

(40 CFR 180.242). There are no regulatory actions pending against continued registration of the pesticide, and there are no other considerations involved in establishing this tolerance. The metabolism of thiabendazole is adequately understood, and an adequate analytical method, spectrophotometric analysis, is available for enforcement purposes.

Based on the information cited above, the Agency has determined that the establishment of the tolerance for the fungicide thiabendazole in or on the raw agricultural commodity dry beans will protect the public health. Therefore, the regulation is established by amending 40 CFR 180.242, as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the *Federal Register*, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512, 21 U.S.C. 346a(d)(2))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 21, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.242(a) is amended, by adding the tolerance for dry beans, to read as follows:

§ 180.242 Thiabendazole; tolerances for residues.

(a) * * *

Commodities	Parts per million
Beans (dry)	0.1

[FR Doc. 85-7822 Filed 4-2-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435 and 436

[BERC-507-F]

Medicaid Program; Federal Financial Participation for Inmates in Public Institutions and Individuals in an Institution for Mental Disease or Tuberculosis

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule brings regulations into conformance with the Medicaid statute by clarifying that no Federal financial participation (FFP) is available for any services furnished to certain institutionalized individuals. These are individuals who are inmates of public institutions which are not medical institutions or patients under age 65 in institutions for mental diseases or tuberculosis. In accordance with statute, an exception is provided for individuals under age 22 who are receiving covered inpatient services in psychiatric facilities. Prior regulations provided that FFP was available for noninstitutional services furnished during the month in which the individual became an inmate or patient and the last month of institutionalization and were inconsistent with the statute.

EFFECTIVE DATE: May 3, 1985.

FOR FURTHER INFORMATION CONTACT: Roy Trudel, 301-594-9128.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1905(a) of the Social Security Act (the Act) prohibits Federal payments for services provided to inmates of public institutions which are not medical institutions or to individuals under age 65 who are patients in an institution for mental diseases or tuberculosis unless these individuals are under age 22 and are receiving covered

inpatient services in psychiatric facilities. The intent of this provision is to ensure that Medicaid funds are not used to finance care which traditionally has been the responsibility of State and local governments. Aside from the exceptions specified in section 1905(a) of the Act, FFP has never been available for institutional services provided to patients in public institutions or under age 65 in institutions for mental diseases or tuberculosis. (For purposes of this preamble, we refer to institutional services as inpatient psychiatric or tuberculosis services provided to the individual who is a patient or inmate. We refer to noninstitutional services as all other services covered under the State plan.)

In a proposed rule (NPRM) published in the March 31, 1983 *Federal Register* (48 FR 13446), we proposed to revise Medicaid regulations at 42 CFR 435.1008(b) and 435.1004(b) to bring our regulations into conformance with section 1905(a) of the Act. Under the prior regulations, FFP was allowed during the first and last months of institutionalization for noninstitutional services provided under the State plan to otherwise eligible individuals who under the statute, were inmates of public institutions or patients of mental or tuberculosis institutions. This exception in the regulations was not based on the statute, but rather on a judgment that such an arrangement would be more administratively convenient for States. (When current regulations were published, States generally did not have sophisticated claims processing systems. However, the situation has changed and most States now have a mechanized claims processing and information retrieval system which enables them to determine when noninstitutional services furnished to certain institutionalized individuals are no longer covered.)

As explained in the preamble to the NPRM, we decided to change our regulations and ensure that Medicaid funds are not used to finance care for institutionalized individuals who have traditionally been the responsibility of State and local governments. We concluded that, in this case, a policy of administrative convenience (which is not a statutory requirement) should not take precedence over a specific statutory provision.

II. Provisions of the Regulations

After consideration of public comments received following our proposal, we are adopting the provisions of the proposed regulations without change in this final rule. (The comments

and our responses to them, are found in section III of this preamble.) As proposed, we are amending 42 CFR 435.1008 and 436.1004 to preclude the availability of FFP for all services provided to individuals who are inmates of public institutions (which are not medical institutions) or to individuals under age 65 who are patients in institutions for mental diseases or tuberculosis, from the date of admission to the date of discharge. By the term "institution for tuberculosis", we mean an institution traditionally thought of as a tuberculosis sanitarium. Under the policy set forth in this rule, FFP will not be available for Medicaid services provided from the date of admission until the date of discharge. However, in accordance with section 1905(a)(16) of the Act, we will continue to provide FFP for services furnished to individuals under age 22 who are receiving inpatient psychiatric services as defined in 42 CFR 440.160. These final regulations do not affect Federal matching funds for services to individuals who are *not* residing in (i.e. have been discharged from) these facilities. FFP will continue to be available for covered services furnished to an eligible individual during any part of the month in which the individual is not an inmate of a public institution or a patient in an institution for mental diseases or tuberculosis. The provisions of this rule do not affect individual eligibility under Medicaid but rather FFP for services furnished to certain institutionalized individuals.

III. Public Comments

Thirty comments were received from States, professional organizations and local health departments. The majority of comments were received voiced opposition to the proposed regulations for the reasons discussed below. All comments were considered in drafting these final regulations.

A. General Comments

Comment: Seven respondents stated that the proposed regulations were contrary to Congressional intent because a 1965 Senate Report (S. Rep. No. 404, Part 1) refers to FFP for a partial month of services provided to eligible individuals admitted to an institution and to the administrative inconvenience of having to segregate bills by the day of month on which services were provided.

Response: We do not agree that these regulations contradict Congressional intent. The language at section 1905(a) of the Act specifically excludes FFP for any services provided to inmates of public institutions or patients under age 65 in an institution for mental diseases or tuberculosis. The plain language of

the statute thus clearly precludes FFP for all such services.

Comment: Three commenters felt that there was no basis for eliminating FFP for noninstitutional services provided to inmates of public institutions or patients of institutions for mental diseases or tuberculosis.

Response: We believe the statute (section 1905(a) of the Act) clearly justifies these regulations. The language of this provision prohibits FFP for all services to individuals in certain types of institutions (with specified exceptions). Specifically, subparagraphs (A) and (B) following section 1905(a)(18) provide that no FFP is available "... with respect to care or services for any individual who is an inmate of a public institution ..." or "... with respect to care or services for any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases."

Comment: One respondent thought that our statement that the purpose of section 1905(a) is to ensure that Medicaid funds are not used to finance care which has traditionally been the responsibility of State and local governments, was unfounded since States and local governments do not have adequate finances for acute inpatient psychiatric care.

Response: Even under our present regulations, FFP has not been available beyond the first and last months of institutionalization for any care provided to inmates of public institutions and individuals under age 65 in institutions for mental diseases or tuberculosis (except for those under age 22 in qualified psychiatric facilities).

We recognize that States and local governments may be reassuming financial responsibility for such care; however, we believe this was contemplated by Congress since the statute clearly precludes FFP for services provided to certain institutionalized individuals in certain types of institutions.

Comment: One professional association commented that the regulations allowing FFP for services furnished to eligible individuals during the month in which they become patients of an institution for mental diseases did not limit FFP to services "not provided by the institution". They questioned why this distinction was made in the proposed rule and requested that it not be retained in the final rule.

Response: Since section 1905(a) of the Act (with limited exceptions) precludes any payment with respect to care or

services for inmates of public institutions or patients under age 65 of institutions for mental diseases or tuberculosis, we have made this statutory exclusion clear in these regulations. That is, the exclusion in the statute and regulations applies to both services provided by the institution and to services rendered by other Medicaid providers to institutionalized individuals in the types of facilities specified by the law.

Comment: One respondent stated that Medicaid payments should be available for disabled individuals of all ages dually entitled to Medicare and Medicaid, to cover Medicare deductibles and copayments.

Response: The availability of FFP for services provided under Medicaid is determined by law. The only legal exceptions to the preclusion of FFP for inmates of public institutions or patients in institutions for mental diseases or tuberculosis are those which are specified in the law at section 1905(a) of the Act.

Comment: Two commenters stated that the proposed rule would negatively affect the care provided to patients by causing premature discharges or disrupting Medicaid benefits.

Response: We do not believe that this change will significantly affect patient care. Changes as a result of these regulations do not require the termination of any services. Rather they place the responsibility for payment for care provided during those portions of the first and last months during which an individual is in a facility outside the federally-assisted Medicaid program.

Comment: One State mental health department requested that HCFA "hold harmless" States that received reimbursement for services provided in public institutions.

Response: We cannot legally "hold harmless" States that received reimbursement for services provided which are not covered services; thus any State which received FFP for such services is subject to recovery action. We note, however, that since our regulations specifically allowed payment for covered noninstitutional services to eligible institutionalized individuals during the first and last months of institutionalization, FFP for such services furnished up to the effective date of this regulation will not be subject to recovery.

B. Economic Impact of the Regulations

Comment: One commenter contended that contrary to the Secretary's certification under 5 U.S.C. 605(b) as enacted by the Regulatory Flexibility

Act (Pub. L. 96-354), these regulations would have a significant impact on providers of services.

Response: We continue to believe this policy will not significantly affect providers of these services. However, we do agree that State governments will be affected to the extent that they reassume the responsibility for full funding of services provided to inmates of public institutions and some patients in institutions for mental diseases or tuberculosis. However, since State governments are not considered small entities under the provisions of the Regulatory Flexibility Act, we consider the Secretary's certification accurate.

Comment: Several commenters questioned the statement in the preamble to the NPRM that a regulatory impact analysis is not needed. They stated that HCFA failed to account for the impact on States of eliminating FFP for partial month institutional and noninstitutional services.

Response: HCFA is aware that these regulations will have some impact on State governments. As stated earlier in this preamble, (aside from the exceptions specified in section 1905(a)) FFP has never been available for institutional services provided to patients in public institutions or under age 65 in institutions for mental diseases or tuberculosis. Thus, the impact on State governments is reduced only to the loss of FFP for noninstitutional services for the months of entry and discharge in the institution. Additional, State governments are not considered small entities for purposes of the Regulatory Flexibility Act. Further, as we noted in the preamble to the NPRM, even though we were unable to develop exact cost estimates because of insufficient data, there was no evidence to suggest that the results of this change will exceed the \$100 million a year criteria. Accordingly, we do not believe an impact statement is necessary.

Comment: Several respondents stated that the proposed regulations would impact negatively on both State and local governments. They noted that reduced FFP could result in the elimination of other State and local programs or hinder the capacity of those governments to provide care to patients.

Response: As previously stated, we acknowledge that these regulations will have some impact on State governments. We do not believe that the impact on local governments will be great. However, because of the statutory exclusion for all services to individuals in public institutions which are not medical institutions and individuals in institutions for mental disease between the ages of 22 and 64, or under age 65 in

institutions for tuberculosis, we believe it is necessary to issue these regulations.

Comment: One State social services department commented that the proposed regulations would penalize States which use various cost containment mechanisms that depend on the availability of FFP for partial months.

Response: We do not believe that these regulations preclude State governments from establishing cost containment mechanisms which provide fiscal disincentives for more costly institutional placement when this placement is inappropriate. We recognize that under these regulations States will have to assume the costs of those mechanisms associated with partial month institutionalization in the types of institutions for which FFP is not available.

Comment: One respondent noted that general hospital psychiatric units routinely shift the costs of acute psychiatric care from Medicare to Medicaid for dually entitled individuals who run out of Medicare psychiatric benefits. The respondent alleged that institutions for mental diseases (IMDs) often follow the same practice for dually entitled Medicare patients who run out of Medicare psychiatric benefits around the time of their discharge to an IMD, so that, IMDs have been claiming for a partial month of institutional services under Medicaid.

According to the respondent, these regulations prevent IMDs from following this practice and would result in additional cost-shifting to the Medicaid program because hospitals would retain the patients. Additionally, because of the loss of revenue, IMDs would prematurely discharge patients.

Response: In limiting Medicaid funds for psychiatric services, the statute refers only to services for those under 65 in institutions for mental diseases and tuberculosis except for covered inpatient services in psychiatric facilities for individuals under age 22. While it is true that general hospital psychiatric units are not affected by these regulations, most admissions to such units are for acute psychiatric episodes which generally do not extend beyond the number of hospital days in a Medicare-benefit period; therefore, we do not believe there are many opportunities under these circumstances for general hospitals to shift costs to the Medicaid program. In regard to premature discharges and institutions losing revenue, services need not be terminated because the only change to occur is the locus of responsibility for a portion of certain expenses during partial months of care.

C. Administrative Effects of the Regulations

Comment: One commenter stated that the expected administrative costs to States under the proposed regulations would exceed any savings to the Federal government realized by disallowing FFP for services provided during a partial month of institutionalization.

Response: We do not believe that these regulations will cause undue administrative burden or expense to State governments, given the sophistication of existing mechanisms for administering the Medicaid program. At least 90 percent of the jurisdictions participating in the Medicaid program currently have an approved mechanized claims processing and information retrieval system or have received approval on an advanced planning document to implement a system. The system has the capability of determining when noninstitutional services furnished to certain institutionalized individuals are no longer covered. Based upon this existing capability, we believe States will not have difficulty in implementing this regulation change. However, any administrative burdens resulting from these regulations are outweighed by the need to fully effectuate Congressional intent as expressed in the statute.

Comment: One State human resources department questioned the administrative feasibility of the regulations. Medicaid eligibility is determined prospectively and inappropriate claims for partial months are not identified until after services have been provided. They contend that HCFA should maintain the policy set forth at 42 CFR 435.1004, which permit FFP to continue through the end of the second month following the month in which a determination of ineligibility is made.

Response: These regulations will not affect eligibility under Medicaid; they preclude FFP for services provided to individuals admitted to specific types of institutions. Regulations at 42 CFR 435.1004 do not apply to this situation. We do not believe this change in the regulations is administratively unrealistic or that it will cause a serious disruption to State governments' administration of Medicaid programs.

Comment: One State recommended that HCFA provide a "hold harmless" period of time to allow States to react to a change in Medicaid eligibility.

Response: The regulations do not affect Medicaid eligibility; therefore, a special period of time is not needed.

Comment: One respondent noted that Federal and State regulations require

advance notice if Medicaid benefits are adversely affected. Since it is impossible for a State to anticipate when a recipient will become an inmate of a public institution, the proposed regulations are contrary to Federal advance notice requirements.

Response: Federal regulations (42 CFR 431.211) require advance notice when eligibility for the Medicaid program is adversely affected. These regulations do not apply to this situation; advance notice is not required when an otherwise eligible recipient receives services for which FFP is not available.

Comment: One State commented that it provides eligibility for the entire month in which an individual is determined to be Medicaid eligible and guarantees reimbursement to providers during that month. The State believes that the proposed regulations would jeopardize the reliance providers have in this system and cause many of them to withhold services.

Response: The regulations do not affect Medicaid eligibility, but rather the availability of FFP for services provided to individuals in certain institutions. A State can continue to guarantee reimbursement to providers for the remainder of the month of admission, but at 100 percent State cost.

Comment: One State human resources department noted that it uses SSI eligibility criteria to determine Medicaid eligibility. Compliance with the proposed regulations, therefore, would require the State not to accept SSI eligibility criteria for affected individuals.

Response: As noted above, these regulations do not affect Medicaid eligibility; therefore, States can continue to use SSI eligibility criteria to determine Medicaid eligibility. However, States must apply these regulations to determine which services provided to eligible individuals can be claimed for FFP. We note that up to now, States have had to apply the rules set forth in this regulation whenever the individual is in an institution for more than one month.

IV. Impact Analysis

Executive Order 12291

The Secretary has determined that these regulations do not meet the criteria for a "major rule", as defined by section 1(b) of Executive Order 12291. That is, the regulations will not—

- Have an annual effect on the economy of \$100 million or more;
- Result in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic regions; or

- Have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

In terms of any future program costs, we cannot provide an exact estimate since we are unable to determine with specificity—

1. The number of eligible individuals located in public institutions which are not medical institutions or who are under age 65 and in institutions for mental disease or tuberculosis which are not psychiatric hospitals for persons age 22 and under,

2. How many of these individuals will require covered noninstitutional services during the portion of the month after admission to an institution, and

3. What the specific costs for any of these services would be.

In addition, we do not believe that State governments will incur undue administrative burden or expense as a result of publishing this final rule. For example, as stated earlier, at least 90 percent of the jurisdictions participating in the Medicaid program currently have an approved mechanized claims processing and information retrieval system or have received approval on an advanced planning document to implement a system. Based upon the system's existing capability to determine when noninstitutional services furnished to certain institutionalized individuals are no longer covered, we believe States will have little, if any, difficulty implementing this regulation. Any administrative burdens that States may incur are outweighed by the need to fully effectuate Congressional intent as expressed in the statute.

However, there is no evidence that any difference in costs will exceed the \$100 million threshold. Since the threshold will not be exceeded, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that these regulations will not have a significant economic impact on a substantial number of small businesses, nonprofit entities or small local governments. Generally, the policy will not significantly impact the providers of these services. Public institutions and State governments will be affected in that they will reassume responsibility for full funding of services provided to inmates of public institutions and some

patients in institutions for mental diseases or tuberculosis. However, State governments are not considered small entities under the provisions of the Act. As discussed in the Executive Order analysis, an actuarial estimate of cost avoidance has not been determined, and there is no indication that these provisions are likely to result in a significant impact on a substantial number of small entities.

List of Subjects

42 CFR Part 435

Aid to families with dependent children, Aliens, Categorically needy, Contracts (Agreements—State Plan), Eligibility, Grant-in-aid program—health, Health facilities, Medicaid, Medically needy, Reporting requirements, Spend-down, Supplemental security income (SSI).

42 CFR Part 436

Aid to families with dependent children, Aliens, Contracts, (Agreements), Eligibility, Grant-in-aid program—health, Guam, Health facilities, Medicaid, Puerto Rico, Supplemental security income (SSI), Virgin Islands.

42 CFR Parts 435 and 436 are amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

The authority citation for Part 435 reads as follows:

Authority.—Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

1. Section 435.1008 is amended by revising paragraphs (a) and (b) to read as follows:

§ 435.1008 Institutionalized individuals.

(a) FFP is not available in expenditures for services provided to—

(1) Individuals who are inmates of public institutions as defined in § 435.1009; or

(2) Individuals under age 65 who are patients in an institution for tuberculosis or mental diseases unless they are under age 22 and are receiving inpatient psychiatric services under § 440.160 of this subchapter.

(b) The exclusion of FFP described in paragraph (a)(2) of this section does not apply during that part of the month in which the individual is not an inmate of a public institution or a patient in an institution for tuberculosis or mental diseases.

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PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

The authority citation for Part 436 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. Section 436.1004 is amended by revising paragraphs (a) and (b) to read as follows:

§ 436.1004 Institutionalized individuals.

(a) FFP is not available in expenditures for services provided to—

(1) Individuals who are inmates of public institutions as defined in § 435.1009; or

(2) Individuals under age 65 who are patients in an institution for tuberculosis or mental diseases unless they are under age 22 and are receiving inpatient psychiatric services under § 440.160 of this subchapter.

(b) The exclusion of FFP described in paragraph (a)(2) of this section does not apply during that part of the month in which the individual is not an inmate of a public institution or a patient in an institution for tuberculosis or mental diseases.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: May 18, 1984.

Carolyn K. Davis,
Administrator, Health Care Financing
Administration.

Approved: January 17, 1985.

Margaret M. Heckler,
Secretary.

[FR Doc. 85-7885 Filed 4-2-85; 8:45 am]

BILLING CODE 4120-01-M

UNITED STATES INFORMATION AGENCY**48 CFR Ch. 19****Acquisition Regulation**

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: This rule establishes the United States Information Agency Acquisition Regulation (IAAR) as Chapter 19 of Title 48, Code of Federal Regulations. The IAAR implements and supplements the Federal Acquisition Regulation (FAR), Title 48 CFR Chapter 1. The IAAR contains the United States Information Agency's significant policies and procedures on government procurement. The IAAR supersedes the IAPR Procurement Regulation (41 CFR Chapter 19).

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Mary H. Wood, Policy and Procedures Staff, Office of Contracts, U.S. Information Agency, 330 C Street, SW., Room 1611, Washington, D.C. 20547, telephone (202) 485-6404.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Rulemaking was published on Page 37020 of the Federal Register on September 20, 1984 and invited comments by October 22, 1984.

We have changed within the provision and clause headings the date to February 1985 to coincide with date of publication of this final rule.

Executive Order 12291

This rule is exempt from the provisions of Executive Order 12291, with the exception of section 5 in accordance with OMB Bulletin 85-7 dated December 14, 1984.

Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. Since this rule reformats existing procurement policies to comply with the FAR structure and does not promulgate any new procurement policies which would impact the public, USIA certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

Paperwork Reduction Act

The information collection and recordkeeping requirements that are imposed on the public by this rule have been cleared 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. OMB Control No. 3116-0185, Expiration date December 31, 1987.

List of Subjects in 48 CFR Ch. 19

Government procurement.

Title 48 Chapter 19 Code of Federal Regulations is established as set forth below:

CHAPTER 19—UNITED STATES INFORMATION AGENCY**General Structure****SUBCHAPTER A—GENERAL**

Part 1901—United States Information Agency Acquisition Regulation System

Part 1902—Definitions of Words and Terms

Part 1903—Improper Business Practices and Personal Conflicts of Interest

Part 1904—Administrative Matters

SUBCHAPTER B—ACQUISITION PLANNING

Part 1909—Contractor Qualifications

Part 1910—Specifications, Standards and Other Purchase Descriptions

Part 1912—Contract Delivery or Performance

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Part 1913—Small Purchase and Other Simplified Purchase Procedures

Part 1915—Contracting by Negotiation

Part 1917—Special Contracting Methods

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

Part 1919—Small Business and Small Disadvantaged Business Concerns

Part 1922—Application of Labor Laws to Government Acquisitions

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Part 1927—Patents, Data, and Copyrights

Part 1932—Contract Financing

SUBCHAPTER G—CONTRACT MANAGEMENT

Part 1942—Contract Administration

Part 1946—Quality Assurance

SUBCHAPTER H—CLAUSES AND FORMS

Part 1952—Solicitation Provisions and Contract Clauses

Part 1953—Forms

SUBCHAPTER A—GENERAL**PART 1901—UNITED STATES INFORMATION AGENCY ACQUISITION REGULATION SYSTEM**

Sec.
1901.000 Scope of part.

Subpart 1901.1—Purpose, Authority, Issuance

1901.101 Purpose.
1901.102 Authority.
1901.103 Applicability.
1901.104 Issuance.
1901.104-1 Publication and code arrangement.
1901.104-2 Arrangement of regulations.

Subpart 1901.4—Deviations from the FAR

1901.403 Individual deviations.
1901.404 Class deviations.

Subpart 1901.6—Contracting Authority and Responsibilities

1901.601 General.
1901.602 Contracting officers.
1901.602-1 Authority.
1901.670 Ratification of unauthorized commitments.

- Sec.
1901.670-1 Authority.
1901.670-2 Definitions.
1901.670-3 Procedures.
1901.670-4 Limitations on exercise of authority.
1901.670-5 Nonratifiable commitments.

Authority: 40 U.S.C. 486(c).

1901.000 Scope of part.

This part describes the method by which the United States Information Agency implements and supplements the Federal Acquisition Regulation and contains policies and procedures that implement and supplement Chapter 1 of the Federal Acquisition Regulation (48 CFR).

Subpart 1901.1—Purpose, Authority, Issuance

1901.101 Purpose.

This subpart establishes the United States Information Agency Acquisition Regulation (IAAR) as Chapter 19 of the Federal Acquisition Regulations System (48 CFR Chapter 19) and states the relationship of the IAAR to the Federal Acquisition Regulation (FAR), 48 CFR Chapter 1.

1901.102 Authority.

The USIA Acquisition Regulation is prescribed by the Director of the United States Information Agency pursuant to the authority of the Reorganization Plan No. 2 of 1977 and the Federal Property and Administrative Services Act of 1949, as amended, and other applicable law.

1901.103 Applicability.

Except where a deviation is specifically authorized in accordance with Subpart 1901.4 or otherwise authorized by law, the FAR and the IAAR govern all USIA acquisitions within the United States.

1901.104 Issuance.

1901.104-1 Publication and code arrangement.

(a) The IAAR is published in the Federal Register and, in cumulative form in the Code of Federal Regulations (CFR).

(b) The IAAR is issued as Chapter 19 of Title 48, CFR.

1901.104-2 Arrangement of regulations.

The IAAR uses the same numbering system and arrangement used in the FAR. Where the IAAR implements the FAR, it is numbered and captioned to correspond to the FAR. Where there is no corresponding material in the FAR, numbers beginning with 70 or higher are assigned to the IAAR supplementing part. Where the subject matter is the FAR requires no implementation, the IAAR contains no corresponding part.

Subpart 1901.4—Deviations From the FAR

1901.403 Individual deviations.

Deviations from the IAAR or the FAR in individual cases shall be authorized by the Agency Procurement Executive or a designee unless FAR 1.405(e) is applicable. The request shall cite the specific part of the IAAR or FAR from which it is desired to deviate; shall set forth the nature of the deviation(s); and shall give the reason for the action requested.

1901.404 Class deviations.

Class deviations affecting more than one contracting action shall be authorized only by the Agency Procurement Executive, unless FAR 1.405(e) is applicable, and shall be subject to the limitations set forth in FAR 1.404. Requests shall include the same information as cited in 1901.403.

Subpart 1901.6—Contracting Authority and Responsibilities

1901.601 General.

The Director, Office of Contracts, is designated the Agency Procurement Executive. The Agency Procurement Executive is delegated the full delegable authority of the Director of this Agency with respect to the acquisition of goods and services by contract and such other methods as may be prescribed in the FAR. The Agency Procurement Executive is delegated overall responsibility by the Director for the Agency's contracting activities.

1901.602 Contracting officers.

1901.602-1 Authority.

USIA Contracting Officers designated by name on Certificates of Appointment by the Agency Procurement Executive are authorized to enter into, administer, and terminate contracts and make related determinations and findings, subject to all requirements and limitations set forth in the Certificate of Appointment. A list of USIA employees who have been appointed as Contracting Officers and the limits of their authority is available from the Policy and Procedures Staff, Office of Contracts.

1901.670 Ratification of unauthorized commitments.

1901.670-1 Authority.

Only contracting officers acting within the scope of their authority (see FAR 1.602) may enter into contracts on behalf of the Government. Subject to the limitations in 1901.670-4, the Agency Procurement Executive may ratify an unauthorized commitment, provided:

(a) The Government has obtained a benefit resulting from the unauthorized commitment;

(b) The Agency Procurement Executive could have granted or had the authority to enter into the commitment at the time it was made and still has the authority to do so; and

(c) The resulting contract would otherwise have been proper if made by an authorized contracting officer.

1901.670-2 Definitions.

"Ratification," as used in this section, means that act of approving an unauthorized commitment, by an official who has the authority to do so, for the purpose of paying for supplies or services provided to the Government as a result of the unauthorized commitment.

"Unauthorized commitment," as used in this section, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into a contract on behalf of the Government.

1901.670-3 Procedures.

USIA components shall process unauthorized commitments using the ratification authority set forth herein in lieu of referral of such actions to the General Accounting Office for resolution as "quantum meruit/quantum valebant" claims.

1901.670-4 Limitations on exercise of authority.

The authority in 1901.670-1, may be exercised only where—

(a) Supplies or services have been provided to and accepted by the Government;

(b) The contracting officer determines the price to be fair and reasonable;

(c) The contracting officer recommends payment and legal counsel concurs in the recommendation;

(d) Funds are available and were available at the time the unauthorized commitment was made; and

(e) Administrative settlement of the unauthorized commitment would not involve a claim subject to resolution under the Contract Disputes Act of 1978.

1901.670-5 Nonratifiable commitments.

Cases that are not ratifiable under this section may be subject to resolution as recommended by the General Accounting Office under its claim procedure (4 GAO 5.1), or as authorized by FAR Part 50. Legal advice should be obtained in these cases.

PART 1902—DEFINITIONS OF WORDS AND TERMS**Subpart 1902.1—Definitions****1902.101 Definitions**

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

"Agency" means the United States Information Agency, acting through any of its duty authorized officials.

"Agency Procurement Executive" means the Director, Office of Contracts.

"AR/CO" means Authorized Representative of the Contracting Officer (See 1942.202-70).

"Contracting activity" means the Office of Contracts, which has the responsibility to contract for the acquisition of supplies and services (including construction).

"Head of the agency" (also called "Agency head") means the Agency Director or Deputy Director; and the term "authorized representative" means any person, persons or board (other than the contracting officer) authorized to act for the Head of the Agency.

"Purchasing Activity" means an office with one or more Level I or Level II Small Purchases Contracting Officer(s) exercising limited redelegations of contracting officer authority.

"USIA" means the United States Information Agency.

(40 U.S.C. 486(c))

PART 1903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Sec.

1903.000 Scope of part.

Subpart 1903.1—Safeguards

1903.101 Standards of conduct.

1903.101-2 Solicitation and acceptance of gratuities by Government personnel.

1903.101-3 Agency regulations.

1903.103 Independent pricing.

1903.103-2 Evaluating the certification.

Subpart 1903.2—Contracting Gratuities to Government Personnel

1903.203 Reporting suspected violations of the Gratuities clause.

1903.204 Treatment of violations.

Subpart—1903.3 Reports of Suspected Antitrust Violations

1903.301 General.

Subpart 1903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1903.602 Exceptions.

1903.670 Contracts between USIA and former employees.

Authority: 40 U.S.C. (486(c)).

1903.000 Scope of part.

This Part implements FAR Part 3, cites USIA regulations on employee responsibilities and conduct, establishes responsibility for reporting violations and related actions, and provides for authorization of exceptions to policy.

Subpart 1903.1—Safeguards

1903.101 Standards of conduct.

1903.101-2 Solicitation and acceptance of gratuities by Government personnel.

USIA employees and their spouses, minor children, and members of their households may not solicit, accept, or agree to accept any gratuity for themselves, members of their families, or others, either directly or indirectly, from or on behalf of an actual or prospective contractor of USIA. This general prohibition does not apply to the following:

(a) Gifts, gratuities, favors, entertainments, loans or any other thing of monetary value received on account of close family or personal relationships, when the circumstances make it clear that it is the relationship rather than the business of the persons concerned which is the motivating factor;

(b) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans;

(c) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value;

(d) Acceptance of rates and discounts offered to employees as a class. Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance.

(e) Contractor provided transportation, meals, or overnight accommodations in connection with official business when arrangements for Government or commercial transportation, meals, or accommodations are clearly impracticable. Unless prior approval of the Agency Procurement Executive has been obtained, a full report of the circumstances of the acceptance shall be made to the employee's supervisor for inclusion in the contractor's file.

1903.101-3 Agency regulations.

(a) *General.* USIA regulations on Employee Responsibilities and Conduct are contained in 22 CFR Part 10. All personnel involved in acquisition actions shall become familiar with the statutory and regulatory prohibitions. Any questions concerning them shall be referred to the Agency's Office of the General Counsel.

(b) *Non-Disclosure of proposed acquisition.* Agency personnel, particularly requirements officers, project officers, technical staff and their supervisors often need to discuss standard commercial products or services, new manufacturing techniques, processes and equipment with members of industry in their efforts toward the goal of obtaining a quality product or service for the Agency. During these discussions, Agency personnel shall not disclose any information on a specific acquisition, especially its funding and scheduling. Information on proposed acquisitions shall be released concurrently to all prospective contractors in a common solicitation.

1903.103 Independent pricing.

1903.103-2 Evaluating the certification.

Whenever an offer is rejected under FAR 3.103-2 or the Certificate of Independent Price Determination is suspected of being false, the Contracting Officer shall report the situation to the Inspector General through the Agency Procurement Executive for referral to the Attorney General in accordance with FAR 3.303.

Subpart 1903.2—Contractor Gratuities to Government Personnel

1903.203 Reporting suspected violations of the Gratuities clause.

USIA personnel, particularly Contracting Officers, shall promptly report, by memorandum, suspected violations of the Gratuities clause in solicitations or contracts to the Agency Procurement Executive.

1903.204 Treatment of Violations.

Suspected violations shall be treated as provided in the USIA debarment and suspensions procedures in 1909.4.

Subpart 1903.2—Reports of Suspected Antitrust Violations

1903.301 General.

The Contracting Officer shall report any instances of suspected collusion or other violations of antitrust laws in connection with competitive acquisitions to the General Counsel through the Agency Procurement

Executive for possible referral to the Attorney General in Accordance with FAR Subpart 3.3.

Subpart 1903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1903.602 Exceptions.

To avoid potential conflicts of interest or the appearance of preferential treatment, it is USIA policy not to award contracts, purchase orders, grants or cooperative agreements to Government employees or their family members or business concerns owned or controlled by Government employees or their family members. Exceptions to this policy must be approved by the Agency Director or Agency Procurement Executive and supported by written Findings and Determination. A contract with an employee for services may result in violation of the dual salary compensation statutes (5 U.S.C. 5533). Nothing in this paragraph is intended to render inapplicable the conflict of interest prohibition set out in 18 U.S.C. 208.

1903.670 Contracts between USIA and former employees.

To avoid conflicts of interest or the appearance of preferential treatment, purchase orders, contracts, grants or cooperative agreements with former employees of USIA, or with firms in which former employees or their family members are known to have controlling interest, may be entered into within two years following separation from employment only with the written approval of the Agency Director. A written justification shall be made a part of the file. The justification must address the issue of conflict of interest and conclude that it does not exist; or that in spite of its existence, the Agency's ability to meet its mission would be seriously harmed without the award.

PART 1904—ADMINISTRATIVE MATTERS

Subpart 1904.70—Procurement Requests

1904.7001 General.

(a) Procurement requests will be prepared and submitted to the contracting office in accordance with Agency procedures.

(b) Except in unusual circumstances, the contracting office will not issue solicitations until an approved procurement request, containing a certification that funds are available, has been received. However, the

contracting office may take all necessary actions up to the point of contract award prior to the receipt of the approved procurement request certifying that funds are available when:

- (1) Such action is necessary to meet critical program schedules;
- (2) It has been established that program authority has been issued and that funds to cover the acquisition will be available prior to the date set for contract award or contract modification;
- (3) A person at a level above the contracting officer authorizes such action prior to the issuance of the solicitation, and the contract file is properly documented; and
- (4) The solicitation document clearly indicates that the award is subject to the availability of funds.

(c) The procurement request shall be assigned within the contracting office to an individual who, if not the contracting officer, will be responsible to the contracting officer for conducting the business aspects of the transaction. This individual shall review the request to ensure that it complies with the FAR and this Regulation and that the information contained in the request is in sufficient detail to prepare presolicitation and solicitation documents. The contracting officer, or other designated individual in the contracting office, shall discuss uncertain requirements or inconsistencies in the procurement request with the initiator of the request and obtain clarification prior to taking any further action.

(40 U.S.C. 486(c))

SUBCHAPTER B—ACQUISITION PLANNING

PART 1909—CONTRACTOR QUALIFICATIONS

Subpart 1909.4—Debarment, Suspension, and Ineligibility

Sec.

1909.403 Definitions.

1909.404 Consolidated list of debarred, suspended, and ineligible contractors.

1909.406 Debarment, suspension, and ineligibility.

1909.406-3 Procedures.

Authority: 40 U.S.C. 486(c).

Subpart 1909.4—Debarment, Suspension, and Ineligibility

1909.403 Definitions.

The Agency Procurement Executive, is designated the "debarment official" and the "suspending official" as defined in FAR 9.403 and is designated as the agency official authorized to make the decisions required in FAR 9.405(a), 9.405-1(b), 9.405-2, 9.406-1(c), and 9.407-1(d).

1909.404 Consolidated list of debarred, suspended, and ineligible contractors.

(a) The Policy and Procedures Staff, Office of Contracts, shall be responsible for the maintenance and distribution of the GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors. It will be coordinated with the Solicitation Mailing List and appropriate notations will be made on both lists, when additions or deletions are necessary. Contracting Officers shall notify the Policy and Procedures Staff, Office of Contracts, of their distribution needs and shall ensure the list is used effectively.

(b) The Agency Procurement Executive (or designee) is responsible for notifying GSA of the information required by FAR 9.404(b).

1909.406 Debarment, suspension, and ineligibility.

1909.406-3 Procedures.

(a) *Investigation and referral.* Any officer of the Agency who becomes aware of circumstances which may serve as a basis for a debarment, suspension, or ineligibility shall report the circumstances by memorandum to the Agency Procurement Executive for consideration of debarment, suspension or ineligibility action.

(b) *Decision-making process.* (1) Contractors shall be given the opportunity to submit, in person, in writing, or through a representative, information and arguments in opposition to a proposed debarment or suspension. All rebuttals shall be addressed to the Agency Procurement Executive. However, if a response to the proposed debarment or suspension is not received by the Agency Procurement Executive within 30 calendar days of receipt of the notice, the debarment or suspension shall become final.

(2) If a contractor, or a representative, desires to present information and arguments in person to the Agency Procurement Executive, an oral presentation will be held within 20 calendar days of receipt of the request, unless a longer period of time is requested by the contractor. Hearings will be held before a three-person fact-finding board composed of one member each from the Office of General Counsel and Congressional Liaison, the Bureau of Management, and the Office of Contracts, other than the initiating officer. The fact-finding board shall deliver written findings to the Agency Procurement Executive (together with a transcription of the proceedings, if made) within 10 calendar days after the hearing. The findings shall resolve any

facts in dispute based on a preponderance of the evidence presented and determine whether a cause for debarment or suspension exists.

(c) *Debarment/suspending official's decision.* The debarment/suspending official's final decision shall be made in writing in accordance with FAR 9.406-3 and notice of the decision will be given in accordance with FAR 9.406-3. A copy of the notice shall be given to the affected agency component.

PART 1910—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

- 1910.004-70 Brand name products or equal.
- 1910.004-71 Limits on the use of brand name or equal purchase descriptions.
- 1910.004-72 Solicitations, brand name or equal descriptions.
- 1910.004-73 Offer evaluation and award, brand name or equal descriptions.
- 1910.004-74 Procedure for negotiated, procurements and small purchases.
- 1910.011 Solicitation provisions and contract clauses.

Authority: 40 U.S.C. 486(c).

1910.004-70 Brand name products or equal.

(a) *General.* Consistent with the policy stated in FAR 10.004(a)(2), USIA acquisitions will generally not be based on a specifically identified product or feature(s) thereof. However, under unusual circumstances such an approach may be used as described below.

(b) *Citing brand name products.* Brand name or equal purchase descriptions shall cite all brand name products known to be acceptable and of current manufacture. If the use of a brand name or equal purchase description results in the purchase of an acceptable brand name product which was not listed as an "equal" product, a reference to that brand name product should be included in the purchase description for later acquisitions. If a brand name product is no longer applicable, the reference thereto shall be deleted from subsequent purchase description.

(c) *Specifying essential characteristics.* (1) It is imperative that brand name or equal purchase descriptions specify each physical or functional characteristic of the product that is essential to the intended use. Failure to do so may result in a defective solicitation and the necessity to resolicit the requirements. (See 1910.004-73) Care must be taken to avoid specifying characteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition.

(2) When describing essential characteristics, permissible tolerances should be indicated. Avoid specifying a characteristic (e.g., a specific dimension) of a brand name product unless it is essential to the Government's need. The contracting officer must be able to justify the requirement.

1910.004-71 Limits on the use of brand name or equal purchase descriptions.

(a) *General.* The use of brand name or equal purchase descriptions in solicitations is intended to promote competition by encouraging the offering of products that are equal in all material respects to brand name products cited in such descriptions. Identification by brand name does not indicate a preference for the products mentioned but indicates the quality and characteristics of products that will meet the Government's needs. Where a component of an item is described in the solicitation by a brand name or equal purchase description and the contracting officer determines that application of the provision of 1952.210-70 would be impracticable, the requirement to include the entry described in 1910.004-72(a) shall not apply. If the provision is included in the solicitation for other reasons, there also shall be included in the solicitation a statement to identify either the component parts (described by brand name or equal descriptions) to which the provision applies or those to which it does not apply. This also applies to accessories related to an end item where a brand name or equal purchase description of the accessories is a part of the description of an end item. Brand name or equal descriptions shall not be used to acquire a particular product under the guise of competitive acquisition to the exclusion of other products that would meet the actual needs.

(b) In small purchases within the open market limitations, brand name policies and procedures shall be applicable to the extent practicable.

(c) *Approval required.* A brand name or equal purchase description shall not be used unless it has been approved at one level above the contracting officer.

1910.004-72 Solicitations, brand name or equal descriptions.

(a) An entry substantially as follows shall be prominently inserted in the item listing after each item or component part of an end item to which a brand name or equal purchase description applies.

Bidding On:
Manufacturer's Name: _____
Brand: _____
No. _____

(b) Because bidders frequently overlook the requirements of the clause at 1952.210-70 "Brand Name or Equal," the following note shall be inserted in the item listing after each brand name or equal item (or component part), or at the bottom of each page, listing several such items, or in a manner that may otherwise direct the offeror's attention to this clause.

Offerors offering other than brand name items identified herein should furnish with their offers adequate information to ensure that a determination can be made as to equality of the product(s) offered (see the provision "Brand Name or Equal" set forth in 1952.210-70 of the solicitation.)

(c) If offeror samples are requested for brand name or equal acquisitions, the above notice shall not be included in the solicitation.

1910.004-73 Offer evaluation and award, brand name or equal descriptions.

An offer may not be rejected for failure of the offered product to equal a characteristic of a brand name product if it was not specified in the brand name or equal description. However, if it is clearly established that the unspecified characteristic is essential to the intended end use, the solicitation is defective and no award may be made. In such cases, the contracting officer should resolicit the requirements, using a purchase description that sets forth the essential characteristics.

1910.004-74 Procedure for negotiated procurements and small purchases.

(a) The policies and procedures prescribed for sealed bid procurements shall be generally applicable to negotiated procurements.

(b) The clause set forth at 1952.210-70 may be adapted for use in negotiated procurements. If use of the clause is not practicable (as may be the case in unusual and compelling urgency purchases), suppliers shall be suitably informed that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that the offered products meet fully the salient characteristics requirements of the solicitation.

(c) In small purchases within open-market limitations, such policies and procedures shall be applicable to the extent practicable.

1910.011 Solicitation provisions and contract clauses.

The Contracting Officer shall include the provision at 1952.210-70, Brand Name or Equal, in solicitations for which brand name or equal purchase is used.

PART 1912—CONTRACT DELIVERY OR PERFORMANCE**Subpart 1912.70—Delays****1912.701 Delays.**

The Contracting Officer shall insert the clause at 1952.212-70 in all USIA contracts.

(40 U.S.C. 486(c))

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES**PART 1913—SMALL PURCHASES AND OTHER SIMPLIFIED PURCHASE PROCEDURES****Subpart 1913.1—General**

Sec.

1913.106-70 Data to support small purchases over \$1,000.

1913.107 Solicitation and evaluation of quotations.

Subpart 1913.2—Blanket Purchase Agreements

1913.201 General.

1913.203 Establishment of blanket purchase agreements.

1913.203-1 General.

Subpart 1913.4—Imprest Fund

1913.404 Conditions for use.

1913.405 Procedures.

Subpart 1913.5—Purchase Orders

1913.505 Purchase order and related forms.

1913.505-2 Agency order forms in lieu of Optional and Standards Forms.

Authority: 40 U.S.C. 486(c).

Subpart 1913.1—General

1913.106-70 Data to support small purchases over \$1,000.

Form IA-21, Abstract of Quotations (see 1953.370-21) may be used to satisfy documentation requirements of FAR 13.106(c).

1913.107 Solicitation and evaluation of quotations.

(a) Standard Form 18, Request For Quotations, shall be used to obtain written quotations as prescribed in FAR 13.107(a) unless an equivalent form has been authorized for use by the Agency Procurement Executive. (See also FAR 53.103). Exceptions under this subpart shall be processed through the Agency Procurement Executive.

(b) Quotations on standard contractor quotation forms may be accepted when they provide sufficient information for fair and equal competitive evaluation.

Subpart 1913.2—Blanket Purchase Agreements

1913.201 General.

The Agency Procurement Executive may require that only contracting

officers make purchases under a blanket purchase agreement.

1913.203 Establishment of blanket purchase agreements (BPA's).

1913.203-1 General.

Blanket purchase agreements shall be established and administered in accordance with Agency instructions.

Subpart 1913.4—Imprest Fund

1913.404 Conditions for use.

Imprest funds may be used for small purchases when the transaction does not exceed \$150 (\$300) under emergency conditions.

1913.405 Procedures.

(a) The individual making an approved purchase from the imprest fund shall be responsible for compliance with documentation requirements.

(b) The individual having acquisition authority to approve purchases from the imprest fund shall be responsible for checking the authorized purchase requisition for compliance with the internal control requirements.

Subpart 1913.5—Purchase Orders

1913.505 Purchase order and related forms.

1913.505-2 Agency order forms in lieu of Optional and Standard Forms.

(a) Optional Forms 347 and 348 shall be used as prescribed in FAR 13.505 unless an equivalent form has been authorized for use by the Agency Procurement Executive (or Designee). Exceptions may be granted, on a case by case basis, in order to accommodate computer-generated purchase order forms. Exception approval for over printing (FAR 53.104) is not needed.

(b) USIA Form IA-44 (see 1953.370-44) is authorized for use when obtaining nonpersonal services on an intermittent basis for such services as script writers, translators, narrators, etc.

PART 1915—CONTRACTING BY NEGOTIATION**Subpart 1915.1—General Requirements for Negotiation**

1915.106 Contract clauses.

1915.106-70 Key personnel and facilities.

Whenever contractor selection has been substantially predicated on the contractor's possession of special capabilities (i.e. personnel and/or facilities) the contracting officer shall include the clause at 1952.215-70 in the awarded contract.

(40 U.S.C. 486(c))

PART 1917—SPECIAL CONTRACTING METHODS**Subpart 1917.1—Multiyear Contracting**

1917.102 Policy.

When consistent with 22 U.S.C. 1472(b), the Head of the Agency may approve multiyear contracts up to five years.

(40 U.S.C. 486(c))

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS**PART 1919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS****Subpart 1919.2—Policies.**

Sec.

1919.201 General policy.

1919.201-70 Director, Office of Small and Disadvantaged Business Utilization.

Authority: 40 U.S.C. 486(c).

Subpart 1919.2—Policies

1919.201 General policy.

The Agency Procurement Executive shall also serve as the Director, Office of Small and Disadvantaged Business Utilization (OSDBU).

1919.201-70 Director, Office of Small and Disadvantaged Business Utilization.

The Director, OSDBU, is responsible for the implementation and execution of the small, and small, disadvantaged business programs required by sections 8 and 15 of the Small Business Act, as amended, and provides guidance and advice, as appropriate, to agency program and contracts officials. The Director, OSDBU, is the central point of contact for general inquiries concerning the small and disadvantaged business programs from industry, the Small Business Administration (SBA), and from the Congress. The Director, OSDBU, shall represent the Agency in discussions with other Government agencies on small and small disadvantaged business matters.

PART 1922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**Subpart 1922.3—Contract Work Hours and Safety Standards Act**

Sec.

1922.305 Contract clauses.

Subpart 1922.4—Labor Standards for Contracts Involving Construction

1922.470 Contract clauses.

Subpart 1922.70—Service Contract Act of 1965

1922.7001 Clause for contracts over \$2,500.

Authority: 40 U.S.C. 486(c).

Subpart 1922.3—Contract Work Hours and Safety Standards Act

1922.305 Contract clauses.

The Contracting Officer shall insert the clauses at 1952.222-82 and 1952.222-83 in lieu of the clause at FAR 52.222-4 until such time as the latter is updated to reflect the requirements of DOL Regulations, 29 CFR 5.5(c), implemented by FPR Temp. Reg. 70, dated June 28, 1983, 48 FR 31028 July 6, 1983.

Subpart 1922.4—Labor Standards for Contracts Involving Construction

1922.470 Contract clauses.

(a) Except as required by 1922.470(b), every construction contract in excess of \$2,000 (or of such other amount as may be specifically indicated) for work within the United States shall include the following clauses:

Davis-Bacon Act (40 U.S.C. 276a-276a-7) clause of 1952.222-70.

Contract Work Hours and Safety Standards Act Overtime Compensation (40 U.S.C. 327-333) clause at 1952.222-71.

Apprentices and Trainees clause at 1952.222-72.

Payrolls and Basic Records clause at 1952.222-73.

Compliance with Copeland Act Requirements clause at 1952.222-74.

Withholding clause at 1952.222-75.

Subcontracts clause at 1952.222-76.

Contract Termination; Debarment clause at 1952.222-77.

Disputes Concerning Labor Standards clause at 1952.222-78.

Compliance with Davis-Bacon and Related Act Requirements clause at 1952.222-79.

Certification of Eligibility clause at 1952.222-80.

(b) Every construction contract in excess of \$2,000 for work outside the United States, but which is nevertheless subject to the Contract Work Hours and Safety Standards Act as set forth in FAR Subpart 22.3, shall include the Work Hours and Safety Standards Act Overtime Compensation clause at 1952.222-71.

Subpart 1922.70—Service Contract Act

1922.7001 Clause for contract over \$2,500.

The Contracting Officer shall insert in full text the clause at 1952.222-81, Service Contract Act of 1965, As Amended, in solicitations and contracts, in excess of \$2,500, or in an indefinite amount, the principal purpose of which is to furnish services through the use of service employees.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1927—PATENTS, DATA, AND COPYRIGHTS

Subpart 1927.4—Rights in Data and Copyrights

Sec.

1927.400 Scope of subpart.

1927.401 Definitions.

1927.402 Policy.

1927.403 Procedures.

1927.404 Acquisition of data.

1927.405 Solicitation provisions and contract clauses.

Authority: 40 U.S.C. 486(c).

Subpart 1927.4—Rights in Data and Copyrights

1927.400 Scope of subpart.

This subpart sets forth policies, procedures, and instructions with respect to (a) rights in data and copyrights and (b) requirements for data.

1927.401 Definitions.

"Computer Software," as used in this subpart means computer programs, computer data bases, and documentation thereof.

"Data," as used in this subpart, means recorded information, regardless of form or the media on which it may be recorded. The term includes computer software. The term does not include information incidental to contract administration, such as contract cost analysis or any financial, business and management information required for contract administration purposes.

"Form, fit, and function data," as used in this subpart, means data relating to, and sufficient to enable, physical and functional interchangeability; as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements.

"Limited-rights," as used in this subpart, means the rights of Government in limited-rights data, as set forth in a Limited Rights Notice if included in the data rights clause of the contract.

"Limited-rights data," as used in this subpart, means data that embodies trade secrets or is commercial or financial and confidential or privileged, to the extent that such data pertains to items, components or processes developed at private expense, including minor modifications thereof. (Agencies may, however, adopt the following alternate definition: "Limited-rights data," as used in this subpart, means data developed at private expense that embodies trade secrets or is commercial

or financial and confidential or privileged.)

"Restricted computer software," as used in this subpart, means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is published copyrighted computer software.

"Restricted rights," as used in this subpart, means the rights of the Government in restricted computer software as set forth in a Restricted Rights Notice if included in a data rights clause of the contract or as otherwise may be included or incorporated in the contract.

"Technical data," as used in this subpart, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information, and computer software documentation. Technical data does not include computer software of financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

"Unlimited rights," as used in this subpart, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

1927.402 Policy.

(a) It is necessary for the U.S. Information Agency in order to carry out its missions and programs, to acquire or obtain access to many kinds of data produced during or used in the performance of its contracts. Such data may be required to: obtain competition among suppliers; fulfill certain responsibilities for disseminating and publishing the results of USIA activities; insure appropriate utilization of the results of research, development, and demonstration activities; and 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 protection from unauthorized use and disclosure of this data is necessary in order to prevent the compromise of such property right or economic interest, avoid jeopardizing the contractor's commercial position, and maintain the Government's ability to obtain access to our use of such data.

(b) The protection of this data by the Government is necessary to encourage qualified contractors to participate in Government programs and apply innovative concepts to such programs. The specific procedures and prescriptions for use of solicitation provisions and contract clauses set forth below are framed in light of the above considerations to strike a balance between the Government's needs and the contractor's property rights and economic interests.

1927.403 Procedures.

(a) *General.* All contracts that require data to be produced, furnished, or acquired must contain terms that delineate the respective rights and obligations of the Government and the contractor regarding the use, duplication, and disclosure of such data, except certain contracts resulting from sealed bidding that require only existing data (other than limited-rights data and restricted computer software) to be delivered and reproduction rights are not needed for such data. As a general rule, the data rights clause at 1952.227-70, Rights in Data—General, where determined appropriate by the Agency as discussed in paragraph (b), below, is to be used for this purpose. However, certain types of contracts, the particular subject matter of a contract, or the intended use of the data, may require the use of other clauses or no clause at all, as discussed in paragraphs (c), (d), (e), and (f) below.

(b) *Basic Rights in Data.*—(1) *Summary.* The clause at 1952.227-70, Rights in Data—General, is structured to strike a balance between USIA's needs in carrying out its missions and programs and the contractor's needs to protect property rights and valid economic interests in certain data arising out of private investment. This clause enables the contractor to protect from unauthorized use and disclosure data that qualifies as limited-rights data or restricted computer software (see paragraph (b)(2) below for an alternate definition of limited-rights data). This clause also specifically delineates the categories or types of data that USIA is

to acquire with unlimited rights (see paragraph (b)(3) below). The contractor may protect qualifying limited-rights data and restricted computer software under this clause by either withholding such data from delivery to USIA, or when USIA has a need to obtain delivery of limited-rights data or restricted computer software, by delivering such data with limited rights or restricted rights with authorized notices on the data. (See paragraphs (b)(4) and (5) below.) In addition, this clause enables contractors to establish and/or maintain copyright protection for data first produced and/or delivered under the contract, subject to certain license rights in the Government. (See paragraph (b)(6) below.) This clause also includes procedures that apply when the Government questions whether notices on data are authorized (see paragraph (b)(7) below) or when a contractor wishes to add or correct omitted or incorrect notices on data (see paragraph (b)(8) below); addresses the contractor's right to release, publish or use certain data involved in contract performance (see Paragraph (b)(9) below); and provides for the possibility for the Government to inspect certain data at the contractor's facility (see paragraph (b)(10) below).

(2) *Alternate definition of limited-rights data.* In the clause at 1952.227-70, Rights in Data—General, in order for data to qualify as limited-rights data, in addition to being data that either embodies a trade secret or is data that is commercial or financial and confidential or privileged, such data must also pertain to items, components, or processes developed at private expense, including minor modifications thereof. However, where appropriate, the contracting officer may determine to adopt in the clause the alternate definition for limited-rights data that does not require that such data pertain to items, components, or processes developed at private expense; but rather that the data that either embodies a trade secret or is commercial or financial and confidential or privileged be produced at private expense in order to qualify as limited-rights data. As an example, the alternate definition may be used where the principal purpose of a contract does not involve the development, use or delivery of items, components, or processes that are intended to be acquired for use by or for the Government (either under the contract in question or any anticipated follow-on contracts relating to the same subject matter). Other examples include contracts for market research and surveys, economic forecasts,

socioeconomic reports, educational material, health and safety information, management analysis, and related matters.

(3) *Unlimited-rights data.* Under the clause at 1952.227-70, Rights in Data—General, the Government acquires unlimited rights in the following data except as provided in paragraph (b)(6) below for copyrighted data: (i) Data first produced in the performance of a contract; (ii) form, fit, and function data delivered under contract; (iii) data (except as may be included with restricted computer software) that constitutes manuals or instructional and training material for installation, operation, or routine maintenance and repair delivered under a contract; and (iv) all other data delivered under the contract unless such data qualifies as limited-rights data or restricted computer software. If any of the foregoing data is published copyrighted data, the Government acquires it under a copyright license as set forth in paragraph (b)(6) below rather than with limited rights or restricted rights.

(4) *Protection of limited-rights data.* (i) The contractor may protect data (other than unlimited rights data or published copyrighted data) that qualifies as limited-rights data under the clause at 1952.227-70, Rights in Data—General, by withholding such data from delivery and providing form, fit, and function data in lieu thereof; or, if and USIA specifies the delivery of the data, by delivering such data with limitations on its use and disclosure. These two modes of protection afforded the contractor (i.e., withhold, or deliver with limited rights) are provided for in paragraph (g) of the clause at 1952.227-70, Rights in Data—General. Subparagraph (g)(1) of this clause allows the contractor to withhold limited-rights data and provide form, fit, and function data in lieu thereof. Alternate II adds subparagraph (g)(2) to this clause to enable USIA selectively to obtain the delivery withheld or withholdable data with limited rights. The limitations on the Government's rights to use and disclose limited-rights data when the clause is used are set forth in a "Limited Rights Notice" that the contractor is required to affix to such data. The specific limitations in the Notice are described below.

(ii) Limited-rights data delivered to the Government with the Limited Rights Notice contained in subparagraph (g)(2) will not, without permission of the contractor, be used by the Government for purposes of manufacture, and will not be disclosed outside the Government except for certain limited

purposes as may be set forth in the Notice, and then only if the Government makes the disclosure subject to prohibition against further use and disclosure by the recipient. The following are examples of specific purposes which may be selected by an agency and added to the Limited Rights Notice of subparagraph (g)(2) of the clause:

(A) Use by support service contractors.

(B) Evaluation by nongovernment evaluators.

(C) Use by other contractors participating in the USIA program of which this contract is a part, for information and use in connection with the work performed under their contracts.

(D) Emergency repair or overhaul work.

(E) Release to a foreign government, as the interests of the United States may require, for information or evaluation, or for emergency repair or overhaul work by such Government.

(iii) As an aid in determining whether the clause should be used with its Alternate II, the provision at 1952.227-71, Notification of Limited Rights Data and Restricted Computer Software, may be included in any solicitation containing the clause at 1952.227-70, Rights in Data—General. In addition, the need for Alternate II should be considered during the negotiations of a contract, particularly if negotiations are based on an unsolicited proposal. However, use of the clause at 1952.227-70, Rights in Data—General, without Alternate II does not preclude this Alternate from being used subsequently by amendment during contract performance should the need arise for delivery of limited-rights data that has been withheld or identified as withholdable.

(5) *Protection of restricted computer software.* (i) If computer software qualifies as restricted computer software, the clause at 1952.227-70, Rights in Data—General, permits the contractor to protect such software by either withholding it from delivery and providing form, fit, and function data in lieu thereof; or if USIA specifies delivery of the software, by delivering the software with restricted rights regarding its use, disclosure, and reproduction. The two modes of protection afforded the contractor (i.e. withhold or deliver with restricted rights) are provided for in paragraph (g) of the clause at 1952.227-70, Rights in Data—General. Subparagraph (g)(1) of this clause allows the contractor to withhold restricted computer software and provide form, fit, and function data in lieu thereof. Alternate III adds subparagraph (g)(3) to

this clause to enable the Government selectively to obtain delivery of the withheld or withholdable computer software with restricted rights. The restrictions on the Government's right to use, disclose, and reproduce restricted computer software when the clause is used with its Alternate III are set forth in a "Restricted Rights Notice" that the contractor is required to affix to such computer software. When restricted computer software delivered with such Notice is published copyrighted computer software, it is acquired with a restricted copyright license, without disclosure prohibitions, as also set forth in the Notice. The specific restrictions in the Notice are set forth below.

(ii) Restricted computer software delivered with the Restricted Rights Notice of subparagraph (g)(3) will not be used or reproduced by the Government, or disclosed outside the Government, except that the computer software may be:

(A) Used, or copied for use in or with the computer for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(B) Used, or copied for use in or with a backup computer if the computer or computers for which it is acquired is inoperative;

(C) Reproduced for safekeeping (archives) or backup purposes;

(D) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of any derivative software incorporating restricted computer software are made subject to the same restricted rights; and

(E) Disclosed and reproduced by support contractors or their subcontractors, subject to the same restrictions under which USIA acquired the software.

(iii) The restricted rights set forth in 1927.403(b)(5)(ii) above are the minimum rights the Government normally obtains with restricted computer software and will automatically apply when such software is acquired under the Restricted Rights Notice of subparagraph (g)(3) of the clause. However, either greater or lesser rights, consistent with the purposes and needs for which the software is to be acquired, may be specified in the contract. Any additions to, or limitations on, the restricted rights set forth in the Restricted Rights Notice of subparagraph (g)(3) of the clause are to be expressly stated in the contract; or, with approval of the contracting officer, in a collateral agreement incorporated in and made part of the contract. (See paragraph (d)(2) below.)

(iv) As an aid in determining whether the clause should be used with its Alternate III, the provision at 1952.227-71, Notification of Limited Rights Data and Restricted Computer Software, may be included in any solicitation containing the clause at 1952.227-70, Rights in Data—General. In addition, the need for Alternate III should be considered during negotiations of a contract, particularly if negotiations are based on an unsolicited proposal. However, use of the clause at 1952.227-70, Rights in Data—General, without Alternate III does not preclude this Alternate from being used subsequently by amendment during contract performance, should the need arise for the delivery of restricted computer software that has been withheld or identified as withholdable.

(6) *Copyrighted data—(i) Data first produced in the performance of a contract.* (A) In order to enhance the transfer or dissemination of information produced at Government expense, contractors may be permitted to establish claim to copyright subsisting in data first produced in the performance of work under a contract containing the clause at 1952.227-70, Rights in Data—General. This right is granted in subparagraph (c)(1) of the clause for any data first produced under the contract. USIA may, however, specifically exclude items or categories of data from the right of the contractor to establish claim to copyright when appropriate; for example, where the data is to be disseminated in useful form by the Government. Also, agencies having programs for the transfer or dissemination of information resulting from its programs may, by use of the clause, include a substitute subparagraph (c)(1) in the clause to limit the right of the contractor granted in subparagraph (c)(1) to establish claim of copyright to scientific and technical articles based on or derived from work performed under the contract and published in academic, professional, or technical journals. However, permission may be granted to establish claim to copyright in all other data in accordance with the procedures set forth below.

(B) Usually permission for a contractor to establish claim to copyright for data first produced under the contract will be granted when copyright protection will enhance the appropriate transfer or dissemination of such data. The request for permission must be in writing, and may be made either at the time of contracting or subsequently during contract performance. It should identify the data involved or furnish a copy of the data

for which permission is requested, as well as a statement as to the intended publication or dissemination media or other purpose for which copyright is desired. The request normally will be granted unless: (1) The data consists of a report that represents the official views of USIA or that USIA is required by statute to prepare; (2) the data is intended primarily for internal use by the Government; (3) the data is of the type that USIA itself distributes to the public under an established program; or (4) USIA determines that limitation on distribution of the data is in the national interest.

(C) Whenever a contractor establishes claim to copyright subsisting in data first produced in the performance of a contract, the Government normally is granted a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute to the public, perform publicly and display publicly by or on behalf of the Government, for all such data, as set forth in subparagraph (c)(1) of the clause at 1952.277-70, Rights in Data—General. However, USIA may on a case-by-case basis or on a class basis obtain on equitable terms a license of lesser scope than set forth in subparagraph (c)(1) of the clause if USIA determines that such lesser license will substantially enhance the transfer or dissemination of any data first produced under the contract.

(ii) *Data not first produced in the performance of a contract.* (A) Contractors are not to incorporate in data delivered under contract any data not first produced under the contract with the copyright notice of 17 U.S.C. 401 or 402 without either: Acquiring for, or granting to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data; or obtaining permission from the contracting officer to do otherwise. However, if computer software not first produced under contract is delivered with the copyright notice of 17 U.S.C. 401 or 402, the Government's license will be as set forth in subparagraph (g)(3) if included in the clause at 1952.277-70, Rights in Data—General, or as otherwise may be provided in a collateral agreement incorporated in or made part of the contract.

(B) Contractors delivering data with an authorized limited rights or restricted rights notice and a copyright notice of 17 U.S.C. 401 or 402 should modify the copyright notice to include the following

(or similar) statement: "Unpublished—all rights reserved under the copyright laws." If this statement is omitted, the contractor may be afforded opportunity to correct it in accordance with 1927.403(b)(8). Otherwise, data delivered with a copyright notice 17 U.S.C. 401 or 402 may be presumed to be published copyrighted data subject to the applicable rights set forth in (b)(6)(i)(A) above, without disclosure limitations or restrictions.

(C) If contractor action causes limited rights or restricted rights data to be published with copyright notice after its delivery to the Government, the Government is relieved of disclosure and use limitations and restrictions regarding such data, and the contractor should advise the Government and request that a copyright notice be placed on the data, and acknowledge the applicable copyright license.

(7) *Unauthorized marking of data.* The Government has, in accordance with paragraph (e) of the clause at 1952.227-70, Rights in Data—General, the right either to return to the contractor data containing markings not authorized by that clause or to cancel or ignore such markings. However, markings will not be cancelled or ignored without making written inquiry of the contractor and affording the contractor at least 30 days to substantiate the propriety of the markings. The contracting officer will also give the contractor notice of any determination made based on any response by the contractor. Any such determination to cancel or ignore the markings shall be a final decision under the Contract Disputes Act. Failure of the contractor to respond to the contracting officer's inquiry within the time afforded may, however, result in Government action to cancel or ignore the markings. The above procedures may be modified in accordance with USIA regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request for data thereunder.

(8) *Omitted or incorrect notices.* (i) Data delivered under a contract containing the clause at 1952.227-70, Rights in Data—General, without a limited-rights notice or restricted rights notice, or without a copyright notice, shall be presumed to have been delivered with unlimited rights, and the Government assumes no liability for the disclosure, use or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the contractor may within six months (or a longer period approved by the contracting officer for good cause

shown) request permission of the contracting officer to have omitted limited rights or restricted rights notices, as applicable, placed on qualifying data at the contractor's expense, and the contracting officer may agree to so permit if the contractor—

(A) Identifies the data for which a notice is to be added or corrected;

(B) Demonstrates that the omission of the proposed notice was inadvertent;

(C) Establishes that use of the proposed notice is authorized; and

(D) Acknowledges that the Government has no liability with respect to any disclosure or use of any such data made prior to the addition of the notice or resulting from omission of the notice.

(ii) The contracting officer may also (A) permit correction at the contractor's expense of incorrect notices if the contractor identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (B) correct any incorrect notices.

(9) *Release, publication and use of data.* (i) In the clause at 1952.227-70, Rights in Data—General, paragraph (d) provides that contractors normally have the right to use, release to others, reproduce, distribute, or publish data first produced or specifically used by the contractor in the performance of a contract; however, to the extent the contractor receives or is given access to data that is necessary for the performance of the contract and the data contains restrictive markings, the contractor agrees to treat the data in accordance with such markings, unless otherwise specifically authorized in writing by the contracting officer.

(ii) USIA may, on a case-by-case basis, or on a class basis, place further limitations or restrictions on the contractor's right to use, release to others, reproduce, distribute or publish any data first produced (but not data specifically used) in the performance of the contract. Such restrictions are not to be imposed on a class basis unless they are pursuant to statutory requirements, determined to be necessary in the furtherance of USIA mission objectives, or determined to be necessary in support of specific USIA programs.

(10) *Inspection of data at the contractor's facility.* USIA may obtain the right to inspect data at the contractor's facility by use of paragraph (j) of the clause to provide that right in the clause at 1952.227-70, Rights in Data—General. The data subject to inspection may be data withheld or withholdable under subparagraph (g)(1) of the clause, or any data specifically

used in the performance of the contract. Such inspection may be made by the contracting officer or representative for the purpose of verifying a contractor's assertion regarding the limited rights or restricted rights status of the data, or for evaluating work performance under the contract. This right may be exercised at all reasonable times up to three years after acceptance of all items to be delivered under the contract. The contract may specify data items that are not subject to inspection under paragraph (j) of the clause. If the contractor demonstrates to the contracting officer that there would be a possible conflict of interest if inspection were made by a particular representative, the contracting officer shall designate an alternate representative.

(c) *Production of special works.* [Reserved]

(d) *Acquisition of existing data other than limited-rights data.* [Reserved]

(e) *Specific Acquisition of Unlimited Rights in Technical Data.* (1) Notwithstanding any other provision of this subsection the Government may acquire unlimited rights in any limited rights technical data by means of negotiation with an individual contractor or subcontractor, or as a part of a competition among several contractors or subcontractors. Such individual negotiation or competition may be conducted either by the Government, or upon Government request by the prime contractor or higher-tier subcontractor. Such unlimited rights in technical data shall be stated in the contract schedule as a separate item and shall be separately priced. Unlimited rights in technical data shall not be acquired under this paragraph unless it is determined after a finding upon a documented record that—

(i) There is a clear need for procurement of the item, component, or process to which the technical data pertains;

(ii) There is no suitable item, component or process of alternate design or availability;

(iii) The item or component can be manufactured or the process performed through the use of such technical data by other competent manufacturers, without the need for additional technical data which cannot be purchased reasonably or is not readily obtained by other economic means; and

(iv) Anticipated net savings in procurements will exceed the acquisition cost of the technical data and rights therein.

(2) The analysis and findings referred to in paragraph (b)(1) above shall

specifically identify each item, component or process and the particular technical data therefor which is to be purchased.

(3) When all technical data is to be acquired under any contract with unlimited rights in accordance with the findings of paragraph (f)(1) above, the clause at 192.227-75, Rights in Technical Data—Specific Acquisition, shall be used.

(f) *Architect-Engineer and Construction Contracts—(1) General.* This section sets forth policies, procedures, implementing instructions, solicitation provisions, and contract clauses pertaining to data, copyrights, and designs unique to the acquisition of construction and architect-engineer services.

(2) *Acquisition and Use of Plans, Specifications, and Drawings—(i) Plans and Specifications and As-Built Drawings.* Insert the clause at 192.227-76 Government Rights (Unlimited), in solicitations and contracts calling for architect-engineer services or in contracts for construction involving architect-engineer services.

(ii) *Shop Drawings for Construction.* In acquiring shop drawings for construction, the Government shall obtain the unlimited rights to use and reproduce such drawings, but shall not exclude a similar right in the designer or others. Accordingly, in solicitations and contracts calling for delivery of such drawings, insert the clause at 192.227-77, Rights in Shop Drawings.

(3) *Contracts for Construction Supplies and Research and Development Work.* The solicitation provisions and contract clauses in Subpart 1927.4 relating to technical data, other data, computer software, and copyrights and prescribed for use in solicitation and contracts for the acquisition of other than construction or architect-engineer services are applicable when the acquisition is limited to either (i) construction supplies or materials as such, as distinguished from construction as defined in FAR 36.102; (ii) experimental, developmental, or research work, or test and evaluation studies of structures, equipment, processes, or materials for use in construction; or (iii) both. The right of the Government and others to use, duplicate, or disclose such data or computer software will be determined by the terminology of the applicable clauses in the contracts or the terminology of agreements recited in or made part of the contracts.

(4) *Mixed Contracts.* When solicitations and resulting contracts call for (i) supplies or materials, (ii) experimental, developmental or

research work, or (iii) both, in addition to either construction or architect-engineer work, the solicitation provisions and contract clauses in Subpart 1927.4 relating to technical data, other data, computer software, and copyrights and prescribed for use in solicitations and contracts for the acquisition of other than construction or architect-engineer services shall be included in such solicitations and resultant contracts in addition to the appropriate solicitation provisions and contract clauses prescribed for use in solicitation and contracts for construction or architect-engineer services. In such cases, the solicitations and resulting contracts shall clearly indicate which of the solicitation provisions and contract clauses apply only to the supplies or materials being acquired, or to experimental, developmental, or research work, or to both, and which of the solicitation provisions and contract clauses apply only to the construction or architect-engineer work.

1927.404 Acquisition of data.

(a) *General.* (1) It is important to recognize and maintain the conceptual distinction between contract terms whose purpose is to identify the data required for delivery to, or made available to, the Government (i.e. data requirements) and those contract terms whose purpose is to define the respective rights of the Government and the contractor in such data (i.e. data rights). This section relates to data requirements; 1927.403 relates to the data rights.

(2) It is the Government's practice to determine, to the extent feasible, its data requirements in time for inclusion in solicitations. The data requirements are subject to revision during contract negotiations. Since the preparation, reformatting, maintenance and updating, cataloging, and storage of data represents an expense to both the Government and the contractor, efforts should be made to keep the contract data requirements to a minimum.

(3) To the extent feasible, all known data requirements, including the time and place for delivery and any limitations and restriction to be imposed on the contractor in the handling of the data, shall be specified in the contract.

(b) *Additional data requirements.* Recognizing that in some contracting situations, such as experimental, developmental, research, or demonstration contracts, it may not be possible or appropriate to ascertain all the data requirements at the time of contracting, the clause at 192.227-72,

Additional Data Requirements, is provided to enable the subsequent ordering by the Government of additional data first produced or specifically used in the performance of such contracts as the actual requirements become known. Data may be ordered under the clause at any time during contract performance or within a period of three years after acceptance of all items to be delivered under the contract. The contractor is to be compensated for converting the data into the prescribed form, for reproduction, and for delivery. In order to minimize storage costs for the retention of data, the contractor may be relieved of retention requirements for specified data items by the contracting officer at any time during the retention period required by the clause. Any data ordered under the clause will be subject to the Rights in Data—General clause in the contract and data authorized to be withheld under that clause will not be required to be delivered under this Additional Data Requirements clause.

1927.405 Solicitation provisions and contracts clauses.

(a) *Rights in Data—General.* (1) The contracting officer shall insert the clause at 1952.227-70, Rights in Data—General, (see 1927.403(b)) in solicitations and contracts if it is contemplated that data will be produced, furnished, or acquired under the contract, except that such clause shall not be used in solicitations and contracts—

(i) For the production of special works. [Reserved]

(ii) For the separate acquisition of existing works. [Reserved]

(iii) When all technical data to be delivered is to be acquired with unlimited rights pursuant to the policy at 1927.403(e) in which case the clause at 1952.227-75, Rights in Technical Data—Specific Acquisition shall be used;

(iv) When performance will be limited solely to architect-engineer services or construction pursuant to the policy at 1927.403(f), in which case the clause at 1952.227-76, Government Rights (Unlimited) applies;

(v) To be performed outside the United States, its possessions, and Puerto Rico, in which case the contracting officer may prescribe different clauses (see paragraph (k) below).

(2) If the contracting officer determines, in accordance with 1927.403(b)(2), to adopt the alternate definition of "Limited Rights Data" in paragraph (a) of the clause, the clause shall be used with its Alternate I.

(3) If USIA needs to obtain the delivery of limited-rights data the clause

shall be used with its Alternate II (see 1927.403(b)(4)). The contracting officer shall assure that the purposes, if any, for which limited-rights data is to be disclosed outside the Government are included in the "Limited Rights Notice" of subparagraph (g)(2) of the clause in accordance with 1927.403(b)(4). The contract may exclude identified items of data from delivery under subparagraph (g)(2) of the clause. Alternate II may be used at the time of contracting or subsequently by amendment if the need to acquire limited-rights data arises during contract performance.

(4) If USIA needs to obtain the delivery of restricted computer software, the clause shall be used with its Alternate III (see 1927.403(b)(5)). Any greater or lesser rights regarding the use, duplication, or disclosure of restricted computer software than those set forth in the Restricted Rights Notice of subparagraph (g)(3) of the clause must be specified in the contract. Alternate III may be used at the time of contracting or subsequently by amendment if the need to acquire restricted computer software arises during contract performance.

(5) If USIA wishes to limit the automatic right of the contractor to establish claim to copyright subsisting in data first produced in the performance of the contract to scientific and technical articles based on or derived from the work performed under the contract and published in academic, technical, or professional journals, the clause shall be used with its Alternate IV. (See 1927.403(b)(6)). Alternate IV provides a substitute subparagraph (c)(1) in the clause with such limitation. This subparagraph (c)(1) does, however, allow the contracting officer to give permission to the contractor to establish claim to copyright subsisting in other data first produced in the performance of the contract, either at the time of contracting or subsequently during contract performance, in accordance with 1927.403(b)(6).

(6) If USIA needs to have the right to inspect certain data at a contractor's facility, the clause shall be used with its Alternate V. (See 1927.403(b)(10)). Alternate V adds a paragraph (j) to the clause to provide for such right, including the limitations thereon. Inspection may be by the contracting officer or representative, and may be made at all reasonable times up to 3 years after acceptance of all items to be delivered under the contract. The contract may specify data items that are not to be subject to inspection under paragraph (j) of the clause. If the contractor demonstrates to the contracting officer that there would be a

possible conflict of interest if inspection were made by a particular representative, the contracting officer shall designate an alternate representative.

(b) If USIA desires to have an offeror state in response to a solicitation, to the extent feasible, whether limited-rights data or restricted computer software is likely to be used in meeting the data requirements set forth in the solicitation, the contracting officer shall insert the provision at 1952.227-71, Notification of Limited-Rights Data and Restricted Computer Software, in any solicitation containing the clause at 1952.227-70, Rights in Data—General. The contractor's response will provide an aid in determining whether the clause should be used with Alternate II and/or Alternate III. (See 1927.403(b)(4) and (5)).

(c) The contracting officer shall insert the clause at 1952.227-72, Additional Data Requirements, in solicitations and contracts involving experimental, developmental, research, or demonstration work unless all the requirements for data are believed to be known at the time of contracting and specified in the contract. (See 1927.404.) This clause may also be used in other contracts when considered appropriate. If the clause at 1952.227-70, Rights in Data—General, is used in the contract with its Alternates II or III, the contracting officer may permit the contractor to identify data the contractor does not wish to deliver, and may specifically exclude in the contract any requirement that such data be delivered under paragraphs (g)(2) or (g)(3) of that clause or ordered for delivery under the Additional Data Requirements clause if such data is not necessary to meet the Government's requirements for data. Also, the contracting officer may alter the Additional Data Requirements clause by deleting the term "or specifically used".

(d) Special Works [Reserved]

(e) Existing Works [Reserved]

(f) The contracting officer shall insert the clause at 1952.227-75, Rights in Technical Data—Specific Acquisition, in solicitations and contracts when all technical data is to be acquired with unlimited rights in accordance with 1927.403(e) (1), (2), and (3). The clause shall also be included in subcontracts when the Government has determined to acquire all technical data with unlimited rights from a subcontractor in accordance with the authority and findings of 1927.403-2(e) (1), (2), and (3). The clause shall not be used under any other circumstances.

(g) The contracting officer shall insert the clause at 1952.227-76, Government Rights (Unlimited) in solicitations and contracts in accordance with 1927.403(f)(2)(i).

(h) The contracting officer shall insert the clause at 1952.227-77, Rights in Shop Drawings, in solicitations and contracts in accordance with 1927.403(f)(2)(ii).

(i) While no specific clause of this subpart need be included in contracts for the separate acquisition of existing computer software, the contracting officer shall assure that the contract contains terms to obtain sufficient rights for the Government to fulfill the need for which the software is being acquired and is otherwise consistent with 1927.403(d)(2).

(j) While no specific clause of this subpart need be included in contracts solely for the acquisition of books, publications and similar items in the exact form in which such items exist prior to the request for purchase (i.e., the off-the-shelf purchase of such items) (see 1927.403(d)(3)), if reproduction rights are to be acquired the contract shall include terms addressing such rights. (See 1927.403(d)(3).)

(k) The contracting officer may prescribe, as appropriate, clauses consistent with the policy of section 1927.402 in contracts to be performed outside the United States, its possessions, and Puerto Rico.

(l) The Contracting Officer shall insert the clause at 1952.227-78, Disposition of Prints and Videotape Recordings in License Agreements which limit the period for distribution and exhibition of video-tape programs and films.

PART 1932—CONTRACT FINANCING

Subpart 1932.1—General

1932.111 Contract clauses.

(a) The contracting officer shall insert one of the clauses at 1952.232-70 and 1952.232-71, Payment Due Date, in solicitations and contracts. The contracting officer shall select the clause that is applicable to the type of supplies or services being procured.

(b) The contracting officer shall insert the clauses 1952.232-72, Interest on Overdue Payments, in solicitations and contracts.

(c) The contracting officer shall insert the clause at 1952.232-73, Invoice Requirements, in solicitations and contracts for supplies or services which require the submission of invoices.

(d) The contracting officer shall insert the clause at 1952.232-74, Method of Payment, in all solicitations and contracts, except those which are

subject to simplified small purchase procedures.

(40 U.S.C. 486(c))

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1942—CONTRACT ADMINISTRATION

Subpart 1942.2—Assignment of Contract Administration

1942.202-70 Authorized Representative of the Contracting Officer (AR/CO).

The Contracting Officer may designate an appropriately qualified Government employee to act as the Authorized Representative of the Contracting Officer (AR/CO). Such designation shall apply to a single contract, must be in writing, and shall define the scope and limitations of the AR/CO's authority. The instrument designating an AR/CO shall not contain authority to sign or agree to any contract or major modification to a contract. Contractual commitments shall be made only by a duly certified contracting officer. The Contracting Officer shall insert the clause at 1952.242-70, Authorized Representative of the Contracting Officer, in solicitations and contracts when an individual is to be selected and designated by the Contracting Officer to perform administration of a given contract(s).

(40 U.S.C. 486(c))

PART 1946—QUALITY ASSURANCE

Subpart 1946.7—Warranties

1946.704 Authority for use of warranties.

(a) The procurement request initiator is responsible for preparing a written recommendation for those purchases deemed to be appropriate for application of warranty provisions. The recommendation shall state why a warranty is appropriate by specifically addressing the criteria set forth in FAR 46.703. The recommendation shall also identify the specific parts, subassemblies, assemblies, systems, or contract line items to which a warranty should apply.

(b) Prior to solicitation of the requirement, the contracting officer shall make a written determination when a warranty provision is to be included.

(40 U.S.C. 486(c))

SUBCHAPTER H—CLAUSES AND FORMS

PART 1952—SOLICITATION PROVISIONS AND CONTRACTS CLAUSES

Sec.

1952.000 Scope of part.

Subpart 1952.1—Instructions for Using Provisions and Clauses

Sec.

1952.102-1 Incorporation in full text.

1952.104 Procedures for modifying and completing provisions and clauses.

Subpart 1952.2—Texts of Provisions and Clauses

1952.200 Scope of part.

1952.210-70 Brand name or equal.

1952.212-70 Notice of delay.

1952.215-70 Key Personnel and facilities.

1952.222-70 Davis-Bacon Act (40 U.S.C. 276a-276a-7).

1952.222-71 Contract Work Hours and Safety Standards Act Overtime Compensation (40 U.S.C. 327-333).

1952.222-72 Apprentices and trainees.

1952.222-73 Payroll and basic records.

1952.222-74 Compliance with Copeland Act Requirements.

1952.222-75 Withholding.

1952.222-76 Subcontracts.

1952.222-77 Contract termination; debarment.

1952.222-78 Disputes concerning labor standards.

1952.222-79 Compliance with Davis-Bacon and Related Act Requirements.

1952.222-80 Certification of eligibility.

1952.222-81 Service Contract Act of 1965.

1952.222-82 Contract Work Hours and Safety Standard Act—Overtime Compensation (40 U.S.C. 327-333)—(Non-Construction only).

1952.222-83 Payrolls and basic records (Non-Construction only).

1952.227-70 Rights in data—General.

1952.227-71 Notification of limited rights data and restricted computer software.

1952.227-72 Additional data requirements.

1952.227-73 Rights in data—Special works [Reserved].

1952.227-74 Rights in data—Existing works [Reserved].

1952.227-75 Rights in technical data—Specific acquisition.

1952.227-76 Government rights (unlimited).

1952.227-77 Rights in shop drawings.

1952.227-78 Disposition of prints and videotape recordings.

1952.232-70 Payment due date—F.O.B. Destination or F.A.S. Vessel.

1952.232-71 Payment due date—F.O.B. Origin.

1952.232-72 Interest on overdue payments.

1952.232-73 Invoice requirements.

1952.232-74 Method of payment.

1952.242-70 Authorized Representative of the Contracting Officer.

Authority: 40 U.S.C. 486(c).

1952.000 Scope of part.

This part implements and supplements FAR Part 52 which sets forth solicitation provisions and contract clauses for use in the acquisition of personal property and nonpersonal services (including construction).

Subpart 1952.1—Instructions for Using Provisions and Clauses**1952.102-2 Incorporation in full text.**

All IAAR provisions and clauses shall be incorporated in solicitations and/or contracts in full text.

1952.104 Procedures for modifying and completing provisions and clauses.

IAAR provisions and clauses shall not be modified (see FAR 1952.101(a) unless authorized by the Director, Office of Contracts, and when so authorized, contracting officers must comply with the procedures in FAR 1952.104.

Subpart 1952.2—Texts of Provisions and Clauses**1952.200 Scope of subpart.**

This subpart sets forth the full text of all IAAR provisions and clauses.

1952.210-70 Brand name or equal.

As prescribed in 1910.011 insert the following provision when a "brand name or equal" purchase description is used in the solicitation:

Brand Name or Equal (Feb. 85)

(As used in this provision the term "brand name" includes identification of products by make and model.)

A. If items called for by this solicitation have been identified in this schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Solicitations offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the offer and are determined by the Government to meet fully the salient characteristics requirements listed in the solicitation.

B. Unless the offeror clearly indicates in the offer that an "equal" product is being offered, the offer shall be considered as offering a brand name product referenced in the solicitation.

C. 1. If the offeror proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation, or such product shall be otherwise clearly identified in the offer. The evaluation of offers and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in the offer as well as other information reasonably available to the contracting activity. **CAUTION TO OFFERORS.** The contracting activity is not responsible for locating or securing any information which is not identified in the offer and reasonably available to the contracting activity. Accordingly, to insure that sufficient information is available, the offeror must furnish as a part of the offer all

descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting activity to (i) determine whether the product offered meets the salient characteristics requirement of the solicitation, and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the contracting activity.

2. If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall (i) include in the offer a clear description of such proposed modifications and (ii) clearly mark any descriptive material to show the proposed modifications.

3. Modifications proposed after date for receipt of offers to make a product conform to a brand name product referenced in the solicitation will not be considered.

(End of Clause)

1952.212-70 Notice of delays.

As prescribed at 1912.70, insert the following clause in all contracts:

Notice of Delay (Feb. 85)

If the Contractor becomes unable to complete the contract work at the time(s) specified because of technical difficulties, notwithstanding the exercise of good faith and diligent efforts in the performance of the work called for hereunder, the Contractor shall give the Contracting Officer written notice of the anticipated delay and the reasons therefor. Such notice and reasons shall be delivered promptly after the condition creating the anticipated delay becomes known to the Contractor but in no event less than forty-five (45) days before the completion date specified in this contract, unless otherwise directed by the Contracting Officer. When notice is so required, the Contracting Officer may extend the time specified in the Schedule for such period as deemed advisable.

(End of Clause)

1952.215-70 Key personnel and facilities.

As prescribed in 1915.106-70 insert the following clause in appropriate contracts:

Key Personnel and Facilities (Feb. 85)

The personnel and/or facilities listed below (or as specified in the Schedule of this contract) are considered essential to the work being performed hereunder. Prior to removing, replacing, or diverting any of the specified individuals or facilities, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract. No diversion shall be made by the Contractor without the written consent of the Contracting Officer; provided, that the Contracting Officer may ratify in writing the change and such ratification shall constitute the consent of the Contracting Officer

required by this clause. The personnel and/or facilities listed below (or as specified in the Schedule of this contract) may, with the consent of the contracting parties, be amended from time to time during the course of the contract to either add or delete personnel and/or facilities, as appropriate. (End of Clause)

1952.222-70 Davis-Bacon Act (40 U.S.C. 276a-276a-7).

As prescribed in 1922.403(a) the contracting officer shall insert the following clauses:

Davis-Bacon Act (40 U.S.C. 276a-276a-7) (Feb. 85)

(a) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled "Apprentices and Trainees." Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all time by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract

shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (ii) The classification is utilized in the area by the construction industry; and
- (iii) The proposed wage rate, including any bond fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator of the Wage and Hour Division, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (b)(2) or (b)(3) of this clause, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. *Provided*, That the Secretary

of Labor has found, upon written request of the Contractor, that applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(e) Paragraphs (a) through (d) of the clause shall apply to this contract to the extent that it is (1) a prime contract with the Government subject to the Davis-Bacon Act, or (2) a subcontract also subject to the Davis-Bacon Act under such prime contract.

(End of Clause)

1952.222-71 Contract Work Hours and Safety Standards Act Overtime Compensation (40 U.S.C. 327-333).

As prescribed at 1922.403(a), the contracting officer shall insert the following clause:

Contract Work Hours and Safety Standards Act Overtime Compensation (40 U.S.C. 327-333) (Feb. 85)

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 8 hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of \$10 for each calendar day for which such individual was required or permitted to work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall upon his/her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any

moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) *Subcontracts.* The Contractor of subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (d) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of Clause)

1952.222-72 Apprentices and Trainees.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Apprentices and Trainees (Feb. 85)

(a) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other

than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination of the work actually performed. In the event the Employment and

Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30. (End of Clause)

1952.222-73 Payrolls and basic records.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Payrolls and Basic Records (Feb. 85)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under paragraph (d) of the clause entitled "Davis-Bacon Act" that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of

the information required to be maintained under paragraph (a) of this clause. The information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents, Government Printing Office. The Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause entitled "Payrolls and Basic Records" and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deduction have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.

(4) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or the Department of Labor or their authorized representatives. The Contractor and subcontractors shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(End of Clause)

1952.222-74 Compliance with Copeland Act Requirement.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Compliance With Copeland Act Requirement (Feb. 85)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract. (End of Clause)

1952.222-75 Withholding.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Withholding (Feb. 85)

The Contracting Officer shall upon his/her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentices, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Prime Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(End of Clause)

1952.222-76 Subcontracts.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Subcontracts (Feb. 85)

The Contractor or subcontractor shall insert in any subcontracts the clauses entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act-Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Withholding," "Subcontracts," "Contract Termination-Debarment," "Disputes Concerning Labor Standards," "Compliance With Davis-Bacon and Related Act Requirements," and "Certification of Eligibility," and such other clauses as the Contracting Officer may by appropriate instructions require, and also a clause requiring the subcontractors to include these

clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited above.

(End of Clause)

1952.222-77 Contract termination; debarment.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Contract Termination; Debarment (Feb. 85)

A breach of the contract clauses entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act-Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Subcontracts," "Compliance With Davis-Bacon and Related Act Requirements," and "Certification of Eligibility," may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(End of Clause)

1952.222-78 Disputes concerning labor standards.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Disputes Concerning Labor Standards (Feb. 85)

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of Clause)

1952.222-79 Compliance with Davis-Bacon and Related Act Requirements.

As prescribed in 1922.403(a), the contracting officer shall insert the following clauses:

Compliance With Davis-Bacon and Related Act Requirements (Feb. 85)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(End of Clause)

1952.222-80 Certification of eligibility.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Certification of Eligibility (Feb. 85)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person of firm who has an interest in the Contractor's firm is a person or

firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(End of Clause)

1952.222-81 Service Contract Act of 1965.

As prescribed in 1922.1006 insert the following clause:

Service Contract Act of 1965, As Amended (Feb. 85)

(a) This contract is subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR Part 4).

(b)(1) Each service employee employed in the performance of this contract by the contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If there is such a wage determination attached to this contract, the contracting officer shall require that any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this section. (The information collection requirements contained in the following paragraphs of this section have been approved by the Office of Management and Budget under OMB control number 1215-0150.)

(ii) Such conforming procedure shall be initiated by the contractor prior to the performance of contract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative of the employees themselves, shall be submitted by the contractor to the contracting officer no later than 30 days after such unlisted class of employees performs any contract work. The contracting officer shall review the proposed action and promptly submit a report of the action, together with the agency's recommendation and all

pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the contracting officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the contracting officer who shall promptly notify the contractor of the action taken. Each affected employee shall be furnished by the contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a contractor succeeds a contract under which the classification in question was previously conformed pursuant to this section, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the contractor shall advise the contracting officer of the action taken but the other procedures in paragraph (b)(2)(ii) of this section need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined pursuant to paragraphs

(b)(2)(i) and (ii) of this section shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with paragraphs (b)(2)(i) through (v) of this section, the Wage and Hour Division shall make a final determination of conformed classification, wage rate and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work.

(3) If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965 as amended, the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor as provided in such Act.

(c) The contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subpart D of 29 CFR Part 4, and not otherwise.

(d)(1) In the absence of a minimum wage attachment for this contract, neither the contractor nor any subcontractor under this contract shall pay any person performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision shall relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(2) If this contract succeeds a contract, subject to the Service Contract Act of 1965 as amended, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such

agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 4.1b(b) of 29 CFR Part 4 apply or unless the Secretary of Labor or his authorized representative finds, after hearing as provided in 4.10 of 29 CFR Part 4 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 4.11 of 29 CFR Part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract. 53 Comp. Gen. 401 (1973). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(e) The contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract. (Approved by the Office of Management and Budget under OMB control number 1215-0150.)

(f) The contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the contractor or subcontractor shall comply with safety and health standards applied under 29 CFR Part 1925.

(g)(1) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from

the completion of the work records containing the information specified in paragraphs (g)(1) (i) through (vi) of this section for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor. (Sections 4.6(g)(1) (i) through (iv) approved by the Office of Management and Budget under OMB control number 1215-0017 and sections 4.6(g)(1) (v) and (vi) approved under OMB control number 1215-0150.)

(i) Name and address and social security number of each employee.

(ii) The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.

(iii) The number of daily and weekly hours so worked by each employee.

(iv) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(v) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to the labor standards clause in paragraph (b) of this section. A copy of the report required by the clause in paragraph (b)(2)(ii) of this section shall be deemed to be such a list.

(vi) Any list of the predecessor contractor's employees which had been furnished to the contractor pursuant to 4.6(l)(2).

(2) The contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of the Department of Labor and notification of the contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(h) The contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(i) The contracting officer shall withhold or cause to be withheld from the Government

prime contractor under this or any other Government contract with the prime contractor such sums as an appropriate official of the Department of Labor requests or such sums as the contracting officer decides may be necessary to pay underpaid employees employed by the contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965, may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(j) The contractor agrees to insert these clauses in this section relating to the Service Contract Act of 1965 in all subcontracts subject to the Act. The term "contractor" as used in these clauses in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government prime contractor."

(k)(1) As used in these clauses, the term "service employee" means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent provision of those regulations. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(2) The following statement is included in contracts pursuant to section 2(a)(5) of the Act and is for informational purposes only:

The following classes of service employees expected to be employed under the contract with the Government would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332 and would, if so employed, be paid not less than the following rates of wages and fringe benefits:

Employee class	Monetary wage-fringe benefits

(l)(1) If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government prime contractor shall report such fact to the

contracting officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof. (Approved by the Office of Management and Budget under OMB control number 1215-0150.)

(2) Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a contractor (predecessor) or successor (sec. 4.173 of Regulations, 29 CFR Part 4), the incumbent prime contractor shall furnish to the contracting officer a certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The contracting officer shall turn over such list to the successor contractor at the commencement of the succeeding contract. (Approved by the Office of Management and Budget under OMB control number 1215-0150.)

(m) Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR Part 4.

(n)(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(o) Notwithstanding any of the clauses in paragraphs (b) through (m) of this section relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by

section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

(p) Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

(q) An employee engaged in an occupation in which he or she customarily and regularly receives more than \$30 a month in tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531: *Provided, however*, That the amount of such credit may not exceed \$1.24 per hour beginning January 1, 1980, and \$1.34 per hour after December 31, 1980. To utilize this proviso:

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act Minimum wage through the combination of direct wages and tip credit; (approved by the Office of Management and Budget under OMB control number 1215-0017);

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(r) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6 and 8. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of Clause)

1952.222-62 Contract Work Hours and Safety Standards Act—Overtime Compensation (40 U.S.C. 327-333) (Nonconstruction only).

As prescribed in 1922.305 insert the following clause:

Contract Work Hours and Safety Standards Act Overtime Compensation (40 U.S.C. 327-333) (Feb. 85)

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 8 hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with

respect to each individual laborer or mechanic, including watchmen, and guards, employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day for which such individual was required or permitted to work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall upon his/her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (d) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of Clause)

1952.222-63 Payrolls and basic records (Nonconstruction only).

As prescribed in 1922.305 insert the following clause:

Payrolls and Basic Records (Feb. 85)

(a) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the contract work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(b) The records to be maintained under paragraph (a) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, and transcription by the Contracting Officer or the Department of Labor or their authorized representatives. The Contractor and subcontractors will permit such representatives to interview employees during working hours on the job. (End of Clause)

1952.227-70 Rights in data—General.

(a) As prescribed in 1927.405(a)(1) insert the following clause:

(a) Definitions:

"Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term shall be construed broadly; it includes all writings within the scope of Article 1, Section 8, Clause 8 of the United States Constitution, as well as all works subject to copyright under Title 17, United States Code. The term does not include information incidental to contract administration, such as contract cost analysis or financial, business, and management information required for contract administration purposes.

"Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.

"Form, fit, and function data," as used in this clause, means data describing, and sufficient to enable, physical and functional interchangeability; as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements.

"Limited-rights data," as used in this clause, means data that embodies trade secrets or is commercial or financial and confidential or privileged, but only to the extent that the data pertains to items, components, or processes developed at private expense, including minor modifications thereof.

"Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret, is commercial or financial data which is confidential or privileged, or is published copyrighted computer software.

"Unlimited rights," as used in this clause, means the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

"Limited rights," as used in this clause, means the rights of the Government in limited-rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

"Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in a this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract.

(b) Allocation of rights. (1) Except as provided in paragraph (c) below regarding copyright, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitutes manuals or instructional and training material for installation, operation, or routine maintenance and repair, and

(iv) All other data delivered under this contract unless otherwise provided for limited-rights data or restricted computer software in accordance with paragraph (g) below.

(2) The contractor shall have the right to—
(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract unless provided otherwise in paragraph (d) below;

(ii) Protect from unauthorized disclosure and use that data which is limited-rights data or restricted computer software to the extent provided in paragraph (g) below;

(iii) Substantiate use of, add, or correct limited rights or restricted rights notices, and to take other appropriate action, in accordance with paragraphs (e) and (f) below; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) below.

(c) Copyright. (1) Data first produced in the performance of this contract. Except as otherwise specifically provided in this contract, the Contractor may establish claim to copyright subsisting in any data first produced in the performance of this contract. When claim to copyright is made, the contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 to the data when such data is delivered to the Government, and include that notice as well as acknowledgement of Government sponsorship on the data when published or deposited in the U.S. Copyright Office. The contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(2) Data not first produced in the performance of this contract. The contractor shall not, without prior written permission of the contracting officer, incorporate into data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402 unless the contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (1) above; provided, however, that if such data is computer software, the Government shall acquire a copyright license as set forth in subparagraph (g)(3) below if included in this contract, or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

(3) The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, publication and use of data. (1) The contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, except as may be provided otherwise below in this paragraph.

(2) The contractor agrees that to the extent it receives or is given access to data

necessary for the performance of this contract which contains restrictive markings, the contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the contracting officer.

(e) Unauthorized marking of data. (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract is marked with the notices specified in subparagraphs (g)(2) or (g)(3) below and use of such is not authorized by this clause, the contracting officer may either return the data to the contractor, or cancel or ignore the markings. However, markings will not be cancelled or ignored unless—

(i) The contracting officer makes written inquiry to the contractor concerning the propriety of the markings, providing the contractor 30 days to respond; and

(ii) The contractor fails to respond within the 30 day period (or such longer time approved by the contracting officer for good cause shown), or the contractor's response fails to substantiate the propriety of the markings.

(2) The contracting officer shall consider the contractor's response, if any, and determine whether the markings shall be cancelled or ignored. The contracting officer shall furnish written notice to the contractor of the determination, which shall be a final decision under the Contract Disputes Act.

(3) The above procedures may be modified in accordance with regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request for data thereunder.

(f) Omitted or incorrect markings. (1) Data delivered to the Government without any notice authorized by paragraph (g) below, or without a copyright notice, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the contractor may request, within six months (or such longer time approved by the contracting officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the contractor's expense, and the contracting officer may agree to do so if the contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The contracting officer may also (i) permit correction, at the contractor's expense, of incorrect notices if the contractor identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) *Protection of limited-rights data and restricted computer software.* (1) When data other than that listed in subdivisions (b)(2) (i), (ii), and (iii) above, is specified to be delivered under this contract and qualifies as either limited-rights data or restricted computer software, the contractor, if it desires to continue protection of such data, shall withhold such data and not furnish it to the Government under this contract. As a condition to this withholding the contractor shall identify the data being withheld and furnish form, fit and function data in lieu thereof. Limited-rights data that is formatted as a computer data base for delivery to the Government is to be treated as limited-rights data and not restricted computer software.

(2)-(3) (Reserved)

(h) *Subcontracting.* The contractor has the responsibility to obtain from its subcontractors all data and right therein necessary to fulfill the contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the contractor shall promptly bring such refusal to the attention of the contracting officer and not proceed with subcontract award without further authorization.

(i) *Relationship to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(b) *Alternate I.* As prescribed in 1927.405(a)(2) substitute the following definition for "Limited Rights Data" in paragraph (a) of the clause:

"Limited-rights data," as used in this clause, means data produced at private expense that embodies trade secrets or is commercial or financial and confidential or privileged.

(c) *Alternate II.* As prescribed in 1927.405(a)(3) insert the following subparagraph (g)(2) in the clause:

(g)(2) Notwithstanding subparagraph (g)(1) above, the contract may identify and specify the delivery of limited-rights data, or the contracting officer may require by written request the delivery of limited-rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the contractor may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) above, in accordance with such Notice:

Limited Rights Notice

(a) This data is submitted with limited rights under Government contract No. _____ (subcontract _____, if appropriate). It may be reproduced and used by the Government with the express limitation that it will not, without permission of the contractor, be used for purposes of manufacture or disclosed outside the Government; except that the Government may disclose this data outside the Government for the following purposes, if any, provided that the Government makes

such disclosure subject to prohibition against further use and disclosure:

(The contracting officer may list additional purposes as set forth in 1927.403(b)(4).)

(b) This Notice shall be marked on any reproduction of this data, in whole or in part. (End of Notice)

(d) *Alternate III.* As prescribed in 1927.405 (a)(4) insert the following subparagraph (g)(3) in the clause:

(g)(3) Notwithstanding subparagraph (g)(1) above, the contract may identify and specify the delivery of restricted computer software, or the contracting officer may require by written request the delivery of restricted computer software that has been withheld. If delivery of such computer software is so required, the contractor may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) above, in accordance with the Notice:

Restricted Rights Notice

(a) This computer software is submitted with restricted rights under Government Contract No. _____ (and subcontract _____ if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided below or as otherwise expressly stated in the contract.

(b) This computer software may be—

(1) Used or copied for use in or with the computer for which it was acquired, including use at any Government installation to which such computer may be transferred;

(2) Used with a backup computer if the computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and

(5) Disclosed and reproduced for use by support contractors or their subcontractors in accordance with subparagraphs (1) through (4) above, provided the Government makes such disclosure subject to these restricted rights.

(d) Any other rights or limitations regarding the use, duplication or disclosure of this computer software are to be expressly stated in the contract.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(ii) Where it is impractical to include the above Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice (Short Form)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. _____ (and subcontract _____ if appropriate) with _____ (name of contractor and subcontractor).

(End of Notice)

(e) *Alternate IV.* As prescribed in 1927.405(a)(5) substitute the following subparagraph (c)(1) in the clause:

(c)(1) Data first produced in the performance of this contract. Unless provided otherwise in subparagraph (d) below, the contractor may establish claim to copyright subsisting in scientific and technical, or professional journals. The prior, express written permission of the contracting officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract in accordance with USIA Acquisition Regulation 1927.403(b)(8). When claim, to copyright is made, the contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 to the data when such data is delivered to the Government, and include that notice as well as acknowledgement of Government sponsorship on the data when published or deposited in the U.S. Copyright Office. The contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(f) *Alternate V.* As prescribed in 1927.405(a)(6), add the following paragraph (j) to the clause:

(j) The contractor agrees, except as may be otherwise specified in this contract for specific data items listed as not subject to this paragraph, that the contracting officer or an authorized representative may, at all reasonable times up to three years after acceptance of all items to be delivered under this contract, inspect at the contractor's facility any data withheld under subparagraph (g)(1) of this clause, or any data specifically used in the performance or verifying the contractor's assertion pertaining to the limited rights or restricted rights status of the data. Where the contractor whose data is to be inspected demonstrates to the contracting officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the contracting officer shall designate an alternate inspector.

(End of clause)

1952.227-71 Notification of limited-rights data and restricted computer software.

As prescribed in 1927.405(b) insert the following provision in solicitations that include the clause at 1952.227-70, Rights in Data—General:

Notification of Limited-Rights Data and Restricted Computer Software (Feb. 85)

(a) This solicitation sets forth the work to be performed and the Government's known requirements for data (as defined in USIA Acquisition Regulation, 1927.401). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements

clause (USIA Acquisition Regulation 1952.227-73) if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data—General clause (USIA Acquisition Regulation 1952.227-71) that is to be included in this contract. Under this clause, a contractor may withhold from delivery data that qualifies as limited-rights data or restricted computer software, and delivered form, fit, and function data in lieu thereof. This clause also may be used with Alternates II and/or III to obtain delivery of limited-rights data or restricted computer software with limited rights or restricted rights. In addition, use of alternate V with this clause provides the Government with the right to inspect such data at the contractor's facility.

(b) As an aid in determining the Government's need to include any of the above Alternates in the clause at 1952.227-70, Rights in Data—General, the offeror's response to this solicitation shall, to the extent feasible, either state that none of the data qualifies as limited-rights data or restricted computer software, or identify which of the data qualifies as limited-rights data or restricted computer software. Any identification of limited-rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

1952.227-72 Additional data requirements.

As prescribed in 1927.405(c), insert the following clause in solicitations and contracts involving experimental, developmental or research work, except those awards using small purchase procedures. This clause may be used in solicitations and contracts for other types of work after consultation with legal counsel:

Additional Data Requirement (Feb. 85)

(a) In addition to the data (as defined in the Rights in Data—General clause included in this contract) specified elsewhere in this contract to be delivered, the contracting officer may at any time during contract performance or within a period of three years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.

(b) The Rights in Data—General clause included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the contractor to deliver any data: (1) The withholding of which is authorized by the Rights in Data—General clause of this contract; or (2) which is specifically identified in this contract as not subject to this clause.

(c) When data is to be delivered under this clause, the contractor will be compensated for: (1) Converting the data into the prescribed form; (2) reproduction; and (3) delivery.

(d) The contracting officer may release the contractor from the requirements of this clause for specifically identified data items at any time during the three-year period set forth in (a) above.

1952.227-73 Rights in Data—Special Works. [Reserved]

1952.227-74 Rights in Data—Existing Works. [Reserved]

1952.227-75 Rights in Technical Data—Specific Acquisition.

As prescribed in 1927.405(f), insert the following clause:

Rights in Technical Data—Specific Acquisition (Feb. 85)

(a) *Definition.* Technical Data means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be able or used to define a design or process or to procure, produce, support, maintain, or operate material. The Data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and documentation related to computer software. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

(b) *Government Rights.* The Government may duplicate, use and disclose in any manner and for any purpose whatsoever, and have others so do, all or any part of the technical data delivered by the Contractor to the Government under this contract.

(c) *Copyright.* (1) In addition to the rights granted under the provisions of (b) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies of phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified in subparagraph (c)(1) above.

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under Section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the Contractor, or should the contractor fail, by the Government:

This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at 1952.227-75 (Feb. 85).

(d) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) *Limitation on Charges for Data.* The Contractor recognizes that the Government may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of technical data on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the United States Government, charges for data which the Government has a right to use and disclose to others, which is in the public domain, which the Government has been given without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(End of Clause)

1952.227-76 Government rights (unlimited).

As prescribed in 1927.405(g), insert the following clause:

Government Rights (Unlimited) (Feb. 85)

The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyrights laws. The Contractor for a period of three years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

1952.227-77 Rights in shop drawings.

As prescribed in 1927.405(h), insert the following clause:

Rights in Shop Drawings (Feb. 85)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation

(i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

(End of clause)

1952.227-78 Disposition of prints and videotape recordings.

As prescribed in 1927.405(j) insert the following clause in License Agreements:

Disposition of Prints and Videotape Recordings (Feb. 1985)

If the Agency elects to discontinue distribution and exhibition hereunder, or upon expiration of the term of this License Agreement, the Agency will destroy all prints and erase all videotape recordings of the film. A certificate(s) attesting to such destruction and/or erasure will be furnished the Licensor upon its written request.

(End of Clause)

1952.232-70 Payment due date: F.O.B. Destination or F.A.S. Vessel.

As prescribed in 1932.111(a), insert a clause substantially the same as the following in contracts for supplies when delivery is on an F.O.B. Destination or F.A.S. Vessel basis or in service contracts for nonrecurring work payable upon completion of performance. Contracts providing advance payments or contracts for utilities covered by tariff are excluded:

Payment Due Date—F.O.B. Destination or F.A.S. Vessel (Feb. 85)

A. Payments under the contract will be due on the ——— calendar day after the later of:

(1) The date of actual receipt of a proper invoice in the office designated to receive the invoice, or

(2) The date the supplies or services are accepted by the Government.

B. For the purpose of determining the due date for payment and for no other purpose, acceptance will be deemed to occur on the ——— calendar day after the date of delivery of the supplies or completion of service performance in accordance with the terms of the contract.

C. If the supplies or services are rejected for failure to conform to the technical requirements of the contract, such as damage in transit or otherwise, the provisions in paragraph (b) of this clause will apply to the new delivery of replacement supplies or satisfactory completion of the services.

D. The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of Clause)

*The contracting officer should insert an appropriate number (e.g., 30 days, unless some other number of days is necessary).

*The contracting officer should insert a number (e.g., 15 days, unless some other number of days is necessary).

1952.232-71 Payment due date; F.O.B. Origin.

As prescribed in 1932.111(a), insert a clause substantially the same as the following in contracts for supplies when delivery is on an F.O.B. Origin basis with inspection and acceptance at source and proof of shipment (e.g., a GBL) is to be required to be furnished with the invoice and in nonpersonal service contracts when the contractor's invoice covers services performed on a recurring basis with periodic billings:

Payment Due Date—F.O.B. Origin (Feb. 85)

A. Payments under this contract will be due on the ——— calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice. The invoice must include proper documentation that the supplies have been delivered to and accepted for shipment by an approved carrier, or in the case of services, that the services have been rendered and accepted.

B. However, when the contract specifies that inspection and acceptance will take place at the ultimate destination point, payment for items shipped F.O.B. Origin will not constitute final acceptance.

C. The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of Clause)

*The contracting officer should insert an appropriate number (e.g., 30 days, unless some other number of days is necessary).

1952.232-72 Interest on overdue payments.

As prescribed in 1932.111(b), insert the following clause in solicitations and contracts for supplies and services, including construction, and in leases of real property.

Interest on Overdue Payments (Feb. 85)

(a) The Prompt Payment Act, Pub. L. 97-177 (96 Stat. 85, 31 U.S.C. 1801) is applicable to payments under this contract, except contracts providing advance payments or contracts for utilities covered by tariff, and requires the payment to contractors of interest on overdue payments and improperly taken discounts.

(b) Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

(End of Clause)

1952.232-73 Invoice requirements.

As prescribed in 1932.111(c), insert the following clause in solicitations and contracts for supplies or services which require the submission of invoices:

Invoice Requirements (Feb. 85)

Invoices shall be submitted in an original and one (1) copy to the Government office designated in this contract or on the delivery order to receive invoices. To constitute a proper invoice, the invoice must include the following information and/or attached documentation:

(1) Name of the business concern and invoice date.

(2) Contract number, or other authorization for delivery of property or services.

(3) Description, price, and quantity of property and services actually delivered or rendered.

(4) Shipping and payment terms, and such other substantiating documentation or information as required by the contract.

(5) Name (where practicable), title, phone number, and complete mailing address of responsible official to whom payment is to be sent.

(End of Clause)

1952.232-74 Method of payment.

As prescribed in 1932.111(d), insert the following clause in solicitations and contracts:

Method of Payment (Feb. 85)

A. Payments under this contract will be made either by check or by wire transfer through the Treasury Financial Communications System at the option of the Government.

B. The Contractor shall forward the following information in writing to the Contracting Officer not later than 7 days after receipt of notice of award:

(1) Full name (where practicable), title, phone number, and complete mailing address of responsible official(s) (i) to whom check payments are to be sent, and (ii) who may be contacted concerning the bank account information requested below.

(2) The following bank account information required to accomplish wire transfers:

(i) Name, address, and telegraphic abbreviation of the receiving financial institution.

(ii) Receiving financial institution's 9-digit American Bankers Association (ABA) identifying number for routing transfer of funds. (Provide this number only if the receiving financial institution has access to the Federal Reserve Communications System.)

(iii) Recipient's name and account number at the receiving financial institution to be credited with the funds.

(iv) If the receiving financial institution does not have access to the Federal Reserve Communications System, provide the name of the correspondent financial institution through which the receiving financial institution receives electronic funds transfer messages. If a correspondent financial institution is specified, also provide:

(a) Address and telegraphic abbreviation of the correspondent financial institution.

(b) The correspondent financial institution's 9-digit ABA identifying number for routing transfer of funds.

C. Any changes to the information furnished under paragraph B. of this clause shall be furnished to the Contracting Officer in writing at least 30 days before the effective date of the change. It is the Contractor's responsibility to furnish these changes promptly to avoid payments to erroneous addresses or bank accounts.

D. The document furnishing the information required in paragraphs B. and C. must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number.
(End of Clause)

1952.242-70 Authorized Representative of the Contracting Officer.

As prescribed in 1942.202-70 insert the following clause in solicitations and contracts:

Authorized Representative of the Contracting Officer (Feb. 85)

The Contracting Officer will appoint by letter an Authorized Representative of the Contracting Officer (AR/CO) who will be given the responsibility of ensuring that the work conforms to the requirements of the contract and such other responsibilities as are specifically identified in the letter of authorization, unless specifically delegated such authority, in writing, by the Contracting Officer. The AR/CO shall not have the authority to make changes in the scope or terms and conditions of the contract; only the Contracting Officer has such authority. THE RESULTANT CONTRACTOR IS HEREBY FOREWARNED THAT IT MAY BE HELD FULLY RESPONSIBLE FOR ANY CHANGES NOT AUTHORIZED IN ADVANCE, IN WRITING, BY THE CONTRACTING OFFICER, AND MAY BE DENIED COMPENSATION FOR ANY ADDITIONAL WORK PERFORMED WHICH IS NOT SO AUTHORIZED.

(End of Clause)

PART 1953—FORMS

Subpart 1953.3—Illustrations of Forms

Sec.
1953.300 Scope of subpart.
1953.370 USIA forms.

Authority: 40 U.S.C. 486(c)

Subpart 1953.3—Illustrations of Forms

1953.300 Scope of subpart.

This subpart contains illustrations of some forms referenced in this IAAR.

1953.370 USIA forms.

This section contains illustrations of USIA forms references in this IAAR.

Note.—IAAR forms are not published in the Federal Register or in the Code of Federal Regulations. Forms may be obtained by writing: Office of Contracts, United States Information Agency, Washington, DC 20547. For the convenience of the user, a list containing section numbers, form numbers and form titles appears below:

Sec.
1953.370-21 USIA Form IA-21, Abstract of Quotations.
1953.370-44 USIA Form IA-44, Requisition-Purchase—Order-Invoice for Professional Services.
Dated: March 27, 1985.

Philip R. Rogers,

Director, Office of Contracts.

[FR Doc. 85-7932 Filed 4-2-85; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Amendment No. 192-49; Docket PS-81]

Transportation of Natural and Other Gas by Pipeline; Ovality of Field Bends in Steel Pipe

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment removes the ovality limitation requirement of 2½ percent of the nominal diameter for a field bend made in steel pipe during construction of transmission lines and mains. This limitation was operational in origin (i.e., to permit the passage of internal "pigging" devices) and has been found to be redundant because of other performance requirements that each bend have a smooth contour, be free of mechanical damage, and must not impair the serviceability of the pipe. Experience has also shown that the rule was unnecessary for safety.

EFFECTIVE DATE: May 3, 1985.

FOR FURTHER INFORMATION CONTACT:

William A. Gloe, (202) 426-2082, regarding the content of this amendment, or the Dockets Branch, (202) 426-3148, regarding copies of the amendment or other information in the docket file for this proceeding.

SUPPLEMENTARY INFORMATION:

Background

Section 192.313, Bends and elbows, is contained in the minimum Federal safety standards for gas pipelines to provide for the structural integrity of field pipe bends and for elbows in steel transmission lines and mains. Requirements of the section were largely derived from the 1968 edition of the industry standard, ANSI B31.8, and were later modified by a rulemaking action and issuance of Amendments 192-26 and 195-10 (14 FR 26018; June 24, 1976). Amendment 192-26 revised § 192.313

while Amendment 195-10 concurrently revised § 195.212 of 49 CFR Part 195, the minimum Federal safety standards for hazardous liquid pipelines. As resulted from that rulemaking, § 192.313(a) reads as follows:

§ 192.313 Bends and elbows.

(a) Each field bend in steel pipe, other than a wrinkle bend made in accordance with § 192.315, must comply with the following:

- (1) A bend must not impair the serviceability of the pipe.
- (2) For pipe more than 4 inches in nominal diameter, the difference between the maximum and minimum diameter at a bend must not be more than 2½ percent of the nominal diameter.
- (3) Each bend must have a smooth contour and be free from buckling, cracks, or any other mechanical damage.
- (4) On pipe containing a longitudinal weld, the longitudinal weld must be as near as practicable to the neutral axis of the bend unless:
 - (i) The bend is made with an internal bending material; or
 - (ii) The pipe is 12 inches or less in outside diameter or has a diameter to wall thickness ratio less than 70.

In the 1976 rulemaking it was stated that MTB intends to propose deletion of the ovality restriction in § 192.313. MTB averred, however, in the preamble of the final rule that the deletion could not be made in that proceeding because it had not been proposed in the advance notice or the Notice of Proposed Rulemaking (NPRM). Comments were occasioned on the ovality restriction for the reason that MTB had proposed amending § 195.212 to include the restriction in the hazardous liquid pipeline safety regulations, then existing in Part 192 as § 192.313(a)(4). The following excerpt from the preamble (41 FR 26017) describes evaluation of the comments and the decision to exclude the restriction from Part 195:

Ovality.—For pipe more than 4 inches in nominal diameter, § 192.313(a)(4) provides a numerical restriction on ovality due to bending. The liquid pipeline bending regulations do not contain a similar requirement. Because the ovality restriction limits wall thinning and excessive strain due to bending, MTB proposed that § 195.212 be amended to include the ovality limitation now existing in § 192.313(a)(4). This proposal resulted in a considerable amount of negative comment. Commenters pointed out that the proposed ovality requirement is twice as restrictive as the current industry practice and more stringent than the ovality limitation in pipe manufacturing specifications. In the latter case, if the proposal were adopted, pipe from a manufacturer could exceed the ovality restriction before being bent. Another commenter pointed out that liquid pipeline carriers have not filed with the Department any reports of failures caused by bends with excessive ovality.