

(6) When the state fails to grant water quality certification or a waiver of certification or concurrence or waiver of coastal zone consistency for emergency actions.

(b) *Reports.* The report of the district engineer on a project requiring action by the division engineer or by the Chief of Engineers should be in a letter form as prescribed by the Office of the Chief of Engineers.

#### **§ 337.9 Identification and use of disposal areas.**

(a) As practicable, district engineers should identify and develop dredged material disposal management strategies that satisfy the long-term (greater than 10 years) needs for Corps projects. Full consideration should be given to all practicable alternatives including upland, open water, beach nourishment, within banks disposal, ocean disposal, etc. Within existing policy, district engineers should also explore beneficial uses of dredged material, such as marsh establishment and dewatering techniques, in order to extend the useful life of existing disposal areas. Requests for water quality certification and/or coastal zone consistency concurrence for projects with identified long-term disposal sites should include the length of time for which the certification and/or consistency concurrence is sought. The section 404(b)(1) evaluation and environmental assessment or environmental impact statement should also address long-term maintenance dredging and disposal. The Corps of Engineers will be responsible for accomplishing the environmental compliance requirements for all Corps disposal areas.

(b) The identification of disposal sites should include, as practicable, consideration of dredged material disposal needs by local interests, with first priority being given to the Federal project. District engineers are encouraged to require local interests, where the project has a local sponsor, to designate long-term disposal areas.

#### **§ 337.10 Supervision of Federal projects.**

District engineers should assure that dredged or fill material disposal activities are conducted in conformance

with current plans and description of the project as expressed in the SOF or ROD. Conditions and/or limitations required by a state (e.g., water quality certification), as identified through the coordination process, should be included in the project specifications. To the maximum extent practicable, contracting officers should assure that contractors are aware of their responsibilities for compliance with the terms and conditions of state certifications and other conditions expressed in the SOF or ROD.

### **PART 338—OTHER CORPS ACTIVITIES INVOLVING THE DISCHARGE OF DREDGED OR FILL INTO WATERS OF THE UNITED STATES**

Sec.

#### **338.1 Purpose.**

338.2 Activities involving the discharge of dredged or fill material into waters of the U.S.

Authority: 33 U.S.C. 1344.

#### **§ 338.1 Purpose.**

(a) The procedures of this part, in addition to the provisions of 33 CFR Parts 335 through 337, will be followed when undertaking Corps operations and maintenance activities involving the discharge of fill material into waters of the United States, except that the procedures of 33 CFR Part 336 will be used in those cases where the discharge of fill material is also the discharge of dredged material, i.e., beach nourishment, within banks disposal for erosion control, etc.

(b) After construction of Corps Civil Works water resource projects, certain operations and maintenance activities involving the discharge of fill material require evaluation under the CWA. These activities generally include lakeshore management, installation of boat ramps, erosion protection along the banks of navigation channels, jetty maintenance, remedial erosion control, etc. While these activities are normally addressed in the existing environmental impact statement for the project, new technology or unexpected events such as storms or high waters may require maintenance or remedial work not fully addressed in existing environmental

documents or state permits. The CWA exemptions at 404(f) and NEPA categorical exclusions should be used to the maximum extent practicable. If the district engineer decides that the changes have not been adequately addressed in existing environmental documentation, the procedures of this part will be followed.

#### **§ 338.2 Activities involving the discharge of dredged or fill material into waters of the U.S.**

(a) Generally, fill activities conducted by the Corps for operations and maintenance of existing Civil Works water resource and navigation projects are routine and have little, if any, potential for significant degradation of the environment. District engineers are encouraged to develop general authorizations in accordance with the procedures of 33 CFR 337.5 for categories of such routine activities. The general authorization should satisfy all compliance requirements including water quality certifications and, if applicable, coastal zone consistency determinations. For activities which are not conducive to the development of general authorizations or are more appropriately evaluated on an individual basis, the following procedures should be followed.

(b) A public notice should be issued using the procedures of 33 CFR 337.1.

(c) Water quality certifications should be requested and, if applicable, coastal zone consistency determinations should be provided using the procedures of 33 CFR Part 336.

(d) The discharge site should be specified through the application of the section 404(b)(1) guidelines.

(e) The procedures of 40 CFR Part 230 should be used to determine the NEPA compliance requirements.

(f) The factors of 33 CFR 336.1(c) should be followed when evaluating fill activities.

(g) Upon completion of all required coordination and after receipt of the necessary state certifications, the district engineer should prepare an SOF in accordance with 33 CFR 337.6.

[FR Doc. 86-12084 Filed 5-29-86; 8:45 am]

BILLING CODE 3710-08-M



# Estimote

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Friday  
May 30, 1986

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## Part V

## Department of Defense

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### Department of the Army

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#### 32 CFR Part 553

#### Military Reservations and National Cemeteries; Arlington National Cemetery; Final Rule



**DEPARTMENT OF DEFENSE****Department of the Army****32 CFR Part 553****Military Reservations and National Cemeteries; Arlington National Cemetery****AGENCY:** Department of the Army, DOD.**ACTION:** Final rule.

**SUMMARY:** The change clarifies the current rule the only certain individuals and organizations are allowed to donate items to be placed in Arlington National Cemetery. The Department of the Army is revising the rules concerning tributes in Arlington National Cemetery to commemorate events, units, groups and/or organizations.

**EFFECTIVE DATE:** May 30, 1986.**FOR FURTHER INFORMATION CONTACT:**

Harriet Antiporowich, Arlington National Cemetery, Arlington, VA 22211-5003 (202) 695-3191.

**SUPPLEMENTARY INFORMATION:** Proposed rulemaking was published on pages 50315-50316 of the *Federal Register* of December 10, 1985. Interested parties were given the opportunity to comment. No comments have been received.

Responsibility for the administration of Arlington National Cemetery was recently transferred from the Director of Casualty and Memorial Affairs Operations Center, United States Army Military Personnel Center to the Commander, United States Army Military District of Washington. Accordingly tributes to be placed in Arlington National Cemetery will be approved by the Superintendent, Arlington National Cemetery rather than the Director of Casualty and Memorial Affairs Operations.

**Regulatory Flexibility Act**

This rule does not have "significant" economic impact on a substantial number of small "entities" as defined by the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq.

**Paperwork Reduction Act**

There are no collection of information requirements contained in this rule that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et. seq.

**List of Subjects in 32 CFR Part 553**

Army Department, Cemeteries, District of Columbia, Government property, Veterans.

Accordingly, 32 CFR Part 553 is amended as follows:

**PART 553—[AMENDED]**

1. The authority citation for Part 553 continues to read as follows:

Authority: 24 U.S.C. Chapter 7.

2. Section 553.22 is amended by adding new paragraphs (j), (k), (l) and Appendix A to read as follows.

**§ 553.22 Visitor's Rules for the Arlington National Cemetery.**

\* \* \* \* \*

(j) *Tributes in Arlington National Cemetery to commemorate individuals, events, units, groups and/or organizations.*

(1) *General.* Tributes, which include plaques, medals, and statues, will be accepted only from those veterans organizations listed in the Directory of Veterans Organizations and State Department of Veterans Organizations published annually by the Veterans Administration or those substantially similar in nature.

(2) *Plaques at trees and other donated items.* Plaques may be accepted and placed at trees or other donated items to honor the memory of a person or persons interred in Arlington National Cemetery or those dying in the military service of the United States or its allies.

Plaques placed at trees or other donated items must conform to the specifications described in Appendix A, Specifications for Tributes in Arlington National Cemetery. A rendering of the proposed plaque shall be sent to the Superintendent, Arlington National Cemetery, Arlington, Virginia 22211-5003 for approval.

(k) *Tributes to the Unknowns (Unknown Soldier).*

(1) *General.* Tributes, normally plaques, to the Unknowns by those organizations described in 553.22(j) above must conform to specifications and guidelines contained in Appendix A, Specifications for Tributes in Arlington National Cemetery. Descriptions of the character, dimensions, inscription, material and workmanship of the tribute must be submitted in writing to Superintendent, Arlington National Cemetery, Arlington, Virginia 22211-5003 for approval.

(2) *Tributes to the Unknowns (Unknown Soldier) Presented by Foreign Dignitaries.* Presentation of tributes by Foreign Dignitaries is allowed as part of an official ceremony as defined herein.

(l) *Monuments.* Monuments (other than private monuments or markers) to commemorate an individual, group or event may be erected following joint or concurrent resolution of the Congress.

**Appendix A.—Specifications for Tributes in Arlington National Cemetery**

1. *Purpose.* The Appendix provides specifications and guidelines for obtaining approval for the donation of tributes at Arlington National Cemetery.

2. *Approval.* The Superintendent, Arlington National Cemetery, Arlington, Virginia 22211-5003 exercises general supervision over Arlington National Cemetery; and his approval of proposed tributes to be placed in Arlington National Cemetery is required.

3. *Who May Offer Tributes.* a. Tributes will be accepted only from those veterans' organizations listed in the Directory of Veterans Organizations and State Department of Veterans Organizations published annually by the Veterans Administration or those substantially similar in nature. Tributes will not be accepted from individuals or from subdivisions of parent organizations.

b. Only one tribute will be accepted from an organization. However, with prior approval, the inscription of a tribute already presented in Memory of the Unknown Soldier (World War I) may be reworded by the donating organization to commemorate one additional or all the Unknowns, or a new tribute may be substituted for the old one.

4. *Design.*—a. *Character.* The design of the tribute shall be artistically proportioned and shall be consistent with the sacred purpose of the shrine, which is to honor heroic military service as distinguished from civilian service however notable or patriotic.

b. *Dimensions.* The surface area of the tribute, including the mounting, shall not exceed 36 square inches; and the thickness or height shall not exceed two (2) inches when mounted.

c. *Inscriptions.*—(1). *Tributes to the Unknowns.* Tributes are accepted only for the purpose of commemorating and paying homage and respect to one or more of the Unknowns. Thus all tributes must include, either in the basic design or on a small plate affixed thereto, a clear indication of such commemoration.

Suggestions follow:

- In Memory Of The American Heroes Known But to God
- The American Unknowns
- The Unknown American Heroes
- The Unknown Soldier
- The Unknown of World War II
- The Unknown of the Korean War
- The Unknown American of World War II
- The Unknown American of the Korean War

The identity of the donor/Date of Presentation.

2. *Other Tributes including plaques at trees and other donated items.* Inscriptions on



tributes will be in keeping with the dignity of Arlington National Cemetery.

d. *Material and Workmanship.* The material and workmanship of the tribute, including the mounting, shall be of the highest quality, free of flaws and imperfections.

5. *Applications.* Requests for authority to present tributes shall be submitted in writing to the Superintendent, Arlington National Cemetery, Arlington, Virginia 22211-5003.

a. A scale drawing or model, showing the exact inscription and other details of the proposed tribute.

b. A copy of the constitution and bylaws of the organization desiring to make the presentation.

6. *Final Approval.* Upon fabrication, the completed tribute will be forwarded to the Superintendent, Arlington National Cemetery, Arlington, Virginia 22211-5003 for visual inspection prior to its presentation.

7. *Presentation of Tributes.* After authorized acceptance of the tribute the sponsoring organization may arrange appropriate presentation ceremonies with the Superintendent, Arlington National Cemetery, Arlington, Virginia 22211-5003. If

presentation ceremonies are not desired, the Superintendent will acknowledge receipt of the tribute and inform the sponsoring organization of the number of the case in which it reposes in the Memorial Display Room at the Amphitheater at Arlington National Cemetery.

Dated: May 16, 1986.

**Robert K. Dawson,**

*Assistant Secretary of Army (Civil Works).*

[FR Doc. 86-11997 Filed 5-29-86; 8:45 am]

BILLING CODE 3710-08-M





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Friday  
May 30, 1986

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**Part VI**

**Department of Defense**

**General Services  
Administration**

**National Aeronautics and  
Space Administration**

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48 CFR Part 8 et al.  
Federal Acquisition Regulation; Final Rule



## DEPARTMENT OF DEFENSE

GENERAL SERVICES  
ADMINISTRATIONNATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION48 CFR Parts 8, 12, 13, 15, 19, 32, 36,  
38, 45, and 52

[Federal Acquisition Circular 84-16]

## Federal Acquisition Regulation

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

**ACTION:** Final rule.

**SUMMARY:** Federal Acquisition Circular (FAC) 84-16 amends the Federal Acquisition Regulation (FAR) with respect to the following: International Federal Supply Schedule; Reporting Purchases of Identical Items at Less than Multiple-Award Schedule Prices; Subpart 8.7—Miscellaneous changes; Leasing of Motor Vehicles; Priorities and Allocations; Imprest Fund (Increase in Dollar Limitation); Evaluation of Bids for Multiple Awards; Written Confirmation of Oral Request for Best and Final Offers; Small Business Administration Procurement Center Representatives; Regulatory Guidance on sec. 211 of Pub. L. 95-507; Withholding of Funds from Construction Contracts Progress Payments; Presolicitation Notice for Construction; Definition of Government Property; Contractor Use and Rental of Government Property; Clarification of Small Business Concern Representation; and FAR 52.249-6, Termination (Cost-Reimbursement).

**EFFECTIVE DATE:** May 30, 1986.

**FOR FURTHER INFORMATION CONTACT:** Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523-4755, Room 4041, GS Bldg., Washington, DC 20405.

## SUPPLEMENTARY INFORMATION:

## A. Public Comments

FAC 84-16, Items I through XVI (except Item XI). Public comments have not been solicited since these revisions either: (a) Do not alter the substantive meaning of any coverage in the FAR having a significant impact on contractors or offerors, or (b) do not have a significant effect beyond agency internal operating procedures.

FAC 84-16, Item XI, Withholding of Funds from Construction Contracts Progress Payments. On February 21, 1985, a notice of proposed rule was published in the *Federal Register* (50 FR 7200), requesting Government agencies,

private firms, associations, and the general public to submit comments to be considered in the formulation of the final rule. As a result of the notice, comments were received and considered.

## B. Regulatory Flexibility Act

FAC 84-16, Items I through XVI (except Item XI). Since solicitation of public comments is not required, the Regulatory Flexibility Act (Pub. L. 96-354) does not apply.

FAC 84-16, Item XI, Withholding of Funds from Construction Contracts Progress Payments. The addition of FAR 32.103 and the revision at 52.232-5 will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because the revision does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies.

## C. Paperwork Reduction Act

FAC 84-16, Items I through XVI. The Paperwork Reduction Act does not apply because this final rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 8, 12, 13,  
15, 19, 32, 36, 38, 45, and 52.

Government procurement.

Dated: May 23, 1986.

Lawrence J. Rizzi,  
Director, Office of Federal Acquisition and  
Regulatory Policy.

## Federal Acquisition Circular

[Number 84-16]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-16 is effective May 30, 1986.

Eleanor R. Spector,  
Deputy Assistant Secretary of Defense for  
Procurement.

Terence C. Golden,  
Administrator, GSA.

May 15, 1986.

S.J. Evans,  
Assistant Administrator for Procurement,  
NASA.

Federal Acquisition Circular (FAC) 84-16 amends the Federal Acquisition Regulation (FAR) as summarized below:

Item I—International Federal Supply  
Schedule

FAR 8.403 and 38.102 are revised to include coverage concerning the International Federal Supply Schedule program which was developed by the General Services Administration to provide sources of supply to U.S. Government activities located overseas.

Item II—Reporting Purchases of  
Identical Items at Less Than Multiple-  
Award Schedule Prices

FAR 8.404-1, Mandatory use, is revised to provide current instructions concerning the purchase of identical items from commercial sources at prices lower than their Multiple-Award Schedule counterparts.

Item III—Subpart 8.7—Miscellaneous  
Changes

FAR 8.703, 8.704, 8.708, 8.712, are revised and FAR 8.715 is added to incorporate changes made to the Committee for Purchase from the Blind and Other Severely Handicapped regulation at 41 CFR 51-5.11 and 51-5.12 regarding specifications for commodities and services on the Procurement List and the time for their delivery.

## Item IV—Leasing of Motor Vehicles

FAR Subpart 8.11 is revised to prescribe a new contract clause entitled "Tagging of Leased Vehicles," and FAR Subpart 52.2 is revised to include the new clause.

## Item V—Priorities and Allocations

FAR Subpart 12.3, Priorities, Allocations and Allotments, is retitled Priorities and Allocations, and is revised to change coverage in the FAR which was superseded by a Department of Commerce regulation effective August 29, 1984 (49 FR 147). The provision at 52.212-7 and the clause at 52.212-8 are retitled, and the prescriptions at FAR 12.304 are changed to reflect the new titles.

Item VI—Imprest Fund (Increase in  
Dollar Limitation)

FAR 13.404 is revised to incorporate the Treasury Department's increase in the spending limitation for imprest fund transactions from \$150 to \$500.

Item VII—Evaluation of Bids for  
Multiple Awards

FAR Part 15, Contracting By Negotiation, is revised to prescribe a new solicitation provision, Evaluation of Offers for Multiple Awards, and FAR Part 52, Solicitation Provisions and Contract Clauses, is revised accordingly.



**Item VIII—Written Confirmation of Oral Request for Best and Final Offers**

FAR 15.611(a) is revised to add a requirement that oral requests for best and final offers be confirmed in writing. This revision is based on the advice of the Comptroller General.

**Item IX—Small Business Administration Procurement Center Representatives**

FAR Subpart 19.4 is revised to specify the activities of procurement center representatives and the requirement for contracting personnel to interface with the representatives and their advisors. Pub. L. 98-577 provides for the appointment of breakout procurement center representatives and specifies their duties and responsibilities.

**Item X—Regulatory Guidance on Sec. 211 of Pub. L. 95-507**

FAR 19.705-2 is revised to delete, as a factor in determining whether subcontracting possibilities exist, a potential contractor's longstanding contractual relationship with its suppliers. This factor is relocated to 19.705-4(d)(3) as a consideration in evaluating subcontracting potential for a particular acquisition.

**Item XI—Withholding of Funds From Construction Contracts Progress Payments**

FAR 32.103 is added and FAR 52.232-5 is revised to reflect policy set forth in OFPP Policy Letter 83-1.

**Item XII—Presolicitation Notice for Construction**

FAR 36.302(b) is revised to add a reference to FAR 36.204 which sets forth estimated price ranges for work to be performed.

**Item XIII—Definition of Government Property**

FAR 45.101(a) is revised to include the term "Contractor-acquired property" in the FAR definition of "Government property."

**Item XIV—Contractor Use and Rental of Government Property**

FAR 45.401 is revised to add additional coverage on the use and rental of Government property.

**Item XV—Clarification of Small Business Concern Representation**

FAR 52.219-1 is revised to clarify that the portion of the representation regarding the source of manufactured supplies refers to the end items being acquired rather than the materials and supplies that went into the end item.

**Item XVI—FAR 52.249-6, Termination (Cost-Reimbursement)**

FAR 52.249-6(g)(1) has been revised to allow a contractor whose contract has been terminated to recover those costs that may continue for a reasonable time with the approval of or as directed by the contracting officer.

Therefore, 48 CFR Parts 8, 12, 13, 15, 19, 32, 36, 38, 45, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 8, 12, 13, 15, 19, 32, 36, 38, 45, and 52 continues to read as follows:

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

**PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

2. Section 8.403-4 is added to read as follows:

**8.403-4 International Federal Supply Schedule.**

(a) The International Federal Supply Schedule (IFSS) provides sources of supply (supplies and services) at reasonable prices to U.S. Government activities located overseas. The use of the schedule is mandatory only on GSA.

(b) The schedule is divided into two sections. Section A includes those items which were awarded under sealed bid procedures, while Section B covers items that were awarded under negotiated procedures.

(c) Ordering offices need to review the information in the schedule and any applicable contractor's catalogs/price lists to ensure the proper placement of orders. Orders are placed directly with the contractors.

(d) Ordering offices shall forward copies of any orders (at the time the orders are issued) to the contracting office designated in the IFSS.

3. Section 8.404-1 is amended by revising paragraph (e)(3), by redesignating paragraph (f) as paragraph (g), by adding new paragraph (f), and by revising new paragraph (g) to read as follows:

**8.404-1 Mandatory use.**

\* \* \* \* \*

(e) \* \* \*

(3) When products are purchased from commercial sources on the open market (i.e., not under an existing Government contract) at delivered prices that are lower than the prices provided by multiple-award schedule contracts, ordering offices shall forward the following information, at the time the orders are issued, to the contracting office designated in the multiple-award schedule that was not used:

- (i) Copy of the order.
- (ii) Identification of the Federal Supply Schedule.
- (iii) Name of the schedule contractor.
- (iv) Applicable schedule contract number.
- (v) Schedule contract price.
- (vi) Schedule special item number (SIN).
- (vii) Manufacturer's model and /or part number.

(f) *Report documentation.*  
Documentation of subdivisions (e)(3)(ii) through (e)(3)(vii) of this section may be provided as attachment(s) to the order, annotated directly on the order, or a combination of both. Interagency Report Control Number 0262-GSA-AR has been assigned to this report.

(g) *Absence of follow-on award.*  
Ordering offices, after any consultation required by the schedule, are not required to forgo or postpone their legitimate needs pending the award or renewal of any schedule contract.

4. Section 8.703 is amended by revising paragraph (b) to read as follows:

**8.703 Procurement List.**

\* \* \* \* \*

(b) The Procurement List identifies—

- (1) Workshop supplies available from the General Services Administration (GSA) stocks at supply distribution facilities and the Defense Logistics Agency (DLA) system; and
- (2) Supplies that are also available from Federal Prison Industries, Inc.

5. Section 8.704 is amended by revising in paragraph (a) the first sentence to read as follows:

**8.704 Purchase priorities.**

(a) The Act requires the Government to purchase supplies or services on the Procurement List, at prices established by the Committee, from qualified workshops if they are available within the period required. \* \* \*

\* \* \* \* \*

**8.708 [Amended]**

6. Section 8.708 is amended by removing in the second sentence of paragraph (c) the words "[see Subpart 49.4, Termination for Default]." and inserting a period following the word "delivery".

\* \* \* \* \*

7. Section 8.712 is amended by revising paragraphs (a), (b), and (b)(1), and by adding paragraphs (c) and (d) to read as follows:



**8.712 Specification changes.**

(a) The contracting activity shall notify the workshop and appropriate central nonprofit agency of any change in specifications or descriptions. In the absence of such written notification, the workshop shall produce the supplies or provide the services under the specification or description cited in the order.

(b) The contracting activity shall provide 90-days advance notification to the Committee and the central nonprofit agency on actions that affect supplies on the Procurement List and shall permit them to comment before action is taken, particularly when it involves—

(1) Changes that require new national stock numbers or item designations;

(c) For services, the contracting activity shall notify the workshop and central nonprofit agency concerned at least 90 days prior to the date that any changes in the scope of work or other conditions will be required.

(d) When, in order to meet its emergency needs, a contracting activity is unable to give the 90-day notification required in paragraphs (b) and (c) of this section, the contracting activity shall, at the time it places the order or change notice, inform the workshop and the central nonprofit agency in writing of the reasons that it cannot meet the 90-day notification requirement.

8. Section 8.715 is added to read as follows:

**8.715 Replacement commodities.**

When a commodity on the Procurement List is replaced by another commodity which has not been previously acquired, and a qualified workshop can produce the replacement commodity in accordance with the Government's quality standards and delivery schedules and at a fair market price, the replacement commodity is automatically on the Procurement List and shall be acquired from the workshop designated by the Committee. The commodity being replaced shall continue to be included on the Procurement List until there is no longer a requirement for that commodity.

9. Section 8.1104 is amended by redesignating paragraph (d) as paragraph (e), and by adding a new paragraph (d) to read as follows:

**8.1104 Contract clauses.**

(d) A clause substantially the same as the clause at 52.208-7, Tagging of Leased Vehicles, for vehicles leased over 60 days (see 41 CFR 101-38.6).

**PART 12—CONTRACT DELIVERY OR PERFORMANCE**

10. Subpart 12.3, consisting of §§ 12.300, 12.301, 12.302, 12.303, and 12.304, is revised to read as follows:

**Subpart 12.3—Priorities and Allocations**

Sec.

- 12.300 Scope of subpart.
- 12.301 Definitions.
- 12.302 General.
- 12.303 Procedures.
- 12.304 Solicitation provision and contract clause.

**Subpart 12.3—Priorities and Allocations****12.300 Scope of subpart.**

This subpart implements the Defense Priorities and Allocations System (DPAS), a Department of Commerce (DOC) regulation in support of authorized national defense programs (see 15 CFR Part 350).

**12.301 Definitions.**

"Authorized program," as used in this subpart, means a program approved by the Federal Emergency Management Agency (FEMA) for priorities and allocations support under the Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, et seq.), to promote the national defense. Schedule I of the DPAS lists currently authorized programs.

"Controlled materials," as used in this subpart, means the various shapes and forms of steel, copper, aluminum, and nickel alloys specified in Schedule II, and defined in Schedule III, of the DPAS.

"Delegate Agency," as used in this subpart, means an agency of the U.S. Government authorized by delegation from DOC to place priority ratings on contracts that support authorized programs. Schedule I of the DPAS lists the Delegate Agencies.

"Rated order" means a prime contract for any product, service, or material (including controlled materials) placed by a Delegate Agency under the provisions of the DPAS in support of an authorized program and which requires preferential treatment, and includes subcontracts and purchase orders resulting under such contracts.

**12.302 General.**

(a) Under Title I of the Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, et seq.), the President is authorized (1) to require that contracts in support of the national defense be accepted and performed on a preferential or priority basis over all other contracts, and (2) to allocate

materials and facilities in such a manner as to promote the national defense.

(b) The Office of Industrial Resource Administration (OIRA), DOC, is responsible for administering and enforcing a system of priorities and allocations to carry out Title I of the Defense Production Act for industrial items. The DPAS has been established to promote the timely availability of the necessary industrial resources to meet current national defense requirements and to provide a framework to facilitate rapid industrial mobilization in case of national emergency.

(c) The Delegate Agencies (see Schedule I of the DPAS) have been given authority by DOC to place rated orders in support of authorized programs. Other government agencies, Canada, and other friendly foreign nations may apply for special rating authority in support of authorized programs (see 15 CFR 350.55).

(d) Rated orders shall be placed in accordance with the procedures in the DPAS. Contracting officers responsible for acquisitions in support of authorized programs shall be familiar with the DPAS and should provide guidance on the DPAS to contractors and suppliers receiving rated orders. Agency heads shall ensure compliance with the DPAS by contracting activities within their agencies.

(e) Under the Defense Production Act, any willful violation of the Act, the DPAS, or any official action taken by DOC under the DPAS, is a crime punishable by a maximum fine of \$10,000, one year in prison, or both (see 15 CFR 350.70 and 15 CFR 350.74).

**12.303 Procedures.**

(a) There are two levels of priority for rated orders established by the DPAS, identified by the rating symbols "DO" and "DX." All DO rated orders have equal priority with each other and take preference over unrated orders. All DX rated orders have equal priority with each other and take preference over DO rated and unrated orders. DX ratings are used for special defense programs designated by the President to be of the highest national priority.

(b) DOC may issue a Directive to compel a contractor or supplier to accept a rated order, to rearrange production or delivery schedules, or to improve shipments against particular rated orders. Directives issued by DOC take precedence over all rated and unrated orders as stated in the Directive.

(c) In addition to any other contractual requirements, a valid rated



order must contain (see 15 CFR 350.12) the following:

(1) A priority rating consisting of the appropriate DO or DX rating symbol and a program of identification symbol to indicate the authorized program (see Schedule I of the DPAS).

(2) A required delivery date or delivery dates.

(3) The signature of an individual authorized by the agency to sign rated orders.

(d) The DPAS has the following three basic elements which are essential to the operation of the system:

(1) *Mandatory acceptance of rated orders.* A rated order shall be accepted by a contractor or supplier unless rejected for the reasons provided for mandatory rejection in 15 CFR 350.13(b), or for optional rejection in 15 CFR 350.13(c).

(2) *Mandatory extension of priority ratings throughout the acquisition chain.* Contractors and suppliers receiving rated orders shall extend priority ratings to subcontractors or vendors when acquiring items to fill the rated orders (see 15 CFR 350.15).

(3) *Priority scheduling of production and delivery.* Contractors and suppliers receiving rated orders shall give the rated orders priority over other contracts as needed to meet delivery requirements (see 15 CFR 350.14).

(e) Agencies shall provide contracting activities with specific guidance on the issuance of rated orders in support of agency programs.

(f) Contracting officers shall follow agency procedural instructions concerning the use of rated orders in support of agency programs.

(g) Contracting officers, contractors, or subcontractors at any tier, that experience difficulty placing rated orders, obtaining timely delivery under rated orders, locating a contractor or supplier to fill a rated order, ensuring that rated orders receive preferential treatment by contractors or suppliers, or require rating authority for items not automatically ratable under the DPAS, should promptly seek special priorities assistance in accordance with agency procedures (see 15 CFR 350.50-350.55).

(h) Contracting officers shall report promptly any violations of the DPAS to DOC in accordance with agency procedures.

#### 12.304 Solicitation provision and contract clause.

(a) Contracting officers shall insert the provision at 52.212-7, Notice of Priority Rating for National Defense Use, in solicitations when the contract to be awarded will be a rated order.

(b) Contracting officers shall insert the clause at 52.212-8, Defense Priority and Allocation Requirements, in contracts that are rated orders.

#### PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

11. Section 13.404 is amended by revising paragraph (a) to read as follows:

##### 13.404 Conditions for use.

(a) The transaction does not exceed \$500 or such other limits as have been approved by the agency head;

#### PART 15—CONTRACTING BY NEGOTIATION

12. Section 15.406-5 is amended by revising paragraph (c) to read as follows:

##### 15.406-5 Part IV—Representations and instructions.

(c) *Section M, Evaluation factors for award.* Identify all factors, including price or cost, and any significant subfactors that will be considered in awarding the contract (see 15.605(e) and (f) and the multiple award provision at 52.215-34) and state the relative importance the Government places on those evaluation factors and subfactors.

13. Section 15.407 is amended by adding paragraph (h) to read as follows:

##### 15.407 Solicitation provisions.

(h) The contracting officer shall insert the provision at 52.215-34, Evaluation of Offers for Multiple Awards, in requests for proposals if the contracting officer determines that multiple awards might be made if doing so is economically advantageous to the Government.

14. Section 15.605 is amended by adding paragraph (f) to read as follows:

##### 15.605 Evaluation factors.

(f) In addition to other factors, offers will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (see 15.407(h)). The contracting officer shall assume for the purpose of making multiple awards that \$250 would be the administrative cost to the Government for issuing and administering each contract awarded under a solicitation. Individual awards shall be for the items or combination of items that result in the lowest aggregate cost to the

Government, including the assumed administrative costs.

15. Section 15.611 is amended by adding in paragraph (a) a second sentence to read as follows:

##### 15.611 Best and final offers.

(a) \* \* \* Oral requests for best and final offers shall be confirmed in writing.

#### PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

16. Section 19.402 is amended by revising paragraph (a) to read as follows:

##### 19.402 Small Business Administration procurement center representatives.

(a) The SBA may assign one or more procurement center representatives to any contracting activity or contract administration office to carry out SBA policies and programs. Assigned SBA procurement center representatives are required to comply with the contracting agency's directives governing the conduct of contracting personnel and the release of contract information. The SBA must obtain for its procurement center representatives security clearances required by the contracting agency.

17. Section 19.403 is added to read as follows:

##### 19.403 Small Business Administration breakout procurement center representatives.

(a) The SBA is required by sec. 403 of Pub. L. 98-577 to assign a breakout procurement center representative to each major procurement center. A major procurement center means a procurement center of the Department of Defense that awarded contracts for items other than commercial items totaling at least \$150,000,000 in the preceding fiscal year, and other procurement centers as designated by the Administrator, SBA. The SBA breakout procurement center representative is an advocate for (1) the appropriate use of full and open competition, and (2) the breakout of items, when appropriate and while maintaining the integrity of the system in which such items are used. The SBA breakout procurement center representative is in addition to the SBA procurement center representative (see 19.402). When an SBA breakout procurement center representative is assigned, the SBA is required to assign at least two collocated small business technical advisors. Assigned SBA breakout procurement center



representatives and technical advisors are required to comply with the contracting agency's directives governing the conduct of contracting personnel and the release of contract information. The SBA must obtain for its breakout procurement center representatives and technical advisors security clearances required by the contracting agency.

(b) Contracting officers shall comply with 19.402(b) in their relationships with SBA breakout procurement center representatives and SBA small business technical advisors.

(c) The SBA breakout procurement center representative is authorized to—

(1) Attend any provisioning conference or similar evaluation session during which determinations are made as to whether requirements are to be acquired using other than full and open competition and make recommendations with respect to such requirements to the members of such conference or session;

(2) Review, at any time, restrictions on competition previously imposed on items through acquisition method coding or similar procedures and recommend to personnel of the appropriate activity the prompt reevaluation of such limitations;

(3) Review restrictions on competition arising out of restrictions on the rights of the United States in technical data and, when appropriate, recommend that personnel of the appropriate activity initiate a review of the validity of such an asserted restriction;

(4) Obtain from any governmental source, and make available to personnel of the appropriate center, unlimited-rights technical data necessary for the preparation of a competitive solicitation package for any item of supply or service previously acquired noncompetitively due to the unavailability of such technical data;

(5) Have access to the unclassified procurement records and other data of the procurement center;

(6) Receive unsolicited engineering proposals and, when appropriate—

(i) Conduct a value analysis of such proposal to determine whether it, if adopted, will result in lower costs to the United States without substantially impeding legitimate acquisition objectives and forward to personnel of the appropriate center recommendations with respect to such proposal; or

(ii) Forward such proposals without analysis to personnel of the center responsible for reviewing them who shall furnish the breakout procurement center representative with information regarding the proposal's disposition;

(7) Review the systems that account for the acquisition and management of technical data within the procurement

center to ensure that such systems provide the maximum availability and access to data needed for the preparation of offers to sell to the United States those supplies to which such data pertain which potential offerors are entitled to receive; and

(8) Appeal a failure by the procurement center to act favorably on any recommendation made pursuant to subparagraphs (c) (1) through (7) of this section. Such appeal must be in writing and specifically recite both the circumstances of the appeal and the basis of the recommendation. The appeal shall be decided by a person within the employ of the procurement center who is at least one supervisory level above the person who initially failed to act favorably on the recommendation. Such appeal shall be decided within 30 calendar days of its receipt by the procurement center. All such decisions shall be final.

(d) The duties of the SBA small business technical advisors are to assist the SBA breakout procurement center representative in carrying out the activities described in (c) (1) through (7) above to assist the SBA procurement center representatives (see FAR 19.402).

#### 19.705-2 [Amended]

18. Section 19.705-2 is amended by removing paragraph (b)(3).

19. Section 19.705-4 is amended by revising paragraph (d)(3) to read as follows:

#### 19.705-4 Reviewing the subcontracting plan.

\* \* \*

(d) \* \* \*

(3) Evaluate subcontracting potential, considering the offeror's make-or-buy policies or programs, the nature of the products or services to be subcontracted, the known availability of small and small disadvantaged business concerns in the geographical area where the work will be performed, and the potential contractor's longstanding contractual relationship with its suppliers.

\* \* \*

#### PART 32—CONTRACT FINANCING

20. Section 32.103 is added to read as follows:

##### 32.103 Progress Payment Construction Contracts.

When satisfactory progress has not been achieved by a contractor during any period for which a progress payment is to be made, a percentage of the progress payment may be retained. Retainage should not be used as a substitute for good contract

management, and the contracting officer should not withhold funds without cause. Determinations to retain and the specific amount to be withheld shall be made by the contracting officer on a case-by-case basis. Such decisions will be based on the contracting officer's assessment of past performance and the likelihood that such performance will continue. The amount of retainage withheld shall not exceed 10 percent of the approved estimated amount in accordance with the terms of the contract and may be adjusted as the contract approaches completion to recognize better than expected performance, the ability to rely on alternative safeguards, and other factors. Upon completion of all contract requirements, retained amounts shall be paid promptly.

#### PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

##### 36.302 [Amended]

21. Section 36.302 is amended by adding in paragraph (b)(1), following the word "range)" the reference "(see 36.204);".

#### PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING

22. Section 38.102-4 is added to read as follows:

##### 38.102-4 International Federal Supply Schedule.

(a) The International Federal Supply Schedule (IFSS) has been established to provide sources of supply (supplies and services) at reasonable prices to U.S. Government activities located overseas. The use of the schedule is mandatory only on GSA.

(b) The IFSS is divided into two sections. The items included in Section A are awarded under a solicitation using sealed bid procedures, as covered in Part 14, while the items listed in Section B are awarded under a solicitation using negotiated procedures, as described in Part 15.

#### PART 45—GOVERNMENT PROPERTY

##### 45.101 [Amended]

23. Section 45.101 is amended by revising in paragraph (a) the definition of "Government property" to read as follows:

\* \* \*

"Government property" means all property owned by or leased to the Government under the terms of the contract. It includes both Government-furnished property and contractor-



acquired property as defined in this section.

24. Section 45.401 is revised to read as follows:

#### 45.401 Policy.

In performing Government contracts or subcontracts, Government production and research property in the possession of contractors or subcontractors shall be used to the greatest possible extent, provided that a competitive advantage is not conferred on the contractor or its subcontractors (see Subpart 45.2). Prior approval of the contracting officer having cognizance of Government production and research property is required for any use, whether Government or non-Government, to ensure that the Government receives adequate consideration. Government use is defined as use in support of U.S. Government contracts and non-Government use is all other use (including direct commercial sales to domestic and foreign customers). As a general rule, Government use is on a rent-free basis. Non-Government use is on a rental basis. When Government production and research property is no longer required for the performance of Government contracts or subcontracts, it shall not continue to be made available to a contractor for non-Government use.

### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

25. Section 52.208-7 is added to read as follows:

#### 52.208-7 Tagging of Leased Vehicles.

As prescribed in 8.1104(d), insert a clause substantially as follows:

##### Tagging of Leased Vehicles (May 1986)

While it is the intent that vehicles leased under this contract will operate on Federal tags, the Government reserves the right to utilize State tags if necessary to accomplish its mission. Should State tags be required, the Contractor shall furnish the Government documentation necessary to allow acquisition of such tags. Federal tags are the responsibility of the Government.

(End of clause)

26. Section 52.212-7 is revised to read as follows:

#### 52.212-7 Notice of Priority Rating for National Defense Use.

As prescribed in 12.304(a), insert the following provision:

#### Notice of Priority Rating for National Defense Use (May 1986)

Any contract awarded as a result of this solicitation will be a [ ] DX rated order; [ ] DO rated order certified for national defense use under the Defense Priorities and Allocations System (DPAS) (15 CFR Part 350), and the Contractor will be required to follow all of the requirements of this regulation. [Contracting Officer check appropriate box.]

(End of provision)

27. Section 52.212-8 is revised to read as follows:

#### 52.212-8 Defense Priority and Allocation Requirements.

As prescribed in 12.304(b), insert the following clause:

##### Defense Priority and Allocation Requirements (May 1986)

This is a rated order certified for national defense use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR Part 350).

(End of clause)

28. Section 52.215-34 is added to read as follows:

#### 52.215-34 Evaluation of Offers for Multiple Awards.

As prescribed in 15.407(h), insert the following provision:

##### Evaluation of Offers for Multiple Awards (May 1986)

In addition to other factors, offers will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (multiple awards). It is assumed, for the purpose of evaluating proposals, that \$250 would be the administrative cost to the Government for issuing and administering each contract awarded under this solicitation and individual awards shall be for the items or combinations of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

(End of provision)

29. Section 52.219-1 is revised to read as follows:

#### 52.219-1 Small Business Concern Representation.

As prescribed in 19.304(a), insert the following provision:

##### Small Business Concern Representation (May 1986)

The offeror represents and certifies as part of its offer that it ☐ is, ☐ is not a small business concern and that ☐ all, ☐ not all end items to be furnished will be manufactured or produced by a small business concern in the United States, its territories or possessions,

Puerto Rico, or the Trust Territory of the Pacific Islands. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

30. Section 52.232-5 is amended by removing in the title of the clause the date "JAN" and inserting in its place the date "MAY" and by revising paragraphs (c) and (e) of the clause to read as follows:

#### 52.232-5 Payments under Fixed Price Construction Contracts.

(c) If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Government and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(e) In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (c) above shall not apply to that portion of progress payments attributable to bond premiums.

31. Section 52.249-6 is amended by inserting a colon following the word "clause" in the introductory text and deleting the remainder of the paragraph; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(MAY 1986)"; by revising paragraph (g)(1) of the clause; and by removing both derivation lines following "(End of clause)" to read as follows:



**52.249-6 Termination (Cost-Reimbursement).**

\* \* \* \* \*

**(g) \* \* \***

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue these costs as rapidly as practicable.

\* \* \* \* \*

[FR Doc. 86-12098 Filed 5-29-86; 8:45 am]

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