license or sublicense if so required by the applicable treaty or international agreement. For example, in some cases exclusive licenses or even assignment of

title in the foreign country involved might be required. In addition, the Alternate may be modified to provide for direct licensing by the contractor of the foreign government or international organization.

27.304 Procedures.

27.304-1 General.

(a) *Greater rights determinations.* Whenever the contract contains the clause at 52.227-13, Patent Rights—Acquisition by the Government, the contractor (or an employee-inventor of the contractor after consultation with the contractor) may request greater rights to an identified invention within the period specified in such clause. Requests for greater rights may be granted if the agency head or designee determines that the interests of the United States and the general public will be better served thereby. In making such determinations, the agency head or designee shall consider at least the following objectives:

(1) Promoting the utilization of inventions arising from federally supported research and development.

(2) Ensuring that inventions are used in a manner to promote free competition and enterprise.

(3) Promoting public availability of inventions made in the United States by United States industry and labor.

(4) Ensuring that the Government obtains sufficient rights in federally-supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions.

(b) *Retention of rights by inventor.* If the contractor does not elect to retain title to a subject invention, the agency may consider and, after consultation with the contractor, grant requests for retention of rights by the inventor. Retention of rights by the inventor will be subject to the conditions in paragraph (d) (except subparagraph (d)(1)), subparagraph (f)(4), and paragraphs (h), (i), and (j) of the applicable Patent Rights—Retention by the Contractor clause.

(c) *Government assignment to contractor of rights in Government employees' inventions.* When a Government employee is a coinventor of an invention made under a contract with a small business firm or nonprofit organization, the agency employing the coinventor may transfer or reassign whatever right it may acquire in the subject invention from its employee to the contractor, subject to the conditions of 35 U.S.C. Chapter 18 and OMB Circular A-124.

(d) *Additional requirements.* (1) If it is desired to have the right to require any of the following, the contract shall be modified to require the contractor to do one or more of the following:

(i) Provide periodic (but not more frequently than annually) listings of all subject inventions required to be disclosed during the period covered by the report.

(ii) Provide a report prior to the closeout of the contract listing all subject inventions or stating that there were none.

(iii) Provide notification of all subcontracts for experimental, developmental, or research work.

(iv) Provide upon request, the filing date, serial number and title; a copy of the patent application; and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(v) Furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(2) To the extent provided by such modification (and automatically under the terms of the clauses at 52.227-12 and -13), the contracting officer may require the contractor to—

(i) Furnish a copy of each subcontract containing a patent rights clause (but if a copy of a subcontract is furnished under another clause, a duplicate shall not be requested under the patent rights clause);

(ii) Submit interim and final invention reports listing subject inventions and notifying the contracting officer of all subcontracts awarded for experimental, developmental, or research work;

(iii) Submit information regarding the filing date, serial number and title, and, upon request, a copy of the patent application, and patent number and issue date for any subject invention in any country for which the contractor has retained title; and

(iv) Submit periodic reports on the utilization of a subject invention or on efforts at obtaining utilization that are being made by the contractor or its licensees or assignees.

(3) The contractor is required to deliver to the contracting officer an instrument confirmatory of all rights to which the Government is entitled and to furnish the Government an irrevocable power to inspect and make copies of the patent application file. Such delivery should normally be made within 6 months after filing each patent application, or within 6 months after submitting the invention disclosure if the application has been previously filed.

(e) *Revocation or modification of contractor's minimum rights.* Before revocation or modification of the

contractor's license in accordance with 27.302(h)(2), the contracting officer will furnish the contractor a written notice of intention to revoke or modify the license, and the contractor will be allowed 30 days (or such other time as may be authorized by the contracting officer for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with applicable provisions in the Federal Property Management Regulations and agency licensing regulations, any decisions concerning the revocation or modification.

(f) *Modification, waiver, or omission of rights of the Government or obligations of the contractor.* (1) In contracts not subject to 35 U.S.C. Chapter 18, an agency may modify, waive, or omit, in whole or in part, any of the rights of the Government or obligations of the contractor described in 27.302(c) through (h) if the agency head or designee determines at the time of contracting (i) that the interests of the United States and the general public will be better served thereby as, for example, where this is necessary to obtain a uniquely or highly qualified contractor, or (ii) that the contract involves cosponsored, cost sharing, or joint venture research and development, and the contractor, cosponsor, or joint venturer is making a substantial contribution of funds, facilities, or equipment to the work performed under the contract.

(2) Any modification, waiver, or omission of the rights of the Government shall be in writing and accompanied by a written statement of facts justifying the determination. Inasmuch as these rights are normally considered the minimum rights necessary to protect the interests of the United States and the general public under the policy and objectives of 27.302(a)(1), such statement must specifically—

(i) Describe the extent to which the Government's rights are to be modified, waived, or omitted;

(ii) State the facts and rationale for such modification, waiver, or omission; and

(iii) Include a statement as to why the interests of the United States and the general public will be better served by such modification, waiver, or omission under the policy and objectives of 27.302(a)(1), with particular emphasis on (A) ensuring that the Government obtains sufficient rights to meet its needs competitively and at the lowest cost when relinquishing the Government's royalty-free license rights, (B) protecting the public against nonuse

or unreasonable use of inventions arising out of the contract when relinquishing march-in rights intended to prevent suppression of such inventions and to assure their availability to meet health or safety needs or regulatory requirements, and (C) promoting the public availability of such inventions through commercialization by United States industry and labor.

(g) *Exercise of march-in rights.* The following procedures shall govern the exercise of the march-in rights set forth in 35 U.S.C. 203, paragraph (j) of the Patent Rights—Retention by the Contractor clauses, and subdivision (c)(1)(ii) of the Patent Rights—Acquisition by the Government clause:

(1) When the agency receives information that it believes might warrant the exercise of march-in rights, before initiating any march-in proceeding in accordance with the procedures of subparagraph (2) below, it shall notify the contractor in writing of the information and request informal written or oral comments from the contractor. In the absence of any comments from the contractor within 30 days the agency may, at its discretion, initiate the procedures below. If a comment is received, whether or not within 30 days, then the agency shall, within 60 days after it receives the comment, either initiate the procedures below or notify the contractor, in writing, that it will not pursue march-in rights based on the information about which the contractor was notified.

(2) A march-in proceeding shall be initiated by the issuance of a written notice by the agency head or a designee to the contractor and its assignee or exclusive licensee, as applicable, stating that the Government has determined to exercise march-in rights. The notice shall state the reasons for the proposed march-in in terms sufficient to put the contractor on notice of the facts upon which the action is based, and shall specify the field or fields of use in which the Government is considering requiring licensing. The notice shall advise the contractor, assignee, or exclusive licensee of its rights as set forth in 33.011 and in any supplemental agency regulations or procedures. The determination to exercise march-in rights shall be made by the contracting officer, as a final decision for purposes of the Contract Disputes Act in accordance with 33.011.

(3) These procedures shall also apply to the exercise or march-in rights against inventors receiving title to subject inventions under 35 U.S.C. 202(d) and, for that purpose, the term

"contractor" as used herein shall be deemed to include the inventor.

(4) The contractor, assignee, or exclusive licensee will not be required to grant a license and the Government will not grant any license until after either (i) 90 days from the date of the contractor's receipt of the contracting officer's decision, if no appeal of the decision has been made to a Board of Contract Appeals and if no action has been brought under 41 U.S.C. 609 within that time, or (ii) the board or court has made a final decision, in cases when an appeal or action has been brought within 90 days of the contracting officer's decision.

(h) *Licenses and assignments under contracts with nonprofit organizations.* If the contractor is a nonprofit organization, the clause at 52.227-11 provides that certain contractor actions require agency approval, as specified below. Agencies shall provide procedures for obtaining such approval.

(1) Rights to a subject invention in the United States may not be assigned without the approval of the contracting agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided that such assignee will be subject to the same provisions as the contractor).

(2) The contractor may not grant exclusive licenses under United States patents or patent applications in subject inventions to persons other than small business firms for a period in excess of the earlier of—

- (i) Five years from first commercial sale or use of the invention; or
- (ii) Eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance, unless on a case-by-case basis the contracting agency approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use will not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention will not be deemed to end the exclusive period to different subsequent products covered by the invention.

27.304-2 Contracts placed by or for other Government agencies.

The following procedures apply unless agency agreements provide otherwise:

(a) When a Government agency requests another Government agency to award a contract on its behalf, the request should explain any special circumstances surrounding the contract and specify and furnish the patent rights clause to be used. Normally, the clause will be in accordance with the policies and procedures of this subpart. If, however, the request states that a clause of the requesting agency is required (e.g., because of statutory requirements, a deviation, or exceptional circumstances) that clause shall be used rather than those of this subpart.

(1) If the request states that an agency clause is required and the work to be performed under the contract is not severable and is funded wholly or in part by the agency, then that agency clause and no other patent rights clause shall be included in the contract.

(2) If the request states that an agency clause is required, and the work to be performed under the contract is severable and is only in part for the requesting agency, then the work which is on behalf of the requesting agency shall be identified in the contract, and the agency clause shall be made applicable to that portion. In such situations, the remaining portion of the work (for the agency awarding the contract) shall likewise be identified and the appropriate patent rights clause (if required) shall be made applicable to that remaining portion.

(3) If the request states that an agency clause is not required in any resulting contract, then the appropriate patent rights clause shall be used, if a patent rights clause is required.

(b) Where use of the specified clause, or any modification, waiver, or omission of the Government's rights under any provisions therein, requires a written determination, the reporting of such determination, or a deviation, if any such acts are required in accordance with 27.303(d)(2), 27.304-1(f)(2), or 1.4, it shall be the responsibility of the requesting agency to make such determination, submit the required reports, and obtain such deviations, in consultation with the contracting agency, unless otherwise agreed between the contracting and requesting agencies. However, a deviation to a specified clause of the requesting agency shall not be made without prior approval of that agency.

(c) The requesting agency may require, and provide instructions regarding, the forwarding or handling of any invention disclosures or other reporting requirements of the specified clauses. Normally the requesting agency shall be responsible for the handling of any disclosed inventions, including the

filing of patent applications where the Government receives title, and the custody, control, and licensing thereof, unless provided otherwise in the instructions or other agreements with the contracting agency.

27.304-3 Contracts for construction work or architect-engineer services.

(a) If a solicitation or contract for construction work or architect-engineer services has as a purpose the performance of experimental, developmental, or research work or test and evaluation studies involving such work and calls for, or can be expected to involve, the design of a Government facility or of novel structures, machines, products, materials, processes, or equipment (including construction equipment), it shall include a patent rights clause selected in accordance with the policies and procedures of this Subpart 27.3.

(b) A solicitation or contract for construction work or architect-engineer services that calls for or can be expected to involve *only* "standard types of construction" to be built by previously developed equipment, methods, and processes shall not include a patent rights clause. The term "standard types of construction" means construction in which the distinctive features, if any, in all likelihood will amount to no more than—

(1) Variations in size, shape, or capacity of otherwise structurally orthodox and conventionally acting structures or structural groupings; or

(2) Purely artistic or esthetic (as distinguished from functionally significant) architectural configurations and designs of both structural and nonstructural members or groupings, which may or may not be sufficiently novel or meritorious to qualify for design protection under the design patent or copyright laws.

27.304-4 Subcontracts.

(a) The policies and procedures covered by this subpart apply to all contracts at any tier. Hence, a contractor awarding a subcontract and a subcontractor awarding a lower-tier subcontract that has as a purpose the conduct of experimental, developmental, or research work is required to determine the appropriate patent rights clause to be included that is consistent with these policies and procedures. Generally, the clause at either 52.227-11, 52.227-12, or 52.227-13 is to be used and will be so specified in the patent rights clause contained in the higher-tier contract, but the contracting officer may direct the use of a particular patent

rights clause in any lower-tier contract in accordance with the policies and procedures of this subpart. For instance, when the clause at 52.227-13 is in the prime contract because the work is to be performed overseas, any subcontract with a nonprofit organization would contain the clause at 52.227-11.

(b) Whenever a prime contractor or a subcontractor considers the inclusion of a particular clause in a subcontract to be inappropriate or a subcontractor refuses to accept the proffered clause, the matter shall be resolved by the agency contracting officer in consultation with counsel.

(c) It is Government policy that contractors shall not use their ability to award subcontracts as economic leverage to acquire rights for themselves in inventions resulting from subcontracts.

27.304-5 Appeals.

(a) The agency official initially authorized to take any of the following actions shall provide the contractor with a written statement of the basis for the action at the time the action is taken, including any relevant facts that were relied upon in taking the action:

(1) A refusal to grant an extension to the invention disclosure period under subparagraph (c)(4) of the clauses at 52.227-11 and 52.227-12.

(2) A request for a conveyance of title to the Government under 27.302(d)(1)(i) through (v).

(3) A refusal to grant a waiver under 27.302(g), Preference for U.S. Industry.

(4) A refusal to approve an assignment under 27.304-1(h)(1).

(5) A refusal to approve an extension of the exclusive license period under 27.304-1(h)(2).

(b) Each agency shall establish and publish procedures under which any of the agency actions listed in paragraph (a) above may be appealed to the head of the agency or designee. Review at this level shall consider both the factual and legal basis for the action and its consistency with the policy and objectives of 35 U.S.C. 200-206 and this subpart.

(c) Appeals procedures established under paragraph (b) above shall include administrative due process procedures and standards for fact-finding at least comparable to those set forth in Part 13e-g of OMB Circular A-124 whenever there is a dispute as to the factual basis for an agency request for a conveyance of title under 27.302(d)(1)(i) through (v) including any dispute as to whether or not an invention is a subject invention.

(d) To the extent that any of the actions described in paragraph (a) above are subject to appeal under the

Contract Disputes Act, the procedures under that Act will satisfy the requirements of paragraphs (b) and (c) above.

27.305 Administration of patent rights clauses.

27.305-1 Patent rights follow-up.

(a) It is important that the Government and the contractor know and exercise their rights in inventions conceived or first actually reduced to practice in the course of or under Government contracts in order to ensure their expeditious availability to the public and to enable the Government, the contractor, and the public to avoid unnecessary payment of royalties and to defend themselves against claims and suits for patent infringement. To attain these ends, contracts having a patent rights clause should be so administered that—

(1) Inventions are identified, disclosed, and reported as required by the contract, and elections are made;

(2) The rights of the Government in such inventions are established;

(3) Where patent protection is appropriate, patent applications are timely filed and prosecuted by contractors or by the Government;

(4) The rights of the Government in filed patent applications are documented by formal instruments such as licenses or assignments; and

(5) Expeditious commercial utilization of such inventions is achieved.

(b) If a subject invention is made under funding agreements of more than one agency, at the request of the contractor or on their own initiative, the agencies shall designate one agency as responsible for administration of the rights of the Government in the invention.

27.305-2 Follow-up by contractor.

(a) *Contractor procedures.* If required by the applicable clause, the contractor shall establish and maintain effective procedures to ensure its patent rights obligations are met and that subject inventions are timely identified and disclosed, and when appropriate, patent applications are filed.

(b) *Contractor reports.* Contractors shall submit all reports required by the patent rights clause to the contracting officer or other representative designated for such purpose in the contract. Agencies may, in their implementing instructions, provide specific forms for use on an optional basis for such reporting.

27.305-3 Follow-up by Government.

(a) Agencies shall maintain appropriate follow-up procedures to

protect the Government's interest and to check that subject inventions are identified and disclosed, and when appropriate, patent applications are filed, and that the Government's rights therein are established and protected. Follow-up activities for contracts that include a clause referenced in 27.304-2 shall be coordinated with the appropriate agency.

(b) The contracting officer administering the contract (or other representative specifically designated in the contract for such purpose) is responsible for receiving invention disclosures, reports, confirmatory instruments, notices, requests, and other documents and information submitted by the contractor pursuant to a patent rights clause. If the contractor fails to furnish documents or information as called for by the clause within the time required, the contracting officer shall promptly request the contractor to supply the required documents or information and, if the failure persists, shall take appropriate action to secure compliance. Invention disclosures, reports, confirmatory instruments, notices, requests, and other documents and information relating to patent rights clauses shall be promptly furnished by the contracting officer administering the contract (or other designee) to the procuring agency or contracting activity for which the procurement was made for appropriate action.

(c) Contracting activities shall establish appropriate procedures to detect and correct failures by the contractor to comply with its obligations under the patent rights clauses, such as failures to disclose and report subject inventions, both during and after contract performance. Ordinarily a contractor should have written instructions for its employees covering compliance with these contract obligations. Government effort to review and correct contractor compliance with its patent rights obligations should be directed primarily towards contracts that, because of the nature of the research, development, or experimental work or the large dollar amount spent on such work, are more likely to result in subject inventions significant in number or quality, and towards contracts when there is reason to believe the contractors may not be complying with their contractual obligations. Other contracts may be reviewed using a spot-check method, as feasible. Appropriate follow-up procedures and activities may include the investigation or review of selected contracts or contractors by those qualified in patent and technical matters

to detect failures to comply with contract obligations.

(d) Follow-up activities should include, where appropriate, use of Government patent personnel—

(1) To interview agency technical personnel to identify novel developments made in contracts;

(2) To review technical reports submitted by contractors with cognizant agency technical personnel;

(3) To check the Official Gazette of the United States Patent and Trademark Office and other sources for patents issued to the contractor in fields related to its Government contracts; and

(4) If additional information is required, to have cognizant Government personnel interview contractor personnel regarding work under the contract involved, observe the work on site, and inspect laboratory notebooks and other records of the contractor related to work under the contract.

(e) If it is determined that a contractor or subcontractor does not have a clear understanding of the rights and obligations of the parties under a patent rights clause, or that its procedures for complying with the clause are deficient, a post-award orientation conference or letter should ordinarily be used to explain these rights and obligations (see Subpart 42.5). When a contractor fails to establish, maintain, or follow effective procedures for identifying, disclosing, and, when appropriate, filing patent applications on inventions (if such procedures are required by the patent rights clause), or after appropriate notice fails to correct any deficiency, the contracting officer may require the contractor to make available for examination books, records, and documents relating to the contractor's inventions in the same field of technology as the contract effort to enable a determination of whether there are such inventions and may invoke the withholding of payments provision (if any) of the clause. The withholding of payments provision (if any) of the patent rights clause or of any other contract clause may also be invoked if the contractor fails to disclose a subject invention. Significant or repeated failures by a contractor to comply with the patent rights obligation in its contracts shall be documented and made a part of the general file (see 4.801(c)(3)).

27.305-4 Conveyance of invention rights acquired by the Government.

(a) Agencies are responsible for those procedures necessary to protect the Government's interest in subject inventions. When the Government acquires the entire right, title, and

interest in an invention by contract, this is normally accomplished by an assignment either from each inventor to the contractor and from the contractor to the Government, or from the inventor to the Government with the consent of the contractor, so that the chain of title from the inventor to the Government is clearly established. When the Government's rights are limited to a license, there should be a confirmatory instrument to that effect.

(b) The form of conveyance of title from the inventor to the contractor must be legally sufficient to convey the rights the contractor is required to convey to the Government. Agencies may, by supplemental instructions, develop suitable assignments, licenses, and other papers evidencing any rights of the Government in patents or patent applications, including such instruments as may be required to be recorded in the Statutory Register or documented in the Government Register maintained by the U.S. Patent and Trademark Office pursuant to Executive Order 9424, February 18, 1944.

27.305-5 Publication or release of invention disclosures.

(a) In accordance with the policy at 27.302(i), to protect their mutual interests, contractors and the Government should cooperate in deferring the publication or release of invention disclosures until the filing of the first patent application, and use their best efforts to achieve prompt filing when publication or release may be imminent. The Government will, on its part and to the extent authorized by 35 U.S.C. 205, withhold from disclosure to the public any invention disclosures reported under the patent rights clauses of 52.227-11, 52.227-12, or 52.227-13 for a reasonable time in order for patent applications to be filed. The policy in 27.302(i) regarding protection of confidentiality shall be followed.

(b) The Government will also use reasonable efforts to withhold from disclosure to the public for a reasonable time other information disclosing a reported invention included in any data delivered pursuant to contract requirements; provided, that the contractor notifies the agency as to the identity of the data and the invention to which it relates at the time of delivery of the data. Such notification must be to both the contracting officer and any patent representative to which the invention is reported, if other than the contracting officer.

27.306 Licensing background patent rights to third parties.

(a) A contract with a small business firm or nonprofit organization will not contain a provision allowing the Government to require the licensing to third parties of inventions owned by the contractor that are not subject inventions unless such provision has been approved by the agency head and written justification has been signed by the agency head. Any such provision will clearly state whether the licensing may be required in connection with the practice of a subject invention, a specifically identified work object, or both. The agency head may not delegate the authority to approve such provisions or to sign justifications required for such provisions.

(b) The Government will not require the licensing of third parties under any such provision unless the agency head determines that the use of the invention by others is necessary for the practice of a subject invention or for the use of a work object of the contract and that such action is necessary to achieve the practical application of the subject invention or work object. Any such determination will be on the record after an opportunity for a hearing, and the contractor shall be given notification of the determination by certified or registered mail. The notification shall include a statement that any action commenced for judicial review of such determination must be brought by the contractor within 60 days after the notification.

SUBPART 27.4—RIGHTS IN DATA AND COPYRIGHTS

27.401 General.

It is necessary for Government departments and agencies, in order to carry out their missions and programs, to acquire or obtain access to many kinds of data developed under or used in performing their contracts. Such data are required in order to obtain competition among suppliers; to meet acquisition needs; to ensure logistic support; to fulfill certain responsibilities for disseminating and publishing the results of their activities; to ensure appropriate use of the results of research, development, and demonstration activities; and to meet other programmatic and statutory requirements. At the same time, the Government recognizes that its contractors may have a property right or other valid economic interest in certain data resulting from private investment, and that the protection from unauthorized use and disclosure of this

data, and other data made available to the Government for use, is required in order to preclude the compromise of such property right or economic interest, jeopardizing the contractor's commercial position, and impairment of the Government's ability to obtain access to or use of such data. Protecting this data is therefore necessary to encourage qualified contractors to participate in Government programs and apply innovative concepts to such programs. Specific agency regulations shall be framed in light of the above considerations to strike a balance between the Government's need and the contractor's economic interest.

SUBPART 27.5—RESERVED

SUBPART 27.6—FOREIGN LICENSE AND TECHNICAL ASSISTANCE AGREEMENTS

27.601 General.

Agencies shall provide all necessary rules and regulations as are required for the proper application of the laws and policies of the U.S. Government regarding—

(a) Elimination in agreements between domestic concerns and foreign governments or foreign concerns of charges for the use of patents in which the U.S. Government has a royalty-free license or of charges in agreements for the use of data that the U.S. Government has a right to use and disclose to others, that is in the public domain, or that was acquired by the U.S. Government with the unrestricted right to use, duplicate, or disclose and to have or permit others to do so;

(b) Foreign license and technical assistance agreements between the U.S. Government and United States domestic concerns;

(c) Guidance on negotiating contract prices and terms concerning patents and data, including royalties, in contracts between the U.S. Government and a foreign government or foreign concern; and

(d) Regulations and guidance on controls on the exportation of data relating to certain designated items, such as arms or munitions of war, and guidance on reviews of agreements involving such data (see 22 CFR 124).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205-18 [Amended]

16. In subsection 31.205-18, paragraphs (c)(1)(i) and (c)(1)(v) are amended by changing "\$4 million" to read "\$4,400,000", and paragraph (c)(1)(ii) is amended by changing "\$500,000" to read "\$550,000".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

17. The table of contents for Part 52 is amended by adding the following entries:

- * * *
- 52.227-1 Authorization and Consent.
- 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.
- 52.227-3 Patent Indemnity.
- 52.227-4 Patent Indemnity—Construction Contracts.
- 52.227-5 Waiver of Indemnity.
- 52.227-6 Royalty Information.
- 52.227-7 Patents—Notice of Government Licensee.
- 52.227-8 Reporting of Royalties (Foreign).
- 52.227-9 Refund of Royalties.
- 52.227-10 Filing of Patent Applications—Classified Subject Matter.
- 52.227-11 Patent Rights—Retention by the Contractor (Short Form).
- 52.227-12 Patent Rights—Retention by the Contractor (Long Form).
- 52.227-13 Patent Rights—Acquisition by the Government.
- * * *

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

18. The titles and text of subsections 52.222-40 through 52.222-44 are removed and reserved.

19. In paragraph (b) of the contract clause at subsection 52.225-9, the last sentence is revised to read as follows:

52.225-9 Buy American Act—Trade Agreements Act—Balance of Payments Program.

(b) * * * Contractors may not supply a foreign end product with a total value of \$161,000 or more unless the foreign end product is a designated country end product (see FAR 25.401), or unless a waiver is granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(b)).

* * *

52.227 [Removed]

20. Section 52.227 [Reserved] is removed.

21. Subsections 52.227-1 through 52.227-13 are added to read as follows:

52.227-1 Authorization and Consent.

As prescribed at 27.201-2(a), insert the following clause:

AUTHORIZATION AND CONSENT (APR 1984)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the

Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed \$25,000; however, omission of this clause from any subcontract, under or over \$25,000, does not affect this authorization and consent.

(End of clause) (R 7-103.22 1961 JAN)

Alternate I (APR 1984). The following is substituted for paragraph (a) of the clause:

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

(R 7-302.21 1964 MAR)

Alternate II (APR 1984). The following is substituted for paragraph (a) of the clause:

(a) The Government authorizes and consents to all use and manufacture in the performance of any order at any tier or subcontract at any tier placed under this contract for communication services and facilities for which rates, charges, and tariffs are not established by a government regulatory body, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the contractor or a subcontractor with specifications or written provisions forming a part of this contract or with specific written instructions given by the Contracting

Officer directing the manner of performance.

(R 7-1702.5(a) 1971 APR)

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.

As prescribed at 27.202-2, insert the following clause:

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (APR 1984)

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the dollar amount set forth in 13.000 of the Federal Acquisition Regulation (FAR).

(End of clause) (R 7-103.23 1965 JAN)

52.227-3 Patent Indemnity.

Insert the following clause as prescribed at 27.203-1(b), 27.203-2(a), or 27.203-4(a)(2) as applicable:

PATENT INDEMNITY (APR 1984)

(a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the

Government of such supplies or construction work.

(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or (3) a claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

(End of clause) (R 7-104.5 1975 JUN)

Alternate I (APR 1984). The following paragraph (c) is added to the clause:

(c) This patent indemnification shall not apply to the following items:

[Contracting Officer list and/or identify the items to be excluded from this indemnity]

(R 7-104.5(a) 1964 SEP)

Alternate II (APR 1984). The following paragraph (c) is added to the clause:

(a) This patent indemnification shall cover the following items:

[List and/or identify the items to be included under this indemnity] (R 7-104.5(a) 1964 SEP)

Alternate III (APR 1984). The following paragraph is added to the clause:

() As to subcontracts at any tier for communication service, this clause shall apply only to individual communication service authorizations over \$5,000 issued under this contract and covering those communications services and facilities (1) that are or have been sold or offered for sale by the Contractor to the public, (2) that can be provided over commercially available equipment, or (3) that involve relatively minor modifications.

(R 7-1701.10 1971 APR)

52.227-4 Patent Indemnity—Construction Contracts.

As prescribed at 27.203-5, insert the following clause:

PATENT INDEMNITY—CONSTRUCTION CONTRACTS (APR 1984)

Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of performing this contract or out of the use or disposal by or for the account of the Government of supplies furnished or work performed under this contract.

(End of clause) (R 7-602.16 1964 JUN)

Alternate I (APR 1984) Designate the first paragraph as paragraph(a) and add the following to the basic clause as paragraph (b):

(b) This patent indemnification shall not apply to the following items:

[Contracting Officer specifically identify the item to be excluded]

(R 7-602.16(b) 1966 APR)

NOTE: Exclusion from indemnity of specified, identified patents, as distinguished from items, is the exclusive prerogative of the agency head or designee (See 27.203-6).

52.227-5 Waiver of Indemnity.

As prescribed at 27.203-6, insert the following clause:

WAIVER OF INDEMNITY (APR 1984)

Any provision or clause of this contract to the contrary notwithstanding, the Government hereby authorizes and consents to the use and manufacture, solely in performing this contract, of any invention covered by the United States patents identified below and waives indemnification by the Contractor with respect to such patents:

[Contracting Officer identify the patents by number or by other means if more appropriate]

(End of clause) (AV 7-104.5(b) 1955 JAN)

52.227-6 Royalty Information.

As prescribed at 27.204-2, insert the following provision:

ROYALTY INFORMATION (APR 1984)

(a) *Cost or charges for royalties.* When the response to this solicitation contains costs or charges for royalties totaling more than \$250, the following information shall be included in the response relating to each separate item of royalty or license fee:

- (1) Name and address of licensor.
- (2) Date of license agreement.

(3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable.

(4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable.

(5) Percentage or dollar rate of royalty per unit.

(6) Unit price of contract item.

(7) Number of units.

(8) Total dollar amount of royalties.

(b) *Copies of current licenses.* In addition, if specifically requested by the Contracting Officer before execution of the contract, the offeror shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents.

(End of provision) (R 7-2003.42 1961 AUG)

Alternate I. (APR 1984) Substitute the following for the introductory portion of paragraph (a) of the basic clause:

When the response to this solicitation covers charges for special construction or special assembly that contain costs or charges for royalties totaling more than \$250, the following information shall be included in the response relating to each separate item of royalty or license fee:

(R 7-1710.12)

52.227-7 Patents—Notice of Government Licensee.

As prescribed at 27.204-3(c), insert the following provision:

PATENTS—NOTICE OF GOVERNMENT LICENSEE (APR 1984)

The Government is obligated to pay a royalty applicable to the proposed acquisition because of a license agreement between the Government and the patent owner. The patent number is [Contracting Officer fill in], and the royalty rate is [Contracting Officer fill in]. If the offeror is the owner of, or a licensee under, the patent, indicate below:

() Owner () Licensee

If an offeror does not indicate that it is the owner or a licensee of the patent, its offer will be evaluated by adding thereto an amount equal to the royalty.

(End of provision) (R 7-2003.15 1974 APR)

52.227-8 Reporting of Royalties (Foreign).

As prescribed at 27.204-4, insert the following clause:

REPORTING OF ROYALTIES (FOREIGN) (APR 1984)

(a) If this contract is in an amount that exceeds 50,000 United States dollars, the Contractor shall report in writing to the Contracting Officer while performing this contract the amount of royalties paid or to be paid by the Contractor directly to others in performing this

contract. The Contractor shall also (1) furnish in writing any additional information relating to such royalties as may be requested by the Contracting Officer and (2) insert a provision similar to this clause in any subcontract at any tier that involves an amount in excess of the equivalent of 50,000 United States dollars.

(b) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like for the use of or for rights in patents or patent applications.

(End of clause) (R 7-104.8 1966 OCT)

52.227-9 Refund of Royalties.

As prescribed at 27.206-2, insert the following clause. In solicitations and contracts with an incentive fee arrangement, change "price" to "target cost and target profit" wherever it appears.

REFUND OF ROYALTIES (APR 1984)

(a) The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.

(b) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract hereunder.

(c) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder together with the reasons.

(d) The Contractor will be compensated for royalties reported under paragraph (c) above, only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. To the extent that any royalties that are included in the contract price are not in fact paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the Government and allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs.

(e) If, at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) above, the Contractor shall promptly

notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.

(f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

(End of clause) (V 7-104.8(b) 1968 FEB)

52.227-10 Filing of Patent Applications—Classified Subject Matter.

As prescribed at 27.207-2, insert the following clause:

FILING OF PATENT APPLICATIONS—CLASSIFIED SUBJECT MATTER (APR 1984)

(a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of this contract classified "Secret" or higher, the Contractor shall, citing the 30-day provision below, transmit the proposed application to the Contracting Officer. The Government shall determine whether, for reasons of national security, the application should be placed under an order of secrecy, sealed in accordance with the provision of 35 U.S.C. 181-188, or the issuance of a patent otherwise delayed under pertinent United States statutes or regulations. The Contractor shall observe any instructions of the Contracting Officer regarding the manner of delivery of the patent application to the United States Patent Office, but the Contractor shall not be denied the right to file the application. If the Contracting Officer shall not have given any such instructions within 30 days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) Before filing a patent application in the United States disclosing any subject matter of this contract classified "Confidential," the Contractor shall furnish to the Contracting Officer a copy of the application for Government determination whether, for reasons of national security, the application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations.

(c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed, in any country other than in the United States as provided in paragraphs (a) and (b) of this clause, an application or registration for a patent containing any of the subject matter of this contract without first obtaining written approval of the Contracting Officer.

(d) When filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter and shall promptly furnish to the Contracting Officer the serial number, filing date, and name of the country of any such application. When transmitting the application to the United States Patent Office, the Contractor shall by separate letter identify by agency and number the contract or contracts that require security classification markings to be placed on the application.

(e) The Contractor agrees to include, and require the inclusion of, this clause in all subcontracts at any tier that cover or are likely to cover classified subject matter.

(End of clause) (R 7-104.6 1969 DEC)

52.227-11 Patent Rights—Retention by the Contractor (Short Form).

As prescribed at 27.303(a), insert the following clause:

PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SHORT FORM) (APR 1984)

(a) Definitions.

"Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

"Subject invention" means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract.

"Practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Made", when used in relation to any invention, means the conception or first actual reduction to practice of such invention.

"Small business firm" means a small domestic business concern as defined at Section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

"Nonprofit organization" means a domestic university or other institution of higher education or an organization of

the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any domestic nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) *Allocation of principal rights.* The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent applications by Contractor.*

(1) The Contractor shall disclose each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to the Contracting Officer shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Contracting Officer, the Contractor shall promptly notify the Contracting Officer of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor shall elect in writing whether or not to retain title to any such invention by notifying the Federal agency within 12 months of disclosure; *provided*, that in any case where publication, on sale, or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period of election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall file its initial patent application on an elected

invention within 2 years after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to the Contracting Officer, election, and filing may, at the discretion of the funding Federal agency, be granted.

(d) *Conditions when the Government may obtain title.* The Contractor shall convey to the Federal agency, upon written request, title to any subject invention—

(1) If the Contractor fails to disclose or elect the subject invention within the times specified in paragraph (c) above, or elects not to retain title (the agency may only request title within 60 days after learning of the Contractor's failure to report or elect within the specified times);

(2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) above; *provided*, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) above, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country; or

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to contractor.* (1) The Contractor shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the Contractor fails to disclose the subject invention within the times specified in paragraph (c) above. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of

the funding Federal agency except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the Federal Property Management Regulations and agency licensing regulations (if any). This license shall not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations (if any) and the Federal Property Management Regulations concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) *Contractor action to protect the Government's interest.* (1) The Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) above, and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format

suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) above. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor shall notify the Federal agency of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the contract) awarded by (identify the Federal agency). The Government has certain rights in this invention."

(g) *Subcontracts.* (1) The Contractor shall include this clause (52.227-11 of the Federal Acquisition Regulation (FAR)), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization. The subcontractor shall retain all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to those matters covered by this clause.

(h) *Reporting utilization of subject inventions.* The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on

efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (j) of this clause. To the extent data or information supplied under this paragraph is considered by the Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the agency agrees that, to the extent permitted by law, it shall not disclose such information to persons outside the Government.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* (1) The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in FAR 27.304-1(g) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, the Federal agency has the right to grant such a license itself if the Federal agency determines that—

(i) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(ii) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(iii) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(iv) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.* If the Contractor is a nonprofit organization, it agrees that—

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided, that such assignee will be subject to the same provisions as the Contractor);

(2) The Contractor may not grant exclusive licenses under United States patents or patent applications in subject inventions to persons other than small business firms for a period in excess of the earlier of—

(i) Five years from first commercial sale or use of the invention; or

(ii) Eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance, unless on a case-by-case basis, the Federal agency approves a longer exclusive license. If exclusive field-of-use licenses are granted, commercial sale or use in one field of use will not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention will not be deemed to end the exclusive period to different subsequent products covered by the invention;

(3) The Contractor shall share royalties collected on a subject invention with the inventor; and

(4) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions,

will be utilized for the support of scientific research or education.

(l) *Communications.* Reserved.
(End of clause) (R 7-302.23(h) 1981 JUL)
Alternate I (APR 1984). Add the following sentence at the end of paragraph (b) of the basic clause:

The license shall include the right of the Government to sublicense foreign governments and international organizations pursuant to the following treaties or international agreements:* or pursuant to any future treaties or agreements with foreign governments or international organizations.

[*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]

(R 7-302.23(b) 1981 JUL)

52.227-12 Patent Rights—Retention by the Contractor (Long Form)

As prescribed at 27.303(b), insert the following clause:

PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LONG FORM) (APR 1984)

(a) *Definitions.*

"Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

"Subject invention" means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract.

"Practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

"Small business firm" means a domestic small business concern as defined at Section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8

and 13 CFR 121.3-12, respectively, will be used.

"Nonprofit organization" means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any domestic nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) *Allocation of principal rights.* The Contractor may elect to retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor elects to retain title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent applications by Contractor.* (1) The Contractor shall disclose each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or within 6 months after the Contractor becomes aware that a subject invention has been made, whichever is earlier. The disclosure to the Contracting Officer shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Contracting Officer, the Contractor shall promptly notify the Contracting Officer of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor shall elect in writing whether or not to retain title to any such invention by notifying the Federal agency at the time of disclosure or within 8 months of disclosure, as to those countries (including the United

States) in which the Contractor will retain title; *provided*, that in any case where publication, on sale, or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period of election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall file its initial patent application on an elected invention within 1 year after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor shall file patent applications in additional countries (including the European Patent Office and under the Patent Cooperation Treaty) within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to the Contracting Officer, election, and filing may, at the discretion of the funding Federal agency, be granted, and will normally be granted unless the Contracting Officer has reason to believe that a particular extension would prejudice the Government's interest.

(d) *Conditions when the Government may obtain title.* The Contractor shall convey to the Federal agency, upon written request, title to any subject invention—

(1) If the Contractor elects not to retain title to a subject invention;

(2) If the Contractor fails to disclose or elect the subject invention within the times specified in paragraph (c) above (the agency may only request title within 60 days after learning of the Contractor's failure to report or elect within the specified times);

(3) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) above; *provided*, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) above, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country; or

(4) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to Contractor.* (1)

The Contractor shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the Contractor fails to disclose the subject invention within the times specified in paragraph (c) above. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the funding Federal agency except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the Federal Property Management Regulations and agency licensing regulations (if any). This license shall not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and the Federal Property Management Regulations concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) *Contractor action to protect the Government's interest.* (1) The Contractor agrees to execute or to have executed and promptly deliver to the

Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) above and subparagraph (n)(2) below, and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) above. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor shall notify the Federal agency of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the contract) awarded by (identify the Federal agency). The Government has certain rights in this invention."

(5) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and

other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(6) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on the subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(7) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and certifying that all subject inventions have been disclosed or that there are no such inventions.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or certifying that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(8) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontract, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.

(9) In the event of a refusal by a prospective subcontractor to accept one of the clauses in subparagraph (g)(1) or (2) below, the Contractor (i) shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter and (ii) shall not proceed with such subcontracting without the written authorization of the Contracting Officer.

(10) The Contractor shall provide, upon request, the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and patent number and issue date for any subject invention for which the Contractor has retained title.

(11) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(g) *Subcontracts.* (1) The Contractor shall include the clause at 52.227-11 of the Federal Acquisition Regulation (FAR), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization. The subcontractor shall retain all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The Contractor shall include this clause (FAR 52.227-12) in all other subcontracts, regardless of tier, for experimental, developmental, or research work.

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to those matters covered by this clause.

(h) *Reporting utilization of subject inventions.* The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (j) of this clause. To the extent data or information supplied under this paragraph is considered by the Contractor, its licensee or assignee to be privileged and confidential and is so marked, the agency agrees that, to the

extent permitted by law, it shall not disclose such information to persons outside the Government.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in FAR 27.304-1(g) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, the Federal agency has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.* Reserved.

(l) *Communications.* Reserved.

(m) *Other inventions.* Nothing contained in this clause shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(n) *Examination of records relating to inventions.* (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by subparagraphs (f)(2) and (f)(3) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer determines that an inventor has not disclosed a subject invention to the Contractor in accordance with the procedures required by subparagraph (f)(5) of this clause, the Contracting Officer may, within 60 days after the determination, request title in accordance with subparagraphs (d)(2) and (d)(3) of this clause. However, if the Contractor establishes that the failure to disclose did not result from the Contractor's fault or negligence, the Contracting Officer shall not request title.

(3) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

(4) Any examination of records under this paragraph shall be subject to appropriate conditions to protect the confidentiality of the information involved.

(o) *Withholding of payment (this paragraph does not apply to subcontracts).* (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of the contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (f)(5) above;

(ii) Disclose any subject invention pursuant to subparagraph (c)(1) above;

(iii) Deliver acceptable interim reports pursuant to subdivision (f)(7)(i) above; or

(iv) Provide the information regarding subcontracts pursuant to subparagraph (f)(6) above.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (c)(1) above, an acceptable final report pursuant to subdivision (f)(7)(ii) above, and all past due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(End of clause) (R 7-302.23(b) 1981 JUL)

Alternate 1 (APR 1984). Add the following sentence at the end of paragraph (b) of the basic clause:

The license shall include the right of the Government to sublicense foreign governments and international organizations pursuant to the following treaties or international agreements:* or pursuant to any future treaties or agreements with foreign governments or international organizations.

[*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]

(R 7-302.23(h) 1981 JUL)

52.227-13 Patent Rights—Acquisition by the Government.

As prescribed at 27.303(c), insert the following clause:

PATENT RIGHTS—ACQUISITION BY THE GOVERNMENT (APR 1984)

(a) Definitions.

"Invention," as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

"Subject invention," as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract.

"Practical application," as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(b) *Allocations of principal rights.* (1) *Assignment to the Government.* The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Contractor under subparagraph (b)(2) and paragraph (d) below.

(2) *Greater rights determinations* (i) The Contractor, or an employee-inventor after consultation with the Contractor, may retain greater rights than the nonexclusive license provided in paragraph (d) below, in accordance with the procedures of paragraph 27.304-1(a) of the Federal Acquisition Regulation (FAR). A request for a determination of whether the Contractor or the employee-inventor is entitled to retain such greater rights must be submitted to the Head of the Contracting Agency or designee at the time of the first disclosure of the invention pursuant to subparagraph (e)(2) below, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract normally shall be subject to paragraph (c) below, and to the reservations and conditions deemed to be appropriate by the Head of the Contracting Agency or designee.

(ii) Upon request, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and patent number and issue date for any subject invention in any country for which the Contractor has retained title.

(iii) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(c) *Minimum rights acquired by the Government.* (1) With respect to each subject invention to which the

Contractor retains principal or exclusive rights, the Contractor agrees as follows:

(i) The Contractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).

(ii) The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in FAR 27.304-1(g) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, the Federal agency has the right to grant such a license itself if the Federal agency determines that—

(A) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(iii) The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceedings undertaken by the agency

in accordance with subdivision (ii) above. To the extent data or information supplied under this section is considered by the Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the agency agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

(iv) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(v) The Contractor agrees to provide for the Government's paid-up license pursuant to subdivision (i) above in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by subdivision (ii) above, and for the reporting of utilization information as required by subdivision (iii) above, whenever the instrument transfers principal or exclusive rights in a subject invention.

(2) Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(d) *Minimum rights to the Contractor.*

(1) The Contractor is hereby granted a revocable nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the subject invention within the times specified in subparagraph (e)(2) below. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the funding Federal agency except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious

practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the Federal Property Management Regulations and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and the Federal Property Management Regulations concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(4) When the Government has the right to receive title, and does not elect to secure a patent in a foreign country, the Contractor may elect to retain such rights in any foreign country in which the Contractor elects to secure a patent, subject to the Government's rights in subparagraph (c)(1) above.

(e) *Invention identification, disclosures, and reports.* (1) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request,

the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor shall disclose each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor shall promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period, and certifying that all subject inventions have been disclosed (or that there are not such inventions) and that the procedures required by subparagraph (e)(1) above have been followed.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or certifying that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply

with the disclosure provisions of paragraph (c) above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (2) above.

(5) The Contractor agrees subject to FAR 27.302(i) that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Examination of records relating to inventions.* (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Withholding of payment (this paragraph does not apply to subcontracts).* (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (e)(1) above;

(ii) Disclose any subject invention pursuant to subparagraph (e)(2) above;

(iii) Deliver acceptable interim reports pursuant to subdivision (e)(3)(i) above; or

(iv) Provide the information regarding subcontracts pursuant to subparagraph (h)(4) below.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (e)(2) above, and acceptable final report pursuant to subdivision (e)(3)(ii) above, and all past due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) *Subcontracts.* (1) The Contractor shall include this clause (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, or research work. The subcontractor shall retain all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, the agency, subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract,

and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(i) *Preference for United States industry.* Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely

to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(End of clause) (R 7-302.23(a) 1981 JULY)

Alternate I (APR 1984). Add the following sentence at the end of subdivision (c)(1)(i) of the basic clause:

The license will include the right of the Government to sublicense foreign governments and international organizations pursuant to the following treaties or international agreements: " or pursuant to any future treaties or agreements with foreign governments or international organizations.

[*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]

(R 7-302.23(a) 1981 JUL)

PART 53—FORMS

53.203 [Amended]

22. In section 53.203, the reference to "DJ-1500" is removed from the title, and paragraph (b) is removed and reserved.

53.222 [Amended]

23. In section 53.222, the references to "98, 98a" are removed from the title, paragraph (a) is removed and reserved, and paragraph (b) is amended by removing "and 22.1009".

53.303 [Amended]

24. Section 53.303 is amended by removing Form DJ-1500, Identical Bid Report For Procurement.

Appendix A

Note.—The following appendix will not appear in the Code of Federal Regulations.

BILLING CODE 6820-61-M



RESEARCH AND
ENGINEERING

OFFICE OF THE UNDER SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

21 FEB 1984

Honorable Donald E. Sowle
Administrator
Office of Federal Procurement Policy
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Sowle:

We are enclosing herewith a copy of the Memorandum of Understanding for FAR Maintenance executed by James T. Brannan, Director, Defense Acquisition Regulatory Council and William B. Ferguson, Chairman, Civilian Agency Acquisition Council and concurred in by the appropriate executives of DoD, GSA, and NASA. This memorandum provides a uniform and orderly basis for the processing of FAR cases and orderly maintenance of the FAR.

Sincerely,

[Signature]
ALLAN W. BERES
Assistant Administrator
for Acquisition Policy

[Signature]
S. J. EVANS
Assistant Administrator
for Procurement

MEMORANDUM OF AGREEMENT
FOR
FAR MAINTENANCE

RECOMMENDATIONS FOR FAR CHANGES

- Military Services, Defense Agencies, other components of the Department of Defense, and NASA shall submit recommendations for change to the DAR Council.
- Other Executive agencies governed by the FAR shall submit recommendations for change to the CAA Council.
- The others (e.g. the public and agencies not covered by the FAR) may submit recommendations for change to either Council.
- Matters that may affect defense and civilian acquisition equally should be submitted to the FAR Secretariat who will refer it to the cognizant Council for consideration of the establishment of a FAR Case in accordance with the attached listing.
- Matters primarily involving civilian agency acquisition may be submitted to the CAA Council.
- Matters primarily involving defense acquisition may be submitted to the DAR Council.

ESTABLISHING A FAR CASE

- Either Council receiving a recommendation for a change may establish a FAR case after receiving concurrence of the other Council.
- A Council establishing a FAR case shall obtain a FAR case number from the FAR Secretariat. The FAR Secretariat shall examine the list of open FAR cases and advise whether an existing FAR case covers the same subject matter.
- A Council receiving a recommendation for change pertaining to the subject matter of an open FAR case shall consult with the other Council before establishing a FAR case; if appropriate, the new recommendation may be incorporated into the existing FAR case and may be transferred to the other Council for processing.
- A Council establishing a FAR case shall give the other Council an opportunity to provide a representative to work on the development of the case.
- A Council receiving a recommendation for change shall communicate, as necessary, with the proponent to obtain sufficient information to establish or develop the FAR case.

FAR APPORTIONMENT LISTING

ASSIGNMENT

PART

1	Both
2	As applicable
3	CAAC
4	CAAC except 4.4
5	CAAC
6	Reserved
7	DARC
8	CAAC except 8.3 (Both)
9	Both
10	DARC
11	DARC
12	CAAC
13	Both
14	CAAC
15	DARC
16	DARC
17	DARC except 17.6
18	Reserved
19	DARC
20	CAAC
21	Reserved
22	CAAC
23	CAAC
24	CAAC
25	DARC
26	Reserved
27	Both
28	CAAC except 28.3
29	DARC
30	DARC
31	DARC
32	DARC
33	Both
34	DARC
35	DARC
36	Both
37	CAAC
38	CAAC
39	CAAC
40	Reserved
41	Reserved
42	DARC
43	CAAC
44	DARC
45	DARC
46	DARC
47	DARC
48	DARC
49	DARC
50	DARC
51	CAAC
52	As applicable
53	As applicable

This list is subject to modification by agreement of both Councils.

A Council receiving a recommendation for change which it believes would more appropriately be processed by the other Council may request the other Council to establish it as a FAR case.

PROCESSING A FAR CASE

- The Council processing a FAR case shall keep the other Council advised of any significant change in scope or direction from the original recommendation for change.
- The Council processing a FAR case shall periodically keep the FAR Secretariat advised of the current status of the case.
- The Council processing a FAR case shall obtain the concurrence of the other Council in any proposed resolution, including rejection of the recommendation.
- The Council processing a FAR case shall respond to information requests concerning the case.
- The Council providing final concurrence shall forward the approved coverage to the FAR Secretariat for publication.
- The FAR Secretariat shall not publish a change or notice of proposed change in the Federal Register until both Councils concur.

RESOLVING DISAGREEMENTS

- When the two Councils cannot agree on the resolution of a FAR case, the matter shall be forwarded to the Deputy Under Secretary of Defense for Acquisition Management, DoD; the Assistant Administrator for Acquisition Policy, GSA; and the Assistant Administrator for Procurement, NASA for resolution. In the event an agreement cannot be reached within 30 days for reasons pertaining to substantive differences, the matter shall be deemed a disagreement in accordance with Public Law 96-191.

JAMES T. BRANNAN
Director
Defense Acquisition
Regulatory Council

WILLIAM B. FERGUSON
Chairman
Civilian Agency
Acquisition Council

CONCUR:

Walter J. Brown
DoD
GSA
NASA

FAR APPORTIONMENT (Continued)

DAR COUNCIL

4.4 Safeguarding Classified Information Within Industry
 7 Acquisition Planning
 10 Specifications, Standards, and Other Purchase Descriptions
 11 Acquisition and Distribution of Commercial Products
 15 Contracting by Negotiation
 16 Types of Contracts
 17 Special Contracting Methods
 19 Small Business and Small Disadvantaged Business Concerns
 25 Foreign Acquisition
 28.3 Insurance
 29 Taxes
 30 Cost Accounting Standards
 31 Contract Cost Principles and Procedures
 32 Contract Financing
 34 Major System Acquisition
 35 Research and Development Contracting
 42 Contract Administration
 44 Subcontracting Policies and Procedures
 45 Government Property
 46 Quality Assurance
 47 Transportation
 48 Value Engineering
 49 Termination of Contracts
 50 Extraordinary Contractual Actions

CAA COUNCIL

3 Improper Business Practices and Personal Conflicts of Interest
 4 Administrative Matters
 5 Publicizing Contract Actions
 8 Required Sources of Supplies and Services
 12 Contract Delivery or Performance
 14 Formal Advertising
 17.6 Management and Operating Contracts
 20 Labor Surplus Area Concerns
 22 Application of Labor Laws to Government Acquisitions
 23 Environment, Conservation, and Occupational Safety
 24 Protection of Privacy and Freedom of Information
 28 Bonds and Insurance
 37 Service Contracting
 38 Federal Supply Schedule Contracting
 39 Management, Acquisition, and Use of Information Resources
 43 Contract Modifications
 51 Use of Government Sources by Contractors

Both*

1 Federal Acquisition Regulations System
 8.3 Acquisition of Utility Services
 9 Contractor Qualification
 13 Small Purchase and Other Simplified Purchase Procedures
 27 Patents, Data, and Copyrights--Reserved
 33 Disputes and Appeals
 36 Construction and Architect-Engineer Contracts

As Applicable

2 Definitions of Words and Terms
 52 Solicitation Provisions and Contract Clauses
 53 Forms

This list is subject to modification by agreement of both Councils.

* These parts have a shared community of interest and a case will be established on a case-by-case basis in accordance with procedures established in this Memorandum of Agreement.

[FR Doc. 84-8751 Filed 3-29-84; 8:45 am]

BILLING CODE 6820-61-C