OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6, 7, 10, 18, 26, 37, 41, and 52

[FAR Case 2026-002, Docket No. FAR-2026-0002, Sequence No. 1]

RIN 9000-AO87

Federal Acquisition Regulation: Revolutionary Federal Acquisition Regulation Overhaul Parts 6, 7, 10, 18, 26, 37, and 41

AGENCY: Office of Federal Procurement Policy (OFPP), Office of Management and Budget (OMB); Department of Defense (DoD); General Services Administration (GSA); and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: OFPP, DoD, GSA, and NASA (collectively referred to as the Federal Acquisition Regulatory Council or FAR Council) are proposing to amend the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 14275, Restoring Common Sense to Federal Procurement. The E.O. directs the elimination of excessive acquisition regulations to stop the inefficient use of American taxpayer dollars. The FAR Council is issuing twelve

proposed rules that collectively will streamline the FAR in its entirety. This rule proposes revisions to FAR parts 6, 7, 10, 18, 26, 37, 41, and 52.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2026-002 to the Federal eRulemaking portal at *https://www.regulations.gov.* Follow the instructions for sending comments.

Instructions: Please submit comments only and cite "FAR Case 2026-002" in all correspondence related to this case. Include your name, company name (if any), and "FAR Case 2026-002" on any attached document. Comments received generally will be posted without change to *https://www.regulations.gov*, including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at *https://www.regulations.gov/faq*). To confirm receipt of your comment(s), please check *https://www.regulations.gov*, approximately two to three days after submission to verify posting.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov/FAR-2026-0002*.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact *FARpolicy@gsa.gov* or call 202-969-4075 and cite "FAR Case 2026-002." For information pertaining to status, publication schedules, or alternate instructions for submitting comments if *https://www.regulations.gov* cannot be used, contact the Regulatory Secretariat Division at 202-501-4755 or *GSARegSec@gsa.gov*. Please cite "FAR Case 2026-002."

SUPPLEMENTARY INFORMATION:

I. Background

E.O. 14275, Restoring Common Sense to Federal Procurement (April 15, 2025), resets the foundation for Federal buying by requiring the FAR Council to produce a streamlined FAR that is simpler, clearer, and structured for speed. According to the E.O., the FAR has evolved from its original purpose (i.e., to establish uniform procedures across executive departments and agencies), into an excessive and overcomplicated regulatory framework and bureaucracy. While meant to "deliver, on a timely basis, the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives," the FAR has become an expensive barrier to achieving those objectives. As a result, the E.O. directed

the FAR Council and OMB to create an agile, effective, and efficient regulation that contains only provisions required by statute or essential to sound procurement.

To implement E.O. 14275, OMB issued Memorandum M-25-26, Overhauling the Federal Acquisition Regulation, which announced the "Revolutionary FAR Overhaul" (RFO) and created a roadmap for producing simpler regulations aligned to statute, rewritten in plain language, and including nonstatutory requirements that are necessary to conducting a sound procurement. The memorandum described a new streamlined vision for the FAR, to be maintained alongside nonregulatory governmentwide guidance to provide a common-sense authoritative foundation for nimble response and delivery of mission capability.

This new vision represents a paradigm shift where over-engineered regulations designed for paperwork and compliance are replaced with streamlined regulations focused on core stewardship principles and nonregulatory guidance that will be used in concert with the streamlined FAR focused on proven buying strategies, critical thinking, market awareness (including to expand awareness of goods, products, and materials offered in the United States), and risk literacy to enhance workforce problem-solving. The significant reduction of unnecessary mandates is intended to clarify and reinforce the contracting officer's discretion to determine the best way to apply policies and

practices. The newly established, nonregulatory guidance, which has been inspired by acquisition innovation advocates, category managers, other experienced practitioners, and many years of feedback from the contractor community – is expected to facilitate contracting officers' use of their discretion more efficiently and effectively to make smarter buying decisions.

OMB Memorandum M-25-26 also directed the FAR Council to complete the regulatory overhaul in two phases, each with robust public input. The FAR Council conducted its phase one effort in fiscal year 2025 by issuing model class deviations to replace each part in the FAR until such time as formal rulemaking occurred. This proposed rule is one of a series that constitute the FAR Council's phase two effort to obtain public comment through formal rulemaking.

II. Discussion and Analysis

A summary of proposed changes to existing FAR parts 6, 7, 10, 18, 26, 37, 41, and their corresponding provisions and clauses in part 52 follows:

A. General

1. General RFO updates. This proposed rule generally reorganizes the FAR parts into phases of acquisition and simplifies the text into plain language, where possible. The plain language efforts include changes to active voice, edits to improve readability, and reorganization to present

information more logically. None of the plain language edits are intended to change existing FAR requirements. The rewriting of the entire FAR also required edits to harmonize the changes being proposed such as updating the cross-references. This aligns with the Federal plain language guidelines as directed by the Plain Writing Act of 2010 (5 U.S.C. 301 note).

2. Standardization of prescriptions. This rule proposes revisions to standardize prescriptions for provisions and clauses. These changes are intended to provide better clarity around the applicability of provisions and clauses such as whether they apply to commercial products and services.

3. Use of "must" instead of "shall". Additional revisions are being proposed throughout the FAR text and FAR provisions and clauses to replace the use of the term "shall" with "must" or "will," as appropriate, to impose requirements.

4. Non-statutory requirements. Section 4 of the E.O. required amendments to the FAR to ensure it contains only provisions that are required by statute or that are otherwise necessary to support simplicity and usability, strengthen the efficacy of the procurement system, or protect economic or national security. The FAR Council reviewed all non-statutory requirements to determine if they are still relevant and essential to sound procurement

in today's contracting environment based on the criteria from section 4 of the E.O. The proposed rule retains non-statutory requirements that further one or more of the elements of sound procurements, including those requirements that serve as guardrails to protecting taxpayer interests and promote taxpayer confidence in the procurement system. Non-statutory requirements that were beneficial but not essential were retained in the non-regulatory guidance documents. Other non-statutory requirements that did not meet these standards, were removed. The Council considered the extent to which regulation is the most efficient means for capturing the benefit of the policy. For example, most "how to" requirements were found to be more appropriately suited for non-regulatory coverage which better enables a contracting officer to use discretion in determining the application of a strategy to a given situation and limits the risk of overapplication, which can create wasteful burden on the contracting parties.

As part of the RFO, the FAR Council has created a number of non-regulatory resources, including the FAR Companion, which provides insight from experienced practitioners across the government on using more streamlined practices and processes. The migration of significant coverage to non-regulatory guidance is intended to ensure that the benefits of the policy are not

outweighed by the compliance burden of a more rigidly written regulation that is prone to application in an overly broad manner. This approach was explained to the public in a set of "frequently asked questions" that were posted on the Revolutionary FAR Overhaul homepage shortly after the initiative was launched.

B. FAR Part 6

This proposed rule revises FAR part 6 to simplify and streamline the policies and procedures pertaining to competition. These revisions align with the broader RFO initiatives and do not substantively change the policy or procedures in the part. Several types of streamlining are highlighted below with specific examples for further illustration.

1. Eliminating redundancy. The proposed rule captures existing FAR subpart 6.2, Full and Open Competition After Exclusion of Sources, content at FAR section 6.102. The proposed text significantly streamlines the content through several simple adjustments. For example, where existing text repeats "No separate justification or determination and findings is required under this part to..." before each specific authority, the proposed rule simply states one time, upfront: "Acquisitions under this section do not require J&As." This change alone significantly reduces repetitive text and improves readability.

Another example is the advocate for competition coverage at existing FAR subpart 6.5, which merely repeats statutory requirements. Regulations do not need to repeat statutes. The coverage for advocates for competition is streamlined and moved to FAR 6.003.

2. *Focusing on essential policy.* The existing FAR 6.302 section includes extensive "application" paragraphs for each authority (FAR 6.302-1(b) et seq.). These paragraphs generally expound on the underlying authorities with duplicative, nonstatutory, or non-exhaustive example listings that are better left to agency discretion and may unintentionally constrain field flexibility.

Another example is the conditional language regarding justifications for the public interest authority for other than full and open competition at existing FAR 6.302-7(c)(3). This statutory authority requires an agency head determination and expressly does not require a justification. The elective treatment creates ripple effects and adds complexity to other sections in part 6. For example, existing FAR 6.303-1(d) adds nuance by informing contracting officers that justifications using the public interest authority may not be made on a class basis. The proposed rule simplifies this by simply stating no justification is required (proposed FAR 6.103-7(d)), clearly stating the agency head determination responsibility for public interest (proposed FAR 6.103-

7(c)), and clearly stating that justifications generally may be made on an individual or class basis (proposed FAR 6.104(c)).

The proposed revisions significantly streamline the content by focusing on the core statutory authorities for using other than full and open competition. These changes do not fundamentally alter policy and provide a more focused treatment of underlying statutory authorities.

3. *Threshold adjustments.* This rule proposes adjusting the justification approval thresholds to align with Section 1804 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2026 (Pub. L. 119-60). The NDAA language addresses threshold changes for the use of procedures other than competitive procedures at 10 U.S.C. 3204 for DoD, NASA, and United States Coast Guard. Additionally, this rule proposes to revise the way the thresholds and corresponding approval authorities are displayed by presenting them in an enhanced table format (see Table 6-1 in FAR 6.104-2).

C. FAR Part 7

1. *General.* This proposed rule revises FAR part 7 to emphasize thoughtful acquisition planning based on the complexity and circumstance of each procurement and clarifies that the acquisition planning process is not merely the act of creating an acquisition plan document.

The proposed rule establishes the fundamental requirement for acquisition planning in all acquisitions. Having a plan is key to ensuring the guiding principles of the acquisition system are met. Revisions at FAR 7.102 now mandate that agencies establish procedures for determining when a written or oral plan is needed and list high-level outcomes that planning must promote: acquisition of commercial products or services; full and open competition; selection of appropriate contract type; and use of existing contracts.

2. *Agency-head Responsibilities.* The proposed rule revises agency-head responsibilities from a long list of specific tasks to a list of high-level responsibilities, such as creating streamlined procedures for different acquisition types (e.g., orders, commercial products and services), establishing criteria for high-risk contracts, and ensuring small business opportunities are considered. This proposed rule emphasizes the responsibility for heads of contracting agencies to establish streamlined acquisition planning thresholds and criteria. For example, the revisions make clear distinctions between task orders and delivery orders and the award of new contracts, requiring appropriate acquisition planning for each. The placing of task orders and delivery orders is a faster and more streamlined process with significantly fewer pre-award actions required than in awarding new contracts.

Additionally, this proposed rule outlines general procedures for acquisition planning and moves the specific contents of written acquisition plans to the FAR companion guide.

3. ***Consolidation and Bundling.*** Proposed edits at FAR 7.107 also unify the sections related to consolidation, bundling, and substantial bundling which adds simplicity to training, processes, and timeframes. The proposed rule streamlines and standardizes the analysis, determination, and notification requirements for consolidation and bundling – there are no longer separate requirements for each.

4. ***Restructuring and Eliminating Redundancy.*** This proposed rule removes or relocates FAR content that is outdated, redundant, or otherwise unnecessary such as: major systems acquisition planning which is in existing FAR part 34, Major System Acquisition; Contractor Versus Government Performance and its underlying sections as Congress has consistently placed a statutory hold on A-76 competitions since 2008; and FAR 52.207-1, Notice of Standard Competition, FAR 52.207-2, Notice of Streamlined Competition, and FAR 52.207-3, Right of First Refusal of Employment.

5. ***Relocation of FAR subpart 7.5.*** The inherently governmental functions policy is relocated from existing

FAR subpart 7.5 to subpart 37.3. For more details, see Discussion and Analysis section II.G.3.

6. *Relocation of FAR part 10.* This proposed rule relocates and streamlines existing FAR part 10 content to FAR subpart 7.2, because market research is fundamentally an integral component of acquisition planning. The acquisition community cannot effectively plan an acquisition without first understanding the marketplace, available solutions, and industry capabilities. This reorganization reflects the reality that market research is the foundation upon which sound acquisition strategies are built, making it more logical to address these interconnected activities within a single part devoted to the planning phase of the acquisition process.

The proposed FAR 7.201(f) requires agencies to procure commercial products and commercial services to the maximum extent practicable by following a specified order of available solutions in Federal contracts for efficient use.

The proposed FAR subpart 7.2 provides more flexibility for acquisition professionals conducting market research for given agency requirements, freeing agencies to implement best approaches rather than follow an overly prescriptive process regardless of the marketplace for a given requirement. The FAR no longer lists specific market research considerations or techniques that must be used. Agencies will have the flexibility to choose the market

research method that best fits their needs. Acquisition professionals must still comply with the Competition in Contracting Act of 1984 (Title VII of Pub. L. 98-369), which may necessitate market research. While existing FAR clause 52.210-1, Market Research, is not required by statute for civilian agencies, it has been retained as essential to the acquisition process and relocated to FAR 52.207-7.

7. *Relocation of FAR 15.201.* Additionally, this rule relocates the industry engagement requirements previously found in FAR 15.201 to FAR 7.105.

D. FAR Part 10

FAR part 10 is now marked reserved and does not contain any policy. Its content is relocated to FAR subpart 7.2. For more details, see Discussion and Analysis section II.C.6.

E. FAR Part 18

FAR part 18 is now marked reserved and does not contain any policy. The content is relocated to a website and FAR subpart 26.2. For more details, see Discussion and Analysis section II.F.3.

F. FAR Part 26

This proposed rule revises FAR part 26 to simplify and streamline the policies and procedures pertaining to other socioeconomic programs. These revisions align with the broader RFO initiatives, and do not substantively change

fundamental policy or procedures in the part. Several types of streamlining are highlighted below with specific examples for further illustration.

1. ***Eliminating redundancy.*** Existing FAR 26.103 content on the Indian Incentive Program is relocated to FAR 26.303. The proposed text, however, significantly streamlines content. For example, the existing policy contains extensive nonstatutory procedural detail involving contractor engagement. This content is already captured in FAR contract clause 52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises. The intricate policy detail provided negligible value, and the streamlined approach reduces relevant text significantly while improving readability.

2. ***Focusing on essential policy.*** Existing FAR subpart 26.4, Food Donations to Nonprofit Organizations, is relocated to subpart 26.5. The subpart includes essential policy to comply with statutory requirements at 42 U.S.C. 1792, Promoting Federal food donation. The policy includes the prescription for contract clause FAR 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. The existing contract clause, however, includes a paragraph (e) requiring the flowdown of the clause to subcontractors. Upon review of the underlying statute, no flowdown is required by statute and provides minimal benefit, as the liability protections for food donation are granted by the

Bill Emerson Good Samaritan Food Donation Act (41 U.S.C. 1791) and apply to all entities, including subcontractors, regardless of the clause's presence. To reduce administrative burden, this nonstatutory flowdown is removed in the proposed revision to FAR 52.226-6.

3. *Part 18 streamlining and incorporation*. Given the alignment in content in existing FAR part 26, Other Socioeconomic Programs, and existing FAR part 18, Emergency Acquisitions, FAR subpart 18.2 is incorporated at FAR subpart 26.2. Additionally, the static list of general acquisition flexibilities in existing FAR subpart 18.1 is replaced with a link to a more dynamic repository. These flexibilities have been consolidated into a single reference point for existing authorities now available by clicking on the link which takes the reader to an Emergency Procurement List. Replacing the regulatory text with a URL [*https://acquisition.gov/emergency-procurement*] provides Government users a more dynamic resource summarizing flexibilities already codified in disparate sections of the FAR.

Additionally, duplicative references to the micro-purchase threshold, the simplified acquisition threshold, and the Presidential declaration of a major disaster or emergency, that appeared in existing FAR parts 18 and 26 are consolidated in the proposed rule's FAR part 26 to eliminate redundancy.

4. *Definition relocation.* With the consolidation of emergency contracting content into FAR part 26, the definition of disaster response registry is relocated from existing FAR 2.101 to FAR 26.101. Additionally, definitions for historically black college or university and minority institutions are moved from existing FAR 2.101 to the proposed FAR 26.401. While these inclusions are addressed in this proposed rule, the removal of the definition from existing FAR part 2 is addressed in a parallel RFO proposed rule (FAR Case 2026-001) which more holistically addresses part 2 proposed revisions.

G. FAR Part 37

This proposed rule revises FAR part 37 to simplify and streamline the policies and procedures pertaining to service contracting. These revisions align with the broader RFO initiatives and do not substantively change policy or procedures in the part. Several types of streamlining are highlighted below with specific examples for further illustration.

1. *Eliminating extraneous content.* Several areas within existing FAR part 37 were extraneous or were addressed in multiple locations across the existing FAR. For example, the scope section in existing FAR 37.000 contains nonessential text, when the part title is reasonably descriptive as to the contents of the part.

Several areas within existing FAR part 37 contained definitions that were unnecessary. For example, existing FAR 37.101 provides a definition of "nonpersonal services contract." The definition of a "nonpersonal services contract" simply means those services contracts which are not a "personal services contract," which is already a defined term at FAR 2.101. Accordingly, the extraneous definition is deleted.

Similarly, FAR 37.101 includes a definition for "performance-based contracting." The definition is largely duplicative of the existing FAR 2.101 definition of "performance-based acquisition." Accordingly, the term is deleted in the proposed revision to further simplify and streamline.

Another example at existing FAR 37.501 is the term "best practices," a ubiquitous term with context and understanding beyond simply services contracting. Furthermore, this rule proposes to remove the entire FAR subpart 37.5, Management Oversight of Service Contracts, as it addresses nonstatutory, and rather generic, policy not specifically limited to services contracting.

2. *Restructuring.* In addition to the acquisition lifecycle phasing, the proposed rule includes extensive restructuring to improve readability. For example, performance-based acquisition appears as both a general policy matter at existing FAR 37.102 and in a dedicated

subpart at existing FAR 37.6. The proposed revision consolidates performance-based acquisition policy to one subpart at FAR 37.1. This provides a single reference point for essential guidance on a core statutory requirement.

Another structural peculiarity in the existing text is the inclusion of myriad miscellaneous policies within FAR subpart 37.1, Service Contracts-General. The proposed revision shifts most of these policies that do not apply to services contracts generally, and did not necessarily warrant a dedicated subpart, to a newly established FAR subpart 37.8, Other Service Considerations.

This reshuffling brings parity to additional structural peculiarities. For example, treatment of nonpersonal health care services holds a dedicated policy subpart at existing FAR subpart 37.4, despite being nonstatutory because it is policy considered essential for sound procurement. Meanwhile, statutory requirements for background checks in child care service contracts were relegated to a seemingly random subparagraph at FAR 37.103 under miscellaneous contracting officer responsibilities. Accordingly, a new subpart in the proposed revision at FAR subpart 37.5, Child Care Services, is established to bring parity and ensure the responsibilities are understood and shared by the agency’s acquisition community when developing contracts and overseeing contracts and not solely a contracting officer’s responsibility.

3. ***Inherently governmental functions.*** The inherently governmental functions policy is relocated from existing FAR subpart 7.5 to subpart 37.3 because determining which functions must remain governmental is a critical component of acquisition planning specifically for service contracts. Acquisition planners cannot properly plan a services acquisition without first understanding what work can legally be performed by contractors versus what must be performed by Government personnel. This reorganization recognizes that inherently governmental determinations are integral to service contract planning and should be addressed alongside other service contracting considerations.

H. FAR Part 41

FAR part 41 is being revised to simplify and streamline the policies and procedures pertaining to the acquisition of utilities. This change more clearly directs civilian agencies to GSA for their procurements of utilities.

These revisions align with the broader RFO initiatives, and do not substantively change the policy or procedures in the part. General changes include plain-language and grammar changes (e.g., using acronyms and consistency for number references) and clarifying the location of guidance from GSA to civilian agencies. Clauses and provisions have been updated for plain-language and

consistent use of acronyms. The FAR clause at 52.241-13 is revised to more broadly speak to the Government and contractors complying with the terms of utility cooperatives in general, instead of speaking solely to the application of capital credits specifically.

I. FAR Part 52

Discussion and analysis for provisions and clauses updated in this rule. Provisions and clauses associated with a particular FAR part are discussed within the relevant FAR part's analysis (e.g., the proposed removal of FAR clauses 52.207-1, 52.207-2, and 52.207-3 is addressed at Discussion and Analysis section II.C.4).

FAR part 52 renumbering of provisions and clauses. As a result of the RFO, the FAR Council is considering establishing a new subpart in part 52 and relocating and renumbering all provisions and clauses under this new subpart. This means, if FAR subpart 52.4 was used, all provisions and clauses would begin with 52.4 instead of 52.2. This change is anticipated to prevent confusion and increase compliance by creating a clear distinction between versions of a provision or clause prior to the RFO. Other benefits include avoiding potential clause numbering conflicts and information system and data collection impacts. The FAR Council welcomes comments on the potential impact of such a change on contractors, Government personnel, and other stakeholders.

III. Applicability to Contracts and Subcontracts Valued at or Below the Simplified Acquisition Threshold and for Commercial Products and Commercial Services

The following sections address the applicability of provisions and clauses prescribed in FAR parts 7, 26, 37, and 41 to solicitations and contracts valued at or below the simplified acquisition threshold (SAT) and those for the acquisition of commercial products, commercially available off-the-shelf (COTS) items, and commercial services. Prescriptions for provisions and clauses in these parts have been updated to reflect applicability to commercial acquisitions.

A. Contracts and Subcontracts Valued at or Below the Simplified Acquisition Threshold.

This proposed rule, if finalized, does not alter the prescriptions of provisions and clauses included in this proposed rule to change their applicability to contracts and subcontracts valued at or below the SAT.

B. Contracts and Subcontracts for Commercial Products, Commercially Available Off-The-Shelf Items, and Commercial Services.

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial products and commercial services and gives the FAR Council the authority to determine to apply a law to contracts or subcontracts for the acquisition of commercial products and commercial

services. 41 U.S.C. 1907 exempts contracts for commercially available off-the-shelf (COTS) items from certain provisions of law unless the Administrator for Federal Procurement Policy determines that doing so would not be in the best interest of the Federal Government.

Section 839 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115-232) required the FAR Council and the Administrator of Federal Procurement Policy to review prior determinations under 41 U.S.C. 1906 and 41 U.S.C. 1907, as well as the applicability of provisions and clauses to contracts and subcontracts for commercial products, COTS items, and commercial services that do not implement statute or Executive order, and propose amendments to the FAR to eliminate or exempt such requirements from commercial acquisitions, unless there are specific reasons to retain particular requirements.

In accordance with section 839 of the NDAA for FY 2019 and their authorities under 41 U.S.C. 1906 and 1907, the FAR Council reviewed the applicability of the provisions and clauses associated with the FAR parts covered by this proposed rule. The following table reflects the FAR Council and Administrator of Federal Procurement Policy's proposed determination regarding the applicability of the provisions and clauses to solicitations and contracts for commercial products, COTS items, and/or commercial services. In making

proposed applicability determinations, the FAR Council considered factors such as whether the provision or clause advances national security or economic security, contributes to the resilience of contractors and subcontractors in the federal marketplace, or advances uniformity and clarity in the performance of basic functions that are essential to sound procurement.

Accordingly, this proposed rule, if finalized, would revise provision and clause prescriptions to clearly reflect applicability to commercial acquisitions as outlined in the table. An “X” in the following table indicates the provision or clause will apply to that category of commercial acquisition, as prescribed:

Provision/ Clause Number	**Title**	**Commercial Products**	**Commercial Services**	**COTS items**
52.207-4	Economic Purchase Quantity-Supplies.			
52.207-5	Option to Purchase Equipment.			
52.207-6	Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements	X	X	X

	or Joint Ventures (Multiple-Award Contracts).			
52.207-7	Market Research.			
52.226-1	Utilization of Indian Organizations and Indian-Owned Economic Enterprises.	X	X	
52.226-2	Historically Black College or University and Minority Institution Representation.	X	X	
52.226-3	Disaster or Emergency Area Representation.	X	X	X
52.226-4	Notice of Disaster or Emergency Area Set-Aside.	X	X	X
52.226-5	Restrictions on Subcontracting Outside Disaster or Emergency Area.	X	X	X

52.226-6	Promoting Excess Food Donation to Nonprofit Organizations.			
52.226-7	Drug-Free Workplace.			
52.226-8	Encouraging Contractor Policies to Ban Text Messaging While Driving.	X	X	X
52.237-1	Site Visit.		X	
52.237-2	Protection of Government Buildings, Equipment, and Vegetation.		X	
52.237-3	Continuity of Services.		X	
52.237-4	Payment by Government to Contractor.		X	
52.237-4 Alt I	Payment by Government to Contractor.		X	

52.237-5	Payment by Contractor to Government.		X	
52.237-6	Incremental Payment by Contractor to Government.		X	
52.237-7	Indemnification and Medical Liability Insurance.		X	
52.237-8	Restriction on Severance Payments to Foreign Nationals.			
52.237-9	Waiver of Limitation on Severance Payments to Foreign Nationals.			
52.237-10	Identification of Uncompensated Overtime.			
52.241-1	Electric Service Territory Compliance Representation.		X	
52.241-2	Order of Precedence-Utilities.		X	

52.241-3	Scope and Duration of Contract.		X	
52.241-4	Change in Class of Service.		X	
52.241-5	Contractor’s Facilities.		X	
52.241-6	Service Provisions.		X	
52.241-7	Change in Rates or Terms and Conditions of Service for Regulated Services.		X	
52.241-8	Change in Rates or Terms and Conditions of Service for Unregulated Services.		X	
52.241-9	Connection Charge.		X	
52.241-9 Alt I	Connection Charge.		X	
52.241-10	Termination Liability.		X	
52.241-11	Multiple Service Locations.		X	

52.241-12	Nonrefundable, Nonrecurring Service Charge.		X	
52.241-13	Capital Credits.		X	

The FAR Council also reviewed subcontract flow down requirements in clauses associated with the FAR parts covered by this proposed rule. The following table reflects the FAR Council and Administrator of Federal Procurement Policy's proposal regarding whether those clauses flow down to subcontracts for commercial products, COTS items, and/or commercial services. This proposed rule, if finalized, would revise the subcontract paragraphs in these clauses to clearly state whether the clause flows down to commercial subcontracts, as outlined in the table. An "X" in the following table indicates the provision or clause will apply to subcontracts for that category of commercial subcontracts, as described in the clause:

Clause Number	**Title**	**Commercial Products**	**Commercial Services**	**COTS items**
52.226-8	Encouraging Contractor Policies to Ban Text Messaging While Driving.			

52.237-9	Waiver of Limitation on Severance Payments to Foreign Nationals.			

IV. Expected Impact of the Rule

The intended impact of the RFO, as stated in E.O. 14275, is to restore the Government's ability to "deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives." Each of the RFO rulemakings is designed to contribute to this impact by emphasizing mission first, by aligning acquisition activities directly to achieving the agency's overarching objectives and serving the public interest and elevating the importance of fiscal responsibility. The proposed RFO rules focus on three goals in particular: (1) timely acquisition and delivery, (2) lower cost and accountability in all spending, and (3) increased competition.

Timeliness. Timely acquisition and delivery are essential for mission success. To this end, RFO rules propose to eliminate mandates that unnecessarily interfere with agency discretion to determine the best way to procure products and services. The proposed RFO rules highlight more clearly streamlined and simplified authorities that allow buyers to use their time more efficiently and are

expected to reduce time between solicitation and award. The proposed RFO rules are expected to make it easier for contracting officers to leverage commercial practices that are familiar to the commercial marketplace. This is expected to make it easier for sellers to engage and respond to Government solicitations more rapidly.

Lower cost. E.O. 14271, Ensuring Commercial, Cost-Effective Solutions in Federal Contracts (April 15, 2025), directs the Government to utilize, to the maximum extent practicable, the commercial marketplace and the innovations of private enterprise to provide better, more cost-effective services to taxpayers, as envisioned by the Federal Acquisition Streamlining Act. The procurement of custom products and services where a suitable or superior commercial solution would have fulfilled the Government's needs has resulted in avoidable waste to the detriment of American taxpayers.

To address these concerns, consistent with associated responsibilities in section 839 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115-232), the FAR Council reviewed prescriptions for provisions and clauses to ensure all prescriptions are clear regarding their applicability to acquisitions for commercial products and services. Currently, many prescriptions do not specify applicability to commercial acquisitions and leave the applicability

determination to contracting officer interpretation. By specifically stating when a provision or clause can be applied to commercial acquisitions, proposed RFO rules should decrease the likelihood of inclusion of provisions and clauses in commercial acquisitions that are not required by law and drive greater consistency in the terms and conditions used in these contracts. In turn, these changes should increase the participation of commercial sellers, who are unwilling or unable to manage the cost of complying with noncommercial requirements, and also improve taxpayer access to affordable commercial solutions.

Some RFO rules propose to delete requirements placed on commercial or noncommercial sellers that are not related to performance of the contract, drive up cost without attendant performance benefits, and may misdirect efforts away from innovation, investment and economic growth. Greater emphasis on timeliness should reduce bidders' carrying costs, enabling them to pass those savings on to customers through lower prices.

Increased competition. Since enactment of the Competition in Contracting Act of 1984 (Title VII of Pub. L. 98-369), competition has been the cornerstone of the Federal acquisition system. The benefits of competition are well established: competition saves money for the taxpayer, improves contractor performance, curbs fraud, and promotes accountability for results. Competition also drives

contractor resilience and positions the U.S. market to develop a strategic advantage for the nation.

According to data in the SAM Contracts Awards Management, roughly 45 percent of contract dollars were awarded in FY 2025 either without competition or with competition that received only one offer. Of equal concern, the Federal marketplace has seen a significant decline over the past 20 years in the number of businesses – especially small businesses -- participating in the Federal supplier base. Studies suggest that high compliance costs lead to the misallocation of resources away from more profitable activities and discourage innovation, investment, and economic growth (Council of Economic Advisers, Executive Office of the President. June 2025. The Economic Benefits of Current Deregulatory Policies. *https://www.whitehouse.gov/wp-content/uploads/2025/03/The-Economic-Benefits-of-Current-Deregulatory-Efforts.pdf*)). This may shelter incumbent contractors and stifle competition, reducing startup activity and job formation.

The RFO rules seek to increase participation in agency competitions and the resilience of the Federal supplier base, which includes commercial entities, small businesses, manufacturers, and nontraditional suppliers. The RFO will achieve this outcome by removing regulatory mandates that are not rooted in statute or essential to sound procurement, promoting greater reliance on practices that

reduce transaction costs, and improving the quality of communications with offerors and potential offerors. Access to a broader range of solutions in a more dynamic marketplace will drive better return for each taxpayer dollar spent and increase taxpayer confidence in the Federal acquisition system.

The Government has conducted a regulatory impact analysis (RIA) for the RFO rulemaking inclusive of this proposed rule for FAR parts 6, 7, 10, 18, 26, 37 and 41. The RIA includes a discussion of the anticipated effects of the rulemakings as follows:

1. FAR part 6. This proposed rule simplifies and streamlines competition requirements and policies without changing fundamental requirements. The consolidation of content and elimination of redundant text will reduce the time contracting officers spend navigating regulations. For example, clearly stating where a justification and approval is required for other than full and open competition aids in clarity for the field. Additionally, removing numerous duplicative and nonstatutory "application" paragraphs not only reduces regulatory footprint, it lifts potentially unintended constraints the field may have read into such nonexhaustive examples. The rewrite makes core statutory competition requirement policies clear while freeing contracting officers and other acquisition professionals to exercise their judgment to fulfill mission requirements.

Benefits to the Government include reduced administrative burden through clearer, more concise regulations; potentially faster processing of competition determinations; and reduced risk of procedural errors. Changes are primarily internal to the Government, but industry may experience ancillary benefits associated with Government process improvements (e.g., increased shared understanding through plain language adjustments, faster processing with improved clarity).

2. FAR part 7. This proposed rule significantly revises FAR part 7 to stress the importance of tailored acquisition planning that is appropriate for the complexity and circumstances of each procurement. The revisions clarify that acquisition planning is a comprehensive process, not merely the creation of a formal document. The revisions focus on achieving key outcomes like using commercial products/services, promoting full and open competition, selecting the right contract type, and utilizing existing contracts. Specific contents of written acquisition plans are moved to a companion guide. The proposed rule stresses that heads of contracting agencies must establish streamlined planning thresholds and criteria, distinguishing planning for task orders and delivery orders (a faster process) from new contract awards, establishing high-risk contract criteria and ensuring small business opportunities. The distinction

between planning for task orders and delivery orders versus new contracts will improve efficiency by aligning planning efforts with acquisition complexity. Additionally, the proposed rule integrates market research as a fundamental component of planning. See section II. C. of the preamble for additional information.

Consolidation and bundling. The rewrite unifies previously distinct procedures for consolidation, bundling, and substantial bundling into a streamlined process. This unified approach offers several key benefits, including simplified training, reduced processing time, and standardized analysis, determination, and notification requirements. This not only reduces the overall regulatory footprint, it eliminates sources of confusion that can obfuscate efficiency and compliance.

Market research integration. Moving market research from Part 10 to Part 7 recognizes it as integral to acquisition planning, reducing duplicative efforts and improving acquisition outcomes. The proposed FAR 7.201(f) requires agencies to procure commercial products and commercial services to the maximum extent practicable. This refocus into commercial buying should result in improved outcomes including potential savings benefitting the American people.

Contractor versus Government Performance, OMB Circular A-76. Since fiscal year 2008, a continuous congressional

moratorium, enacted through various appropriations acts, has prohibited executive agencies from initiating new public-private competitions under OMB Circular A-76. This statutory prohibition prevents the use of taxpayer funds to competitively convert civilian employee positions into jobs performed by private contractors. Based on this statutory hold, Contractor Versus Government Performance and its underlying sections have been removed from the FAR, including FAR clauses 52.207-1, 52.207-2, and 52.207-3. Removal of these clauses eliminates contractor reporting requirements for hiring displaced Federal employees, reducing administrative burden on both contractors and Government personnel because of the statutory hold.

These changes are expected to reduce acquisition lead times and improve the quality of acquisition planning without imposing additional costs.

3. FAR part 10. The relocation of market research content to FAR Part 7 has no independent impact. See FAR Part 7 discussion above.

4. FAR part 18. The relocation of emergency acquisition content to FAR Part 26 and a web resource has no independent impact. See FAR Part 26 discussion below.

5. FAR part 26. This rule consolidates emergency acquisition flexibilities with other socioeconomic programs, creating a more logical organization. The significant reduction in regulatory text while maintaining

all requirements demonstrates the efficiency gains possible through elimination of regulatory duplication.

Emergency acquisitions. Replacing static regulatory text with a dynamic URL for emergency procurement flexibilities ensures contracting officers have access to current authorities without waiting for regulatory updates. This change is particularly beneficial during emergency responses when speed is critical.

Elimination of nonstatutory flowdowns. Removing the flowdown requirement from FAR 52.226-6 reduces contractor compliance burden without affecting statutory obligations. See Section II.F.2. of the preamble for additional information. These changes reduce administrative burden while maintaining all statutory protections and requirements.

6. FAR part 37. The reorganization of service contracting policies improves accessibility and reduces confusion. Consolidating performance-based acquisition into a single subpart eliminates redundant text and the need to cross-reference multiple sections. Additionally, moving inherently governmental function details from part 7 to part 37 creates a logical home for this service-specific requirement.

Benefits to the Government include clear, but more flexible, language implementing performance based acquisition in ways that are less prescriptive, yet better

facilitate contracts focused on mission outcomes. Additionally, the general improvements in structural clarity and simplicity should aid in reducing training time and improving compliance for the contracting workforce. While the focus of changes is primarily internal to the Government, industry may experience ancillary benefits associated with Government process improvements (e.g., increased shared understanding through plain language adjustments, faster processing with improved clarity).

7. FAR part 41. The part has been revised to more directly route most agencies to GSA for utility procurements. This text at the outset of the part is anticipated to reduce confusion and streamline the acquisition process, while still including useful policies and procedures for agencies such as DoD and DoE, which possesses unique statutory authorities for utility acquisition. Other changes include plain language revisions to improve readability without changing requirements. FAR 52.241-13 has been revised and streamlined to better align with common practice and address general compliance with utility cooperative terms, rather than focusing solely on capital credits.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to

select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Executive Order 14192

This rule is subject to E.O. 14192, Unleashing Prosperity Through Deregulation. This proposed rule, if finalized as proposed, is anticipated to be an E.O. 14192 deregulatory action. See discussion in the "Expected Impact of the Rule" section of this preamble.

VII. Regulatory Flexibility Act

This proposed rule, if finalized, may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is as follows:

1. Reasons for the action.

Executive Order (E.O.) 14275, Restoring Common Sense to Federal Procurement, directs the elimination of excessive acquisition regulations to stop the inefficient use of American taxpayer dollars. The E.O. directs the first comprehensive end-to-end overhaul of the FAR in its 40-year history. The E.O. establishes the policy that the FAR should "contain only provisions that are required by statute or that are otherwise necessary to support simplicity and usability, strengthen the

efficacy of the procurement system, or protect economic or national security interests." In response to E.O. 14275, the Office of Management and Budget issued memorandum M-25-26, Overhauling the Federal Acquisition Regulation. The Memo directed the FAR Council to complete a "revolutionary overhaul" of the FAR. Therefore, the FAR Council is issuing twelve proposed rules that collectively will streamline the FAR in its entirety.

2. Objectives of, and legal basis for, the rule.

The revolutionary FAR overhaul (RFO) rewrite represents a paradigm shift in Federal acquisition. It emphasizes streamlining, clarity, and accessibility, while ensuring that the regulation focuses only on statutory mandates and foundational procurement principles. The RFO is designed to simplify compliance for contracting professionals, improve acquisition speed and agility, and reinforce mission outcomes over process formalities.

The basis for the RFO is E.O. 14275. The authority for promulgation of the FAR is 41 U.S.C. 1121(b); 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

3. Description of and an estimate of the number of small entities to which the rule will apply.

All small entities who want to contract with the Federal Government will have to familiarize themselves with the reorganized, streamlined, and revised FAR, including the content of this rulemaking. As of January 2026, there are 401,196 entities registered in the System for Award Management that were small for at least one North American Industry Classification System code they had selected.

This proposed rule may have a positive impact on small entities by simplifying and streamlining acquisition regulations.

4. Description of projected reporting, recordkeeping, and other compliance requirements of the rule.

This proposed rule does not create any new reporting or recordkeeping, or other compliance requirements. Instead, this proposed rule will remove the following existing reporting requirements:

- Contractors will no longer be required to provide the contracting officer with the names of personnel who were adversely affected or separated from Government employment as a result of the contract award; and subsequently hired by the contractor to perform under the contract within 90 days after contract performance began.

For more information about the changes to the reporting requirements, see section VIII of the preamble.

5. Relevant Federal rules which may duplicate, overlap, or conflict with the rule.

The proposed rule, if finalized, would not duplicate, overlap, or conflict with other Federal rules.

6. Description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes, and which minimize any significant economic impact of the rule on small entities.

There are no significant alternatives that would minimize the impact of the rule on small entities.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. The FAR Council invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

The FAR Council will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite "5 U.S.C. 610 (FAR Case 2026-002)" in correspondence.

VIII. Paperwork Reduction Act

This rule includes information collections under the Paperwork Reduction Act (44 U.S.C. 3501-3521). Following are the specific collections associated with each FAR part in this rule as previously approved by OMB followed by how each collection would be affected by the proposed rule. If a FAR part is not listed below, then there are no information collections associated with the part.

A. FAR Part 7

OMB Control No. 9000-0082, Federal Acquisition Regulation Part 7 Requirements. The changes under this proposed rule, if finalized, would revise this information collection and the paperwork burden previously approved by OMB. The public reporting burden for this collection of information will be revised to reflect the removal of the requirements under the clause at FAR 52.207-3, Right of First Refusal of Employment. The revised annual reporting burden is estimated as follows:

Respondents: 14,500.

Total Annual Responses: 14,500.

Total Burden Hours: 14,500.

B. FAR Part 26

OMB Control No. 9000-0207, Federal Acquisition Regulation (FAR) Part 26 Requirements; FAR Section affected: 52.226-7. The changes under this proposed rule, if finalized, would not affect the information collection or the paperwork burden previously approved by OMB. The collection would remain unchanged.

C. FAR Part 37

OMB Control No. 9000-0152, Service Contracting; FAR Section Affected: 52.237-10. The changes under this proposed rule, if finalized, would not affect the information collection or the paperwork burden previously approved by OMB. The collection would remain unchanged.

D. Comments Regarding Paperwork Burden.

The FAR Council will publish a separate first notice in accordance with the Paperwork Reduction Act seeking comments on the changes to these collections of information.

IX. Severability

If any portion (e.g., section, clause, sentence) of this rule is held to be invalid or unenforceable facially, or as applied to any entity or circumstance, it shall be severable from the remainder of this rule, and shall not affect the remainder thereof, or its application to entities not similarly situated or to other dissimilar circumstances. The various portions of this rule are independent and serve distinct purposes. Even if one aspect were rendered invalid, the other benefits of the rule would still be applicable.

List of Subjects in 48 CFR Parts 6, 7, 10, 18, 26, 37, 41, and 52

Government procurement.

William F. Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, OFPP, DoD, GSA, and NASA propose amending 48 CFR parts 6, 7, 10, 18, 26, 37, 41, and 52 as set forth below:

1. Revise parts 6 and 7 to read as follows:

PART 6—COMPETITION REQUIREMENTS

Sec.

Subpart 6.2—Postaward

AUTHORITY: 41 U.S.C. 1121(b); 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

6.001 Applicability.

This part applies to all acquisitions except—

(a) Contracts awarded using simplified acquisition procedures of subpart 12.201-1 and part 13;

(b) Contracts awarded using contracting procedures (other than those addressed in this part) that are expressly authorized by statute;

(c) Contract modifications that are within the scope of the contract, including exercising priced options that were evaluated as part of the original competition (see part 17);

(d) Orders placed under requirements contracts or definite-quantity contracts;

(e) Orders placed under indefinite-quantity contracts that were entered into according to this part when—

(1) The contract was awarded under 6.101 or 6.102, and the order was placed according to the procedures in subpart 16.6; or

(2) The contract was awarded under 6.103, and the justification and approval (J&A), if required, adequately covers the requirements contained in the order.

6.002 Limitations.

Agencies must not contract for supplies or services from another agency to avoid the requirements of this part.

6.003 Advocates for competition.

(a) 41 U.S.C. 1705 requires the head of each executive agency to designate and resource an advocate for competition for the agency and for each contracting activity of the agency.

(b) The advocate promotes full and open competition, promotes the acquisition of commercial products and services, and challenges barriers to acquisition. The advocate reports actions taken to increase competition to the senior procurement executive (SPE) and chief acquisition officer.

(c) See 41 U.S.C. 1705 for appointment requirements and specific duties of the advocates for competition.

Subpart 6.1—Presolicitation

6.101 Full and open competition.

(a) Except as authorized by 6.102 and 6.103, obtain full and open competition by using competitive procedures to solicit offers and award Government contracts (see 10 U.S.C. 3201 and 41 U.S.C. 3301).

(b) Use the competitive procedure, or combination of procedures, best suited to efficiently fulfill the Government's requirements. Competitive procedures include sealed bids, competitive proposals, and other procedures explicitly authorized by statute.

(1) *Sealed bids.* For sealed bidding procedures, see part 14. Use sealed bids only when the contracting officer has found that all of the following apply:

(i) Time permits the solicitation, submission and evaluation of sealed bids.

(ii) Award will be made on the basis of price and other price-related factors.

(iii) Negotiations with bidders are unnecessary.

(iv) Contracting officers reasonably expect to receive more than one sealed bid.

(2) *Competitive proposals.* For competitive proposal procedures, see part 15.

(3) *Other competitive procedures.* The following procedures are also considered competitive procedures (see 41 U.S.C. 152):

(i) Selection of sources for architect-engineer contracts according to the provisions of 40 U.S.C. 1102 *et seq*.

(ii) Competitive selection of basic and applied research, as well as that part of development not related

to developing a specific system or hardware procurement, if award results from—

(A) Proposals in response to a general solicitation or broad agency announcement (see 35.102); and

(B) A peer review or scientific review of such proposals.

(iii) Use of procedures established by the Administrator of General Services for the multiple award schedule program of GSA.

6.102 Full and open competition after excluding sources.

(a) Agencies may contract by providing for full and open competition after excluding one or more sources under authorities specified in this section. See 10 U.S.C. 3203 and 41 U.S.C. 3303.

(b) Acquisitions made pursuant to this section require use of the competitive procedures outlined in 6.101(b).

(c) Acquisitions pursuant to this section do not require J&As.

6.102-1 Establishing or maintaining alternative sources.

(a) Agencies may exclude a particular source from a contract action to establish or maintain an alternative source of supply or service if the agency head determines that to do so would—

(1) Increase or maintain competition and likely result in reduced overall costs for the acquisition, or anticipated acquisition of the supplies or services;

(2) Serve the interests of national defense to have a facility (or a producer, manufacturer, or other supplier) available for furnishing the supplies or services in case of a national emergency or industrial mobilization;

(3) Serve the interests of national defense by establishing or maintaining an essential engineering, research, or development capability provided by an educational or other nonprofit institution or a federally funded research and development center;

(4) Ensure the continuous availability of a reliable source of supplies or services;

(5) Satisfy projected needs based on a history of high demand for the supplies or services; or

(6) Satisfy a critical need for medical, safety, or emergency supplies.

(b)(1) Support every proposed contract action under the authority of paragraph (a) of this section by a determination and findings (D&F) (see subpart 1.5) signed by the head of the agency or designee. This D&F must not be made on a class basis.

(2) Technical and requirements personnel are responsible for providing all necessary data to support their recommendation to exclude a particular source.

(3) When the authority in (a)(1) of this section is cited, the findings must include a description of the

estimated reduction in overall costs and how the estimate was derived.

6.102-2 Set-asides for small business concerns.

Contracting officers may set aside acquisitions for small business concerns (see 19.104). This authority also includes—

(a) Contract actions conducted under the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs.

(b) Contract actions set aside under the following small business socioeconomic programs:

(1) Historically Underutilized Business Zone (HUBZone) Program (see 19.105).

(2) Service-Disabled Veteran-Owned Small Business (SDVOSB) Program (see 19.106).

(3) Women-Owned Small Business (WOSB) or Economically Disadvantaged WOSB eligible under the WOSB Program (see 19.107).

(4) 8(a) Program (see 19.108).

6.102-3 Set-asides for local firms during a major disaster or emergency.

Contracting officers may set aside solicitations for offerors residing or doing business primarily in the area affected by a major disaster or emergency (see subpart 26.1).

6.103 Other than full and open competition.

(a) Agencies may contract without providing for full and open competition under authorities specified in this section (see 10 U.S.C. 3204 for DoD, United States Coast Guard (USCG), and NASA and 41 U.S.C. 3304 for other civilian agencies).

(b) Contracting without providing for full and open competition must not be justified on the basis of—

(1) A lack of planning by the requiring activity; or

(2) Concerns related to the amount of funds available to the agency or activity for acquisition.

6.103-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a) *Authority.* 10 U.S.C. 3204(a)(1) or 41 U.S.C. 3304(a)(1).

(b) *One responsible source.* Agencies may contract without providing for full and open competition when the supplies or services required by the agency are available from only one responsible source and no other type of supplies or services will satisfy agency requirements. For DoD, NASA, and USCG, this authority extends to situations where only a limited number of responsible sources can satisfy agency requirements.

(c) *Application.* Supplies and services may be deemed as available from only one source under this authority under the following circumstances, including but not limited to:

(1) *Unsolicited research proposals.*

(i) When an unsolicited research proposal-

(A) Demonstrates a unique and innovative concept;

(B) Provides an offering not otherwise available to the Federal Government; and

(C) Does not resemble the substance of any pending competitive acquisition.

(ii) For DoD, NASA, and USCG, this authority extends to unsolicited research proposals demonstrating unique capabilities to provide services.

(iii) Unsolicited proposals that do not meet these criteria, including those for non-research activities, may still be considered for a sole-source award if justified using other rationale.

(2) *Follow-on contracts.* When awarding a follow-on contract for the continued development or production of a major system or highly specialized equipment and, for DoD, NASA, and USCG, for the continued provision of highly specialized services, and award to any other source would result in—

(i) Substantial duplication of cost to the Government that is not expected to be recovered through competition; or

(ii) Unacceptable delays in fulfilling the agency's requirements.

(3) *Agency standardization program.* When the agency head has determined in accordance with the agency's standardization program that only specified makes and models of technical equipment and parts will satisfy the agency's needs for additional units or replacement items, and only one source is available.

(d) *Application for brand-name descriptions.*

(1) Restricting consideration to an item peculiar to one manufacturer (e.g., a particular brand-name, product, or a feature of a product that is peculiar to one manufacturer) prevents full and open competition regardless of the number of sources solicited. Except as authorized at 6.103-5(d), brand-name specifications must not be used unless the particular brand-name, product, or feature is essential to the Government's requirements and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency's needs.

(2)(i) Brand name specifications require a J&A as described in 6.104, modified to show the brand name justification.

(ii) If only a portion of the acquisition is for an item peculiar to one manufacturer, the J&A should state it is covering only the portion of the acquisition, and the approval level requirements will apply only to that portion.

(iii) The approved brand-name justification must be posted along with the solicitation (see 5.201 and 12.102).

(3) The requirements at paragraphs (d)(1) through (d)(2) do not apply to "brand name or equal" descriptions.

(e) *Limitations*. Agencies must publish the notices required by 5.101 and 12.202 and ensure that any bids, proposals, quotations, or capability statements received in response to that notice have been considered.

(f) *Justification.* Contracts using this authority require a J&A as described in 6.104.

6.103-2 Unusual and compelling urgency.

(a) *Authority.* 10 U.S.C. 3204(a)(2) or 41 U.S.C. 3304(a)(2).

(b) *Urgency*. Agencies may contract without providing for full and open competition when the agency's need for the supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.

(c) *Period of performance.* The total period of performance of a contract greater than the simplified acquisition threshold awarded or modified using this authority—

(1) May not exceed the time necessary—

(i) To meet the unusual and compelling requirements of the work to be performed under the contract; and

(ii) For the agency to enter into another contract for the required goods and services through competitive procedures; and

(2) May not exceed one year, including all options, unless the head of the agency determines that exceptional circumstances apply. This determination—

(i) Is separate from the J&A for the use of the unusual and compelling urgency authority and must be documented in the contract file; and

(ii) Does not cover any subsequent modification that further extends the period of performance, except for options included in the original determination. Such extensions must be approved at the same level as the original determination.

(d) *Limitations*. Although unusual and compelling urgency considerations may justify other than full and open competition, agencies must still ensure offers are solicited from as many potential sources as is practicable under the circumstances.

(e) *Justification.* Contracts using this authority require a J&A as described in 6.104.

(f) *Documentation after award.* The J&A for the use of this authority, as well as the determination described in

paragraph (c)(2) of this section, may be made after contract award when making the determination before award would unreasonably delay the acquisition.

6.103-3 Industrial mobilization; engineering, developmental, or research capability; or expert services.

(a) *Authority*. 10 U.S.C. 3204(a)(3) or 41 U.S.C. 3304(a)(3).

(b) *Application*. Agencies may contract without providing for full and open competition when it is necessary to award the contract to a particular source or sources in order—

(1) To maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization;

(2) To establish or maintain an essential engineering, research, or development capability provided by an educational or other nonprofit institution or a federally funded research and development center; or

(3) To acquire the services of an expert or neutral person for use in any current or anticipated—

(i) Litigation or dispute; or

(ii) Alternative dispute resolution or negotiated rulemaking processes.

(c) *Justification*. Contracts using this authority require a J&A as described in 6.104.

6.103-4 International agreement.

(a) *Authority.* 10 U.S.C. 3204(a)(4) or 41 U.S.C. 3304(a)(4).

(b) *International agreement.* Agencies may contract without providing for full and open competition when precluded by the—

(1) Terms of an international agreement or a treaty between the United States and a foreign government or international organization; or

(2) The written directions of a foreign government reimbursing the agency for the cost of acquiring the supplies or services for such a government.

(c) *Justification.* Except for contracts awarded by DoD, NASA, and USCG, contracts using this authority require a J&A described in 6.104.

6.103-5 Authorized or required by statute.

(a) *Authority.* 10 U.S.C. 3204(a)(5) or 41 U.S.C. 3304(a)(5).

(b) *Authorized by statute.* Agencies may contract without providing for full and open competition when a statute expressly authorizes, but does not require, that the acquisition be made through another agency or from a specified source. Examples of such authorities include, but are not limited to, sole source awards under the following small business programs:

(1) HUBZone Program (see 19.105).

(2) SDVOSB Program(see 19.106).

(3) WOSB Program (see 19.107).

(4) 8(a) Program (see 19.108).

(5) SBIR or STTR Program follow-on Phase II.

(6) SBIR or STTR Program Phase III.

(c) *Required by statute.* Agencies may contract without providing for full and open competition when a statute expressly requires the acquisition be made through another agency or from a specified source. Examples of such authorities include, but are not limited to awards to—

(1) Federal Prison Industries, Inc. (see subpart 8.3);

(2) AbilityOne participating nonprofit agencies (see subpart 8.2); or

(3) Government Publishing Office (see subpart 8.5).

(d) *Brand-name commercial product for authorized resale.* Agencies may contract without providing for full and open competition when the agency's need is for a brand-name commercial product for authorized resale (e.g., commercial products for resale through commissaries). This authority does not include other uses of brand name descriptions that generally preclude full and open competition and must be addressed in accordance with 6.103-1(d).

(e) *Limitations.* (1) Do not use this authority when a provision of law requires an agency to award a new contract

to a specified non-Federal Government entity unless the provision of law specifically—

(i) Identifies the entity involved; and

(ii) States that award must be made to that entity despite the merit-based selection procedures in 10 U.S.C. 3201(e) (for DoD, NASA, and USCG) or 41 U.S.C. 3105 (for other civilian agencies).

(2) This limitation does not apply—

(i) When the work provided for in the contract continues the work performed by the specified entity under a preceding contract; or

(ii) To any contract requiring the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an executive agency and to report on those matters to the Congress or any agency of the Federal Government.

(f) *Justification*. Contracting officers must prepare a J&A, as described in 6.104, for contracts awarded under the authority of this section, except those awarded under the authorities at—

(1) Paragraph (c) of this section;

(2) Paragraph (d) of this section; and

(3) Paragraph (b) of this section, if statute specifies that such awards may be made without justification. Example of such statutory exceptions include—

(i) SBIR or STTR Program Phase III awards (see 15 U.S.C. 638(r)(4)(B)); and

(ii) 8(a) awards under $30 million (section 811 of Pub. L. 111-84, 41 U.S.C. 3304 note).

6.103-6 National security.

(a) *Authority.* 10 U.S.C. 3204(a)(6) or 41 U.S.C. 3304(a)(6).

(b) *National security.* Full and open competition is not required when disclosing the agency's needs would compromise national security unless the agency can limit the number of sources from which it solicits bids or proposals.

(c) *Limitations.* Although national security considerations may justify other than full and open competition, agencies must still—

(1) Publish the notices required by 5.101 and 12.202 and ensure that any bids, proposals, quotations, or capability statements received in response to that notice have been considered.

(2) Ensure offers are solicited from as many potential sources as is practicable under the circumstances.

(d) *Justification.* Contracts using this authority require a J&A as described in 6.104.

6.103-7 Public interest.

(a) *Authority.* 10 U.S.C. 3204(a)(7) or 41 U.S.C. 3304(a)(7).

(b) *Public interest.* Full and open competition is not required when the agency head determines it is not in the public interest for that particular acquisition.

(c) *Limitations.* (1) The head of the agency must make a written determination to use this authority in accordance with subpart 1.5. The authority may not be delegated and the determination cannot be on a class basis.

(2) Agencies must notify Congress, in writing, of such determination not fewer than 30 days before awarding the contract.

(d) *Justification.* Contracts using this authority do not require a J&A as described in 6.104.

6.104 Justification and approval.

(a) A J&A must support procedures under 6.103, except as outlined at 6.103-5(f) and 6.103-7(d). Agencies must obtain required J&As, prior to commencing negotiations for a sole source contract, commencing negotiations for a contract resulting from an unsolicited proposal, or awarding any other contract without providing for full and open competition.

(b) Contracting officers require the support of the broader acquisition team when making decisions regarding competition. Technical and requirements personnel are

responsible for providing, and certifying as accurate and complete, necessary data to support their recommendation for other than full and open competition.

(c) Justifications may be on an individual or class basis.

6.104-1 Justification content.

(a) At a minimum, each justification must include the following information; however, see paragraph (b) for sole-source 8(a) contracts over $30 million:

(1) Identification of the agency and the contracting activity, and specific identification of the document as a "Justification for other than full and open competition."

(2) Brief summary of the action being approved.

(3) A description of the supplies or services required to meet the agency's needs (including the estimated value).

(4) An identification of the statutory authority permitting other than full and open competition.

(5) A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires using the authority cited.

(6) A description of efforts to ensure that offers are solicited from as many potential sources as practicable, including whether a notice was or will be publicized as required by 5.101 or 12.202 and, if not, which exception applies. Presolicitation notice

requirements do not apply to acquisitions under the authorities at 6.103-2, 6.103-3, 6.103-4, 6.103-5, and 6.103-7.

(7) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.

(8) The market research conducted (see subpart 7.2) and the results or a statement of the reason market research was not conducted.

(9) Any other facts supporting using other than full and open competition, such as:

(i) When 6.103-1 is cited for follow-on acquisitions as described in 6.103-1(c)(2), an estimate of the cost to the Government that would be duplicated and how the estimate was derived.

(ii) When 6.103-2 is cited, data, estimated cost, or other rationale as to whether and how much the Government would be harmed.

(10) A listing of the sources, if any, that expressed an interest in the acquisition in writing.

(11) A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required.

(12) Contracting officer certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

(b) For sole-source 8(a) contracts over $30 million, the justification must include, at a minimum, the contents described at paragraphs (a)(3), (a)(4), and (a)(7) of this section. It should also include a determination that using a sole-source contract is in the best interest of the agency concerned and any other matters specified by agency procedures.

6.104-2 Approval of justification.

(a) The justification for other than full and open competition must be approved in writing. Officials at a higher authority level may approve lower dollar justifications. For example, the SPE as well as the head of the contracting activity (HCA) may approve a $60 million justification. Approval levels are as follows:

Table 6-1. Approval authorities for other than full and open competition.

Value (including options)	Approval authority
(1) $900,000 or below. ($10,000,000 or below for DoD, NASA, and USCG.)	Contracting officer. Accomplished by certification required at 6.104-1(a)(12).
(2) >$900,000 - $20,000,000.	Advocate for competition for the contracting activity. Not delegable.

(>$10,000,000 - $100,000,000 for DoD, NASA, and USCG.)	
(3) >$20,000,000 - $90,000,000. (>$100,000,000 - $500,000,000 for DoD, NASA, and USCG.)	HCA. May be delegated to a member of the armed services at the general or flag officer level or a civilian in a grade above the GS-15 (or equivalent) level.
(4) >$90,000,000. (>$500,000,000 for DoD, NASA, and USCG.)	SPE. Not delegable, except in the case of the Under Secretary of Defense for Acquisition and Sustainment, acting as the SPE for the DoD.

(b) A class justification for other than full and open competition must be approved in writing in accordance with agency procedures. The estimated total value of the class will determine the approval level.

(c) A justification must include the estimated dollar value of all options to determine the approval level.

Subpart 6.2—Postaward

6.201 Availability of the justification.

(a) Make the approved justification publicly available within 14 days after contract award, except—

(1) Justifications under 6.103-2, which must be posted within 30 days after contract award; and

(2) Justifications for brand-name descriptions that were posted with the solicitation under the authority at 6.103-1(d), which do not need to be re-posted after award.

(b) Make the justifications publicly available—

(1) At the Government Point of Entry (GPE);

(2) On the website of the agency, which may provide access to the justifications by linking to the GPE; and

(3) For a minimum of 30 days.

(c) Carefully screen all justifications for contractor proprietary data and remove such data, and such references and citations as are necessary to protect the proprietary data, before making the justifications available for public inspection. Use the exemptions to disclosure of information contained in the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the prohibitions against disclosure in part 24 to determine whether the justification, or portions of it, are exempt from posting.

(d) The requirements of paragraphs (a) and (b) do not apply if posting the justification would compromise national security or create other security risks.

PART 7—ACQUISITION PLANNING

Sec.

Subpart 7.1—Acquisition Plans

7.000 Scope of part.

This part provides policies and procedures for—

(a) Acquisition planning and developing acquisition plans;

(b) Determining whether to use commercial or Government resources to acquire supplies or services; and

(c) Deciding whether it is more economical to lease or to purchase equipment.

Subpart 7.1—Acquisition Plans

7.101 Definitions.

As used in this subpart—

Design-to-cost means a concept that establishes cost elements as management goals to achieve the best balance between life-cycle cost, acceptable performance, and schedule. Under this concept, cost is a design constraint during the design and development phases, and a management discipline throughout the acquisition and operation of the system or equipment.

Life-cycle cost means the total cost to the Government of acquiring, operating, supporting, and (if applicable) disposing of the items being acquired.

Order means an order placed under a—

(1) Federal Supply Schedule contract; or

(2) Task-order contract or delivery-order contract.

Planner means the person or office responsible for developing and maintaining a plan, whether written or not.

7.102 Requirements.

(a) Agencies must perform acquisition planning for all acquisitions. Agencies should establish procedures to determine when a written or oral acquisition plan is required (see 7.103). The record of the acquisition plan must be appropriate for the type of acquisition and document decisions and actions to ensure-

(1) Information is available for making informed decisions at each step in the acquisition process;

(2) There is clear support for all actions taken;

(3) Necessary information is available for reviews or investigations; and

(4) Essential facts are available in case litigation arises.

(b) Acquisition plans must promote and provide for:

(1) Acquisition of commercial products or commercial services, whenever feasible (see 7.201(f)).

(2) Full and open competition (see part 6). When using an exception to full and open competition, obtain competition to the maximum extent practicable for the procurement.

(3) Selection of the appropriate contract type to fulfill the agency’s needs (see part 16).

(4) Use of existing contracts, if appropriate, including interagency and intra-agency contracts, to fulfill the requirement, before awarding new contracts (see subparts 8.1 and 17.5).

(c) Planning must integrate the efforts of agency personnel responsible for significant aspects of the acquisition to ensure that the Government meets its needs in the most effective, economical, and timely manner.

(d) A written plan is required for cost reimbursement and other high-risk contracts other than firm-fixed-price contracts. Agencies may require written plans for firm-fixed-price contracts as appropriate.

7.103 Agency-head responsibilities.

(a) The agency head must establish agency acquisition planning criteria and thresholds for when increasingly greater detail and formality in the planning process is required. The agency procedures must—

(1) Create streamlined acquisition planning procedures for using Governmentwide acquisition contracts (GWACs) or multi-agency contracts for requirements that are not complex, including for orders, particularly for repetitive orders;

(2) Create streamlined acquisition planning procedures when an acquisition plan has been developed for a single indefinite delivery indefinite quantity (IDIQ)

contract to allow the resulting orders to be covered by and reference the same acquisition plan;

(3) Allow for acquisition planning at the program level that covers multiple procurement actions. Acquisition plans may be on a system basis, individual contract basis, or individual order basis depending on the acquisition;

(4) Consider streamlined acquisition planning procedures for procurements for commercial products, including commercially available off-the-shelf items, and commercial services;

(5) Establish criteria for identifying high-risk contracts;

(6) Identify when design-to-cost and life-cycle-cost techniques will be used; and

(7) Provide procedures to waive planning requirements for acquisitions because of an urgent need.

(b) The agency head or designee are responsible for ensuring:

(1) Market research (see subpart 7.2) is conducted to define requirements and that the statement of work, statement of objectives, or performance work statement closely aligns with needed outcomes and cost estimates.

(2) The principles of this subpart are used, as appropriate, for all acquisitions, whether a written plan is required or not.

(3) Small business opportunities are considered in acquisitions to the maximum extent practicable (see 7.107 and part 19).

(4) No purchase request is started or contract entered into that would result in the performance of an inherently governmental function by a contractor, and that all contracts or orders are adequately managed to ensure effective official control over contract or order performance (see subpart 37.3).

(5) Effective agency responsiveness to disaster and emergencies using the authorities and flexibilities at part 26.

(6) Information security and supply chain security requirements (see part 40) and information and communication technology (ICT) accessibility standards (see part 39) are considered, as appropriate.

(7) Before issuing a solicitation for advisory and assistance services (A&AS) for analyzing and evaluating solicitation proposals, a determination is made that there are insufficient covered personnel within the agency or from another Federal agency with the training and capability to do the analyzing and evaluating (see part 37).

(8) Agency planners on information technology acquisitions comply with the capital planning and

investment control requirements in 40 U.S.C. 11312 and OMB Circular A-130.

(9) Acquisition plans and revisions to these plans are reviewed and approved to ensure compliance with FAR requirements.

7.104 General procedures.

(a) Start acquisition planning as soon as an agency need is identified. Early planning can create opportunities to structure the procurement approach in a way that promotes competition and innovation, and considers capabilities of domestic sources.

(b) In developing the plan, the planner must do the following:

(1) Form a team consisting of all those who will be responsible for significant aspects of the acquisition, such as contracting, small business, fiscal, legal, and technical personnel. If contract performance is to be in a designated operational area or supporting a diplomatic or consular mission, the planner must also consider inclusion of the combatant commander or chief of mission, as appropriate.

(2) Review previous plans for similar acquisitions and discuss them with the key personnel involved.

(3) Review and revise the plan at key dates specified in the plan or whenever significant changes occur, and no less often than annually.

(4) If the plan proposes using other than full and open competition when awarding a contract, coordinate the plan with the appropriate advocate for competition.

(5) Coordinate the plan with the appropriate small business specialist from the agency Office of Small and Disadvantaged Business Utilization (OSDBU) or the Office of Small Business Programs when the plan strategy involves consolidation or bundling (see 7.107).

(6) Ensure that a Contracting Officer‘s Representative is nominated, if required, as early as possible in the acquisition process by the requirements official or according to agency procedures.

(7) Consult with requirements and logistics personnel who determine type, quality, quantity, and delivery requirements. Requirements and logistics personnel should consider ways to promote participation by domestic sources to the maximum extent practicable and avoid issuing requirements on an urgent basis or with unrealistic delivery or performance schedules, since it generally restricts competition and increases prices.

(8) Coordinate and reach agreement on the plan with the contracting officer.

(c) The specific content of plans will vary, depending on the nature, circumstances, and stage of the acquisition. In preparing the plan, the planner should follow the agency’s implementing procedures and address the elements

relevant to the specific procurement to achieve the acquisition objectives (e.g., technical, cost, risks). For additional requirements pertaining to major systems, see subpart 34.1. For additional requirements pertaining to inherently governmental functions, see subpart 37.3.

7.105 Early exchanges with industry.

(a) *General*. Exchanges of information and communication among all interested parties are encouraged and can occur at any time between the identification of a requirement through the receipt of proposals. Interested parties may include potential offerors such as current major subcontractors, end users, Government acquisition and supporting personnel, and others involved in the conduct or outcome of the acquisition. These exchanges can improve both the Government's understanding of industry capabilities and the industry's understanding of the Government's needs. Any exchange of information must be consistent with procurement integrity requirements in part 3, protected in accordance with part 24, and marked in accordance with 40.304.

(b) *Draft requests for proposal (RFPs)*. Agencies are encouraged to release draft RFPs and conduct conferences with industry before issuing competitive RFPs.

(c) *Requests for information (RFI)*. Agencies are encouraged to release RFIs when the Government does not currently intend to award a contract, but wants to obtain

price, delivery, market, or capabilities information for planning purposes.

(1) There is no required format for RFIs.

(2) Responses to RFIs are not offers and cannot be accepted by the Government to form a binding contract.

(3) RFIs must state that–

(i) The Government does not intend to award a contract on the basis of the RFI or otherwise pay for the information requested; and

(ii) Responses will be treated as information only and not as a proposal.

(4) Information received in response to an RFI must be safeguarded adequately from unauthorized disclosure. Contracting officers should mark the information with date and time of receipt and provide the information to designated officials.

(d) *Mission needs and requirements*. General information on an agency's current or anticipated needs and requirements may be disclosed at any time. When information about a proposed acquisition is disclosed to one or more potential offerors and that information is necessary for the preparation of proposals, the information should be made available to the public as soon as practicable, but no later than the next general release of information, in order to avoid creating an unfair competitive advantage.

7.106 Reserved.

7.107 Additional requirements for acquisitions involving consolidation, bundling, or substantial bundling.

7.107-1 General.

(a) Consolidation and bundling may provide substantial benefits to the Government. However, because of the potential impact on small business participation, before conducting an acquisition that consolidates or bundles requirements the agency must-

(1) Conduct market research;

(2) Identify any alternative contracting approaches that would involve a lesser degree of consolidation or bundling (e.g., separate smaller contracts or orders);

(3) Coordinate with the agency's OSDBU or the Office of Small Business Programs;

(4) Identify any negative impact by the acquisition strategy on contracting with small business concerns;

(5) Take steps to include small business concerns in the acquisition strategy; and

(6) Unless excepted in paragraph (b), make a written determination that requirements are necessary and justified for consolidation (15 U.S.C. 657q) or bundling (15 U.S.C. 644(e)).

(b) The requirements of section 7.107 (including 7.107-1 through 7.107-4) do not apply—

(1) To orders placed under single-agency task-order contracts or delivery-order contracts, when the requirement

was considered in determining that the consolidation or bundling of the underlying contract was necessary and justified; or

(2) To requirements for which there is a mandatory source (see part 8). This exception does not apply—

(i) When the requiring agency obtains a waiver or an exception according to part 8; or

(ii) When optional acquisitions of supplies and services permitted under part 8 are included.

(c) Agencies must publish the Governmentwide policy regarding contract bundling, including regarding the solicitation of teaming and joint ventures, on their agency's website. (15 U.S.C. 644(q)(2)(A)(ii)).

7.107-2 Policy.

(a) The Senior Procurement Executive (SPE) or Chief Acquisition Officer may determine that consolidation or bundling is necessary and justified if the benefits of that approach would substantially exceed the benefits that would be derived from each of the alternative contracting approaches identified under 7.107-1(a)(2), including benefits that are quantifiable in dollar amounts as well as any other specifically identified benefits.

(b) If a determination is made that consolidation or bundling is necessary and justified, the contracting officer must include the justification in the acquisition

strategy documentation and provide it to the Small Business Administration (SBA) upon request.

(c)(1) The agency must quantify and document in its strategy the specific benefits identified through the use of market research and other techniques to explain how their impact would be substantial.

(2) Benefits may include cost savings, price reduction, or, regardless of whether quantifiable in dollar amounts—

(i) Quality improvements that will save time or improve or enhance performance or efficiency;

(ii) Reduction in acquisition cycle times;

(iii) Better terms and conditions; or

(iv) Any other benefit.

(3) Benefits are substantial if quantified in dollar amounts individually, in combination, or in the aggregate if the anticipated financial benefits are equivalent to—

(i) Ten percent of the estimated contract or order value (including options) if the value is $94 million or less; or

(ii) Five percent of the estimated contract or order value (including options) or $9.4 million, whichever is greater, if the value exceeds $94 million.

(4) Benefits that are not quantifiable in dollar amounts must be specifically identified and otherwise quantified to the extent feasible.

(5) In assessing whether cost savings and/or price reduction would be achieved through consolidation or bundling, the agency and SBA must—

(i) Compare the price that has been charged by small businesses for the work that they have performed; or

(ii) Where previous prices are not available, compare the price, based on market research, that could have been or could be charged by small businesses for the work previously performed by other than a small business.

(6) For a consolidated or bundled contract or task or delivery order with a cumulative estimated dollar value (including options) above the substantial bundling thresholds of $8 million or more for the Department of Defense, $6 million or more for the National Aeronautics and Space Administration, the General Services Administration, and the Department of Energy, and $2.5 million or more for all other agencies, the agency must also document in its strategy—

(i) The specific benefits expected to be derived from consolidation or bundling;

(ii) An assessment of the specific barriers to participation by small business concerns as contractors that result from consolidation or bundling;

(iii) Actions designed to maximize small business participation as contractors, including provisions that encourage small business teaming;

(iv) Actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract or order that may be awarded to meet the requirements;

(v) The determination that the anticipated benefits of the proposed consolidated or bundled contract or order justify its use; and

(vi) Alternative strategies that would reduce or minimize the scope of the consolidation or bundling, and the reason for not choosing those alternatives.

(d) Reduction of administrative or personnel costs alone is not enough justification for consolidation or bundling unless the cost savings are expected to be substantial.

(e) When the expected benefits are not substantial but the requirements are critical to the agency's mission success, and the procurement strategy provides for maximum practicable participation by small business, the Deputy Secretary or equivalent (or for DoD the SPE), on a non-delegable basis, may determine that consolidation or bundling is necessary and justified.

7.107-3 Notifications.

(a) *Notifications to current small business contractors of the agency's intent to consolidate or bundle.*

(1) The contracting officer must notify each small business performing a contract that it intends to consolidate or bundle the requirement at least 30 days before issuing the solicitation for the consolidated or bundled requirement.

(2) The notification must provide the name, phone number and address of the applicable SBA procurement center representative (PCR), or if an SBA PCR is not assigned to the procuring activity, the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located.

(b) *Notification to the public.* The SPE or Chief Acquisition Officer must publish in the GPE—

(1) A notice that the agency has determined consolidation or bundling of contract requirements is necessary and justified (see 7.107-2) no later than 7 days after making the determination; the solicitation may not be publicized prior to 7 days after publication of the notice of the agency determination; and

(2) The determination that consolidation or bundling is necessary and justified with the publication of the solicitation. See 7.107-2 for the required content of the determination.

(c) *Notification to SBA of follow-on consolidated or bundled requirements.* For each follow-on consolidated or bundled requirement, the contracting officer must obtain

the following from the requiring activity and notify the SBA PCR no later than 30 days before issuing the solicitation:

(1) The amount of savings and benefits achieved under the prior consolidation or bundling.

(2) Whether such savings and benefits will continue to be realized if the contract remains consolidated or bundled.

(3) Whether such savings and benefits would be greater if the procurement requirements were divided into separate solicitations suitable for awarding to small business concerns.

(4) List of requirements that have been added or deleted for the follow-on.

(d) *Annual notification to the public of the reason for consolidated or bundled requirements.* The agency must publish on its website a list and reason for any consolidated or bundled requirement for which the agency solicited offers or issued an award. The notification must be made annually within 30 days of the agency's data certification regarding the validity and verification of data entered in the Federal Procurement Data System to the Office of Federal Procurement Policy (see part 4).

7.107-4 Solicitation provision.

Insert the provision at 52.207-6, Solicitation of Offers from Small Business Concerns and Small Business

Teaming Arrangements or Joint Ventures (Multiple-Award Contracts), in solicitations for multiple-award contracts including those for commercial products and commercial services that exceed the substantial bundling threshold of the agency (see 7.107-2(c)(6)).

7.108 Additional requirements for teleworking.

(a) According to 41 U.S.C. 3306(f), an agency must not discourage a contractor from allowing its employees to telework while performing Government contracts, unless—

(1) The contracting officer has determined that the requirements of the agency, including security requirements, cannot be met if teleworking is permitted;

(2) The basis of the determination is documented in writing; and

(3) The prohibition is specified in the solicitation.

(b) When a teleworking prohibition is stated in a solicitation, the contracting officer will unfavorably evaluate an offer that includes teleworking.

Subpart 7.2—Market Research

7.200 Scope of subpart.

This subpart prescribes minimum requirements for conducting market research, an essential component of acquisition planning, before procuring supplies and services. See section 887 of Public Law 114-92 (41 U.S.C.

1703 note), 41 U.S.C. 3306(a)(1), 41 U.S.C. 3307, and 10 U.S.C. 3453.

7.201 Market research requirements.

(a) Agencies must describe their legitimate needs.

(b) Agencies must conduct market research appropriate to the circumstances before—

(1) Developing new requirements documents;

(2) Soliciting offers for acquisitions with an estimated value over the simplified acquisition threshold; or

(3) Awarding a task or delivery order under an IDIQ contract (e.g., GWACs, MACs) for other than a commercial product or commercial service when the order is over the simplified acquisition threshold.

(c) Agencies should engage in responsible and constructive exchanges with industry (see 7.105). Agencies may use different strategies and methods to gather information, so long as they comply with existing law and regulation and do not provide an unfair competitive advantage to particular firms or violate the procurement integrity requirements (see 3.104).

(d) When conducting market research, agencies must not ask potential sources to submit more than the minimum information necessary to make the determinations required in paragraph (f).

(e) Agencies must document the results of market research in a manner that suits the acquisition’s size and complexity. Market research conducted within 18 months before an award is acceptable if the information is still current, accurate, and relevant.

(f) Agencies must procure commercial products and commercial services to the maximum extent practicable. Using the results of market research, agencies will determine, in the following order of priority, whether—

(1) A commercial product or commercial service on an existing governmentwide contract can meet the agency's requirements;

(2) The requirements could be modified so the agency could use an existing governmentwide contract;

(3) A commercial product or commercial service is available from another source;

(4) A commercial product or commercial service could be modified to meet the agency's requirements; or

(5) The requirement can only be satisfied by a nondevelopmental item.

7.202 Clause.

Insert the clause at 52.207-7, Market Research, in solicitations and contracts, other than those for commercial products and commercial services, if the acquisition value exceeds $7.5 million.

Subpart 7.3—Planning for the Purchase of Supplies in Economic Quantities

7.300 [Reserved]

7.301 [Reserved]

7.302 Policy.

Agencies are required by 10 U.S.C. 3242 and 41 U.S.C. 3310 to procure supplies in such quantity as—

(a) Will result in the total cost and unit cost most advantageous to the Government, where practicable; and

(b) Does not exceed the quantity reasonably expected to be required by the agency.

7.303 Solicitation provision.

Insert the provision at 52.207-4, Economic Purchase Quantity—Supplies, in solicitations for supplies other than those for commercial products or commercial services. The provision may not be necessary if the solicitation is for a contract under the General Services Administration's multiple award schedule contract program, or if the contracting officer determines that—

(a) The Government already has the relevant information required by the provision;

(b) Such information is otherwise readily available; or

(c) It is impracticable for the Government to vary its future requirements.

Subpart 7.4—Equipment Acquisition

7.400 Scope of subpart.

This subpart—

(a) Implements section 555 of the FAA (Federal Aviation Administration) Reauthorization Act of 2018 (Pub. L. 115-254);

(b) Provides guidance when acquiring equipment and more than one method of acquisition is available for use; and

(c) Applies to both the initial acquisition of equipment and the renewal or extension of existing equipment leases or rental agreements.

7.401 Acquisition considerations.

(a)(1) Agencies must acquire equipment using the method of acquisition most advantageous to the Government based on a case-by-case analysis of comparative costs and other factors according to this subpart and agency procedures.

(2) The methods of acquisition to be compared in the analysis must include, at a minimum—

(i) Purchase;

(ii) Short-term rental or lease;

(iii) Long-term rental or lease;

(iv) Interagency acquisition (see part 2); and

(v) Agency acquisition agreements, if applicable, with a State or local government.

(b)(1) The factors to be compared in the analysis must include, at a minimum:

(i) Estimated length of the period the equipment is to be used and the extent of use within that period;

(ii) Financial and operating advantages of alternative types and makes of equipment;

(iii) Cumulative rent, lease, or other periodic payments, however described, for the estimated period of use;

(iv) Net purchase price;

(v) Transportation, installation, and storage costs;

(vi) Maintenance, repair, and other service costs; and

(vii) Potential for the equipment to become outdated because of upcoming technological improvements.

(2) The following additional factors should be considered, as appropriate, depending on the type, cost, complexity, and estimated period of use of the equipment:

(i) Availability of purchase options.

(ii) Cancellation, extension, and early return conditions and fees.

(iii) Ability to swap out or exchange equipment.

(iv) Available warranties.

(v) Insurance, environmental, or licensing requirements.

(vi) Potential for use of the equipment by other agencies after its use by the acquiring agency is ended.

(vii) Trade-in or salvage value.

(viii) Imputed interest.

(ix) Availability of a servicing capability, especially for highly complex equipment; e.g., can the equipment be serviced by the Government or other sources if it is purchased?

(c) The analysis in paragraph (a) is not required—

(1) When the President has issued an emergency declaration or a major disaster declaration pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*);

(2) In other emergency situations if the agency head makes a determination that obtaining such equipment is necessary to protect human life or property; or

(3) When otherwise authorized by law.

7.402 Acquisition methods.

(a) *Purchase method.*

(1) If the equipment will be used beyond the point in time when cumulative rental or leasing costs exceed the purchase costs, use the purchase method if appropriate.

(2) The mere possibility that future technological advances might make the selected equipment less desirable, alone, is not a reason to rule out the purchase method.

(b) *Rent or lease method.*

(1) The rent or lease method may serve as a short-term measure when the circumstances—

(i) Require immediate use of equipment to meet program or system goals; but

(ii) Do not currently support acquisition by purchase.

(2) If a rent or lease method is selected, the inclusion of an evaluated purchase option is preferable.

(3) Generally, a long-term rental or lease agreement should be avoided unless there is an option to purchase or other favorable terms.

(4) If a rental or lease agreement with option to purchase is used, the contract must state the purchase price or provide a formula that shows how the purchase price will be established at the time the option to purchase is exercised.

7.403 OMB guidance.

For additional OMB guidance, see—

(a) Section 13, Special Guidance for Lease-Purchase Analysis, and paragraph 8.c.(2), Lease-Purchase Analysis, of OMB Circular A-94, Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs, (1992 OMB Circular A-94 at *https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/omb/circulars/a094/a094.html* but use Appendix C

from 2025 at *https://bidenwhitehouse.archives.gov/wp-content/uploads/2023/12/CircularA-94AppendixC.pdf*); and

(b) Appendix B, Budgetary Treatment of Lease-Purchases and Leases of Capital Assets, of OMB Circular A-11, Preparation, Submission, and Execution of the Budget, (*https://bidenwhitehouse.archives.gov/wp-content/uploads/2023/12/CircularA-94AppendixC.pdf*).

7.404 Contract clause.

Insert a clause substantially the same as the clause in 52.207-5, Option to Purchase Equipment, in solicitations and contracts, other than those for commercial products and commercial services, involving a rental or lease agreement with option to purchase.

PART 10 [Removed and Reserved]

2. Remove and reserve part 10, consisting of sections 10.000, 10.001, 10.002, and 10.003.

PART 18 [Removed and Reserved]

3. Remove and reserve part 18, consisting of sections 18.000, 18.001, subparts 18.1 and 18.2.

4. Revise parts 26, 37, and 41 to read as follows:

PART 26–EMERGENCY ASSISTANCE AND OTHER SOCIOECONOMIC PROGRAMS

Sec.

Subpart 26.1–Local Area Preference for Disaster Response Contracts

26.101 Definitions.

26.101 Definitions.

As used in this subpart—

Disaster Response Registry means a voluntary registry of contractors who are willing to perform debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities established in accordance with 6 U.S.C. 796, Registry of Disaster Response Contractors. The Registry is accessed via *https://www.sam.gov*.

Emergency response contract means a contract with private entities that provide assistance activities in a major disaster or emergency area, such as debris clearance, distribution of supplies, or reconstruction.

Local firm means a private organization, firm, or individual residing or doing business primarily in a major disaster or emergency area.

Major disaster or emergency area means the area included in the official Presidential declaration(s) and any additional areas identified by the DHS. Major disaster declarations and emergency declarations are published in the Federal Register and are available at *https://www.fema.gov/disasters/disaster/declarations*.

26.102 Presolicitation.

26.102-1 Policy.

(a) *Local area preference*. When practicable, award emergency response contracts to local firms (see 42 U.S.C. 5150). To support this policy, contracting officers may—

(1) Set aside acquisitions to allow only local firms within a specific geographic area to compete (see 6.102-3); or

(2) Use an evaluation preference.

(b) *Transition of work*.

(1) Agencies may award emergency response contracts before a major disaster or emergency occurs to ensure immediate relief is available. Structure such contracts to support timely transition of work to local firms after a major disaster or emergency area has been established.

(2) Agencies must transition emergency response contracts to local firms after the President declares a

major disaster or emergency, unless the head of the agency determines that it is not practicable on an individual or class basis. However, agencies are not required to terminate or renegotiate existing contracts to make the transition.

26.102-2 Procedures.

(a) *Non-local justification requirements.* After the President declares a major disaster or emergency, agencies must justify spending any Federal funds on emergency response contracts not awarded to a local firm. Agencies must document such justification in writing, and contracting officers must keep it in the contract file.

(b) *Area*. A major disaster or emergency area may span counties in several neighboring States. When establishing a geographic area for a local firm set-aside, stay within the declared area(s) but it is not required to include all the counties within the declared areas(s).

(c) *Disaster response registry*. Consult the Disaster Response Registry via *https://www.sam.gov* to determine contractor availability for emergency response activities inside the United States and outlying areas.

26.102-3 Solicitation provision and contract clauses.

(a) Insert the provision at 52.226-3, Disaster or Emergency Area Representation, and fill in the geographic area in paragraph (a), in solicitations involving local

area set-asides, including those for commercial products and commercial services.

(b) Insert the clause at 52.226-4, Notice of Disaster or Emergency Area Set-aside, and fill in the geographic area in paragraph (a), in solicitations and contracts involving local area set-asides, including those for commercial products and commercial services.

(c) Insert the clause at 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area, in solicitations and contracts involving local area set-asides, including those for commercial products and commercial services.

Subpart 26.2–Emergency Acquisition Flexibilities

26.201 Presolicitation.

The FAR includes acquisition flexibilities available for emergency acquisitions, in addition to the local area preference in subpart 26.1.

(a) *General flexibilities*. Use the flexibilities included in the FAR to respond quickly for an emergency or urgent need. See the list of FAR flexibilities available at *https://acquisition.gov/emergency-procurement*. The acquisition flexibilities in this subpart are not exempt from the requirements and limitations set forth in part 3, Improper Business Practices and Personal Conflicts of Interest.

(b) *Micro-purchase threshold and simplified acquisition threshold*. The definitions of micro-purchase threshold and simplified acquisition threshold at part 2 describe the circumstances and new thresholds to which they may be raised when, as determined by the head of an executive agency, they are used to—

(1) Support a contingency operation;

(2) Help defend against or recover from cyber, nuclear, biological, chemical, or radiological attack against the United States;

(3) Support a request from the Secretary of State or the Administrator of the United States Agency for International Development to help provide international disaster assistance as described in 22 U.S.C. 2292 *et seq.*;

(4) Support response to an emergency or major disaster, or

(5) Support a humanitarian or peacekeeping operation using a contract to be awarded and performed, or purchase to be made, outside the United States. The simplified acquisition threshold may be changed, but not the micro-purchase threshold.

(c) *Simplified acquisition procedures for certain commercial products and commercial services*. See part 12 for increased thresholds that may be used in acquiring commercial products or commercial services when the acquisition supports activities described in paragraphs

(b)(1) through (b)(4) of this section. These increased thresholds for using simplified acquisition procedures may also be used when the acquisition is treated as a commercial product or commercial service in accordance with paragraph (d) of this section.

(d) *Commercial product or commercial service treatment*. Contracting officers may treat any acquisition of supplies or services as an acquisition of commercial products or commercial services if the head of the agency determines the acquisition is to be used to help defend against or recover from cyber, nuclear, biological, chemical, or radiological attack. (See part 12.)

(e) *Ocean transportation by U.S. flag vessels*. In emergency situations, the provisions of the Cargo Preference Act of 1954 may be waived (see part 47.)

Subpart 26.3—Indian Incentive Program

26.301 Definitions.

As used in this subpart-

Indian means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) (see 25 U.S.C. 1452) and any "Native" as defined in the Alaska Native Claims Settlement Act (see 43 U.S.C. 1602).

Indian organization means the governing body of any Indian tribe or entity established or recognized by the

governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

Indian-owned economic enterprise means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

Indian tribe means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA (see 25 U.S.C. 1452).

Interested party means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

26.302 Presolicitation.

26.302-1 Policy.

Agencies may allow an incentive payment to prime contractors equal to 5 percent of the amount paid to a subcontractor that is an Indian organization or Indian-owned economic enterprise (see 25 U.S.C. 1544).

26.302-2 Contract clause.

Contracting officers in civilian agencies may insert the clause at 52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, in solicitations and contracts, including those for commercial products (other than commercially available off-the-shelf items) or commercial services, if-

(a) In the opinion of the contracting officer, subcontracting possibilities exist for Indian organizations or Indian-owned economic enterprises; and

(b) Funds are available for any increased costs as described in paragraph (b)(2) of the clause at 52.226-1.

26.303 Postaward.

(a) Contracting officers and prime contractors may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status, or the contracting officer has independent reason to question that status.

(b) Contracting officers must refer challenges to the U.S. Department of the Interior, BIA, Acquisition Management Director (available at *https://www.bia.gov/as-ia/ocfo/acquisitions*). BIA will determine the eligibility and notify the contracting officer.

(c) The contracting officer must notify the prime contractor upon receipt of a challenge.

Subpart 26.4—Historically Black Colleges and Universities and Minority Institutions

26.401 Definitions.

As used in this subpart—

Historically black college or university means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2.

Minority institution means an institution of higher education meeting the requirements of Section 365(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k), including a Hispanic-serving institution of higher education, as defined in Section 502(a) of the Act (20 U.S.C. 1101a).

26.402 Presolicitation.

26.402-1 General.

(a) As established in Executive Order 12928 of September 16, 1994, Promoting Procurement With Small Businesses Owned and Controlled By Socially and Economically Disadvantaged Individuals, Historically Black Colleges and Universities, and Minority Institutions, agencies should promote participation of Historically Black Colleges and Universities and Minority Institutions in Federal procurement.

(b) This subpart does not apply to contracts performed entirely outside the United States and its outlying areas.

26.402-2 Solicitation provision.

Insert the provision at 52.226-2, Historically Black College or University and Minority Institution Representation, in solicitations that exceed the micro-purchase threshold, and that are for research, studies, supplies, or services of the type normally acquired from higher educational institutions, including those for commercial products (other than commercially available off-the-shelf items) and commercial services.

Subpart 26.5—Food Donations to Nonprofit Organizations

26.501 Definitions.

As used in this subpart-

Apparently wholesome food means food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

Excess food means food that-

(1) Is not required to meet the needs of the agencies; and

(2) Would otherwise be discarded.

Food-insecure means inconsistent access to sufficient, safe, and nutritious food.

Nonprofit organization means any organization that is-

(1) Described in section 501(c) of the Internal Revenue Code of 1986; and

(2) Exempt from tax under section 501(a) of that Code.

26.502 Presolicitation.

26.502-1 Policy.

(a) The Government encourages agencies and their contractors to donate excess, apparently wholesome food to nonprofit organizations helping food-insecure people in the United States (see 42 U.S.C. 1792).

(b) The following limitations apply:

(1) *Costs*. Agencies may not assume responsibility for the costs and logistics of collecting, transporting, maintaining the safety of, or distributing excess food donations.

(2) *Liability*. An agency (including an agency that enters into a contract with a contractor) and any contractor making food donations following this policy is exempt from civil and criminal liability to the extent provided under 42 U.S.C. 1791.

26.502-2 Contract clause.

Insert the clause at 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations, in solicitations and contracts greater than $35,000 for providing, serving, or selling food in the United States, other than those for commercial products and commercial services.

Subpart 26.6–Drug-Free Workplace.

26.601 Applicability.

This subpart implements 41 U.S.C. chapter 81, Drug-Free Workplace, and applies to contracts, except those-

(a) At or below the simplified acquisition threshold; however, the requirements of this subpart apply to all contracts of any value awarded to an individual;

(b) For commercial products and commercial services (see part 12);

(c) Performed outside the United States and its outlying areas or any part of a contract performed outside the United States and its outlying areas;

(d) Awarded by law enforcement agencies, if the head of the law enforcement agency involved determines that applying this subpart would be inappropriate in connection with the law enforcement agency's undercover operations; or

(e) Where application would be inconsistent with the international obligations of the United States or with the laws and regulations of a foreign country.

26.602 Definitions.

As used in this subpart-

Controlled substance means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined in regulation at 21 CFR 1308.11-1308.15.

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

Employee means an employee of a contractor directly engaged in performing work under a Government contract. "Directly engaged" includes all direct cost employees and any other contractor employee who has other than a minimal impact or involvement in contract performance.

Individual means an offeror or contractor that has no more than one employee including the offeror or contractor.

26.603 Presolicitation.

26.603-1 Contract clause.

Insert the clause at 52.226-7, Drug-Free Workplace, in solicitations and contracts, other than those for commercial products and commercial services, except as provided in 26.601.

26.604 Evaluation and award.

26.604-1 Policy.

(a) Contracting officers may not consider an offeror, other than an individual, a responsible source unless it agrees to provide a drug-free workplace according to the clause at 52.226-7.

(b) Contracting officers may not award a contract of any dollar value to an individual unless that individual agrees to not engage in the unlawful manufacture,

distribution, dispensing, possession, or use of a controlled substance while performing the contract.

26.605 Postaward.

26.605-1 Suspension of payments, contract termination, and debarment and suspension actions.

(a) Contracting officers may suspend contract payments when they determine in writing that there is adequate evidence of any of the causes at paragraph (d) of this section.

(b) Contracting officers may terminate contracts for default when they determine in writing any of the causes at paragraph (d) of this section exist.

(c) When a contracting officer initiates action under paragraph (a) or (b) of this section, they must refer the case to the agency suspending and debarring official (see part 9).

(d) The specific causes for suspension of contract payments, termination of a contract for default, or suspension and debarment are—

(1) The contractor has failed to comply with the requirements of the clause at 52.226-7, Drug-Free Workplace; or

(2) The number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace indicates that the contractor has failed to make a good faith effort to provide a drug-free workplace.

(e) An agency head may waive a suspension of payments, termination of contract, or suspension or debarment of a contractor under this section, if considered necessary to prevent a severe disruption of the agency operation to the detriment of the Government or the general public. The agency head cannot delegate the waiver authority.

Subpart 26.7—Texting While Driving

26.701 Presolicitation.

26.701-1 Policy.

This subpart implements the requirements of the Executive Order (E.O.) 13513, dated October 1, 2009 (74 FR 51225, October 6, 2009), Federal Leadership on Reducing Text Messaging while Driving. Agencies must encourage contractors and subcontractors to adopt and enforce policies that ban text messaging while driving-

(a) Company-owned or rented vehicles or Government-owned vehicles; or

(b) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

26.701-2 Contract clause.

Insert the clause at 52.226-8, Encouraging Contractor Policies to Ban Text Messaging While Driving, in all solicitations and contracts, including those for commercial products and commercial services.

PART 37—SERVICE CONTRACTING

37.001 Definition.

Service contract, as used in this part, means a contract that directly engages the time and effort of a contractor for the primary purpose of obtaining services rather than furnishing an end item of supply. A service contract may be either a nonpersonal or personal contract. It can also cover services performed by either professional or nonprofessional personnel whether on an individual or organizational basis.

Subpart 37.1—Performance-Based Acquisition

37.101 Presolicitation.

37.101-1 Policy.

When acquiring services, including acquisition of commercial services using the procedures in part 12, agencies must—

(a) Use performance-based acquisition methods, including outcome-focused approaches, to the maximum extent practicable, except for—

(1) Architect-engineer services acquired in accordance with 40 U.S.C. 1101 *et seq.* (see part 36);

(2) Construction (see part 36);

(3) Utility services (see part 41); or

(4) Services that are incidental to supply purchases; and

(b) Use the following order of precedence (Public Law 106-398, section 821(a)):

(1) A firm-fixed price performance-based contract or task order.

(2) A performance-based contract or task order that is not firm-fixed price.

(3) A contract or task order that is not performance-based.

37.102 Evaluation and award.

37.102-1 Procedures.

(a) Performance-based contracts must include a performance work statement (PWS).

(1) The PWS may be prepared by the Government or proposed by an offeror in response to a statement of objectives (SOO) and included in the contract.

(2) The PWS must describe the outcome required rather than "how" that outcome is to be achieved or the estimated level of effort anticipated.

(3) The PWS must, to the maximum extent practicable, define the basis by which successful achievement of outcomes will be determined. This basis can be specific performance standards, a performance management framework, or a combination thereof, provided the approach includes clear, specific, and objective terms with measurable outcomes. The approach may be established by the Government or proposed by the offeror.

(b) When an offeror proposes an approach to achieving outcomes in response to a SOO, agencies must—

(1) Evaluate whether the proposed approach meets agency needs;

(2) Identify methods for assessing progress toward, and achievement of, the desired outcomes; and

(3) Incorporate both the accepted approach and assessment methods into the contract.

Subpart 37.2—Personal Services

37.201 Presolicitation.

37.201-1 Policy.

Agencies must not contract for personal services unless specifically authorized by statute (e.g., 5 U.S.C. 3109).

37.201-2 Characteristics of personal services contracts.

(a) A personal services contract exists when the Government supervises or controls contractor employees, or appears to do so, as if they were Government employees. This type of contract circumvents civil service laws that require the Government to competitively hire and appoint its own employees.

(b) The Government exercising relatively continuous supervision and control over multiple contractor personnel is frequently a key indicator of a personal services contract. However, service contracts often involve interaction with contractor employees—such as ordering and reviewing specific work—that do not constitute the type of supervision or control that would convert a contractor employee into a Government employee.

37.202 Postaward.

37.202-1 Avoiding personal services contracts.

When administering contracts, agencies must avoid making contractor personnel appear to be, in effect, Government employees, unless a statute provides otherwise.

Subpart 37.3—Inherently Governmental Functions

37.301 Presolicitation.

37.301-1 Policy.

(a) Agencies must ensure requirements are carefully developed to make certain none of the functions to be performed are inherently governmental functions.

(b) Service contracts require special oversight if the contract work:

(1) Supports an inherently governmental function, including contracts providing recommendations, analyses, reports, or similar work products that can influence government decision-making; or

(2) May approach becoming inherently governmental because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the Government administers contractor performance (see 37.301-3).

(c) Agency implementation must include procedures requiring a written determination whenever a statement of work (SOW) or SOO (or any modification thereof) is submitted to the contracting officer. This determination must confirm that none of the functions to be performed are inherently governmental. This assessment should emphasize the degree to which conditions and facts restrict the discretionary authority, decision-making responsibility, or accountability of Government officials using contractor services or work products. Disagreements regarding the

determination will be resolved according to agency procedures before issuing a solicitation.

37.301-2 Specific inherently governmental functions.

(a) The following is a non-exclusive list of inherently governmental functions or functions which must be treated as such.

(1) Directly conducting criminal investigations.

(2) Controlling prosecutions and performance of adjudicatory functions other than those relating to arbitration or other methods of alternative dispute resolution.

(3) Commanding military forces, especially the leadership of military personnel who are members of the combat, combat support, or combat service support role.

(4) Conducting foreign relations and determining foreign policy.

(5) Determining agency policy, such as deciding the content and application of regulations.

(6) Determining Federal program priorities for budget requests.

(7) Directing and controlling Federal employees.

(8) Directing and controlling intelligence and counter-intelligence operations.

(9) Selecting or not selecting individuals for Federal Government employment, including interviewing individuals for employment.

(10) Approving position descriptions and performance standards for Federal employees.

(11) Determining what Government property is to be disposed of and on what terms (although an agency may give contractors authority to dispose of property at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency).

(12) In Federal procurement activities with respect to prime contracts—

(i) Determining what supplies or services are to be acquired by the Government (although an agency may give contractors authority to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency);

(ii) Participating as a voting member on any source selection boards;

(iii) Approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;

(iv) Awarding contracts;

(v) Administering contracts (including ordering changes in contract performance or contract quantities, taking action based on evaluations of contractor performance, and accepting or rejecting contractor products or services);

(vi) Terminating contracts;

(vii) Determining whether contract costs are reasonable, allocable, and allowable; and

(viii) Participating as a voting member on performance evaluation boards.

(13) Approving agency responses to Freedom of Information (FOIA) requests (other than routine responses that, because of statute, regulation, or agency policy, do not require the exercise of judgment in determining whether documents are to be released or withheld), and approving agency responses to the administrative appeals of denials of FOIA requests.

(14) Conducting administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or eligibility to participate in Government programs.

(15) Approving Federal licensing actions and inspections.

(16) Determining budget policy, guidance, and strategy.

(17) Collecting, controlling, and disbursing fees, royalties, duties, fines, taxes, or other public funds, unless authorized by statute, such as 31 U.S.C. 3718 (relating to private collection contractors and private attorney collection services), but not including—

(i) Collecting fees, fines, penalties, costs, or other charges from visitors to or patrons of mess halls, post or base exchange concessions, national parks, and similar entities or activities, or from other persons, where the amount to be collected is easily calculated or predetermined and the funds collected can be easily controlled using standard case management techniques; and

(ii) Routinely examining vouchers and invoices.

(18) Controlling treasury accounts.

(19) Administering public trusts.

(20) Drafting Congressional testimony, responses to Congressional correspondence, or agency responses to audit reports from OIG, GAO, or other Federal audit entity.

(b) Agency decisions that determine whether a function is or is not an inherently governmental function may be reviewed and modified by appropriate OMB officials.

37.301-3 Functions that may cross into inherently governmental functions.

(a) The following is a non-exclusive list of functions generally not considered inherently governmental but may, depending on contractor or Government approach, cross the line into that category.

(1) Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.

(2) Services that involve or relate to reorganization and planning activities.

(3) Services that involve or relate to analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy.

(4) Services that involve or relate to developing regulations.

(5) Services that involve or relate to evaluating another contractor's performance.

(6) Services that support acquisition planning.

(7) Contract management support including:

(i) Assistance in technical evaluation of proposals.

(ii) Assistance in developing SOWs or SOOs.

(iii) Assistance in providing responses to FOIA inquiries.

(iv) Working in situations that might provide access to confidential business information or other sensitive information (other than situations covered by the National Industrial Security Program (NISP) described in 40.302-1).

(v) Providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relations campaigns, or conducting agency training courses.

(vi) Participating in any situation where it might be assumed that they are agency employees or representatives.

(vii) Participating as technical advisors to a source selection board or participating as voting or nonvoting members of a source evaluation board.

(viii) Serving as arbitrators or providing alternative methods of dispute resolution.

(ix) Constructing buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.

(x) Providing inspection services.

(xi) Providing legal advice and interpretations of regulations and statutes to Government officials.

(xii) Providing special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.

(b) Agencies must carefully develop requirements for such work to ensure contracted functions do not expand into inherently governmental functions.

37.302 Evaluation and award.

37.302-1 Policy.

Agencies must not award a contract for the performance of an inherently governmental function.

37.303 Postaward.

37.303-1 Contractor support to inherently governmental functions.

Agencies must actively administer contracts to ensure contract functions do not expand into inherently governmental functions, including—

(a) Assigning sufficient qualified Government employees to actively oversee contractor work and monitor for potential encroachment on inherently governmental functions, particularly when the work supports Government policy- or decision-making;

(b) Requiring contractor personnel to identify themselves as contractors when attending meetings, answering government phones, or in any situation where their status might be unclear to the public or Congress, unless the agency determines no confusion or harm would result; and

(c) Ensuring contractor-produced documents are clearly marked as contractor products or include appropriate disclosure of contractor involvement.

Subpart 37.4—Advisory and Assistance Services

37.401 Definition.

Covered personnel, as used in this subpart, means—

(1) An officer or an individual who is appointed in the civil service by one of the following acting in an official capacity:

(i) The President.

(ii) A Member of Congress.

(iii) A member of the uniformed services.

(iv) An individual who is an employee under 5 U.S.C. 2105.

(v) The head of a Government-controlled corporation.

(vi) An adjutant general appointed by the Secretary concerned under 32 U.S.C. 709(c).

(2) A member of the Armed Services of the United States.

(3) A person assigned to a Federal agency who has been transferred to another position in the competitive service in another agency.

37.402 Presolicitation.

37.402-1 Policy.

Agencies may leverage advisory and assistance services (A&AS) as a way to improve Government services and operations. When essential to the agency's mission, agencies may contract for A&AS to obtain certain—

(a) Management and professional support services;

(b) Studies, analyses, and evaluations (see 37.402-3 for limitations on evaluative work); or

(c) Engineering and technical services.

37.402-2 Prohibitions.

A&AS contracts must not be awarded for purposes of—

(a) Performing work of a policy-making, decision-making, or managerial nature which is the direct responsibility of agency officials;

(b) Bypassing or undermining personnel ceilings, pay limitations, or competitive employment procedures;

(c) Aiding in influencing or enacting legislation; or

(d) Obtaining professional or technical advice which is readily available within the agency or another Federal agency.

37.402-3 A&AS contracts for the evaluation of proposals.

Agencies must not contract for A&AS to conduct evaluations or analyses of any aspect of a proposal submitted for an initial contract award unless—

(a) The head of the agency has determined covered personnel with the required training and capabilities to perform the evaluation or analysis are not readily available in the agency or from another Federal agency (41 U.S.C. 1709).

(1) The head of the agency may consider the associated administrative burden when assessing the feasibility of using covered personnel from other agencies. Such considerations may include—

(i) The time and cost associated with searching for suitable personnel;

(ii) Potential travel costs;

(iii) The amount of such costs in relation to the acquisition value; and

(iv) Potential competing demands for the personnel in meeting the agency’s mission.

(2) The contracting officer must ensure, to the maximum extent practicable, the head of the agency makes any such determination prior to issuing the solicitation and in accordance with agency procedures. Once the contracting officer releases the solicitation, the head of the agency must make a determination of a need for A&AS support in analyzing proposals for the initial contract award prior to granting the A&AS contractor access to any proposal material.

(b) The contractor is a Federally-Funded Research and Development Center (FFRDC) as authorized in 41 U.S.C. 1709(c) and the work placed under the FFRDC's contract meets the criteria of part 35; or

(c) Such functions are otherwise authorized by law.

37.402-4 Exclusions.

The following activities and programs are excluded or exempted from the definition of A&AS:

(a) Routine information technology services unless they are an integral part of a contract for the acquisition of A&AS.

(b) Architectural and engineering services as defined in 40 U.S.C. 1102.

(c) Research on theoretical mathematics and basic research involving medical, biological, physical, social, psychological, or other phenomena.

37.403 Evaluation and award.

37.403-1 Treatment of former Government employees.

Agencies must ensure A&AS is not contracted for on a preferential basis to former Government employees.

37.403-2 Avoiding A&AS use in evaluation of proposals.

When evaluating proposals for initial contract award, agencies must not use A&AS to support evaluation unless the conditions at 37.402-3 are satisfied.

37.404 Postaward.

37.404-1 Performance monitoring in A&AS contracts.

(a) Agencies must administer A&AS contracts with sufficient oversight to ensure A&AS contractors do not perform prohibited practices at 37.402-2.

(b) Agencies must not pay for A&AS evaluations or analyses of any aspect of a proposal submitted for an initial contract award unless the agency satisfies the conditions at 37.402-3.

Subpart 37.5—Child Care Services

37.501 Definition.

Child care services, as used in this subpart, means child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education

(whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services.

37.502 Presolicitation.

37.502-1 Policy.

Agencies must ensure that contracts for nonpersonal child care services include requirements for criminal history background checks on employees who will perform child care services under the contract in accordance with 34 U.S.C. 20351 and agency procedures.

Subpart 37.6—Nonpersonal Health Care Services

37.601 Presolicitation.

37.601-1 Policy.

Agencies must ensure nonpersonal health care services contracts with physicians, dentists and other health care providers include indemnification and medical liability insurance.

37.601-2 Procedures.

To ensure adequate medical liability insurance is obtained, insert the necessary value(s) in paragraph (a) of contract clause 52.237-7. Agencies determine the value(s) by considering the standard coverage prevailing within the local community for the specific medical specialty, or a higher amount if necessary to protect the Government’s interests.

37.601-3 Contract clause.

Insert the clause at 52.237-7, Indemnification and Medical Liability Insurance, in solicitations and contracts for nonpersonal health care services, including those for commercial services.

37.602 Evaluation and award.

37.602-1 Evidence of insurability.

Before making award, obtain proof that the apparent successful offeror will be able to obtain the required medical liability insurance (e.g., letter of intent from a reputable insurer, underwriting approval letter).

37.603 Postaward.

37.603-1 Evidence of insurance.

After contract award, but before performance begins, the contracting officer must obtain proof that the contractor holds an active policy for the required medical liability insurance.

Subpart 37.7—Dismantling, Demolition, or Removal of Improvements

37.701 Presolicitation.

37.701-1 Labor standards.

Contracts for dismantling of buildings, ground improvements, and other real property structures and for the removal of such structures or a portion of them (hereafter referred to as *dismantling, demolition, or removal of improvements*) must comply with one of two labor

standards statutes. Service Contract Labor Standards (41 U.S.C. chapter 67) apply when the contract is solely for dismantling, demolition, or removal. However, if the Government plans any follow-on construction, alteration, or repair work of a public building or public work at the same location—even under a separate contract—then the Construction Wage Rate Requirements (40 U.S.C. chapter 31, subchapter IV) apply (see part 22).

37.701-2 Bonds or other security.

The standard bonding requirements (see part 28) in 40 U.S.C. chapter 31, subchapter III do not apply to contracts solely for dismantling, demolition, or removal of improvements. However, the contracting officer may require the contractor to furnish a performance bond or other security in an amount that the contracting officer considers adequate to—

(a) Ensure completion of the work;

(b) Protect property to be retained by the Government;

(c) Protect property to be provided as compensation to the contractor; and

(d) Protect the Government against damage to adjoining property.

37.701-3 Payments and title.

Agencies must structure contracts to carefully balance payment terms and title rights to protect the Government’s interests.

(a) Contracts for dismantling or demolition may be structured so that either the Government pays the contractor for performing the work, or the contractor pays the Government for the right to salvage and remove the resulting materials.

(b) Evaluate all salvageable property to determine its usefulness to the Government. When property is worth more to the Government than its salvage value to the contractor, the contract must specifically designate it for Government retention. For all other property, which the contractor will own, determine its fair market value. This valuation affects both payment structure and any potential termination compensation.

37.701-4 Contract clauses.

(a) Insert the clause at 52.237-4, Payment by Government to Contractor, in solicitations and contracts for services, including those for commercial services, solely for dismantling, demolition, or removal of improvements whenever the contracting officer determines that the Government must make payment to the contractor in addition to any title to property that the contractor may receive under the contract. Use the clause with its Alternate I if the contracting officer determines that all material resulting from the dismantling or demolition work is to be retained by the Government.

(b) Insert the clause at 52.237-5, Payment by Contractor to Government in solicitations and contracts for services, including those for commercial services, for dismantling, demolition, or removal of improvements whenever the contractor is to receive title to dismantled or demolished property and a net amount of compensation is due to the Government, except if the contracting officer determines that it would be advantageous to the Government for the contractor to pay in increments and the Government to transfer title to the contractor for increments of property only upon receipt of those payments.

(c) Insert the clause at 52.237-6,Incremental Payment by Contractor to Government, in solicitations and contracts for services, including those for commercial services, for dismantling, demolition, or removal of improvements if—

(1) The contractor is to receive title to dismantled or demolished property and a net amount of compensation is due the Government; and

(2) The contracting officer determines that it would be advantageous to the Government for the contractor to pay in increments (e.g., to encourage greater competition or participation of small business concerns), and for the Government to transfer title to the contractor for increments of property only upon receipt of those payments.

Subpart 37.8—Other Service Considerations

37.801 Definitions.

As used in this subpart—

Adjusted hourly rate (including uncompensated overtime) is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week which includes uncompensated overtime hours over and above the standard 40-hour work week. For example, 45 hours proposed on a 40-hour work week basis at $20 per hour would be converted to an uncompensated overtime rate of $17.78 per hour ($20.00 × *40/45 = $17.78).*

Uncompensated overtime means the hours worked without additional compensation in excess of an average of 40 hours per week by direct charge employees who are exempt from the Fair Labor Standards Act. Compensated personal absences such as holidays, vacations, and sick leave must be included in the normal work week for purposes of computing uncompensated overtime hours.

37.802 Presolicitation.

37.802-1 Uncompensated overtime.

Agencies must ensure solicitations do not incentivize the use of uncompensated overtime (10 U.S.C. 4507).

37.802-2 Services of quasi-military armed forces.

Agencies must not contract with organizations that offer quasi-military armed forces for hire, or with their employees, regardless of the contract’s character (5 U.S.C. 3108). An organization providing guard or protective

services is not a quasi-military armed force, even though the guards are armed or the organization provides general investigative or detective services.

37.802-3 Foreign national severance cost limitations.

(a) *Authority*. Part 31 specifies cost allowability limitations for severance payments to foreign nationals under service contracts outside the United States. However, agencies may waive or except the cost limitations in certain circumstances (see 10 U.S.C. 3744 and 41 U.S.C. 4304).

(b) *Waivers*. The head of the agency may waive such severance cost limitations when—

(1) The application of the severance pay limitations to the contract would adversely affect the continuation of a program, project, or activity that provides significant support services for–

(i) Members of the armed forces stationed or deployed outside the United States; or

(ii) Employees of an executive agency posted outside the United States; and

(2) The Contractor has taken, or has established plans to take, appropriate actions within its control to minimize the amount and number of incidents of the payment of severance pay to employees under the contract who are foreign nationals; and

(3) The payment of severance pay is necessary to—

(i) Comply with a law that is generally applicable to a significant number of businesses in the country where the foreign national performed services; or

(ii) Comply with a collective bargaining agreement.

(c) *Waiver restrictions*.

(1) Waivers may not be granted if the severance is a result of the curtailment or termination of basing rights of the United States military at the request of the host government (see part 31).

(2) Waivers may only be granted prior to contract award.

(d) *Exception*. The Secretary of Defense may determine that the cost allowability limitations on severance do not apply in military banking contracts (10 U.S.C. 3744(a)(13) and (14)).

37.802-4 Use of private sector temporaries.

(a) Agencies may hire temporary help service firms to provide workers for short-term or occasional needs (5 U.S.C. 3109). These arrangements are not considered personal services contracts. However, agencies cannot use temporary help to avoid normal Federal hiring processes or replace existing Federal employees.

(b) All temporary help contracts must comply with the requirements in 5 CFR part 300, subpart E, Use of Private Sector Temporaries, and agency procedures.

(c) Contracting officers should consult with cognizant civilian personnel offices for expertise when exercising this authority.

37.802-5 Solicitation provisions and contract clauses.

(a) Insert the provision at 52.237-1, Site Visit, in solicitations for services, including those for commercial services, to be performed on Government installations, unless the solicitation is for construction.

(b) Insert the clause at 52.237-2, Protection of Government Buildings, Equipment, and Vegetation, in solicitations and contracts for services, including those for commercial services, to be performed on Government installations, unless a construction contract is contemplated.

(c) Insert the clause at 52.237-3, Continuity of Services, in solicitations and contracts for services, including those for commercial services, when—

(1) The services under the contract are considered vital to the Government and must be continued without interruption and when, upon contract expiration, a successor, either the Government or another contractor, may continue them; and

(2) The Government anticipates difficulties during the transition from one contractor to another or to the Government. Examples of instances where use of the clause may be appropriate are services in remote locations or

services requiring personnel with special security clearances.

(d) Insert the provision at 52.237-8, Restriction on Severance Payments to Foreign Nationals, in solicitations for services, other than those for commercial services, that provide significant support for—

(1) Members of the armed forces stationed or deployed outside the United States; or

(2) Employees of an executive agency posted outside the United States.

(e) Insert the clause at 52.237-9, Waiver of Limitation on Severance Payments to Foreign Nationals in solicitations and contracts for services, other than those for commercial services, when the head of an agency has granted a waiver pursuant to 37.802-3(b).

(f) Insert the provision at 52.237-10, Identification of Uncompensated Overtime, in solicitations for services, other than those for commercial services, valued above the simplified acquisition threshold, for professional or technical services to be acquired on the basis of the level of effort rather than performance outcome required.

37.803 Evaluation and award.

37.803-1 Evaluating uncompensated overtime.

Agencies must ensure an offeror’s use of uncompensated overtime will not degrade the level of technical expertise required to meet Government requirements. When offerors

propose uncompensated overtime, assess potential risks posed by—

(a) Using adjusted hourly rates instead of standard hourly rates for all proposed hours;

(b) Reviewing whether unrealistically low labor rates or costs might lead to poor quality or inadequate service; and

(c) Examining whether uncompensated overtime is distributed unevenly across skill levels or concentrated in critical technical positions.

37.803-2 Funding and term of service contracts.

(a) Contracts funded by annual appropriations must not extend beyond the end of the fiscal year of the appropriation except when authorized (see part 32).

(b) The head of the agency may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed one year (10 U.S.C. 3133 and 41 U.S.C. 3902). Funds made available for a fiscal year may be obligated for the total amount of an action entered into under this authority.

(c) Agencies with statutory multiyear authority should consider the use of this authority to encourage and promote economical business operations when acquiring services.

PART 41—ACQUISITION OF UTILITY SERVICES

Sec.

Subpart 41.1—General

41.100 Scope of part.

This part prescribes policies, procedures, and contract format for the acquisition of utility services.

41.101 Definitions.

As used in this part,

Areawide contract means a contract entered into between the General Services Administration (GSA) and a utility service supplier to cover utility service needs of agencies within the franchise territory of the supplier. Each areawide contract includes an "Authorization" form for requesting service, connection, disconnection, or change in service.

Authorization means the document executed by the ordering agency and the utility supplier to order service under an areawide contract.

Connection charge means all nonrecurring costs, whether refundable or nonrefundable, to be paid by the Government to the utility supplier for the required connecting facilities, which are installed, owned, operated, and maintained by the utility supplier (see Termination liability).

Federal Power and Water Marketing Agency means a Government entity that produces, manages, transports, controls, and sells electrical and water supply service to customers.

Franchise territory means a geographical area that a utility supplier has a right to serve based upon a franchise, a certificate of public convenience and necessity, or other legal means.

Intervention means action by GSA or a delegated agency (see 41.103(b)) to formally participate in a utility regulatory proceeding on behalf of all agencies.

Rates may include rate schedules, riders, rules, terms and conditions of service, and other tariff and service charges, e.g., facilities use charges.

Separate contract means a utility services contract (other than a GSA areawide contract, an Authorization under an areawide contract, or an interagency agreement) to cover the acquisition of utility services.

Termination liability means a contingent Government obligation to pay a utility supplier the unamortized portion of a connection charge and any other applicable nonrefundable service charge as defined in the contract in the event the Government terminates the contract before the cost of connection facilities has been recovered by the utility supplier (see "Connection charge").

Utility service includes, but is not limited to, a continuous service such as furnishing electricity, natural or manufactured gas, water, sewerage, thermal energy, chilled water, steam, hot water, or high temperature hot water for use in the United States. Utility services do not

include any of the above when purchased for use in a foreign country. It also does not include the following: broadband internet, non-broadcast television, telecommunications services, information technology services, acquisitions of natural or manufactured gas when not purchased as utility services (i.e., when purchased as commodities), or acquisitions of rights in real property, acquisitions of public utility facilities, and on-site equipment needed for the facility's own distribution system, or construction/maintenance of Government-owned equipment and real property.

41.102 Applicability.

(a) Agencies not using authorities referenced in 41.103(a)(2) and 41.103(a)(3) must contact the GSA at *utilities@gsa.gov* for assistance with the acquisition of utility services, and must follow all procedures and guidance provided by the GSA regarding the procurement of utility services (see 40 U.S.C. 501 and 48 C.F.R. subpart 541.5).

(b) This part does not apply to agencies when they are procuring—

(1) Utility services produced, distributed, or sold by another agency. In those cases, agencies must use interagency agreements;

(2) Utility services obtained by purchase, exchange, or otherwise by a Federal power or water marketing agency

incident to that agency's marketing or distribution program; or

(3) Third party financed shared-savings projects authorized by 42 U.S.C. 8287. However, agencies may utilize part 41 for any energy savings or purchased utility service directly resulting from implementation of a third party financed shared-savings project under 42 U.S.C. 8287 for periods not to exceed 25 years.

41.103 Statutory and delegated authority.

(a) *Statutory authority.*

(1) The General Services Administration (GSA) is authorized by 40 U.S.C. 501 to prescribe policies and methods governing the acquisition and supply of utility services for agencies. This authority includes related functions such as managing public utility services and representing agencies in proceedings before Federal and state regulatory bodies. GSA is authorized by 40 U.S.C. 501 to contract for utility services for periods not exceeding ten years.

(2) The Department of Defense (DOD) is authorized by 10 U.S.C. 3201(a), and 40 U.S.C. 113(e)(3) to acquire utility services for military facilities.

(3) The Department of Energy (DOE) is authorized by the Department of Energy Organization Act (42 U.S.C. 7251, et seq.) to acquire utility services. DOE is authorized by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2204),

to enter into new contracts or modify existing contracts for electric services for periods not exceeding 25 years for uranium enrichment installations.

(b) *Delegated authority.* GSA has delegated its authority to enter into utility service contracts for periods not exceeding ten years to DOD and DOE, and for connection charges only, to the Department of Veteran Affairs. Contracting pursuant to this delegated authority must be consistent with the requirements of this part. Other agencies requiring utility service contracts for periods over one year, but not exceeding ten years, may request a delegation of authority from GSA at *utilities@gsa.gov*. In keeping with its statutory authority, GSA will, as necessary, conduct reviews of delegated agencies' acquisitions of utility services to ensure compliance with the terms of the delegation and applicable laws and regulations.

(c) *Certification*. Requests for delegations of contracting authority from GSA must include a certification from the acquiring agency's Senior Procurement Executive that the agency has—

(1) An established acquisition program;

(2) Personnel technically qualified to deal with specialized utilities problems; and

(3) The ability to accomplish its own pre-award contract review.

Subpart 41.2—Acquiring Utility Services

41.201 Policy.

(a) Subject to paragraph (c) of this section, it is the policy of the Government that agencies obtain required utility services from sources of supply which are most advantageous to the Government in terms of economy, efficiency, reliability, or service.

(b) Except for acquisitions at or below the simplified acquisition threshold, agencies must acquire utility services by a bilateral written contract, which must include the clauses required by 41.501, regardless of whether rates or terms and conditions of service are fixed or adjusted by a regulatory body. Agencies may not use the utility supplier's forms and clauses to avoid the inclusion of provisions and clauses required by 41.501 or by statute. GSA is exempt from the requirement for a bilateral written contract when GSA acquires utility services from or establishes new accounts with a regulated utility service provider, or to pay for services rendered by any such provider including under an areawide contract.

(c)(1) Section 8093 of the Department of Defense Appropriations Act of 1988, Pub. L. 100-202, provides that none of the funds appropriated by that Act or any other Act with respect to any fiscal year by any department, agency, or instrumentality of the United States, may be used for the purchase of electricity by the Government in any manner

that is inconsistent with state law governing the providing of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements.

(2) The Act does not preclude—

(i) The head of an agency from entering into a contract pursuant to 42 U.S.C. 8287 (which pertains to the subject of shared energy savings including cogeneration);

(ii) The Secretary of a military department from entering into a contract pursuant to 10 U.S.C. 2922a (which pertains to contracts for energy or fuel for military installations including the provision and operation of energy production facilities); or

(iii) The Secretary of a military department from purchasing electricity from any provider when the utility or utilities having applicable state-approved franchise or other service authorizations are found by the Secretary to be unwilling or unable to meet unusual standards for service reliability that are necessary for purposes of national defense.

(3) Additionally, the head of an agency may—

(i) Consistent with applicable state law, enter into contracts for the purchase or transfer of electricity to the agency by a non-utility, including a qualifying

facility under the Public Utility Regulatory Policies Act of 1978;

(ii) Enter into an interagency agreement, pursuant to 41.206 and 17.5, with a Federal power marketing agency or the Tennessee Valley Authority for the transfer of electric power to the agency; and

(iii) Enter into a contract with an electric utility under the authority or tariffs of the Federal Energy Regulatory Commission.

(d) Prior to acquiring electric utility services on a competitive basis, the contracting officer must determine, with the advice of legal counsel, by a market survey or any other appropriate means, e.g., consultation with the state agency responsible for regulating public utilities, that such competition would not be inconsistent with state law governing the provision of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements.

41.202 Procedures.

(a) Agencies must conduct market surveys and perform acquisition planning in order to promote and provide for full and open competition provided that the contracting officer determines that any resultant contract would not be inconsistent with applicable state law governing the

provision of electric utility services. If competition for an entire utility service is not available, the market survey may be used to determine the availability of competitive sources for certain portions of the requirement. The scope of the term "entire utility service" includes the provision of the utility service capacity, energy, water, sewage, transportation, standby or back-up service, transmission and/or distribution service, quality assurance, system reliability, system operation and maintenance, metering, and billing.

(b) In performing a market survey, the contracting officer must consider, in addition to alternative competitive sources, use of the following:

(1) GSA areawide contracts;

(2) Separate contracts; and

(3) Interagency agreements.

(c) When a utility supplier refuses to execute a tendered contract, document the contract file and send a copy of the documentation to GSA at utilities@gsa.gov. Unless urgent and compelling circumstances exist, the contracting officer must notify GSA prior to acquiring utility services without executing a tendered contract. After such notification, the agency may proceed with the acquisition and pay for the utility service under the provisions of 31 U.S.C. 1501(a)(8)—

(1) By issuing a purchase order; or

(2) By ordering the necessary utility service and paying for it upon the presentation of an invoice, provided that a determination is approved by the head of the contracting activity that a written contract cannot be obtained and that the issuance of a purchase order is not feasible.

(d) When obtaining service without a bilateral written contract, except for GSA when utilizing its exemption, the contracting officer must establish a utility history file on each acquisition of utility service provided by a contractor. This utility history file must contain the following information:

(1) The unsigned, tendered contract and any related letter of transmittal.

(2) The reasons stated by the utility supplier for not executing the tendered contract, the record of negotiations, and documentation of the supplier’s refusal.

(3) Services to be furnished and the estimated annual cost.

(4) Historical record of any applicable connection charges.

(5) Historical record of any applicable ongoing capital credits.

(6) A copy of the applicable rate schedule.

(e) If the Government obtains utility services pursuant to paragraph (c) of this section, except for GSA

when utilizing its exemption, the contracting officer must, on an annual basis beginning from the date of final refusal, take action to execute a bilateral written contract. The contracting officer must document the utility history file with the efforts made and the agency must notify GSA, in writing at *utilities@gsa.gov*, if the utility continues to refuse to execute a bilateral contract.

41.203 GSA assistance.

(a) GSA will, upon request, provide technical and acquisition assistance, or will delegate its contracting authority for the furnishing of the services described in this part for any agency, mixed-ownership Government corporation, the District of Columbia, the Senate, the House of Representatives, or the Architect of the Capitol and any activity under the Architect's direction.

(b) Agencies seeking assistance must provide, upon request by GSA, the information listed in 41.301.

41.204 GSA areawide contracts.

(a) *Purpose.* GSA enters into areawide contracts for use by agencies. Areawide contracts provide a pre-established contractual vehicle for ordering utility services under the conditions in paragraph (c)(1) of this section.

(b) *Features.*

(1) Areawide contracts generally provide for ordering utility service at rates approved and/or

established by a regulatory body and published in a tariff or rate schedule. However, agencies are permitted to negotiate other rates and terms and conditions of service with the supplier (see paragraph (c) of this section). Rates other than those published may require the approval of the regulatory body.

(2) Areawide contracts are negotiated with utility service suppliers for the provision of service within the supplier's franchise territory or service area.

(3) Due to the regulated nature of the utility industry, as well as statutory restrictions associated with the procurement of electricity, competition is typically not available within the entire geographical area covered by an areawide contract, although it may be available at specific locations within the utility's service area. When competing suppliers are available, the provisions of paragraph (c)(1) of this section apply.

(c) *Procedures for obtaining service.*

(1) Any agency having a requirement for utility services within an area covered by an areawide contract must acquire services under that areawide contract unless—

(i) Service is available from more than one supplier; or

(ii) The head of the contracting activity otherwise determines that use of the areawide contract is not advantageous to the Government. If service is available

from more than one supplier, service must be acquired using competitive acquisition procedures. The determination required by paragraph (c)(1)(ii) of this section must be documented in the contract file with an information copy furnished to GSA at *utilities@gsa.gov*.

(2) Each areawide contract includes an authorization form for ordering service, connection, disconnection, or change in service. Upon execution of an authorization by the contracting officer and utility supplier, the utility supplier is required to furnish services, without further negotiation, at the current, applicable published or unpublished rates, unless other rates, and/or terms and conditions are separately negotiated by the agency with the supplier.

(3) The contracting officer must execute the authorization, and attach it to a Standard Form (SF) 26, Award/Contract, along with any modifications such as connection charges, special facilities, or service arrangements. The contracting officer must also attach any specific fiscal, operational, and administrative requirements of the agency, applicable rate schedules, technical information and detailed maps or drawings of delivery points, details on Government ownership, maintenance, or repair of facilities, and other information deemed necessary to fully define the service conditions in the authorization/contract.

(d) *List of areawide contracts.* A list of current GSA areawide contracts is available from the GSA at *https://www.gsa.gov/real-estate/facilities-management/utility-services*. The list identifies the types of services and the geographic area served. A copy of the list or a contract may also be obtained from GSA by emailing *utilities@gsa.gov*.

(e) *Notification.* Agencies must provide a copy of each SF 26 and executed authorization issued under an areawide contract to GSA at utilities@gsa.gov within 30 days after execution.

41.205 Separate contracts.

(a) In the absence of an areawide contract or interagency agreement, agencies must acquire utility services by separate contract subject to this part, and subject to agency contracting authority.

(b) If an agency enters into a separate contract, the contracting officer must document the contract file with the following information:

(1) The number of available suppliers.

(2) Any special equipment, service reliability, or facility requirements and related costs.

(3) The utility supplier's rates, connection charges, and termination liability.

(4) Total estimated contract value (including costs in paragraphs (b)(2) and (3) of this subsection).

(5) Any technical or special contract terms required.

(6) Any unusual characteristics of services required.

(7) The utility's wheeling or transportation policy for utility service.

(c) If requesting GSA assistance with a separate contract, the requesting agency must furnish the technical and acquisition data specified in 41.205(b), 41.301, and such other data as GSA may deem necessary.

(d) A contract exceeding a 1-year period, but not exceeding ten years (except pursuant to 41.103), may be justified, and is usually required, where any of the following circumstances exist:

(1) The Government will obtain lower rates, larger discounts, or more favorable terms and conditions of service;

(2) A proposed connection charge, termination liability, or any other facilities charge to be paid by the Government will be reduced or eliminated; or

(3) The utility service supplier refuses to render the desired service except under a contract exceeding a 1-year period.

41.206 Interagency agreements.

Agencies must use interagency agreements (e.g., consolidated purchase, joint use, or cross-service

agreements) when acquiring utility service or facilities from other agencies.

Subpart 41.3—Requests for Assistance

41.301 Requirements.

(a) Requests for delegations of GSA contracting authority, assistance with a proposed contract, and the submission of other information required by this part, must be sent or submitted to GSA at *utilities@gsa.gov*.

(b) Requests for contracting assistance for utility services must be sent not later than 120 days prior to the date new services are required to commence or an existing contract will expire. Requests for assistance must contain the following information:

(1) A technical description or specification of the type, quantity, and quality of service required, and a delivery schedule.

(2) A copy of any service proposal or proposed contract.

(3) Copies of all current published or unpublished rates of the utility supplier.

(4) Identification of any unusual factors affecting the acquisition.

(5) Identification of all available sources or methods of supply, an analysis of the cost effectiveness of each, and a statement of the ability of each source to provide the required services, including the location and a

description of each available supplier's facilities at the nearest point of service, and the cost of providing or obtaining necessary backup and other ancillary services.

(c) For new utility service requirements, the agency must furnish the information in paragraph (b) of this section and the following as applicable:

(1) The date initial service is required.

(2) For the first 12 months of full service, estimated maximum demand, monthly consumption, other pertinent information (e.g., demand side management, load or energy management, peak shaving, on site generation, load shaping), and annual cost of the service.

(3) Known or estimated time schedule for growth to ultimate requirements.

(4) Estimated ultimate maximum demand and ultimate monthly consumption.

(5) A simple schematic diagram or line drawing showing the meter locations, the location of the new utility facilities to be constructed on Government property by the agency, and any required new connection facilities on either side of the delivery point to be constructed by the utility supplier to provide the new services.

(6) Accounting and appropriation data to cover the required utility services and any connection charges required to be paid by the agency receiving such utility services.

(7) The following data concerning proposed facilities and related charges or costs:

(i) Proposed refundable or nonrefundable connection charge, termination liability, or other facilities charge to be paid by the agency, together with a description of the supplier's proposed facilities and estimated construction costs, and its rationale for the charge (e.g., tariff provisions or policies).

(ii) A copy of the acquiring agency's estimate to make its own connection to the supplier's facilities through use of its own resources or by separate contract. When feasible, the acquiring agency must provide its estimates to construct and operate its own utility facilities in lieu of participating in a cost-sharing construction program with the proposed utility supplier.

(d) For existing utility service, the agency must furnish GSA the information in paragraph (b) of this section and the following, as applicable:

(1) A copy of the most recent 12 months' service invoices.

(2) A tabulation, by month, for the most recent 12 months, showing the actual utility demands, consumption, connection charges, fuel adjustment charges, and the average monthly cost per unit of consumption.

(3) An estimate, by month, for the next 12 months, showing the estimated maximum demands, monthly consumption,

other pertinent information (e.g., demand side management, load or energy management, peak shaving, on site generation, load shaping), and annual cost of the service.

(4) Accounting and appropriation data to cover the costs for the continuation of utility services.

(5) A statement noting whether the transformer, or other system components, on either side of the delivery point are owned by the agency or the utility supplier, and if the metering is on the primary or secondary side of the transformer.

Subpart 41.4—Administration

41.401 Monthly and annual review.

Agencies must review utility service invoices on a monthly basis. Agencies must review all utility accounts with annual values exceeding the simplified acquisition threshold, on an annual basis. Annual reviews of accounts with annual values at or below the simplified acquisition threshold must be conducted when deemed advantageous to the Government. The purpose of the monthly review is to ensure the accuracy of utility service invoices. The purpose of the annual review is to ensure that the utility supplier is furnishing the services to each facility under the utility's most economical, applicable rate and to examine competitive markets for more advantageous service offerings. The annual review must be based upon the facility's usage, conditions and characteristics of service

at each individual delivery point for the most recent 12 months. If a more advantageous rate is appropriate, the agency must request the supplier to make such rate change immediately.

41.402 Rate changes and regulatory intervention.

(a) When a change is proposed to rates or terms and conditions of service to the Government, the agency must promptly determine whether the proposed change is reasonable, justified, and not discriminatory.

(b) If a change is proposed to rates or terms and conditions of service that may be of interest to other agencies, and intervention before a regulatory body is considered justified, the matter must be referred to GSA. The agency may request from GSA a delegation of authority for the agency to intervene on behalf of the consumer interests of the agencies.

(c) Pursuant to 52.241-7, Change in Rates or Terms and Conditions of Service for Regulated Services, if a regulatory body approves a rate change, any rate change must be made a part of the contract by unilateral contract modification by the Government or otherwise documented in accordance with agency procedures. The approved applicable rate must be effective on the date determined by the regulatory body and resulting rates and charges must be paid promptly to avoid late payment provisions. Copies of the modification containing the approved rate change must

be sent to the agency's paying office or office responsible for verifying billed amounts.

(d) If the utility supplier is not regulated and the rates, terms, and conditions of service are subject to negotiation pursuant to the clause at 52.241-8, Change in Rates or Terms and Conditions of Service for Unregulated Services, any rate change must be made a part of the contract by a bilateral contract modification, with copies sent to the agency's paying office or office responsible for verifying billed amounts.

Subpart 41.5—Solicitation Provision and Contract Clauses

41.501 Solicitation provision and contract clauses.

Because the terms and conditions under which utility suppliers furnish service may vary from area to area, the differences may influence the terms and conditions appropriate to a particular utility's contracting situation. To accommodate requirements that are peculiar to the contracting situation, this section prescribes provisions and clauses on a “substantially the same as” basis, which permits the contracting officer to prepare and utilize variations of the prescribed provisions and clauses in accordance with agency procedures. Insert the following provisions and clauses in solicitations and contracts for utility services, as prescribed, including utility services that are commercial services:

(a) Insert a provision substantially the same as the provision at 52.241-1, Electric Service Territory Compliance Representation, in solicitations when proposals from alternative electric suppliers are sought.

(b) Insert in solicitations and contracts for utility services clauses substantially the same as the clauses at—

(1) 52.241-2, Order of Precedence—Utilities;

(2) 52.241-3, Scope and Duration of Contract;

(3) 52.241-4, Change in Class of Service;

(4) 52.241-5, Contractor's Facilities; and

(5) 52.241-6, Service Provisions.

(c) Insert clauses substantially the same as the clauses listed below in solicitations and contracts under the prescribed conditions—

(1) 52.241-7, Change in Rates or Terms and Conditions of Service for Regulated Services, when the utility services are subject to a regulatory body. (Except for GSA areawide contracts, insert in the blank space provided in the clause the name of the contracting officer. For GSA areawide contracts, the contracting officer must insert the following: “GSA and each areawide customer with annual billings that exceed $250,000.”)

(2) 52.241-8, Change in Rates or Terms and Conditions of Service for Unregulated Services, when the utility services are not subject to a regulatory body.

(3) 52.241-9, Connection Charge, when a refundable connection charge is required to be paid by the Government to compensate the contractor for furnishing additional facilities necessary to supply service. (Use *Alternate I* to the clause if a nonrefundable charge is to be paid. When conditions require the incorporation of a nonrecurring, nonrefundable service charge or a termination liability, see paragraphs (c)(6) and (c)(4) of this section.)

(4) 52.241-10, Termination Liability, when payment is to be made to the contractor upon termination of service in conjunction with, or in lieu of, a connection charge upon completion of the facilities.

(5) 52.241-11, Multiple Service Locations (as defined in 41.101), when providing for possible alternative service locations, except under areawide contracts, is required.

(6) 52.241-12, Nonrefundable, Nonrecurring Service Charge, when the Government is required to pay a nonrefundable, nonrecurring membership fee, a charge for initiation of service, or a contribution for the cost of facilities construction. The Government may provide for inclusion of such agreed amount or fee as a part of the connection charge, a part of the initial payment for services, or as periodic payments to fulfill the Government's obligation.

(7) 52.241-13, Cooperative Membership, when the Government is a member of a cooperative.

Subpart 41.6—Forms

41.601 Utility services forms.

(a) If acquiring utility services under other than an areawide contract, a purchase order, or an interagency agreement, the Standard Form (SF) 33, Solicitation, Offer and Award; SF 26, Award/Contract; or SF 1447, Solicitation/Contract, must be used.

(b) The contracting officer must incorporate the applicable rate schedule in each contract, purchase order or modification.

Subpart 41.7—Formats

41.701 Formats for utility service specifications.

(a) The following specification formats for use in acquiring utility services are available from GSA at *utilities@gsa.gov* and may be used and modified at the agency's discretion:

(1) Electric service.

(2) Water service.

(3) Steam service.

(4) Sewage service.

(5) Natural gas service.

(b) Contracting officers may modify the specification format referenced in paragraph (a) of this section and attach technical items, details on Government ownership of

equipment and real property and maintenance or repair obligations, maps or drawings of delivery points, and other information deemed necessary to fully define the service conditions.

(c) The specifications and attachments (see paragraph (b) of this section) must be inserted in Section C of the utility service solicitation and contract.

41.702 Formats for annual utility service review.

(a) Formats for use in conducting annual reviews of the following utility services are available from GSA at *utilities@gsa.gov* and may be used at the agency's discretion:

(1) Electric service.

(2) Gas service.

(3) Water and sewage service.

(b) Contracting officers may modify the annual utility service review format as necessary to fully cover the service used.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. The authority citation for 48 CFR part 52 continues to read as follows:

AUTHORITY: 41 U.S.C. 1121(b); 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

52.207-1 through 52.207-3 [Removed and Reserved]

6. Remove and reserve sections 52.207-1 through 52.207-3.

7. Revise sections 52.207-4 through 52.207-6 to read as follows:

52.207-4 Economic Purchase Quantity—Supplies.

As prescribed in 7.303, insert the following provision:

ECONOMIC PURCHASE QUANTITY—SUPPLIES (DATE)

(a) Offerors are invited to state an opinion on whether the quantity(ies) of supplies on which bids, proposals or quotes are requested in this solicitation is (are) economically advantageous to the Government.

(b) Each offeror who believes that acquisitions in different quantities would be more advantageous is invited to recommend an economic purchase quantity. If different quantities are recommended, a total and a unit price must be quoted for applicable items. An economic purchase quantity is that quantity at which a significant price break occurs. If there are significant price breaks at different quantity points, this information is desired as well.

Offeror Recommendations

Item	**Quantity**	**Price quotation**	**Total**

(c) The information requested in this provision is being solicited to avoid acquisitions in disadvantageous quantities and to assist the Government in developing a data base for future acquisitions of these items. However, the Government reserves the right to amend or cancel the solicitation and resolicit with respect to any individual item in the event quotations received and the Government's requirements indicate that different quantities should be acquired.

(End of provision)

52.207-5 Option To Purchase Equipment.

As prescribed in 7.404, insert a clause substantially the same as the following:

OPTION TO PURCHASE EQUIPMENT (DATE)

(a) The Government may purchase the equipment provided on a lease or rental basis under this contract. The Contracting Officer may exercise this option only by providing a unilateral modification to the Contractor. The effective date of the purchase will be specified in the unilateral modification and may be any time during the period of the contract, including any extensions thereto.

(b) Except for final payment and transfer of title to the Government, the lease or rental portion of the contract becomes complete and lease or rental charges must be discontinued on the day immediately preceding the effective

date of purchase specified in the unilateral modification required in paragraph (a) of this clause.

(c) The purchase conversion cost of the equipment must be computed as of the effective date specified in the unilateral modification required in paragraph (a) of this clause, on the basis of the purchase price set forth in the contract, minus the total purchase option credits accumulated during the period of lease or rental, calculated by the formula contained elsewhere in this contract.

(d) The accumulated purchase option credits available to determine the purchase conversion cost will also include any credits accrued during a period of lease or rental of the equipment under any previous Government contract if the equipment has been on continuous lease or rental. The movement of equipment from one site to another site must be "continuous rental."

(End of clause)

52.207-6 Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts).

As prescribed in 7.107-4, insert the following provision:

SOLICITATION OF OFFERS FROM SMALL BUSINESS CONCERNS AND SMALL BUSINESS TEAMING ARRANGEMENTS OR JOINT VENTURES (MULTIPLE-AWARD CONTRACTS)

(DATE)

(a) *Definition.* "Small Business Teaming Arrangement," as used in this provision—

(1) Means an arrangement where—

(i) Two or more small business concerns have formed a joint venture; or

(ii) A small business offeror agrees with one or more other small business concerns to have them act as its subcontractors under a specified Government contract. A Small Business Teaming Arrangement between the offeror and its small business subcontractor(s) exists through a written agreement between the parties that—

(A) Is specifically referred to as a "Small Business Teaming Arrangement"; and

(B) Sets forth the different responsibilities, roles, and percentages (or other allocations) of work as it relates to the acquisition;

(2)(i) For civilian agencies, may include two business concerns in a mentor-protégé relationship when both the mentor and the protégé are small or the protégé is small and the concerns have received an exception to affiliation pursuant to 13 CFR 121.103(h)(3)(ii) or (iii).

(ii) For DoD, may include two business concerns in a mentor-protégé relationship in the Department of Defense Mentor-Protégé Program (see 10 U.S.C. 4902) when both the mentor and the protégé are small. There is no exception to joint venture size affiliation for offers

received from teaming arrangements under the DoD Mentor-Protégé Program; and

(3) See 13 CFR 121.103(b)(9) regarding the exception to affiliation for offers received from Small Business Teaming Arrangements in the case of a solicitation of offers for a bundled contract or a Multiple Award Contract with a value in excess of the agency's substantial bundling threshold.

(b) The Government is soliciting and will consider offers from any responsible source, including responsible small business concerns and offers from Small Business Teaming Arrangements or joint ventures of small business concerns.

(End of provision)

8. Add section 52.207-7 to read as follows:

52.207-7 Market Research.

As prescribed in 7.202, insert the following clause:

MARKET RESEARCH (DATE)

(a) *Definition.* As used in this clause—

Commercial product, commercial service, and *nondevelopmental item* have the meaning contained in Federal Acquisition Regulation (FAR) 2.101.

(b) *Subcontracts.* Before awarding subcontracts for other than commercial products and commercial services, where the subcontracts are over the simplified acquisition threshold, as defined in FAR 2.101 on the date of

subcontract award, the Contractor must conduct market research to determine, in the following order of priority, whether—

(1) A commercial product or commercial service can meet the agency's requirements;

(2) The requirements could be modified so the agency could use an existing commercial product or commercial service;

(3) A commercial product or commercial service could be modified to meet the agency's requirements; or

(4) The requirement can only be satisfied by a nondevelopmental item.

(End of clause)

52.210-1 [Removed and Reserved]

9. Remove and reserve section 52.210-1.

10. Revise sections 52.226-1 through 52.226-8 to read as follows:

52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.

As prescribed in 26.302-2, insert the following clause:

UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES

(DATE)

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

Indian means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized

by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) (see 25 U.S.C. 1452) and any "Native" as defined in the Alaska Native Claims Settlement Act (see 43 U.S.C. 1602).

Indian organization means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

Indian-owned economic enterprise means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

Indian tribe means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA. See 25 U.S.C. 1452.

Interested party means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to receive a subcontract.

(b) *Opportunity to participate in subcontracts*. The Contractor must use its best efforts to give Indian organizations and Indian-owned economic enterprises maximum practicable opportunity to participate in the subcontracts it awards, while still efficiently performing its contract.

(1) The Contracting Officer and the Contractor may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its own eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status.

(2) If the representation of a subcontractor is challenged, the Contracting Officer will refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Acquisition Management Director (available at *https://www.bia.gov/as-ia/ocfo/acquisitions*).

(3) BIA will determine the eligibility and notify the Contracting Officer. The Contractor must not make an incentive payment within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be ineligible, the Contractor must not make an incentive payment under the Indian Incentive Program.

(4) The Contractor may request an adjustment under the Indian Incentive Program to the following:

(i) The estimated cost of a cost-type prime contract.

(ii) The target cost of a cost-plus-incentive-fee prime contract.

(iii) The target cost and ceiling price of a fixed-price incentive prime contract.

(iv) The price of a firm-fixed-price prime contract.

(5) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract first awarded to the Indian organization or Indian-owned economic enterprise.

(6) The Contractor must prove the amount claimed. They must request an adjustment before completing contract performance.

(c) *Incentive payment*. The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor.

(End of clause)

52.226-2 Historically Black College or University and Minority Institution Representation.

As prescribed in 26.402-2, insert the following provision:

HISTORICALLY BLACK COLLEGE OR UNIVERSITY AND MINORITY INSTITUTION REPRESENTATION (DATE)

(a) *Definitions*. As used in this provision—

Historically black college or university means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2.

Minority institution means an institution of higher education meeting the requirements of Section 365(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k), including a Hispanic-serving institution of higher education, as defined in Section 502(a) of the Act (20 U.S.C. 1101a).

(b) *Representation*. The offeror represents that it—

☐ is ☐ is not a historically black college or university;

☐ is ☐ is not a minority institution.

(End of provision)

52.226-3 Disaster or Emergency Area Representation.

As prescribed in 26.102-3(a), insert the following provision:

DISASTER OR EMERGENCY AREA REPRESENTATION (DATE)

(a) *Set-aside area.* The area covered in this contract is: _____

[Contracting Officer to fill in with definite geographic boundaries.]

(b) *Representations.* The offeror represents that it ☐ does ☐ does not reside or primarily do business in the set-aside area.

(c) An offeror is considered to be residing or primarily doing business in the set-aside area if, during the last twelve months-

(1) The offeror had its main operating office in the area; and

(2) That office generated at least half of the offeror's gross revenues and employed at least half of the offeror's permanent employees.

(d) If the offeror does not meet the criteria in paragraph (c) of this provision, factors to be considered in determining whether an offeror resides or primarily does business in the set-aside area include-

(1) Physical location(s) of the offeror's permanent office(s) and date any office in the set-aside area(s) was established;

(2) Current state licenses;

(3) Record of past work in the set-aside area(s) (*e.g.*, how much and for how long);

(4) Contractual history the offeror has had with subcontractors and/or suppliers in the set-aside area;

(5) Percentage of the offeror's gross revenues attributable to work performed in the set-aside area;

(6) Number of permanent employees the offeror employs in the set-aside area;

(7) Membership in local and state organizations in the set-aside area; and

(8) Other evidence that establishes the offeror resides or primarily does business in the set-aside area. For example, sole proprietorships may submit utility bills and bank statements.

(e) If the offeror represents it resides or primarily does business in the set-aside area, the offeror must furnish documentation to support its representation if requested by the Contracting Officer. The solicitation may require the offeror to submit with its offer documentation to support the representation.

(End of provision)

52.226-4 Notice of Disaster or Emergency Area Set-Aside.

As prescribed in 26.102-3(b), insert the following clause:

NOTICE OF DISASTER OR EMERGENCY AREA SET-ASIDE (DATE)

(a) *Set-aside area.* Offers are solicited only from businesses residing or primarily doing business in

_____

[Contracting Officer to fill in with definite geographic boundaries.] Offers received from other businesses will not be considered.

(b) This set-aside is in addition to any small business set-aside contained in this contract.

(End of clause)

52.226-5 Restrictions on Subcontracting Outside Disaster or Emergency Area.

As prescribed in 26.102-3(c), insert the following clause:

RESTRICTIONS ON SUBCONTRACTING OUTSIDE DISASTER OR EMERGENCY AREA (DATE)

(a) *Definitions.* The definitions of cost of materials and subcontracting are found in the Small Business Administration regulations at 13 CFR 125.1.

(b) The Contractor agrees that in performance of the contract in the case of a contract for-

(1) *Services (except construction)*. At least 50 percent of the cost of contract performance incurred for personnel must be expended for employees of the Contractor or employees of other businesses residing or primarily doing business in the area designated in the clause at FAR 52.226—4, Notice of Disaster or Emergency Area Set-Aside;

(2) *Supplies (other than procurement from a nonmanufacturer of such supplies)*. The Contractor or employees of other businesses residing or primarily doing business in the set-aside area must perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials;

(3) *General construction*. The Contractor will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees

or employees of other businesses residing or primarily doing business in the set-aside area; or

(4) *Construction by special trade Contractors*. The Contractor will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees or employees of other businesses residing or primarily doing business in the set-aside area.

(End of clause)

52.226-6 Promoting Excess Food Donation to Nonprofit Organizations.

As prescribed in 26.502-2, insert the following clause:

PROMOTING EXCESS FOOD DONATION TO NONPROFIT ORGANIZATIONS (DATE)

(a) *Definitions*. As used in this clause-

Apparently wholesome food means food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

Excess food means food that-

(1) Is not required to meet the needs of the agencies; and

(2) Would otherwise be discarded.

Food-insecure means inconsistent access to sufficient, safe, and nutritious food.

Nonprofit organization means any organization that is—

(1) Described in section 501(c) of the Internal Revenue Code of 1986; and

(2) Exempt from tax under section 501(a) of that Code.

(b) *Food donation*. The Contractor is encouraged to donate excess apparently wholesome food to nonprofit organizations that help food-insecure people in the United States, where practical and safe.

(c) *Costs*.

(1) The Contractor, including any subcontractors, must assume the responsibility for all the costs and logistics of collecting, transporting, maintaining the safety of, or distributing the excess, apparently wholesome food to the nonprofit organization(s) helping food-insecure people.

(2) Costs incurred for excess food donations are unallowable and, as such, the Contractor will not be reimbursed for any associated costs.

(d) *Liability*. The Government and the Contractor, including any subcontractors, will be exempt from civil and criminal liability to the extent provided under the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791). Nothing in this clause supersedes State or local health regulations (subsection (f) of 42 U.S.C. 1791).

(End of clause)

52.226-7 Drug-Free Workplace.

As prescribed in 26.603-1, insert the following clause:

DRUG-FREE WORKPLACE (DATE)

(a) *Definitions*. As used in this clause-

Controlled substance means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

Conviction means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

Drug-free workplace means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

Employee means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all

direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

Individual means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) *Contractor requirements*. The Contractor, if other than an individual, must within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration-

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about-

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will-

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice must include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation

program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) *Individual contractor requirements*. The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) *Remedies for noncompliance*. In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 26.605-1, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

(End of clause)

52.226-8 Encouraging Contractor Policies to Ban Text Messaging While Driving.

As prescribed in 26.701-2, insert the following clause:

ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING

(DATE)

(a) *Definitions*. As used in this clause-

Driving–

(1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

Text messaging means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(b) *Purpose*. This clause implements Executive Order 13513 of October 1, 2009, Federal Leadership on Reducing Text Messaging While Driving.

(c) *Contractor encouragement*. The Contractor is encouraged to-

(1) Adopt and enforce policies that ban text messaging while driving-

(i) Company-owned or rented vehicles or Government-owned vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct initiatives in a manner commensurate with the size of the business, such as-

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(d) *Subcontracts*. The Contractor must include the substance of this clause, including this paragraph (d), in subcontracts at any tier under this contract if the value of the subcontract exceeds the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award, other than those for commercial products and commercial services.

(End of clause)

11. Revise sections 52.237-1 through 52.237-10 to read as follows:

52.237-1 Site Visit.

As prescribed in 37.802-5(a), insert the following provision:

SITE VISIT (DATE)

Offerors or quoters should inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event may failure to inspect the site constitute grounds for a claim after contract award.

(End of provision)

52.237-2 Protection of Government Buildings, Equipment, and Vegetation.

As prescribed in 37.802-5(b), insert the following clause:

PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (DATE)

The Contractor must use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor must replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such

repair or replacement, the Contractor will be liable for the cost, which may be deducted from the contract price.

(End of clause)

52.237-3 Continuity of Services.

As prescribed in 37.802-5(c), insert the following clause:

CONTINUITY OF SERVICES (DATE)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to-

(1) Furnish phase-in training; and

(2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor must, upon the Contracting Officer's written notice, furnish phase-in, phase-out services for up to 90 days after this contract expires and negotiate a plan with a successor in good faith to determine the nature and extent of phase-in, phase-out services required. The plan must specify a training program and a date for transferring responsibilities for each division of work described in the plan and will be subject to the Contracting Officer's approval. The Contractor must provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for

by this contract are maintained at the required level of proficiency.

(c) The Contractor must allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also must disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor must release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) If the Contracting Officer requires phase-in, phase-out services, the Government will reimburse the Contractor for that work. Reimbursement, including profit or fee as applicable, will be consistent with the contract type and limited to the approved transition period.

(e) In the event the period to exercise this option ends during a lapse in appropriations without the Government exercising any available option(s), the Government and Contractor may mutually agree to toll or extend the period of time by which the Government may exercise the option(s). The Contractor and Government must mutually agree to toll or extend the option’s exercise time period not later than 30 days after the day the lapse in appropriations ends.

(End of clause)

52.237-4 Payment by Government to Contractor.

As prescribed in 37.701-4(a), insert the following clause:

PAYMENT BY GOVERNMENT TO CONTRACTOR (DATE)

(a) In ___ [*insert* full *if Alternate I is used; otherwise insert* partial] consideration of the performance of the work called for in the Schedule, the Government will pay to the Contractor ___ [*fill in amount*].

(b) The Government must make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. Except as provided in paragraph (c) of this clause, in making progress payments the Contracting Officer must retain 10 percent of the estimated payment until final completion and acceptance of the contract work. However, if the Contracting Officer finds that the contractor achieved satisfactory progress during any period for which a progress payment is to be made, the Contracting Officer may authorize such payment in full, without retaining a percentage. Also, on completion and acceptance of each unit or division for which the price is stated separately, the Contracting Officer may authorize full payment for that unit or division without retaining a percentage.

(c) When the work is substantially completed, the Contracting Officer must retain an amount considered adequate for the protection of the Government and, at the Contracting Officer's discretion, may release all or a portion of any excess amount.

(d) In further consideration of performance, the Contractor will receive title to all property to be dismantled or demolished that the Government does not specifically designate as retained by the Government. The title will vest in the Contractor immediately upon the Government's issuing the notice of award, or, if a performance bond is required to be furnished after award, upon the Government's issuance of a notice to proceed with the work. The Government will not be responsible for the condition of, or any loss or damage to, the property. If the Contractor does not wish to remove any of the property acquired from the site, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition to the granting of this permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(e) Upon completion and acceptance of all work and receipt of a properly executed voucher, the Government will make final payment of the amount due the Contractor under this contract. If requested, the Contractor must release

all claims against the Government arising under this contract, other than any claims the Contractor specifically excepts, in stated amounts, from operation of this release.

(End of clause)

Alternate I (DATE). If the contracting officer determines that the Government must retain all material resulting from the dismantling or demolition work, delete paragraph (d) from the basic clause and renumber the remaining paragraphs.

52.237-5 Payment by Contractor to Government.

As prescribed in 37.701-4(b), insert the following clause:

PAYMENT BY CONTRACTOR TO GOVERNMENT (DATE)

(a) Title to all property to be dismantled, demolished, or removed under this contract vests in the Contractor, except for any property specifically designated in the Schedule as being retained by the Government. The title vests immediately upon the Government's issuing the notice of award, or, if a performance bond is required, upon the Government's issuing a notice to proceed with the work. The Government will not be responsible for the condition of, or any loss or damage to, the property.

(b) The Contractor must promptly remove from the site all property acquired by the Contractor. The Government must not permit storage of property on the site beyond the completion date. If the Contractor does not wish to remove

from the site any of the property acquired, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition of the granting of the permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(c) The Contractor must perform the work called for under this contract and within __ days of receipt of notice of award, unless otherwise provided in the Schedule and before proceeding with the work, must pay ____ [*fill in amount*]. Payment must be made to the office designated in the contract or as otherwise arranged with the Contracting Officer.

(End of clause)

52.237-6 Incremental Payment by Contractor to Government.

As prescribed in 37.701-4(c), insert the following clause:

INCREMENTAL PAYMENT BY CONTRACTOR TO GOVERNMENT (DATE)

(a) The Contractor must pay the Government ____ [*Contracting Officer to fill in the amount*] before beginning work and may not begin work until that payment is made. Unless otherwise provided in the Schedule, the Contractor must begin work within __ [*Contracting Officer to fill in the days*] days after receipt of the notice of award. Thereafter, the Contractor must make further payment(s) to the Government in the amount and frequency

specified in the Schedule. The Contractor will be responsible for any delays in contract performance resulting from late Contractor payments to the Government. Payment must be made to the office designated in the contract or as otherwise arranged with the Contracting Officer.

(b) The Contractor receives title to property in increments, as the Government receives each corresponding payment. The Contracting Officer will determine what property is fair and reasonable for each increment of payment. Upon receipt of the Contractor's final payment, title to any remaining property not previously transferred will vest in the Contractor, except for property specifically designated in the Schedule as retained by the Government. The Government will not be responsible for the condition of, or any loss or damage to, the property.

(c) The Contractor must promptly remove all property acquired by the Contractor from the site. The Government will not permit storage of property on the site beyond the completion date. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition of the granting of this permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(End of clause)

52.237-7 Indemnification and Medical Liability Insurance.

As prescribed in 37.601-3, insert the following clause:

INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE (DATE)

(a) The parties agree and understand that this is a nonpersonal services contract, under which the professional services rendered by the Contractor are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided, but retains no control over professional aspects of the services rendered, including by example, the Contractor's professional medical judgment, diagnosis, or specific medical treatments. The Contractor will be solely liable for and expressly agrees to indemnify the Government with respect to any liability producing acts or omissions by it or by its employees or agents. During the term of this contract, the Contractor must maintain liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: _____ [*Contracting Officer to fill in the amount*]. However, if the Contractor is an entity or a subdivision of a State that either provides for self-insurance or limits the liability or the amount of insurance purchased by State entities, then the insurance

requirement of this contract must be fulfilled by incorporating the provisions of the applicable State law.

(b) Prior to contract award, an apparently successful offeror, upon request by the Contracting Officer, must furnish evidence of its insurability concerning the medical liability insurance required by paragraph (a) of this clause or the provisions of State law as to self-insurance, or limitations on liability or insurance.

(c) Liability insurance may be on either an occurrences basis or on a claims-made basis. If the policy is on a claims-made basis, an extended reporting endorsement (tail) for a period of not less than 3 years after the end of the contract term must also be provided.

(d) The Contractor must provide evidence of insurance documenting the required coverage for each health care provider who will perform under this contract to the Contracting Officer prior to the commencement of services under this contract. If the insurance is on a claims-made basis and evidence of an extended reporting endorsement is not provided prior to the commencement of services, the Contractor must provide evidence of such endorsement to the Contracting Officer prior to the expiration of this contract. Final payment under this contract will be withheld until the Contractor provides evidence of the extended reporting endorsement to the Contracting Officer.

(e) The policies evidencing required insurance must also contain an endorsement to the effect that any cancellation or material change adversely affecting the Government's interest must not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. If during the performance period of the contract the Contractor changes insurance providers, the Contractor must provide evidence that the Government will be indemnified to the limits specified in paragraph (a) of this clause, for the entire period of the contract, either under the new policy, or a combination of old and new policies.

(f) *Subcontracts*. The Contractor must—

(1) Include the substance of this clause, including this paragraph (f), in subcontracts at any tier under this contract that is for health care services, including commercial services;

(2) Require such subcontractors to provide evidence of and maintain insurance in accordance with paragraph (a) of this clause; and

(3) At least 5 days before the commencement of work by such subcontractor, furnish evidence of such insurance to the Contracting Officer.

(End of clause)

52.237-8 Restriction on Severance Payments to Foreign Nationals.

As prescribed in 37.802-5(d), insert the following provision:

RESTRICTION ON SEVERANCE PAYMENTS TO FOREIGN NATIONALS (DATE)

(a) FAR 31.205-6(f)(6) limits the cost allowability of severance payments to foreign nationals employed under a service contract performed outside the United States unless the agency grants a waiver pursuant to FAR 37.802-3 before contract award.

(b) In making the determination concerning the granting of a waiver, the agency will determine that—

(1) The application of the severance pay limitations to the contract would adversely affect the continuation of a program, project, or activity that provides significant support services for members of the armed forces stationed or deployed outside the United States, or employees of an executive agency posted outside the United States;

(2) The Contractor has taken (or has established plans to take) appropriate actions within its control to minimize the amount and number of incidents of the payment of severance pay to employees under the contract who are foreign nationals; and

(3) The payment of severance pay is necessary in order to comply with a law that is generally applicable to a significant number of businesses in the country in which

the foreign national receiving the payment performed services under the contract, or is necessary to comply with a collective bargaining agreement.

(End of provision)

52.237-9 Waiver of Limitation on Severance Payments to Foreign Nationals.

As prescribed in 37.802-5(e), insert the following clause:

WAIVER OF LIMITATION ON SEVERANCE PAYMENTS TO FOREIGN NATIONALS (DATE)

(a) *Waiver.* Pursuant to 10 U.S.C. 3744(b) or 41 U.S.C. 4304(b)(1), as applicable, the cost allowability limitations in FAR 31.205-6(f)(6) are waived.

(b) *Subcontracts.* The Contractor may include the substance of this clause in each first-tier subcontract under this contract, other than those for commercial services, if approved by the Contracting Officer.

(End of clause)

52.237-10 Identification of Uncompensated Overtime.

As prescribed in 37.802-5(f), insert the following provision:

IDENTIFICATION OF UNCOMPENSATED OVERTIME (DATE)

(a) *Definitions.* As used in this provision—

Adjusted hourly rate (including uncompensated overtime) is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week which includes

uncompensated overtime hours over and above the standard 40-hour work week. For example, 45 hours proposed on a 40-hour work week basis at $20 per hour would be converted to an uncompensated overtime rate of $17.78 per hour ($20.00 × 40 divided by 45 = $17.78).

Uncompensated overtime means the hours worked without additional compensation in excess of an average of 40 hours per week by direct charge employees who are exempt from the Fair Labor Standards Act. Compensated personal absences such as holidays, vacations, and sick leave must be included in the normal work week for purposes of computing uncompensated overtime hours.

(b)(1) Whenever there is uncompensated overtime, the adjusted hourly rate (including uncompensated overtime), rather than the hourly rate, must be applied to all proposed hours, whether regular or overtime hours.

(2) The offeror must identify all proposed labor hours subject to the adjusted hourly rate (including uncompensated overtime) as either regular or overtime hours, by labor categories, and described at the same level of detail. This is applicable to all proposals whether the labor hours are at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

(c) The offeror's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Proposals that include unrealistically low labor rates, or that do not otherwise demonstrate cost realism, will be considered in a risk assessment and will be evaluated for award in accordance with that assessment.

(e) The offeror must include a copy of its policy addressing uncompensated overtime with its proposal.

(End of provision)

52.241 [Removed and Reserved]

12. Remove and reserve section 52.241.

13. Revise sections 52.241-1 through 52.241-13 to read as follows:

52.241-1 Electric Service Territory Compliance Representation.

As prescribed in 41.501(a), insert a provision substantially the same as the following:

ELECTRIC SERVICE TERRITORY COMPLIANCE REPRESENTATION (DATE)

(a) Section 8093 of Public Law 100-202 generally requires purchases of electricity by any department, agency, or instrumentality of the United States to be consistent with State law governing the provision of electric utility service, including State utility commission rulings and electric utility franchises or

service territories established pursuant to State statute, State regulation, or State-approved territorial agreements.

(b) By signing this offer, the offeror represents that this offer to sell electricity is consistent with Section 8093 of Public Law 100-202.

(End of provision)

52.241-2 Order of Precedence—Utilities.

As prescribed in 41.501(b)(1), insert a clause substantially the same as the following:

ORDER OF PRECEDENCE—UTILITIES (DATE)

In the event of any inconsistency between the terms of this contract (including the specifications) and any rate schedule, rider, or exhibit incorporated in this contract by reference or otherwise, or any of the Contractor's rules and regulations, the terms of this contract control.

(End of clause)

52.241-3 Scope and Duration of Contract.

As prescribed in 41.501(b)(2), insert a clause substantially the same as the following:

SCOPE AND DURATION OF CONTRACT (DATE)

(a) For the period _____, [*contracting officer to insert period of service*] the Contractor agrees to furnish and the Government agrees to purchase _____ [*contracting officer to insert type of service*] utility service in accordance with the applicable tariff(s), rules,

and regulations as approved by the applicable governing regulatory body and as set forth in the contract.

(b) It is expressly understood that neither the Contractor nor the Government is under any obligation to continue any service under the terms and conditions of this contract beyond the expiration date.

(c) The Contractor must, in the same manner that it customarily or regularly provides notice to its non-government customers, provide the Government with one complete set of rates, terms, and conditions of service which are in effect as of the date of this contract and any subsequently approved rates, which may specifically be satisfied by the Contractor publishing their rates on publicly available websites.

(d) The Contractor will be paid at the applicable rate(s) under the tariff and the Government will be liable for the minimum monthly charge, if any, specified in this contract commencing with the period in which service is initially furnished and continuing for the term of this contract. Any minimum monthly charge specified in this contract must be equitably prorated for the periods in which commencement and termination of this contract become effective.

(End of clause)

52.241-4 Change in Class of Service.

As prescribed in 41.501(b)(3), insert a clause substantially the same as the following:

CHANGE IN CLASS OF SERVICE (DATE)

(a) In the event of a change in the class of service, such service must be provided at the Contractor's lowest available rate schedule applicable to the class of service furnished.

(b) Where the Contractor does not have on file with the regulatory body approved rate schedules applicable to services provided, no clause in this contract precludes the Government and the Contractor from negotiating a rate schedule applicable to the class of service furnished.

(End of clause)

52.241-5 Contractor's Facilities.

As prescribed in 41.501(b)(4), insert a clause substantially the same as the following:

CONTRACTOR'S FACILITIES (DATE)

(a) The Contractor, at its expense, unless otherwise provided for in this contract, must furnish, install, operate, and maintain all facilities required to furnish service hereunder, and measure such service at the point of delivery specified in the Service Specifications. Title to all such facilities remain with the Contractor and the Contractor is responsible for loss or damage to such facilities, except that the Government will be responsible

to the extent that loss or damage has been caused by the Government's negligent acts or omissions.

(b) Notwithstanding any terms expressed in this clause, the Contractor must obtain approval from the Contracting Officer prior to any equipment installation, construction, or removal. The Government hereby grants to the Contractor, free of any rental or similar charge, but subject to the limitations specified in this contract, a revocable permit or license to enter the service location for any proper purpose under this contract. This permit or license includes use of the site or sites agreed upon by the parties hereto for the installation, operation, maintenance, and repair of the facilities of the Contractor required to be located upon Government premises. All applicable taxes and other charges in connection therewith, together with all liability of the Contractor in construction, operation, maintenance and repair of such facilities, are the obligation of the Contractor.

(c) Authorized representatives of the Contractor will be allowed access to the facilities on Government premises at reasonable times to perform the obligations of the Contractor regarding such facilities. It is expressly understood that the Government may limit or restrict the right of access herein granted in any manner considered necessary (e.g., national security, public safety).

(d) Unless otherwise specified in this contract, the Contractor must, at its expense, remove such facilities and restore Government premises to their original condition as near as practicable within a reasonable time after the Government terminates this contract. In the event such termination of this contract is due to the fault of the Contractor, such facilities may be retained in place at the option of the Government for a reasonable time while the Government attempts to obtain service elsewhere comparable to that provided for hereunder.

(End of clause)

52.241-6 Service Provisions.

As prescribed in 41.501(b)(5), insert a clause substantially the same as the following:

SERVICE PROVISIONS (DATE)

(a) *Measurement of service.* (1) All service furnished by the Contractor must be measured by suitable metering equipment of standard manufacture, to be furnished, installed, maintained, repaired, calibrated, and read by the Contractor at its expense. When more than a single meter is installed at a service location, the readings thereof may be billed conjunctively, if appropriate. In the event any meter fails to register (or registers incorrectly) the service furnished, the Government and Contractor must agree upon the length of time of meter malfunction and the quantity of service delivered during

such period of time. An appropriate adjustment must be made by the Contractor to the next invoice for the purpose of correcting such errors. However, any meter which registers not more than __ [*contracting officer to insert percentage variance*] percent slow or fast is deemed correct.

(2) The Contractor must read all meters at periodic intervals of approximately 30 days or in accordance with the policy of the cognizant regulatory body or applicable bylaws. All billings based on meter readings of less than __ [*contracting officer to insert number of days*] days must be prorated accordingly.

(b) *Meter test.* (1) The Contractor, at its expense, must periodically inspect and test Contractor-installed meters at intervals not exceeding __ [*contracting officer to insert years*] year(s). The Government has the right to have representation during the inspection and test.

(2) At the written request of the Contracting Officer, the Contractor must make additional tests of any or all such meters in the presence of Government representatives. The cost of such additional tests will be borne by the Government if the percentage of errors is found to be not more than __ [*contracting officer to insert percentage variance*] percent slow or fast.

(3) No meter may be placed in service or allowed to remain in service which has an error in registration in

excess of __ [*contracting officer to insert percentage variance*] percent under normal operating conditions.

(c) *Change in volume or character.* Reasonable notice will be given by the Contracting Officer to the Contractor regarding any material changes anticipated in the volume or characteristics of the utility service required at each location.

(d) *Continuity of service and consumption.* The Contractor must use reasonable diligence to provide a regular and uninterrupted supply of service at each service location, but will not be liable for damages, breach of contract or otherwise, to the Government for failure, suspension, diminution, or other variations of service occasioned by or in consequence of any cause beyond the control of the Contractor, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, or other catastrophe, strikes, or failure or breakdown of transmission or other facilities. If any such failure, suspension, diminution, or other variation of service, in the aggregate is more than __ [*contracting officer to insert amount of hours*] hour(s) during any billing period hereunder, an equitable adjustment must be made by the Contractor in the monthly billing specified in this contract (including the minimum monthly charge).

(End of clause)

52.241-7 Change in Rates or Terms and Conditions of Service for Regulated Services.

As prescribed in 41.501(c)(1), insert a clause substantially the same as the following:

CHANGE IN RATES OR TERMS AND CONDITIONS OF SERVICE FOR REGULATED SERVICES

(DATE)

(a) This clause applies to the extent services furnished under this contract are subject to regulation by a regulatory body. The Contractor agrees to give *_____ written notice to the Contracting Officer, in the same manner that it customarily or regularly provides notice to its non-government customers, of the filing of an application for change in rates or terms and conditions of service concurrently with the filing of the application and of any changes pending with the regulatory body as of the date of contract award. If, during the term of this contract, the regulatory body having jurisdiction approves any changes, the Contractor must forward to the Contracting Officer a copy of any documentation of such changes that it customarily or regularly provides to its non-government customers within 15 days after the effective date thereof. The Contractor agrees to continue furnishing service under this contract in accordance with the amended tariff, and the Government agrees to pay for such service at the higher or lower rates as of the date when such rates are made effective.

(b) The Contractor agrees that throughout the life of this contract the applicable published and unpublished rate schedule(s) cannot be in excess of the lowest cost published and unpublished rate schedule(s) available to any other customers of the same class under similar conditions of use and service.

(c) In the event that the regulatory body promulgates any regulation concerning matters other than rates which affects this contract, the Contractor must immediately provide a copy to the Contracting Officer in the same manner that it customarily or regularly provides to its non-government customers. The Government is not bound to accept any new regulation inconsistent with Federal laws or regulations.

(d) Any changes to rates or terms and conditions of service must be made a part of this contract by the issuance of a unilateral contract modification by the Government, unless otherwise specified in the contract. The effective date of the change is the effective date by the regulatory body. Any factors not governed by the regulatory body will have an effective date as agreed to by the parties.

(End of clause)

*Note: Insert language prescribed in 41.501(c)(1).

52.241-8 Change in Rates or Terms and Conditions of Service for Unregulated Services.

As prescribed in 41.501(c)(2), insert a clause substantially the same as the following:

CHANGE IN RATES OR TERMS AND CONDITIONS OF SERVICE FOR UNREGULATED SERVICES (DATE)

(a) This clause applies to the extent that services furnished hereunder are not subject to regulation by a regulatory body.

(b) After _____ [*contracting officer to insert date*], either the Government or the Contractor may request a change in rates or terms and conditions of service, unless otherwise provided in this contract. Both the Government and the Contractor agree to enter in negotiations concerning such changes upon receipt of a written request detailing the proposed changes and specifying the reasons for the proposed changes.

(c) The effective date of any change is as agreed to by the Government and the Contractor. The Contractor agrees that throughout the life of this contract the rates so negotiated will not be in excess of published and unpublished rates charged to any other customer of the same class under similar terms and conditions of use and service.

(d) The failure of the Government and the Contractor to agree upon any change after a reasonable period of time is a dispute under the Disputes clause of this contract.

(e) Any changes to rates, terms, or conditions as a result of such negotiations must be made a part of this contract by the issuance of a bilateral contract modification.

(End of clause)

52.241-9 Connection Charge.

As prescribed in 41.501(c)(3), insert a clause substantially the same as the following:

CONNECTION CHARGE (DATE)

(a) *Charge.* In consideration of the Contractor furnishing and installing at its expense the new connection facilities described herein, the Government will pay the Contractor a connection charge. The payment will be in the form of progress payments, advance payments or as a lump sum, as agreed to by the Government and the Contractor, and as permitted by applicable law. The total amount payable is the lower of either: the estimated cost of $___ [*contracting officer to insert dollar amount]* less the agreed to salvage value of $___[*contracting officer to insert dollar amount*], or the actual cost less the salvage value. As a condition precedent to final payment, the Contractor must execute a release of any claims against the

Government arising under or by the virtue of such installation.

(b) *Ownership, operation, maintenance and repair of new facilities to be provided.* The facilities to be supplied by the Contractor under this clause, notwithstanding the payment by the Government of a connection charge, are the property of the Contractor and must, at all times during the life of this contract or any renewals thereof, be operated, maintained, and repaired by the Contractor at its expense. All taxes and other charges in connection therewith, together with all liability arising out of the construction, operations, maintenance, or repair of such facilities, are the obligation of the Contractor.

(c) *Credits.* (1) The Contractor agrees to allow the Government, on each monthly bill for service furnished under this contract to the service location, a credit of ___ [*contracting officer to insert percentage*] percent of the amount of each such bill as rendered until the accumulation of credits equals the amount of such connection charge, provided that the Contractor may at any time allow a credit up to 100 percent of the amount of each such bill.

(2) In the event the Contractor, before any termination of this contract but after completion of the facilities provided for in this clause, serves any customer

other than the Government (regardless of whether the Government is being served simultaneously, intermittently, or not at all) by means of these facilities, the Contractor must promptly notify the Government in writing. Unless otherwise agreed by the Government and the Contractor in writing at that time, the Contractor must promptly accelerate the credits provided for under paragraph (c)(1) of this clause, up to 100 percent of each monthly bill until there is refunded the amount that reflects the Government's connection costs for that portion of the facilities used in serving others.

(3) In the event the Contractor terminates this contract, or defaults in performance, prior to full credit of any connection charge paid by the Government, the Contractor must pay to the Government an amount equal to the uncredited balance of the connection charge as of the date of the termination or default.

(d) *Termination before completion of facilities.* The Government reserves the right to terminate this contract at any time before completion of the facilities with respect to which the Government is to pay a connection charge. In the event the Government exercises this right, the Contractor will be paid the cost of any work accomplished, including direct and indirect costs reasonably allocable to the completed work prior to the time of termination by the

Government, plus the cost of removal, less the salvage value.

(e) *Termination after completion of facilities.* In the event the Government terminates this contract after completion of the facilities with respect to which the Government has paid a connection charge, but before the crediting in full by the Contractor of any connection charge in accordance with the terms of this contract, the Contractor has the following options:

(1) To retain in place for ____ [*contracting officer to insert number of months*] months after the notice of termination by the Government such facilities on condition that—

(i) If, during such ____ [*contracting officer to insert number of months*] month period, the Contractor serves any other customer by means of such facilities, the Contractor, must, in lieu of allowing credits, pay the Government during such period installments in like amount, manner, and extent as the credit provided for under paragraph (c) of this clause before such termination; and

(ii) Immediately after such ____ [*contracting officer to insert number of months*] month period the Contractor must promptly pay in full to the Government the uncredited balance of the connection charge.

(2) To remove such facilities at the Contractor's own expense within ____ [*contracting officer to insert*

number of months] months after the effective date of the termination by the Government. If the Contractor elects to remove such facilities, the Government has the option of purchasing such facilities at the agreed salvage value set forth herein; and provided further, that the Contractor must, at the direction of the Government, leave in place such facilities located on Government property which the Government elects to purchase at the agreed salvage value.

(End of clause)

Alternate I (DATE). If the Contracting Officer determines that a nonrefundable charge is to be paid and no credits are due the Government, delete paragraphs (c) and (e), renumber paragraph (d) as (c) and add the following as paragraph (d):

(d) *Termination after completion of facilities.* In the event the Government terminates this contract after completion of the facilities with respect to which the Government is to pay a connection charge, the Contractor has the following options:

(1) To retain in place for ____ [*contracting officer to insert number of months*] months after the notice of termination by the Government. If the Contractor and the Government have not agreed on terms for retention in place beyond ____ [*contracting officer to insert number of months*] months, then the Contractor must remove the

facilities pursuant to the terms of paragraph (d)(2) of this clause.

(2) To remove such facilities at the Contractor's own expense within ____ [*contracting officer to insert number of months*] months after the effective date of the termination by the Government. If the Contractor elects to remove such facilities, the Government then has the option of purchasing such facilities at the agreed salvage value set forth herein; and provided further, that the Contractor must, at the direction of the Government, leave in place such facilities located on Government property which the Government elects to purchase at the agreed salvage value.

52.241-10 Termination Liability.

As prescribed in 41.501(c)(4), insert a clause substantially the same as the following:

TERMINATION LIABILITY (DATE)

(a) *General*. If the Government discontinues utility service under this contract before completion of the facilities cost recovery period specified in paragraph (b) of this clause, in consideration of the Contractor furnishing and installing at its expense, the new facility described herein, the Government will pay termination charges, calculated as set forth in this clause.

(b) *Facility cost recovery period.* The period of time, not exceeding the term of this contract, during which the

net cost of the new facility, will be recovered by the Contractor is—

____ months. [*Contracting officer to insert negotiated duration.*]

(c) *Net facility cost.* The cost of the new facility, less the agreed upon salvage value of such facility, is—

$____. [*Contracting officer to insert appropriate dollar amount.*]

(d) *Monthly facility cost recovery rate.* The monthly facility cost recovery rate which the Government will pay the Contractor whether or not service is received is—

$____. [*Divide the net facility cost in paragraph (c) of this clause by the facility's cost recovery period in paragraph (b) of this clause and insert the resultant figure.*]

(e) *Termination charges.* Termination charges = $[*Multiply the remaining months of the facility's cost recovery period specified in paragraph (b) of this clause by the monthly facility cost recovery rate in paragraph (d) of this clause and insert the resultant figure.*]

(f) *Effect of capital costs recovery.* If the Contractor has recovered its capital costs at the time of termination there will be no termination liability charge.

(End of clause)

52.241-11 Multiple Service Locations.

As prescribed in 41.501(c)(5), insert a clause substantially the same as the following:

MULTIPLE SERVICE LOCATIONS (DATE)

(a) At any time by written order, the Contracting Officer may designate any location within the service area of the Contractor at which utility service must commence or be discontinued. Any changes to the service specifications must be made a part of the contract by the issuance of a bilateral contract modification to include the name and location of the service, specifying any different rate, the point of delivery, different service specifications, and any other terms and conditions.

(b) The applicable monthly charge specified in this contract must be equitably prorated from the period in which commencement or discontinuance of service at any service location designated under the Service Specifications is effective.

(End of clause)

52.241-12 Nonrefundable, Nonrecurring Service Charge.

As prescribed in 41.501(c)(6), insert a clause substantially the same as the following:

NONREFUNDABLE, NONRECURRING SERVICE CHARGE (DATE)

As provided herein, the Government will pay a nonrefundable, nonrecurring charge when the rules and regulations of a Contractor require that a customer pay: a

charge for the initiation of service, a contribution in aid of construction, or a nonrefundable membership fee. This charge may be in addition to or in lieu of a connection charge. Therefore, there is hereby added to the Contractor's schedule a nonrefundable, nonrecurring charge for ____ [*contracting officer to insert type of nonrecurring charge*] in the amount of $____ [*contracting officer to insert dollar amount*] dollars payable.

(End of clause)

52.241-13 Cooperative Membership.

As prescribed in 41.501(c)(7), insert a clause substantially the same as the following:

COOPERATIVE MEMBERSHIP (DATE)

The performance of this contract includes the requirement that the Contractor must follow the bylaws of [_____ [*contracting officer to insert cooperative name*].

(End of clause)

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