OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 12, 13, 15, 38, 44, 51, and 52

[FAR Case 2026–003, Docket No. FAR–2026–0003, Sequence No. 1]

RIN 9000–AO88

Federal Acquisition Regulation: Revolutionary FAR Overhaul Parts 8, 12, 13, 15, 38, 44, and 51

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 8, 12, 13, 15, 38, 44, 51, and 52.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before October 19, 2026, to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2026–003 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 2026–003'' in all correspondence related to this case. Include your name, company name (if any), and ''FAR Case 2026–003'' 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-2026-0003*.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact *FARpolicy@gsa.gov* or call 202–969–4075 and cite ''FAR Case 2026–003.'' 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 2026–003.''

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 a simpler regulation aligned to statute, rewritten in plain language, and including only those nonstatutory requirements that are necessary to conducting 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 focused 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 8, 12, 13, 15, 38, 44, and 51, 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 (Pub. L. 111–274; 5 U.S.C. 301 note).

2. *Standardization of prescriptions.* This rule proposes revisions to standardize prescription language 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. Summary of Changes to FAR Part 8

Part 8 is being revised to simplify and streamline the policies and procedures used in the FAR to acquire supplies and services from required sources. The revisions would clarify the requirements for the use of required sources; simplify the process for using Government sources of products and services; reinforce the use of existing contracts to meet agency requirements, when possible; and broaden the policy permitting contractor use of Government supply sources. Specifically, the rule proposes to revise part 8, by:

1. *Clarifying the requirements for the use of required sources.* The proposed rule would reorganize and simplify the existing text on required sources of supply and their priorities for use in acquisition. Specifically, the proposed rule would group the existing text into a more direct format that is easier to read and would allow contracting officers to quickly and easily identify the required sources for their specific acquisition, in the order of priority in which the sources must be considered to comply with statute.

2. *Simplifying the process for using Government sources.* Currently, part 8 contains requirements, guidance, and procedures for acquiring and using excess property and ordering products and/or services from Federal Prison Industries (FPI), AbilityOne participating nonprofit agencies, the Federal Supply Schedule (FSS), and the Government Publishing Office. Each of these sources oversees its own program and develops the rules and procedures for ordering from them.

This proposed rule would remove duplicative guidance in the FAR and instead would have agencies rely on the rules and procedures of each source, instead. This change would simplify the acquisition process for agencies when ordering from these sources and provide those sources with the flexibility to manage how agencies use their programs.

3. *Reinforcing the use of existing contracts.* Consistent with the goals of E.O. 14240, Eliminating Waste and Saving Taxpayer Dollars by Consolidating Procurement, the proposed rule would support agency efforts to leverage the Government's buying power for better deals by requiring agencies to use and consider existing contracts or blanket purchase agreements (BPA) awarded for Governmentwide use before establishing a new contract for those products or services. Specifically, when a commercial product or commercial service meets an agency's need and is available on a contract or BPA awarded for Governmentwide use:

• Agencies would use the existing vehicle if it is designated as a ''required use'' contract or BPA by the Office of Federal Procurement Policy (OFPP);

• If it isn't a suitable ''required use'' vehicle, agencies would consider using the existing contract or BPA if it is designated as a ''best in class'' contract by OFPP; and

• If it isn't a suitable ''required use'' or ''best in class'' vehicle, agencies would consider using the existing contract or BPA before soliciting for and awarding a new contract vehicle.

OFPP will establish the criteria for what constitutes a ''required use'' contract and identify those specific vehicles for agencies and industry. These changes would increase efficiency in the acquisition process by reducing the need to create new contract vehicles for common commercial products and services, while reducing administrative costs for agencies and industry.

4. *Broadening the policy on contractor use of Government supply sources and movement of FAR part 51 to part 8.* Currently, FAR part 51, Use of Government Sources by Contractors, contains the requirements and policies for agencies to follow when authorizing or requiring contractors to use Government supply sources in the performance of a contract. Specifically, part 51:

• Requires agencies to authorize contractors purchasing supply items for Government use that are on the Procurement List maintained by the Committee to purchase those items from DLA, GSA, or VA (or from the appropriate central nonprofit agency, when not available from DLA, GSA, or VA);

• Permits agencies to authorize contractors to obtain supplies and services required in the performance of a Government contract from Government supply sources. However, in order to use these sources, the contractor must be performing under: a cost reimbursement contract; another negotiated contract type when the agency determines that a substantial dollar portion of the contractor's Government contracts are cost-reimbursable in nature; or a contract awarded to an AbilityOne participating nonprofit agency meeting certain criteria; and

• Permits agencies to authorize contractors performing under cost-reimbursement contracts to obtain vehicles and related services through GSA Fleet.

The proposed rule would simplify and move these policies from part 51 to part 8 to consolidate requirements for the use of Government supply sources by contractors and the Government into a single part in the FAR. With the movement of the requirements and policies of part 51 to part 8, the rule proposes to eliminate part 51, in its entirety, from the FAR and renumber FAR clause 52.251–1, Government Supply Sources, and renumber and rename FAR clause 52.251–2, Interagency Fleet Management System Vehicles and Related Services.

The proposed rule would also broaden an agency's ability to authorize a contractor's use of Government supply sources to other than cost reimbursement-type contracts. The current text limits the use of Government supply sources to predominately cost-reimbursement contracts as a way to control cost and risk to the Government by making these lower cost sources, which would be used by the Government if performing the work on its own, available to contractors. The rule proposes to permit agencies to authorize contractors to use these sources under any contract awarded using other than sealed bidding procedures. This change would allow Government and industry to benefit from the standardized pricing of readily-available and contractually-compliant products from Government sources of supply under more contracts, which could facilitate a more simplified and streamlined acquisition process at a lower contract cost.

5. *Other changes.*

Subpart 8.11 currently provides policy and procedures for leasing non-tactical motor vehicles from commercial concerns to ensure those vehicles comply with Federal and State motor vehicle safety requirements. This text is no longer necessary in the FAR. The terms and conditions included in the subpart are addressed by GSA Fleet in its policies, procedures, and contract terms and conditions. As a result, subpart 8.11 would be no longer necessary and the proposed rule would remove the subpart in its entirety from the FAR.

C. Summary of Changes to FAR Part 12

The FAR Council is proposing to fundamentally re-engineer the structure, scope, and mechanics of FAR part 12 to be user-centric and make Federal buying faster, simpler, and more aligned with commercial practices. The following is a summary of the proposed changes to FAR part 12:

1. *Focus on statutory requirements and sound procurement.*

In accordance with E.O. 14275, the proposed rule seeks to refocus the content of the part on statutory requirements for procuring commercial products, including commercially available off-the-shelf items, and commercial services in accordance with 41 U.S.C. 1906, 1907, and 3307 and 10 U.S.C. 3451–3453. The mandate to procure commercial products and commercial services has always existed in FAR part 12; however, the proposed revisions to the FAR part would refocus buyers on this primary purpose. FAR 12.101, for example, would be retitled ''Requirements'' and would phrase the statutory mandate as directives rather than just agency policy. In doing so, the contracting workforce would have a better understanding of their authority and responsibilities.

The majority of the general guidance, examples, and best practices would be removed from this part of the FAR, because this content can be better addressed in nonregulatory sources, such as the new FAR practitioner guides and workforce training. The non-statutory content that is retained is designed to ensure sound procurement, better align Federal commercial buying with customary commercial practice, and encourage agencies to innovate and find efficiencies when buying commercial products and commercial services. Examples of non-statutory content proposed to be retained include:

• FAR sections 12.106 and 12.107, which continue to require technical data rights and commercial computer software, to ensure agencies are acquiring only the technical data, data rights, and licenses customarily provided to the public.

• FAR 12.201–1(d), which encourages agencies to use additional innovative approaches to the maximum extent practicable when soliciting quotations and issuing purchase orders.

• FAR 12.203(a), which emphasizes that evaluation factors generally need not be more detailed than technical, price, and past performance.

• FAR 12.203(c)(1), which requires the contracting officers to exercise good business judgment in deciding whether to accept late submissions from offerors.

• FAR 12.304, which continues to direct contracting officers to use the streamlined procedures for termination in FAR provision 52.212–4, Terms and Conditions-Commercial Products and Commercial Services, and not the more complex procedures in FAR part 49.

The cumulative result of these proposed changes to the scope of FAR part 12 will ensure agencies buy commercial to the maximum extent practicable, while enabling contracting officers to deliver on their missions more efficiently and effectively.

2. *Process-oriented subparts.*

First, the FAR part would be reorganized into process-oriented subparts by phase of the acquisition. FAR subpart 12.1, Presolicitation, addresses policies and procedures to be considered during acquisition planning and prior to soliciting offers. FAR subpart 12.2, Solicitation, Evaluation, and Award, addresses the procedures for preparing a solicitation, publicizing the requirement, evaluating offers, and preparing and documenting the award. FAR subpart 12.3, Postaward, addresses the policies for notifying offerors and the public of the award, as well as policies and procedures for handling purchase order cancellations and commercial contract terminations. There would also be a cross-reference to commercial subcontract requirements that should be considered during administration of the contract. This structural change will enable Federal buyers to easily access information relevant to the phase in which they are operating.

3. *Procuring from required sources.*

As discussed in section II.B. of this preamble, FAR part 8 would address requirements for agencies to procure from certain mandatory sources and to use and consider existing contracts or BPAs awarded for Governmentwide use before establishing a new contract for those products or services, in accordance with Executive Order 14275. The new section on applicability at FAR 12.200 reminds the contracting officer that they must first seek to procure commercial products and commercial services from the existing required sources identified in FAR part 8, before using the procedures in FAR subpart 12.2 for soliciting, evaluating, and awarding commercial contracts.

4. *Simplified procedures and micro-purchases.*

This proposed rule would consolidate procedures that are specific to or primarily utilized when procuring commercial products and commercial services, including procedures for:

publicizing procurements, simplified acquisition procedures, and procedures for micropurchases. This would replace the current FAR structure that forces commercial buyers to reconcile the procedures in FAR parts 5 and 13 with the procedures in FAR part 12. Specifically, this proposed rule would:

• Transfer the requirements associated with publicizing commercial acquisitions from FAR part 5 to FAR subpart 12.2;

• Transfer from FAR part 13 and streamline at FAR 12.201–1 the procedures for acquiring supplies and services valued at or below the simplified acquisition threshold, and throughout FAR part 12, differentiate these procedures from the more burdensome procedures in FAR parts 14 and 15; and

• Transfer from FAR subpart 13.2 and streamline at FAR subpart 12.4 the procedures for micro-purchases.

By transferring these procedures to FAR part 12, the FAR Council is moving toward ''one-stop shop'' on commercial acquisitions for Federal buyers, particularly those contracting officers primarily focused on smaller dollar value procurements, the majority of which are for commercial products and commercial services.

5. *Higher threshold for simplified procedures.*

The proposed rule would also transfer the statutory authority to use simplified procedures for acquisitions of commercial products and commercial services valued up to $9 million (or $15 million when the supplies and services are to be used in certain specified emergencies or major disasters) from FAR subpart 13.5 to FAR part 12. In lieu of a standalone authority section, this proposed rule will embed the higher thresholds throughout the FAR part and direct contracting officers to use simplified procedures for acquisitions at or below these values (see proposed FAR 12.001(c), 12.102, 12.201–1). These proposed changes make clear to contracting officers that they should not be using the burdensome procedures associated with conducting negotiations or sealed bidding using the procedures in FAR parts 15 and 14, respectively, and ensure that commercial acquisitions in this dollar range are solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry.

6. *Solicitation and contract forms and formats.*

Proposed section FAR 12.202, Publicizing, addresses the acceptable forms and format for solicitations for commercial products and commercial services. FAR 12.202(a) would maintain the preference for use of the Standard Form (SF) 1449, Solicitation/Contract/Order for Commercial Products and Commercial Services. However, if the SF 1449 is inappropriate for a certain circumstance, the contracting officer may choose to use a form or format prescribed in parts 14, 15, and 36, as appropriate. This may be necessary, for instance, if the form and format in those parts would better outline and communicate the requirements of the solicitation to the public. Proposed FAR 12.204(c) again includes the preference for the SF 1449, but authorized use of the forms in other parts.

7. *Publicizing the solicitation.*

The requirements for publicizing presolicitation notices and solicitations for commercial acquisitions would be consolidated in FAR 12.202. In general, as proposed at FAR 12.202(b), contracting officers would be required to post a ''Combined Synopsis/Solicitation'' in the Governmentwide point of entry (GPE) at *https://www.sam.gov* that includes the following:

• Basic summary information about the acquisition, including the type of solicitation, a brief description of the requirement, small business set-aside information, and a statement about any Defense Priorities and Allocations System assigned ratings, if applicable.

• Either the solicitation document itself or access to the solicitation document (*e.g.,* to allow agencies to provide a link to a solicitation document posted on an external agency website).

Proposed FAR 12.202(c) provides exceptions to posting a combined synopsis/solicitation in the GPE, which include the following:

• For acquisitions valued at or below the SAT, the contracting officer may choose to post only a presolicitation notice, as described in 5.101(c), and solicit quotations from at least three sources, which should include two new sources, whenever practicable.

• Only a presolicitation notice would be required when conducting a sole source acquisition or obtaining other than full and open competition on the basis that there is only one responsible source or for national security reasons. However, posting a presolicitation notice is not required if doing so creates national security risks.

• Neither a combined synopsis/solicitation, nor a presolicitation notice would be required if the acquisition meets one of the other exemptions to posting a presolicitation notice in FAR part 5.

Proposed FAR 12.202(d) includes a table to illustrate the minimum publication timeframes for combined synopses/solicitations and presolicitation notices, which are derived from statute or trade agreements.

8. *Solicitation provisions and contract clauses.*

Requirements for solicitation provisions and contract clauses applicable to commercial acquisitions would be consolidated at proposed FAR section 12.205. This proposed rule would maintain three of the five existing provisions and clauses prescribed in FAR part 12 for the acquisition of commercial products and commercial services: FAR 52.212–1, Instructions to Offerors-Commercial Products and Commercial Services; FAR 52.212–2, Evaluation-Commercial Products and Commercial Services; and FAR 52.212–4, Contract Terms and Conditions-Commercial Products and Commercial Services. However, there are proposed edits to FAR 52.212–1 and 52.212–4 to streamline the existing instructions, remove unnecessary content, and make other plain language revisions. FAR 12.205 would also authorize certain tailoring of the provision and the clause to some extent.

The provision at FAR 52.212–3, Offeror Representations and Certifications—Commercial Products and Commercial Services, and clause at FAR 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Products and Commercial Services, commonly referred to as the ''omnibus'' provision or clause are proposed for removal. This provision and clause provide incomplete lists of provisions and clauses that could apply to commercial acquisitions. The contracting officer (or an agency clause logic system) would rely on these updated prescriptions when deciding which provisions and clauses may be included in an acquisition of commercial products or commercial services. This proposed change replaces the direction at FAR 12.301 for contracting officers to make their own determination regarding whether a provision or clause is necessary and consistent with customary commercial practice. FAR 12.301(d) currently gives the contracting officer broad discretion to incorporate provisions and clauses not listed in that section or the omnibus provision or clause. In contrast, if this proposed rule is finalized, it would require an agency to prepare an individual or class deviation in accordance with FAR part 1 to incorporate a provision or clause that is not prescribed for commercial products or commercial services into a solicitation or contract for commercial products or commercial services. These proposed changes are expected to substantially reduce the number of provisions and clauses included in commercial acquisitions. These changes would also shift the burden of determining which provisions and clauses listed in 52.212–3 and 52.212–5 are applicable to a particular commercial acquisition from the offeror or contractor to the Government. However, while FAR 52.212–5 is proposed for removal, the statutory requirement at FAR 52.212–5(d), *Comptroller General Examination of Record,* would be transferred to 52.212–4(t). Block 27 of the SF 1449 (discussed in section II.C.6. of this preamble) would also be modified to remove references to FAR 52.212–3 and 52.212–5.

This proposed rule would also grant agencies the authority to issue a waiver or tailor provisions and clauses normally prescribed for commercial acquisitions as long as the provision or clause does not implement statutory or Executive order and is determined to be inconsistent with customary commercial practice. In addition, tailoring would not be required to be by addendum; however, agencies will be required to ensure that solicitations and contracts clearly indicate when a provision or clause has been tailored (see proposed FAR 12.205(c)(1)(ii)). All class waivers must be provided to the Chair of the Civilian Agency Acquisition Council (for civilian agencies) or the Director of the Defense Acquisition Regulations System (for defense departments and agencies) to determine whether regulatory changes are in order.

9. *Construction as a commercial service.*

The proposed rule published under FAR Case 2026–001 would amend paragraph (2) of the definition of ''commercial services'' in FAR part 2. This change would allow for construction to be considered a commercial service, thus allowing Federal buyers to leverage the procedures in FAR part 12 when buying construction. First, a contracting officer would need to determine that the construction services being procured are services ''of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions.'' If the contracting officer determines that the construction services meet this definition, then they would follow the procedures in Part 12 to structure the contract, solicit offers, and award the contract.

This proposed rule includes changes that, if finalized, would provide guidance to contracting officers that procure construction. The new applicability section proposed at FAR 12.200 makes clear that when a contracting officer is procuring construction as a commercial service, they must still comply with requirements in part 36 for construction. As noted in section II.C.8. of this preamble, RFO rulemakings will also clarify in each provision and clause prescription whether the provision or clause applies to acquisitions of commercial products and commercial services. To this end, other RFO proposed rules for FAR parts that prescribe provisions and clauses for use in solicitations and contracts for construction will include proposed revisions to indicate whether those provisions and clauses apply to construction that is a commercial service.

10. *Subcontracts.*

This proposed rule would continue to include the statutory requirement for the contracting officer to require the prime contractor and subcontractor at all tiers to incorporate, to the maximum extent practicable, commercial products, commercial services, or nondevelopmental items as components of items supplied to the agency (see proposed FAR 12.101(b)). However, proposed FAR subpart 12.3, Postaward, will include a cross-reference to FAR subpart 44.4 where instructions for subcontracts for commercial products and commercial services will be consolidated. See the section II.F. of this preamble for the discussion of changes to Part 44.

11. *Plain language.*

Finally, the content of FAR part 12 and the solicitation provisions and contract clause in part 52 are rewritten in plain language to make the content clearer and easier to follow. For example, the phrase ''the contracting officer shall'' would be replaced with clear directives to the contracting officer in simplified language wherever possible. The revised part would also uses various drafting tools that better illustrate minimum compliance requirements, such as tables to present complex information in a clearer manner. The FAR part and associated provisions and clauses would no longer use the more formal term ''shall,'' but instead use ''must'' or ''will.'' These changes would ensure contracting officers, offerors, and contractors have a clear understanding of the expectations for commercial buying.

D. Summary of Changes to FAR Part 13

The FAR Council is proposing to revise FAR part 13 to provide procedures for only noncommercial acquisitions valued at or below the SAT. To do so, this proposed rule will amend FAR part 13 in the following ways:

1. *Alignment with proposed changes in FAR part 12.*

The current FAR requires contracting officers to decipher which procedures in FAR part 13 apply to commercial acquisitions, including when the higher threshold authorized by statute applies (see II.C.5. of this preamble). This proposed rule seeks to establish the same process-oriented structure in FAR part 13 as is proposed in FAR part 12 (see section II.C.2. of this preamble) and to use cross-references to part 12, where appropriate, to avoid a significant amount of repetitive regulatory text in FAR part 13. For example:

- FAR 13.201(a) would direct the contracting officer to use the simplified procedures at FAR 12.201–1 to issue RFQs for noncommercial acquisitions valued at or below SAT;
- FAR 13.202 would direct the contracting officer to follow the procedures in 12.203 when establishing evaluation factors;
- FAR 13.302(a) would include a cross-reference to FAR 12.201–1(b) on the legal effect of quotations and acceptance; and
- FAR subpart 13.4 would direct the contracting officer to FAR subpart 12.4 on micropurchases.

In other cases, specific requirements would be spelled out in FAR part 13, such as requirements related to competition, small business, forms and formats, and price reasonableness (see proposed FAR 13.101, 13.102, 13.202(b), and FAR 13.203(a), respectively). Because noncommercial acquisitions valued at or below SAT do not benefit from the same streamlining opportunities as commercial acquisitions (*i.e.,* the option to post a combined synopsis/solicitation for a reasonable amount of time, subject to the Contracting Officer's discretion), FAR 13.201(c) would provide the procedures necessary to comply with publicizing requirements in FAR Part 5.

2. *Focus on statutory requirements and sound procurement.*

Again, in accordance with E.O. 14275, the remaining retained content in the proposed FAR part 13 would be those requirements that either implement statute or are necessary for sound procurement. This proposed rule would substantially streamline the content (similar to the proposed changes in FAR part 12) to more clearly communicate to the contracting officer and focus on minimum and simpler compliance requirements.

3. *Solicitation provisions and contract clauses.*

Proposed FAR section 13.204 would maintain the structure whereby contracting officers are expected to incorporate solicitation provisions and contract clauses in contracts valued at or below the SAT based on thresholds (or the absence of thresholds) included in prescriptions for provisions and clauses throughout the FAR. This section would also continue to prescribe FAR clause 52.213–4, Terms and Conditions—Simplified Acquisitions (Noncommercial), which provides a streamlined set of terms and conditions for inspection/acceptance, excusable delays, terminations, and warranties. However, the proposed text at FAR 13.204(b) would make clear that the content in the clause is used in lieu of similar clauses prescribed for these purposes. If the contracting officer would prefer to include a standalone clause instead, then they must tailor 52.213–4 to remove the associated content.

4. *FAST Pay procedures.*

FAR part 13 previously included procedures for FAST payment. Since these procedures are related to payments and apply to both FAR parts 12 and 13, as proposed in this rule, this content will be transferred to a standalone subpart in FAR part 32. The RFO rulemaking for FAR part 32 will address any changes to FAST payment procedures, which will apply to both commercial and noncommercial acquisitions valued at or below the SAT.

5. *Plain language.*

Finally, the content of FAR part 13 and the contract clause at FAR 52.213–4 would be rewritten in plain language to make the content clearer and easier to follow. Like the proposed revisions in FAR part 12, the phrase ''the contracting officer shall'' would be replaced with clear directives to the contracting officer in simplified language wherever possible. The clause at 52.213–4 would also use the terms ''must'' or ''will'' instead of the more formal term ''shall.''

E. Summary of Changes to FAR Part 15

Part 15 would be revised to simplify and streamline the policies and procedures used in negotiated acquisitions. The revisions would simplify how the Government interacts with offerors by focusing on negotiation instead of discussions; reduce complexity around communicating with offerors by revising the definition of ''deficiency'', eliminating the procedures for exchanges with offerors before establishing a competitive range, and expanding on the use of clarifications; and enhance the acquisition process by formalizing another source selection approach. Specifically, the rule proposes to revise part 15, by:

1. *Focusing on negotiations, instead of discussions.*

In practice, the current discussion process is often limited to fixing problems in an offeror's proposal, instead of truly negotiating to get the best possible deal to meet the Government's requirement. When this happens, offerors focus their proposals on meeting the minimum requirements of the Government to avoid being removed from competition, and agencies forgo simple clarifications to avoid inadvertently crossing the boundary into a discussion and creating a protest risk. This practice limits innovation and both parties miss the opportunity for meaningful negotiations that can lead to a more advantageous contract award and a more competitive position in future proposal submissions.

The proposed rule still requires a meaningful negotiation with each offeror in the competitive range where, at a minimum, each offeror's deficiencies and significant weaknesses must be addressed. However, it acknowledges that meaningful discussions do not look the same across every offeror in the competitive range. The proposed rule would clarify that, if necessary, contracting officers may have more than one negotiation with a particular offeror in the competitive range, without having to do so with all other offerors. This would simplify the process to encourage offerors to propose, and contracting officers to consider, solutions that exceed minimum requirements, while prompting contracting officers to proactively bargain on terms and conditions, such as intellectual property rights, licensing agreements, pricing, and other material aspects of the proposal, that would lead to a more advantageous contract award. The proposed rule would also add a basic definition of ''negotiation'' to support the simplification of this process.

2. *Clarifying the definition of ''deficiency''.*

The FAR defines a ''deficiency'' as a material failure of a proposal to meet a Government requirement, or a combination of significant weaknesses that increase the risk of unsuccessful contract performance to an unacceptable level. If negotiations occur in competitive acquisitions, contracting officers must address each offeror's proposal deficiencies during the negotiation. In practice, this definition results in subjective interpretations of what a material failure of a proposal is, whether a weakness is truly significant, and/or whether a combination of significant weaknesses creates a deficiency that requires exclusion from the competition. This subjectivity results in protests and challenges that dispute the line between what could be fixed through clarifications and what is a deficiency that warrants exclusion.

The proposed rule would revise the definition to clarify that a deficiency is simply a part of a proposal that does not conform to a material term of the RFP. The definition would then explain that a material term is one that affects price, quantity, quality, or delivery, or a prerequisite that the RFP requires to be met at the time of proposal submission. Together, these two changes would reduce the subjective nature of the current definition and provide contracting officers with the leeway to address significant weaknesses directly with an offeror through negotiation, without the uncertainty of whether those weaknesses, when combined, increase the contract performance risk to an ''unacceptable'' level warranting exclusion from the competition.

3. *Simplifying exchanges with offerors after receipt of proposals.*

When conducting a competitive acquisition under part 15, the FAR currently prescribes several processes for interacting with offerors at different phases of the source selection process. Specifically, there is a process for clarifying certain aspects of a proposal without holding discussions with offerors, a process to help the Government better understand an offeror's adverse past performance information before establishing the competitive range of proposals to be included in the discussion process, and a process for discussions with offerors whose proposals are in the competitive range.

When the Government intends to make a competitive award without discussions but needs an offeror to clarify certain aspects of their proposal or resolve minor or clerical errors, contracting officers currently rely on the clarification process to do so. However, what is ''minor'' or ''clerical'' is subjective and the line between what is a ''minor'' error that can be remedied through a clarification and a material error that requires a discussion is often unclear for contracting officers and offerors alike. This ambiguity can lead contracting officers to adhere to cautious interpretations of what constitutes a ''minor'' error in an attempt to avoid protest and unfair treatment of offerors. However, this caution can also prevent an offeror from easily correcting a minor mistake and receiving an award as the result of an otherwise competitive proposal.

Further, when the Government is establishing a competitive range of proposals, and an offeror has past performance information that is the determining factor preventing them from being included in the competitive range, the existing process requires contracting officers to give the offeror an opportunity to address adverse past performance information to which the offeror has not previously had an opportunity to respond.

The proposed rule would simplify these two types of exchanges by eliminating the process for exchanging information with offerors before establishing the competitive range, expand the use of clarifications to also apply to competitive negotiated acquisitions, and revise the clarification process to also include addressing adverse past performance information to which the offeror has not previously had an opportunity to respond. The proposed rule would also expand the clarification process to situations in which the ambiguities of the proposal, or other concerns, such as perceived deficiencies or mistakes, needs to be explained. The proposed text would advise that clarifications are not required, may occur at the contracting officer's discretion, and would not permit offerors to revise their proposal or use clarifications to change the material elements of the proposal or cure a material omission in the proposal. As a result, contracting officers could, but would no longer required as a matter of policy, to address adverse past performance information to which the offeror has not previously responded before establishing the competitive range. Instead, the rule would permit clarifications at any time up until contract award. As a result, contracting officers would retain the tools to review, interpret, and evaluate proposals through a clear and simple process. The proposed rule would also add a basic definition of ''clarification'' to support the simplification of this process.

4. *Simplifying the acceptance of late proposals.*

When a proposal is received after the date and time specified in the RFP for receipt of proposals, it is considered ''late'' and cannot considered for award, unless certain conditions exist. If a late proposal is received prior to award, the contracting officer may accept the proposal if doing so would not unduly delay the acquisition, and: (1) it was the only proposal received; or (2) it was submitted electronically and there is evidence to establish that it was received at the initial point of entry to the Government's infrastructure by 5:00 p.m. one working day prior to the date and time specified in the RFP.

The proposed rule would simplify this policy by permitting contracting officers to accept late proposals when they determine that doing so is in the Government's best interest and would not unduly delay the contract award. This change would provide contracting officers with greater leeway in deciding whether to accept a late proposal and offerors with a simpler policy to follow when submitting proposals to the Government.

5. *Broadening the competitive range.*

When contracting officers intend to conduct negotiations with offerors responding to a competitive RFP, statute requires agencies to conduct negotiations with all responsible offerors who submit proposals within the competitive range, unless the range is further reduced to the highest rated proposals for purposes of efficiency. The FAR then requires, as a matter of policy, the competitive range to be comprised of all of the most highly rated proposals.

The proposed rule would no longer require the competitive range to contain all of the most highly rated proposals and instead clarify that the range should include those proposals best suited for further negotiation. This change would acknowledge that, while not the highest rated proposal, offerors may propose solutions or terms that make a proposal otherwise well suited for negotiation. This change would allow contracting officers to consider those offers for inclusion in the competitive range, and focus their time and effort in negotiations on the offers that are most advantageous to the Government, while minimizing the time and effort offerors spend pursuing a contract award they are less likely to win.

Contracting officers would be able continue to reduce the competitive range to a number of proposals that will permit an efficient competition among the most highly evaluated proposals. The rule would exchange the terminology of ''highest rated'' proposals with ''highest evaluated'' proposals to be included in the competitive range, when reduced for efficient competition. This change would formally acknowledge that a rating system is not required when evaluating competitive proposals, and instead, the intent of the statute is to ensure that, if a competitive range is narrowed for efficiency, only the most highly evaluated proposals remain in the competitive range. The proposed rule would also add a basic definition of ''competitive range'' to support the simplification of this process.

6. *Formalizing additional source selection and evaluation approaches.*

The proposed rule would formally recognize an additional way, highest technically rated with a fair and reasonable price, to evaluate the best value in the FAR. This approach would focus on getting the best technical solution at a fair and reasonable price. Specifically, the contracting officer would evaluate proposals based on the non-cost/price factors outlined in the RFP. Upon identifying the highest technically rated proposal, the contracting officer would evaluate the cost/price of the proposal to determine if it is fair and reasonable. A contracting officer would not make tradeoffs between cost/price and non-cost/price factors. If the cost/price is determined reasonable, the contracting officer would make an award to the offeror. If the cost/price is not found to be fair and reasonable, the next highest rated proposal would be identified and its price would be evaluated for fairness and reasonableness. This process would continue until award is made to the offeror with the highest technically rated proposal with a fair and reasonable price.

The proposed rule would also formally recognizes phased evaluations, or a down-select process, as an efficient way to evaluate proposals, when necessary. Phased evaluations would apply evaluation factors in stages. Offerors would be asked to address certain, but not all, evaluation factors with their initial proposal and address remaining evaluation factors in subsequent proposal submissions.

7. *Restriction on the use of LPTA for munitions response services.*

Section 822 of the Servicemember Quality of Life Improvement and National Defense Authorization Act (NDAA) for fiscal year (FY) 2025 (Pub. L. 118–159) amends section 880(c)(1) of the John S. McCain NDAA for FY 2019 (41 U.S.C. 3701 note) to add munitions response services to the list of services that, to the maximum extent practicable, should not be obtained using a LPTA source selection approach. In response, the proposed rule would add munitions response services to the list of services that should avoid using a LPTA approach at FAR 15.102–2(c)(2)(i).

8. *Other Changes.*

In accordance with 41 U.S.C. 3905(b)(3), the rule would limit the six percent cap fee on contracts for architect-engineering services for public works or utilities to cost-type contracts.

The rule proposes to consolidate and move the text of FAR subpart 15.201 regarding exchanges with industry to part 7. Part 7 addresses different aspects of acquisition planning. The tools described at FAR subpart 15.201 are helpful during acquisition planning to better shape and communicate the Government's requirement. As such, the rule proposes to move the text to part 7 to make the tools more visible and accessible to agencies when conducting acquisition planning efforts.

F. Summary of Changes to FAR Part 38

Part 38 prescribes general policies for awarding contracts under the Federal Supply Schedule program. GSA oversees the FSS Program and prescribes the rules and procedures for establishing contracts under the FSS Program in subpart 538.2 of the General Services Administration Acquisition Regulation (GSAR). The text of FAR part 38 is duplicative of the text in the GSAR or is no longer necessary. As a result, the rule proposes to remove part 38, in its entirety, from the FAR.

G. Summary of Changes to FAR Part 44

The proposed rule would revise, reorganize, streamline, and clarify the existing policies and procedures of part 44, as described in paragraph II.A; however, the rule would not substantively change the policies and procedures of the part.

H. Summary of Changes to FAR Part 51

The rule proposes to move the policies of part 51 to part 8 and remove part 51, in its entirety, from the FAR (see discussion at paragraph II.B.4.).

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 parts FAR 8, 12, 13, 15, and 44 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. This rule, if finalized, would transfer the clauses(s) at 52.251–1 and 52.251–2 to new clauses at FAR 52.208–XX, Government Supply Sources, and FAR 52.208–YY, GSA Fleet Vehicles and Related Services. The clauses would continue to apply to contracts 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 NDAA for 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 No.	Title	Commercial products	Commercial services	COTS items
52.208–9	Contractor Use of Mandatory Sources of Supply or Services	X	X	
52.208–XX	Government Supply Sources	X	X	
52.208–YY	GSA Fleet Vehicles and Related Services			
52.212–1	Instructions to Offerors—Commercial Products and Commercial Services	X	X	X
52.212–2	Evaluation—Commercial Products and Commercial Services	X	X	X
52.212–4	Terms and Conditions—Commercial Products and Commercial Services	X	X	X
52.212–4 Alt I	Terms and Conditions—Commercial Products and Commercial Services	X	X	
52.213–4	Terms and Conditions—Simplified Acquisitions (Noncommercial)			
52.215–1	Instructions to Offerors—Competitive Acquisition			
52.215–1 Alt I	Instructions to Offerors—Competitive Acquisition			
52.215–1 Alt II	Instructions to Offerors—Competitive Acquisition			
52.215–2	Audit and Records—Negotiation			
52.215–2 Alt II	Audit and Records—Negotiation			

Provision/clause No.	Title	Commercial products	Commercial services	COTS items
52.215–2 Alt III	Audit and Records—Negotiation			
52.215–6	Place of Performance			
52.215–8	Order of Precedence—Uniform Contract Format			
52.215–9	Changes or Additions to Make-or-Buy Program			
52.215–9 Alt I	Changes or Additions to Make-or-Buy Program			
52.215–9 Alt II	Changes or Additions to Make-or-Buy Program			
52.215–10	Price Reduction for Defective Certified Cost or Pricing Data	X	X	
52.215–11	Price Reduction for Defective Certified Cost or Pricing Data—Modifications	X	X	
52.215–12	Subcontractor Certified Cost or Pricing Data	X	X	
52.215–12 Alt II	Subcontractor Certified Cost or Pricing Data	X	X	
52.215–13	Subcontractor Certified Cost or Pricing Data—Modifications	X	X	
52.215–13 Alt I	Subcontractor Certified Cost or Pricing Data—Modifications	X	X	
52.215–14	Integrity of Unit Prices			
52.215–14 Alt I	Integrity of Unit Prices			
52.215–15	Pension Adjustments and Asset Reversions	X	X	
52.215–16	Facilities Capital Cost of Money			
52.215–17	Waiver of Facilities Capital Cost of Money			
52.215–18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.	X	X	
52.215–19	Notification of Ownership Changes	X	X	
52.215–20	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.	X	X	
52.215–20 Alt I	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.	X	X	
52.215–20 Alt II	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.	X	X	
52.215–20 Alt III	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.	X	X	
52.215–20 Alt IV	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.	X	X	
52.215–21	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications.	X	X	
52.215–21 Alt I	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications.	X	X	
52.215–21 Alt II	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications.	X	X	
52.215–21 Alt III	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications.	X	X	
52.215–21 Alt IV	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications.	X	X	
52.215–22	Limitations on Pass-Through Charges—Identification of Subcontract Effort			
52.215–23	Limitations on Pass-Through Charges			
52.215–23 Alt I	Limitations on Pass-Through Charges			
52.244–2	Subcontracts			
52.244–4	Subcontractors and Outside Associates and Consultants (Architect-Engineer Services).			
52.244–5	Competition in Subcontracting			
52.244–6	Subcontracts for Commercial Products and Commercial Services	X	X	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 No.	Title	Commercial products	Commercial services	COTS items
52.215–2	Audit and Records—Negotiation			
52.215–2 Alt II	Audit and Records—Negotiation			
52.215–2 Alt III	Audit and Records—Negotiation			
52.215–12	Subcontractor Certified Cost or Pricing Data			
52.215–12 Alt II	Subcontractor Certified Cost or Pricing Data			
52.215–13	Subcontractor Certified Cost or Pricing Data—Modifications			
52.215–13 Alt I	Subcontractor Certified Cost or Pricing Data—Modifications			
52.215–15	Pension Adjustments and Asset Reversions			
52.215–18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.			

Clause No.	Title	Commercial products	Commercial services	COTS items
52.215–19	Notification of Ownership Changes			
52.215–23	Limitations on Pass-Through Charges			
52.215–23 Alt I	Limitations on Pass-Through Charges			
52.244–6	Subcontracts for Commercial Products and Commercial Services	X	X	

IV. Expected Impact of the Rule

A. Overview

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 NDAA for 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 leave this 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 provision 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 both increase participation of commercial sellers, who are unwilling or unable to manage the cost of complying with noncommercial requirements, and 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 Contract Award 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.

B. Impact of Rule

The Government has conducted a regulatory impact analysis (RIA) for the RFO rulemaking inclusive of this proposed rule for FAR parts 8, 12, 13, 15, 38, 44, 51, and 52. The RIA includes a discussion of the anticipated benefits of the rulemakings as follows:

1. Part 8

The proposed rule aims to streamline and simplify acquisition processes and shorten acquisition timeframes for both the Government and industry.

- By clarifying the rules and priorities for the use of mandatory sources, the Government can benefit from clear guidance that ensures contracting officers comply with statutory and regulatory requirements for using such sources.

- By simplifying the process for using Government sources of products and services, the Government can benefit from a simplified and more direct acquisition process that saves time and administrative cost when ordering from these sources. Mandatory sources can also benefit from the greater flexibility and speed in which they can affect change to their respective programs due to the simplification and reduction in duplication of these policies in the FAR.
- By reinforcing the use of existing contracts, when possible, both the Government and industry can benefit from a faster acquisition process that relies on contract vehicles with already established terms and conditions, in lieu of having to negotiate these items with each acquisition. Existing contracts also provide streamlined ordering procedures that are less time-consuming for both the Government and industry when placing orders under these vehicles, in lieu of soliciting, negotiating, and awarding a new contract.
- By consolidating its demand for certain products or services into existing contract vehicles, the Government can also benefit from lower pricing through volume discounts, as well as consistent and reliable products and services that are compliant with legal and regulatory requirements.
- By broadening the policy permitting contractor use of Government supply sources, both the Government and industry can benefit from reduced contract costs via the volume discounts associated with the Government's buying power, and consistent and reliable products and services that are compliant with legal and regulatory requirements.

These proposed changes do not create any new burden on the Government or industry. Instead, these changes simply and reduce the guidance needed to acquire products and services from Government supply sources, make the acquisition process faster, lower contract costs, and ensure reliant and compliant products and services are used in performing Government contracts.

The Government acknowledges that these changes are benefits that can result in savings of time and effort costs for both the Government and industry, but the amount time and effort saved will vary for each acquisition and is entirely dependent on the details and requirements of each individual acquisition, as well how agencies apply the procedures and leverage mandatory sources and existing contracts. The saving associated with the rule are expected to be incremental and realized over time through individual acquisitions across various agencies, making a single, upfront estimate difficult to produce. The proposed rule impacts the internal procedures of the Government and does not require any new actions from external stakeholders.

2. Part 12

This proposed rule would substantially revise the structure, scope, and mechanics of FAR part 12 to be user-centric, faster, simpler, and more aligned with customary commercial practices resulting in the following benefits:

- *Improve efficiency and effectiveness:* Enables contracting officers to deliver on their missions more efficiently and effectively by ensuring agencies buy commercial to the maximum extent practicable, encouraging innovation, and finding efficiencies.
- *Greater clarity and understanding:* Refocuses the part on statutory requirements, providing the contracting workforce with a better understanding of their authority and responsibilities. The use of plain language makes the content more clear and easy to follow for contracting officers, offerors, and contractors.
- *Simplified access to information:* Reorganizes the FAR part into process-oriented subparts by acquisition phase, enabling Federal buyers to easily access relevant information.
- ''*One-Stop Shop*'' *for commercial acquisitions:* Consolidates procedures (publicizing, simplified acquisition, micro-purchases) into FAR part 12, creating a single source for commercial acquisitions, especially for smaller-dollar procurements.
- *Reduced administrative burden:* Minimizes burden and administrative costs for both the Government and industry by directing the use of simplified procedures for acquisitions up to $9 million (or $15 million in certain emergencies).
- *Streamlined contracting:* Substantially reduces the number of provisions and clauses in commercial acquisitions by removing the ''omnibus'' provisions (FAR 52.212–3 and 52.212–5) and shifting the burden of determining applicable clauses from the offeror/contractor to the Government.

Expanded use of commercial procedures: Allows construction to be considered a commercial service, permitting Federal buyers to leverage the streamlined, less burdensome procedures in FAR part 12 when buying construction. Overall, the proposed changes aim to foster a more agile, risk-based, and efficient acquisition system that encourages greater commercial supplier participation in the Federal marketplace.

3. Part 13

This proposed rule, if finalized, would establish the same process-oriented structure as proposed in FAR part 12 and simplify the process for contracting officers handling noncommercial acquisitions valued at or below the SAT. The proposed changes would provide:

- *Clearer compliance requirements.* Substantially streamlines the content to focus on statutory requirements and communicate only those minimum compliance requirements necessary for sound procurement.
- *Enhanced clarity and usability.* Rewrites the content of FAR part 13 and the contract clause (52.213–4) in plain language to make them more clear and easy to follow. This includes replacing formal terms like ''shall'' with ''must'' or ''will'' where appropriate.
- *Reduced administrative hurdles:* Gives contracting officers more flexibility and promotes efficiency and economy for smaller purchases.
- *Improved opportunities:* Simplified procedures ensure industry understands how the Government conducts smaller purchases and improves opportunities for new entrants and small businesses.

4. Part 15

The proposed rule aims to streamline and simplify acquisition processes and shorten acquisition timeframes for both the Government and industry.

- By focusing on negotiation, instead of holding discussions (see paragraph II.E.1.), both the Government and industry can benefit from meaningful negotiations that lead to a more advantageous contract award for both parties.
- By simplifying the definition of ''deficiency'', both the Government and industry can benefit from a more consistent application of the term during proposal evaluation, as well as a greater opportunity to address significant weaknesses directly through negotiation.
- By simplifying exchanges with offerors after receipt of proposals, both the Government and industry can benefit from a simple and clear process that can enhance competition by permitting contracting officers to better understand an offeror's proposal and, in turn, consider more proposals for contract award.
- By clarifying what a competitive range is, both the Government and

industry and benefit from a process that enhances competition by allowing the Government to consider proposals that, while not the highest rated, are otherwise well suited for negotiation.

• By formalizing the highest technically rated with a fair and reasonable price source selection approach and phased evaluations, both the Government and industry can benefit from more efficient acquisitions that simplify the source selection process and reduce the time to award a contract.

• By simplifying the policies on late proposals, offerors benefit from simpler and clearer guidance, while contracting officers have greater discretion when deciding whether to accept a late proposal.

These proposed changes do not create any new burden on the Government or industry. Instead, these changes create opportunities for increased competition amongst offerors, more advantageous contract awards for both Government and industry, and quicker and simpler proposal evaluations and contract awards.

The Government acknowledges that these changes are benefits that can result in savings of time and effort costs for both the Government and industry, but the amount of time and effort saved will vary for each acquisition and is entirely dependent on the details and requirements of each individual acquisition, as well as the source selection approach used, the evaluation factors chosen, and the number of other offers received and the details, requirements, and solutions proposed for each of those offers. The proposed rule impacts the internal procedures of the Government and does not require any new actions from external stakeholders.

5. Part 38 and Part 44

The proposed rule aims to reorganize, streamline, and clarify the existing policies and procedures of the FAR. As a result, both the Government and industry can benefit from simpler and clearer guidance. The proposed changes do not change or create any new burden on the Government or industry.

6. Part 51

Due to the proposed movement of the policies in part 51 to part 8, the benefits of the policies in part 51 are included in the discussion at paragraph IV.B.1.

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) 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 entirety of FAR.

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, Restoring Common Sense to Federal Procurement. 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 business concerns who want to contract with the Federal Government will have to familiarize themselves with and be impacted by 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 (SAM) that were small for at least one NAICS code they had selected.

Subcontractors that are small entities do not need to register in SAM. Based on data for fiscal years 2022 through 2024 from the Federal Procurement Data System, the Government awarded an average of 96,000 contracts annually to which the consent to subcontract would apply. Thus, the number of small business firms impacted by this rule may be greater than the number of small entities registered in SAM.

The changes proposed by this rule do not impose any new requirements or burdens on small business concerns. The impact of the proposed movement of part 51 policies and procedures to part 8, and the removal of part 51 on small entities is addresses in paragraph 3.b. The changes proposed by this rule are not expected to have a significant economic impact on a substantial number of small entities.

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

a. FAR Parts 8, 15, 38, 44, and 51.

The proposed rule does not impose any new reporting, recording keeping, or compliance requirements.

b. FAR Part 12.

The revisions to FAR part 12, if finalized, would remove the provision at FAR 52.212–3, Offeror Representations and Certifications—Commercial Products and Commercial Services, and clause at FAR 52.212–5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services, commonly referred to as the ''omnibus'' provision or clause are proposed for removal. Instead, FAR 12.205 would direct the contracting officer (or an agency clause logic system) to rely on the prescriptions for provisions and clauses, which are being amended under RFO rulemakings to explicitly state whether the provision or clause applies to acquisitions of commercial products and commercial services. Agencies would not be authorized to include provisions and clauses not on the list in commercial acquisitions unless they obtain a deviation in accordance with FAR part 1. This methodology will substantially reduce the number of compliance requirements included in commercial solicitations and contracts. This change also shifts the burden of determining which provisions and clauses are applicable to the commercial acquisitions from the offeror or contractor to the Government.

c. FAR Part 13.

There are no reporting or recordkeeping requirements imposed in FAR part 13 and there are no new compliance requirements for small businesses in FAR part 13. This proposed rule, if finalized, would substantially streamline the procedures for acquisitions valued at or below the SAT, having a positive economic impact on small businesses competing for such contracts.

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.

The FAR Council has not, at this stage, identified any significant alternatives that would minimize the impact of the rule on small entities while also implementing the requirements of E.O. 14275. The FAR Council will consider any significant alternatives identified by commenters for the final rule.

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 2026–003)'' 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 12

- OMB Control No. 9000–0034, Examination of Records by Comptroller General and Contract Audit. See details in section IX.B of this preamble.
- OMB Control No. 9000–0136, Commercial Acquisitions. The changes under this proposed rule, if finalized, would remove the information collection in its entirety. The collection would be discontinued.
- OMB Control No. 9000–0142, Past Performance Information; FAR Sections Affected: 15.305(a)(2)(ii), 42.1503(d), and 52.212–1(b)(10). The changes to this information collection under this proposed rule, if finalized, would be negligible and, therefore, would not change the paperwork burden previously approved by OMB. The collection would remain unchanged.

B. FAR Part 15

- OMB Control No. 9000–0013, Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—FAR Sections Affected: 52.214–28, 52.215–12, 52.215–13, 52.215–20, and 52.215–21. The changes to this information collection under this proposed rule, if finalized, would be negligible and, therefore, would not change the paperwork burden previously approved by OMB. The collection would remain unchanged.
- OMB Control No. 9000–0034, Examination of Records by Comptroller General and Contract Audit: FAR Section(s) Affected: 52.212–5(d), 52.214–26, 52.215–2. 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.
- OMB Control No. 9000–0037, Presolicitation Notice and Response—FAR Sections Affected: 14.205; 15.201(c); and 36.213–2. The changes to this information collection under this proposed rule, if finalized, would be negligible and, therefore, would not change the paperwork burden previously approved by OMB. The collection would remain unchanged.
- OMB Control No. 9000–0047, Place of Performance—FAR Sections Affected: 52.214–14, and 52.215–6. The changes to this information collection under this proposed rule, if finalized, would be negligible and, therefore, would not change the paperwork burden previously approved by OMB. The collection would remain unchanged.
- OMB Control No. 9000–0048, Certain Federal Acquisition Regulation Part 15 Requirements: FAR sections affected: 15.407–2(e), 52.215–1(c)(2)(iv), 52.215–9, 52.215–14, 52.215–19, 52.215–22, and 52.215–23. The changes to this information collection under this proposed rule, if finalized, would be negligible and, therefore, would not change the paperwork burden previously approved by OMB. The collection would remain unchanged.
- OMB Control No. 9000–0142, Past Performance Information; FAR Sections Affected: 15.305(a)(2)(ii), 42.1503(d), and 52.212–1(b)(10). See details in section IX.A of this preamble.

C. FAR Part 44

- OMB Control No. 9000–0149, Subcontract Consent and Contractors' Purchasing System Review; FAR Section Affected: 52.244–2. The changes to this information collection under this proposed rule, if finalized, would be negligible and, therefore, would not change the paperwork burden previously approved by OMB. The collection would remain unchanged.

D. FAR Part 51

- OMB Control No. 9000–0032, Contractor Use of Interagency Fleet Management System Vehicles—FAR Sections Affected: 51.202 and 51.203. The changes under this proposed rule, if finalized, would remove the information collection in its entirety. The collection would be discontinued.

E. 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 the collections of information affected by this proposed rule.

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 8, 12, 13, 15, 38, 44, 51, 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 8, 12, 13, 15, 38, 44, 51, and 52 as set forth below:

■ 1. Revise parts 8, 12, 13, and 15 to read as follows:

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.

Subpart 8.1—Presolicitation

Subpart 8.2—Acquisition From AbilityOne Participating Nonprofit Agencies

Subpart 8.3—Acquisitions From Federal Prison Industries, Inc.

Subpart 8.4—Ordering Under the Federal Supply Schedule

Subpart 8.5—Acquisitions of Government Printing and Related Supplies

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.

8.000 Scope.

This part addresses prioritizing sources of supplies and services for use by the Government.

8.001 Definitions.

As used in this part—

AbilityOne Commission is the operating name for the Committee for Purchase From People Who are Blind or Severely Disabled.

AbilityOne participating nonprofit agency means a qualified nonprofit agency employing people who are blind or have other severe disabilities approved by the Committee to furnish a commodity or a service to the Government under 41 U.S.C. chapter 85.

Committee means the Committee for Purchase From People Who Are Blind or Severely Disabled.

Central nonprofit agency means National Industries for the Blind, which has been designated to represent AbilityOne participating nonprofit agencies serving people who are blind; or SourceAmerica (formerly known as the National Industries for the Severely Handicapped), which has been designated to represent AbilityOne participating nonprofit agencies serving people with severe disabilities other than blindness.

Government printing means printing, binding, and blank-book work for the use of an executive department, independent agency, or establishment of the Government.

Procurement List means a list of supplies (including military resale commodities) and services that the Committee has determined are suitable for purchase by the Government under 41 U.S.C. chapter 85.

Subpart 8.1—Presolicitation

8.101 Mandatory sources for specific supplies and services.

Agencies must acquire the following supplies and services using the procedures listed below:

Requirement	Procedures
Public utility services	Part 41.
Government printing and related supplies	Subpart 8.5.
Motor vehicles leased for use within the United States and its outlying areas	Contact GSA Fleet.
Strategic and critical materials (e.g., metals and ores) from inventories exceeding Defense National Stockpile requirements.	DLA Strategic Materials *https://www.dla.mil/Strategic-Materials/.*

8.102 Mandatory source for services.

Unless otherwise required by law or 8.101, agencies must procure services that are on the Procurement List maintained by the Committee, from AbilityOne participating nonprofit agencies in accordance with subpart 8.2.

8.103 Mandatory sources of supplies.

Unless otherwise required by law or subpart 8.101, agencies must procure supplies, in the following order-

(a) From inventories of the requiring agency, in accordance with agency procedures;

(b) From excess from other agencies, in accordance with 41 CFR 102–36;

(c) From Federal Prison Industries (FPI), Inc., in accordance with subpart 8.3; and

(d) When on the Procurement List maintained by the Committee, from AbilityOne participating nonprofit agencies, in accordance with subpart 8.2.

8.104 Use of existing contracts.

(a) When products or services are unavailable from the mandatory sources listed above, agencies should procure commercial products and commercial services, including those that can be modified to fill agencies' needs, to the maximum extent possible, in accordance with the policy of Executive Order 14271, Ensuring Commercial, Cost-Effective Solutions in Federal Contracts.

(b) When a commercial product or commercial service meets an agency's needs and is available on an existing contract or Blanket Purchase Agreement (BPA) awarded for Governmentwide use (such as the Federal Supply Schedule (FSS), governmentwide acquisition contracts, or other indefinite-delivery, indefinite-quantity contracts), the agency must—

(1) Use the existing contract or BPA to buy the product or service if it has been designated by the Office of Federal Procurement Policy (OFPP) as a "required use" contract or BPA, unless the Senior Procurement Executive provides an exception (*e.g.,* because the contract's terms and conditions, scope, or performance period do not meet the agency's needs);

(2) If there is no suitable "required use" contract or BPA to meet the agency's needs, consider using the existing contract or BPA to buy the product or service if it has been designated by OFPP as a "best in class" contract or BPA; and

(3) If there is no suitable "required use" or "best in class" contract or BPA to meet the agency's needs, consider using the existing contract or BPA awarded for Governmentwide use before establishing a new contract for the commercial products and/or commercial services.

(c) Agencies should also consider the use of shared services to fulfill requirements. A shared service is a business or mission function provided by one agency for consumption by multiple other agencies, either within or between Federal agencies (*e.g.,* the stock programs of the General Services Administration (GSA) (see 41 CFR 101–26.3), the Defense Logistics Agency (DLA) (see 41 CFR 101–26.6), and the Department of Veterans Affairs (VA) (see 41 CFR 101–26.704)).

8.105 Contractor use of Government supply sources.

When authorizing contractors to use Government supply sources, agencies must follow the requirements of sections 8.105–1 through 8.105–3.

8.105–1 Contractor required use of Government supply sources.

(a) *Policy.* Agencies must authorize contractors purchasing supply items for Government use that are on the Procurement List maintained by the Committee to purchase such items from DLA, GSA, and VA, if they are available from these agencies through their distribution facilities. When these items are not available from DLA, GSA, or VA, contractors must order them through the appropriate central nonprofit agency which will determine how to fulfill the order.

(b) *Contract clause.* Insert the clause at 52.208–9, Contractor Use of Mandatory Sources of Supply and Services, in solicitations and contracts, including those for commercial products and commercial services, that require a contractor to provide supplies or services for Government use that are on the Procurement List maintained by the Committee.

8.105–2 Contractor permitted use of Government supply sources.

(a) *General.*

(1) Agencies may authorize contractors to use Government supply sources to obtain supplies or services required to perform a Government contract, when it is in the Government's interest and the supplies or services are available from Government supply sources. In this section, the terms "contractors" and "contracts" include "subcontractors" and "subcontracts."

(2) Agencies may authorize the contractors to use these sources in performing—

(i) A contract awarded using other than sealed bidding procedures; or

(ii) A contract awarded to an AbilityOne participating nonprofit agency for supplies or services on Procurement List maintained by the Committee, if—

(A) The nonprofit agency requesting use of the supplies and services is providing a commodity or service to the Government; and

(B) The supplies or services received are directly used in making or providing a commodity or service on the Procurement List.

(3) Contractors with fixed-price Government contracts that require protection of security classified information may acquire security equipment through GSA sources in accordance with 41 CFR 101–26.507.

(b) *Exclusion.* Agencies must not require a contractor, or subcontractor at any tier, to use FPI as a subcontractor to perform a contract by any means, including means such as—

(1) A solicitation provision requiring a potential contractor to offer to use FPI supplies or services;

(2) A contract specification requiring the contractor to use specific supplies or services (or classes of supplies or services) offered by FPI; or

(3) Any contract modification directing the use of FPI supplies or services.

(c) *Contract clause.* Insert the clause at 52.208–XX, Government Supply Sources, in solicitations and contracts, including those for commercial products and commercial services, when the contractor is authorized to acquire supplies or services from a Government supply source.

8.105–3 Contractor use of GSA Fleet.

(a) *General.* Agencies may authorize contractors performing under cost-reimbursement contracts to obtain vehicles and related services through GSA Fleet in accordance with 41 CFR 101–39.202 and 41 CFR 102–34. In this section, the terms "contractors" and "contracts" include "subcontractors" and "subcontracts."

(b) *Requirement.* When providing the authorization in paragraph (a), agencies must ensure that contractors establish and enforce suitable penalties against employees who use, or authorize the use of, Government motor vehicles for unofficial purposes or for other than in the performance of the contract.

(c) *Contract clause.* Insert the clause at 52.208–YY, GSA Fleet Vehicles and Related Services, in solicitations and contracts, other than those for commercial products or commercial services, when a cost-reimbursement contract is contemplated and the contractor may be authorized to use GSA Fleet vehicles and related services.

Subpart 8.2—Acquisition From AbilityOne Participating Nonprofit Agencies

8.201 General.

(a) When buying supplies or services from AbilityOne Nonprofit Agencies, agencies must follow the requirements of this subpart and 41 CFR chapter 51.

(b) The AbilityOne Commission has sole authority to set the price and to authorize or deauthorize sources of supply. Agencies may propose price development through the Commission, or propose additions to the Procurement List at any time through the AbilityOne Commission.

8.202 Presolicitation.

(a) *Policy.* In accordance with 41 U.S.C. chapter 85 and as required by 8.102 and 8.103, agencies must buy supplies or services that are on the Procurement List maintained by the Committee from the central nonprofit agency or its designated AbilityOne participating nonprofit agencies, unless a purchase exception applies or the supplies are available from DLA, GSA, or VA supply distribution facilities.

(b) *Purchase exception.* Agencies may submit a request to the AbilityOne Commission, or the appropriate central non-profit agency, for a waiver to the Procurement List requirement. If the waiver is approved, agencies may fulfill their requirement from a commercial source. Other provisions of the FAR must not be construed as permitting an exception to the mandatory purchase of supplies or services on the Procurement List.

(c) *Supply distribution facilities.* When supplies on the Procurement List are identified as available from DLA, GSA, or VA distribution facilities, agencies must obtain the supplies through DLA, GSA, or VA. Supply distribution facilities in DLA and GSA must obtain supplies on the Procurement List from the central nonprofit agency identified or its designated AbilityOne participating nonprofit agency.

8.203 Postaward.

If the ordering office cannot resolve performance issues with the nonprofit agency, the ordering office must refer the matter to the applicable central nonprofit agency and, if necessary, to the AbilityOne Commission for appropriate resolution.

Subpart 8.3—Acquisitions From Federal Prison Industries, Inc.

8.301 General.

When buying supplies or services from FPI (also known as UNICOR), agencies must follow the requirements of this subpart and FPI's ordering procedures.

8.302 Exclusion.

Agencies must not enter into any contract with FPI that allows an inmate worker access to any—

(a) Classified data;

(b) Geographic data regarding the location of—

(1) Surface and subsurface infrastructure providing communications or water or electrical power distribution;

(2) Pipelines that distribute natural gas, bulk petroleum products, or other commodities; or

(3) Other utilities; or

(c) Personal or financial information about any individual private citizen, including information relating to such person's real property however described, without the prior consent of the individual.

8.303 Presolicitation.

In accordance with 10 U.S.C. 3905 and section 637 of Division H of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447) (18 U.S.C. 4124 note), agencies must—

(a) Before purchasing an item of supply listed in the FPI Schedule, conduct market research to determine whether the FPI item is comparable to supplies available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery. This is a unilateral determination made at the discretion of the contracting officer. The arbitration provisions of 18 U.S.C. 4124(b) do not apply; and

(b) Prepare a written determination that includes supporting rationale explaining the assessment of price, quality, and time of delivery, based on the results of market research comparing the FPI item to supplies available from the private sector.

8.304 Solicitation.

After making the determination in 8.303—

(a) If the FPI item is comparable, agencies must purchase the item from FPI, unless a waiver is obtained in accordance with FPI's ordering procedures; and

(b) If the FPI item is not comparable in one or more of the areas of price, quality, and time of delivery, agencies must—

(1) Acquire the item using—

(i) Competitive procedures; or

(ii) The fair opportunity procedures in part 16, if placing an order under a multiple award delivery-order contract; and

(2) Include FPI in the solicitation process and consider a timely offer from FPI for award in accordance with the item description or specifications, and evaluation factors in the solicitation.

(i) If the solicitation is available through the Governmentwide point of entry (Contract Opportunities at *SAM.gov*), agencies do not need to provide a separate copy of the solicitation to FPI;

(ii) If the solicitation is not available through Contract Opportunities at *SAM.gov,* agencies must provide a copy of the solicitation to FPI;

(iii) When using a multiple award schedule issued under the procedures in subpart 8.4 or when using the fair opportunity procedures in part 16—

(A) Establish and communicate to FPI the item description or specifications, and evaluation factors that will be used as the basis for selecting a source, so an offer from FPI can be evaluated on the same basis as the contract or schedule holder; and

(B) Consider a timely offer from FPI.

8.305 Evaluation and award.

Agencies must make award to the source offering the item determined by the agency to provide the best value to the Government. If the agency determines that the FPI item provides the best value to the Government as a result of FPI's response to a competitive solicitation, follow FPI's ordering procedures.

8.306 Postaward.

Disputes regarding price, quality, character, or suitability of supplies produced by FPI, except for determinations under 8.303 of this section, are subject to arbitration as specified in 18 U.S.C. 4124(b).

Subpart 8.4—Ordering Under the Federal Supply Schedule

8.401 General.

(a) The FSS program is directed and managed by GSA and provides Federal agencies with a simplified process to obtain commercial products and commercial services at prices associated with volume buying. Agencies must use GSA's FSS, in accordance with 8.104.

(b) When placing an order under GSA's FSS, agencies must follow the ordering procedures established by GSA and found at 48 CFR 538.71, Federal Supply Schedule Ordering Procedures. GSA ordering procedures follow all statutory requirements, including the requirements of section 863 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, and have been coordinated with OFPP for consistency with governmentwide acquisition policy.

Subpart 8.5—Acquisitions of Government Printing and Related Supplies

8.501 General.

When acquiring Government printing and related supplies (*i.e.,* supplies and equipment that are used in printing and binding operations), agencies must follow the requirements of this subpart and Government Publishing Office's (GPO) ordering procedures.

8.502 Requirement.

Government printing must be done by or through the GPO (44 U.S.C. 501), unless—

(a) The GPO cannot provide the printing service (44 U.S.C. 504);

(b) The printing is done in field printing plants operated by an executive agency (44 U.S.C. 501(2));

(c) The printing is acquired by an executive agency from allotments for contract field printing (44 U.S.C. 501(2)); or

(d) The printing is specifically authorized by statute to be done other than by the GPO.

PART 12—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

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.

12.000 Scope.

This part provides policies and procedures to streamline the acquisition of commercial products, including commercially available off-the-shelf (COTS) items (a subset of commercial products), and commercial services in accordance with 41 U.S.C. 1906, 1907, and 3307 and 10 U.S.C. 3451–3453. It also implements the simplified procedures authorized by 41 U.S.C. 1901–1903, 1905, and 3305.

12.001 Applicability.

(a) Acquisitions of commercial products or commercial services are subject to other parts of the FAR. This part takes precedence when there is an inconsistency.

(b) Agencies may treat any acquisition of supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack, as an acquisition of commercial products or commercial services. However, if the contract is awarded on a sole-source basis for an amount greater than $25 million, the contract is not exempt from Cost Accounting Standards (CAS) (see 48 CFR chapter 99) or certified cost or pricing data requirements (see part 15).

(c) The $9 million ceiling for the use of simplified procedures (see 12.201–1) is increased to $15 million if the head of the agency determines that the supplies or services are to be used to—

(1) Support a contingency operation;

(2) Facilitate the defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack (including acquisitions treated as commercial products or commercial services according to paragraph (b));

(3) Support a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate provision of international disaster assistance; or

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

(d) Do not divide a requirement to avoid using procedures that are required over certain thresholds.

(e) Go to *https://www.acquisition.gov/inapplicablelaws* for the lists of laws that do not apply to contracts for the acquisition of commercial products or commercial services, acquisitions of COTS items, and acquisitions valued at or below the simplified acquisition threshold (SAT) (41 U.S.C. 1905 through 1907).

Subpart 12.1—Presolicitation

12.101 Requirement.

(a) Agencies must acquire commercial products or commercial services when the agency determines that they are available to meet the agency's needs (see Part 7).

(b) Require prime contractors and subcontractors at all tiers to incorporate, to the maximum extent practicable, commercial products, commercial services, or nondevelopmental items as components of items supplied to the agency.

12.102 Competition.

(a) For acquisitions valued at or below the SAT, document the decision and the basis for the decision to conduct a sole-source acquisition or to require brand-name specifications without allowing for products with equivalent specifications (''brand name or equal''). Publicize brand-name justifications as required by 12.202.

(b) For acquisitions valued over the SAT, follow the procedures in part 6 when conducting a sole source acquisition or requiring brand-name specifications without allowing for products with equivalent specifications.

12.103 Small business.

(a) See part 19 for small business set-aside requirements. When the acquisition is set aside under any of the small business programs, include the North American Industry Classification System (NAICS) code and small business size standard in the solicitation.

(b) Acquisitions of supplies or services that have an anticipated dollar value above the micro-purchase threshold must be set aside for small business concerns in accordance with 19.104–1).

12.104 Contract type.

(a) *Preference for fixed-price contracts.* To the maximum extent practicable, use firm-fixed-price or fixed-price with economic price adjustment contract types to procure commercial products or commercial services. Follow the procedures in part 16 to use these contract types.

(b) *Time-and-materials or labor-hour contracts.* A time-and-materials or labor-hour contract may be used for commercial services that are procured on a competitive basis, if the services are commonly sold to the general public using these types of contracts.

(1) To use this contract type, the contracting officer must—

(i) Execute a determination and findings (D&F) that a firm-fixed-price or fixed-price with economic price adjustment contract type is not suitable; and

(ii) Include in the contract a ceiling price that the contractor exceeds at its own risk.

(2) Any increase to the ceiling price must be supported by a determination that doing so is in the best interest of the procuring agency.

(c) *Indefinite-delivery contracts.*

(1) Indefinite-delivery contracts may be used when—

(i) Prices are established based on a firm-fixed-price or fixed-price with economic price adjustment; or

(ii) Rates are established for commercial services acquired on a time-and-materials or labor-hour basis.

(2) If rates are established on a time-and-materials or labor-hour basis, then to the maximum extent practicable, structure the contract to allow issuance of orders on a firm-fixed-price or fixed-price with economic price adjustment basis.

(i) Orders placed on a time-and-materials or labor-hour basis are subject to the requirements in paragraph (b) of this section.

(ii) If the contract only allows for orders on a time-and-materials or labor-hour basis, the D&F described in paragraph (b)(1) of this section is required only for the basic contract. It must explain why providing for an alternative firm-fixed-price or fixed-price with economic price adjustment pricing structure for orders is not practicable, and an official at least one level above the contracting officer must approve it.

(d) *Prohibition on use of cost-reimbursement contracts.* Do not use any cost-reimbursement contract type to procure commercial products or commercial services. However, line items for incidental expenses, such as travel, may be included in the contract if they provide for reimbursement based on actual costs and include a not-to-exceed amount.

(e) *Executive Order 14402 justification.* Follow the procedures in 16.104 when using other than a firm-fixed-price or fixed-price with economic price adjustment contract type.

12.105 Quality requirements.

(a) *Quality assurance.* To the maximum extent practicable, allow a contractor under a commercial products acquisition to use its existing quality assurance system to inspect or test commercial products before the contractor presents the products to the Government for acceptance. Rely on the contractor to accomplish all inspection and testing needed to ensure that commercial services conform to contract requirements before the contractor presents the services to the Government.

(b) *Warranties.* To the maximum extent practicable, take advantage of commercial warranties, including extended warranties, and use those warranties for the repair and replacement of commercial products and commercial services.

12.106 Technical data.

Presume that technical data delivered under a contract for commercial products was developed exclusively at private expense. Acquire only the technical data and the rights in that data customarily provided to the public with a commercial product or process. When a contract for commercial products requires the delivery of technical data, see part 27 for provisions and clauses to delineate rights in the technical data.

12.107 Computer software.

(a) Commercial computer software or commercial computer software documentation must be acquired under licenses customarily provided to the public to the extent such licenses are consistent with Federal law and otherwise satisfy the Government's needs. Generally, offerors and contractors must not be required to—

(1) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public except for information documenting the specific modifications made at Government expense to such software or documentation to meet the requirements of the solicitation; or

(2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation except as mutually agreed to by the parties.

(b) With regard to commercial computer software and commercial computer software documentation, the Government should have only those rights specified in the license incorporated into the contract. For additional guidance regarding the use and negotiation of license agreements for commercial computer software, see part 27.

12.108 Contract financing.

Government financing may be offered if buyer financing is a customary market practice for a commercial product or commercial service. See part 32 for contract financing policies and procedures.

12.109 Cost Accounting Standards.

CAS do not apply to contracts or subcontracts for the acquisition of commercial products or commercial services, except as provided in 12.001(b).

Subpart 12.2—Solicitation, Evaluation, and Award

12.200 Applicability.

(a) Acquire commercial products and commercial services from mandatory sources and existing contracts according to part 8. If not, use the streamlined procedures for solicitation, evaluation, and award in this subpart.

(b) When procuring construction as a commercial service, use the procedures in part 36 in conjunction with the procedures in this part.

12.201 Solicitation procedures.

12.201–1 Simplified procedures.

(a) *Requirement.* For acquisitions valued up to $9 million ($15 million for acquisitions described at 12.001(c)), issue a request for quotations (RFQ) followed by a purchase order.

(b) *Legal effect of quotations.*

(1) Neither a quotation nor the purchase order issued by the Government in response to a quotation form a binding contract. The purchase order is the Government's offer to a supplier to buy certain products or services upon specified terms and conditions.

(2) A binding contract is formed when the supplier accepts the Government's offer, either by written acceptance of the purchase order or substantial performance of the purchase order. The contracting officer may request that the contractor provide written acceptance of the order.

(c) *Innovation.* In line with 1.102, Guiding principles for the System, agencies are encouraged to use additional innovative approaches to the maximum extent practicable when soliciting quotations and issuing purchase orders to—

(1) Reduce administrative costs and lead time;

(2) Improve opportunities for small business concerns;

(3) Promote efficiency and economy in contracting; and

(4) Avoid unnecessary burdens for agencies and contractors.

(d) *Other flexibilities.* The following are examples of flexibilities that may be leveraged when using simplified procedures:

(1) *Standing price quotation.* A contracting officer may rely upon standing price quotations, as long as the contracting officer validates before award that the pricing is current and reasonable.

(2) *Unpriced purchase order.* An unpriced purchase order is an order for supplies or services, the price of which is not established at the time of issuance of the order.

(i) An unpriced purchase order may be used only when it is impractical to obtain pricing in advance of issuance of the purchase order. Examples of such situations include:

(A) Repairs to equipment requiring disassembly to determine the nature and extent of repairs;

(B) Material available from only one source and for which cost cannot readily be established; or

(C) Supplies or services for which prices are known to be competitive, but exact prices are not known (*e.g.,* miscellaneous repair parts, maintenance agreements).

(ii) When issuing an unpriced purchase order, include—

(A) A realistic monetary limitation (either for each line item or for the total order) that is an obligation subject to adjustment once a firm price is established; and

(B) The following statement:

This is a firm order ONLY if your price does not exceed the maximum line item or total price in the Schedule. Submit invoices to the Contracting Officer. If you cannot perform in exact accordance with this order, do not begin performance, and notify the Contracting Officer immediately, giving your quotation.

(iii) Follow up on each order to ensure timely pricing. Review the invoice price and, if the price is reasonable (see 12.204(a)), process the invoice for payment.

(3) *Blanket purchase agreement.* A blanket purchase agreement (BPA) is a method of filling anticipated repetitive needs for supplies or services. A BPA is not a contract; the Government is only obligated to the extent that authorized orders are placed under a BPA.

(i) BPAs may be established with—

(A) More than one supplier for supplies or services of the same type to provide maximum practicable competition; or

(B) A single firm from which numerous individual purchases at or below the simplified acquisition threshold will likely be made in a given period.

(ii) If, for a particular purchase greater than the micro-purchase threshold, there is an insufficient number of BPAs to ensure maximum practicable competition—

(A) Solicit quotations from other sources and make the purchase as appropriate; and

(B) If practical, establish additional BPAs to facilitate future purchases if recurring requirements for the same or similar supplies or services seem likely and qualified sources are willing to accept BPAs.

(iii) The existence of a BPA does not justify soliciting from only one source or avoiding small business set-asides. The requirements in 12.102 and 12.103 apply to each order under the BPA.

(iv) The BPA must include—

(A) A statement that the supplier will furnish supplies or services, described in general terms, if and when requested by authorized individuals during a specified period and within a stipulated aggregate amount, if any.

(B) A statement that the Government is obligated only to the extent of authorized orders actually made under the BPA.

(C) The dollar limitation for each individual purchase under BPAs awarded to—

(*1*) A single firm, may not exceed the SAT; and

(*2*) More than one supplier, may not exceed the threshold for use of simplified procedures at 12.201–1(a).

(D) A list of individuals authorized to place orders or make purchases under the BPA.

(E) Information that must be included in delivery or shipment documentation.

(F) Instructions for proper invoicing under the BPA (*e.g.,* process for periodic billings).

(G) Any clauses that may be applicable to purchases under the BPA (see 12.205(b)).

(v) Review BPAs at least annually to ensure that authorized procedures are being followed. Maintain awareness of changes in market conditions, sources of supply, and other pertinent factors that may warrant making new agreements with different suppliers or modifying existing agreements.

12.201–2 Other procedures.

(a) *General.* For acquisitions valued at greater than $9 million ($15 million for acquisitions described at 12.001(c)), use the procedures in this subpart in conjunction with the procedures in part 15 for requests for proposals (RFPs) or part 14 for invitations for bids (IFBs), as appropriate.

(b) *Preference.* Use of an RFP is the preferred method because it includes consideration of past performance when evaluating offers (see 12.203(a)(2)).

12.202 Publicizing.

(a) *Forms and formats.*

(1) Agencies should issue the solicitation using the Standard Form (SF) 1449, Solicitation/Contract/Order for Commercial Products and Commercial Services, and Optional Form (OF) 336, Continuation Sheet. The solicitation should be organized as follows:

(i) SF 1449 and, if necessary, the OF 336.

(ii) Applicable contract clauses.

(iii) Any contract documents, exhibits, or attachments.

(iv) Applicable solicitation provisions.

(2) Agencies may use the forms and formats prescribed in parts 14, 15, or 36, when using those procedures in conjunction with this subpart for more complex procurements or where that format would help industry better understand the solicitation.

(b) *General procedures.* Except as provided in paragraph (c), for acquisitions expected to exceed $20,000, post a ''Combined Synopsis/Solicitation'' in the Governmentwide point of entry (GPE).

(1) Include the following statements in the body of the notice:

This is a combined synopsis/solicitation for commercial products or commercial services prepared in accordance with part 12. This announcement constitutes the only solicitation. *[Insert: Quotations, Proposals, or Offers]* are being requested and a separate written solicitation will not be issued.

Solicitation number *[insert: solicitation number]* is issued as a *[insert: request for quotation (RFQ), request for proposal (RFP), or invitation for bid (IFB)]* for *[insert: a brief description of the requirement].*

This acquisition *[is/is not]* set-aside for small business concerns.

[If applicable, insert a statement regarding the Defense Priorities and Allocations System (DPAS) and assigned rating.]

(2) Include or provide access to the RFQ, RFP, or IFB, as applicable.

(3) Include approved brand name justifications, if applicable.

(c) *Exceptions.*

(1) *Simplified acquisition threshold.* For acquisitions valued at or below the SAT, the contracting officer has the option to solicit quotations directly from suppliers instead of posting a combined synopsis/solicitation. When soliciting directly—

(i) Post a presolicitation notice in the GPE that contains the minimum content at 5.101(c) and, if applicable, any approved brand name justification; and

(ii) To ensure maximum practicable competition, solicit quotations from at least three sources and, whenever practicable, ensure two were not included in the previous solicitation.

(2) *Noncompetitive acquisitions.* Post a presolicitation notice in the GPE instead of posting a combined synopsis/solicitation for the following types of noncompetitive actions:

(i) Sole-source acquisitions that do not exceed the SAT (see 12.101(a));

(ii) Acquisitions citing the authority at 6.103–1 (only one responsible source) other than brand-name justifications; and

(iii) Acquisitions citing the authority at 6.103–6 (national security), unless posting the notice would disclose the agency's needs in a way that compromises national security.

(3) *Other exceptions.* Neither a combined synopsis/solicitation, nor a presolicitation notice, is required to be posted if an acquisition meets an exemption to presolicitation notice requirements at 5.101(b).

(d) *Timing.* Comply with the minimum timeframes illustrated in Table 12–1.

(1) A combined synopsis/solicitation must remain open in the GPE for the minimum timeframe.

(2) A presolicitation notice must be posted for the minimum timeframe before soliciting quotations directly or awarding a noncompetitive acquisition, as described at paragraph (c) of this section.

(3) See subpart 25.3 for information on the World Trade Organization Government Procurement Agreement (WTO GPA) and Free Trade Agreements (FTA):

TABLE 12–1—MINIMUM TIMEFRAMES

Type of notice	Acquisition value	Not subject to the WTO GPA or FTA	Subject to the WTO GPA or FTA, but included in annual forecast	Subject to the WTO GPA or FTA, but not included in annual forecast
Combined synopsis/solicitation	>$20,000	Contracting officer discretion (provide a reasonable opportunity to respond).	10 days	40 days.
Presolicitation notice only	>$20,000 to ≤$45,000	10 days	10 days	40 days.
	>$45,000	15 days	15 days	40 days.

12.203 Evaluation.

(a) *Factors.* For most acquisitions of commercial products or commercial services, evaluation factors need not be more detailed than technical (capability of the products or services offered to meet the agency's needs), price, and past performance.

(1) *Technical.* Evaluate technical based on how well the proposed products or services meet the Government's requirement. Predetermined subfactors are not required.

(2) *Past performance.* Past performance should be an important evaluation factor for award. Consider past performance information from a wide variety of sources both inside and outside the Government. This may include reviewing performance information reported to the Contractor Performance Assessment Reporting System, as well as other sources of information. For some commercial products or services, such as emerging technology, this should include consideration of commercial market experience. Contracting officers may consider an offeror's experience as a subcontractor.

(3) *Price.* Evaluate prices inclusive of transportation charges from the shipping point of the supplier to the delivery destination. Obtain prompt payment discounts to the maximum extent practicable, but do not include such discounts when evaluating the prices of quotations or offers.

(b) *Basis for award.* In the solicitation, notify potential quoters or offerors of the basis on which the agency will make the award decision. See 12.205(a)(2) on use of the solicitation provision at 52.212–2 for this purpose.

(c) *Evaluation process.*

(1) *Timely quotations and offers.* Consider all quotations or offers that are timely received. Exercise good business judgment in deciding whether or not to accept a quotation or offer received after the due date or time (see 52.212–1(c)).

(2) *Methods.* Ensure that quotations and offers can be evaluated in an efficient and minimally burdensome fashion.

(i) *Quotations.* When using the simplified procedures at 12.201–1, the contracting officer has broad discretion in establishing how quotations will be evaluated. For example, the contracting officer may perform a comparative evaluation of quotations. The evaluation procedures are not subject to part 15 or 14. Contracting officers are not required to have evaluation plans, score quotations, or establish a competitive range before communicating with quoters or soliciting revised quotations.

(ii) *Offers.* When using other procedures as described at 12.201–2, follow the procedures in part 15 when evaluating proposals and the procedures in part 14 when opening bids. When using the procedures in part 15, do so in conjunction with the procedures in this section. Follow the procedures in part 36 when acquiring construction as a commercial service.

12.204 Award.

(a) *Price reasonableness.* The contracting officer must determine the price to be fair and reasonable. Whenever possible, base price reasonableness on competitive quotations or offers. For offers using the procedures in 12.201–2, see part 15 or 14, as applicable, for additional price documentation requirements.

(b) *Documentation.*

(1) When using simplified procedures (see 12.201–1), include in the contract file a written description of the procedures used in awarding the contract and the number of quotations received.

(2) When using other procedures (see 12.201–2), document the award as required by part 15 or 14, as applicable.

(c) *Forms and formats.*

(1) Agencies should use the SF 1449 and the OF 336, Continuation Sheet, to issue purchase orders (including orders against BPAs) or award contracts for commercial products or commercial services. Follow the streamlined format at 12.202(a)(1) but exclude the solicitation provisions.

(2) Agencies may also use the forms and formats prescribed in parts 14, 15, or 36, as applicable, when awarding contracts using those procedures in conjunction with part 12.

12.205 Solicitation provisions and contract clauses.

(a) *Required provisions.*

(1) Include the provision at 52.212–1, Instructions to Offerors—Commercial Products and Commercial Services, in all solicitations for commercial products and commercial services. This provision may be tailored to reflect customary commercial practice, except the paragraph on debriefings, which is required by statute.

(2) Include the provision at 52.212–2, Evaluation—Commercial Products and Commercial Services, when using the procedures in 12.201–2. Paragraph (a) of this provision must be tailored for the acquisition and must include all evaluation factors and criteria for award. Do not tailor paragraphs (b) or (c).

(3) Include provisions prescribed in other parts of the FAR only if the provision is explicitly prescribed for commercial products and/or commercial services. Incorporate the provision as prescribed.

(b) *Required clauses.*

(1) Include the clause at 52.212–4, Terms and Conditions—Commercial Products and Commercial Services, in solicitations and contracts for commercial products and commercial services.

(i) Use the clause with its Alternate I in solicitations and contracts for commercial services when expecting to award a time-and-materials or labor-hour contract or when expecting that orders will include time-and-material line items.

(ii) This clause may be tailored to reflect customary commercial practice, with the exception of the following paragraphs that implement statute: Assignments, Disputes, Payment, Invoice, Compliance with laws unique to Government contracts, Unauthorized obligations, and Comptroller General examination of records.

(iii) Remove the paragraph on Comptroller General examination of records if the agency head has waived this requirement according to the procedures for waivers of right to examination of records in part 25.

(2) Include clauses prescribed in other parts of the FAR in contracts only if the clause is explicitly prescribed for commercial products and/or commercial services. Incorporate the clause as prescribed.

(c) *Waivers and deviations.*

(1) *Waivers.*

(i) Agencies may waive or tailor provisions and clauses authorized for use in acquisitions for commercial products or commercial services if—

(A) The provision or clause does not implement statute or Executive order;

(B) The contracting officer determines the content to be inconsistent with customary commercial practice; and

(C)(*1*) For individual acquisitions, the head of the contracting activity approves the waiver or tailoring; or

(*2*) For a class of acquisitions, the senior procurement executive approves the waiver or tailoring.

(ii) Agencies must—

(A) Provide copies of class waivers for tailoring to the deviations to the Chair of the Civilian Agency Acquisition Council (for civilian agencies) or the Director of the Defense Acquisition Regulations System (for defense departments and agencies); and

(B) Ensure that solicitations and contracts clearly indicate when a provision or clause has been tailored.

(2) *Deviations.* Do not include provisions or clauses that are not explicitly prescribed for commercial products or commercial services, unless the agency issues an individual or class deviation according to part 1.

Subpart 12.3—Postaward

12.301 Notifications.

(a) *Posting requirements.*

(1) Comply with the award notice posting requirements in subpart 5.3.

(2) Make the justifications required by 12.102(b) for acquisitions valued over the SAT publicly available in accordance with 6.201.

(b) *Explanations for unsuccessful quoters.* When using the simplified procedures at 12.201–1, upon request, provide a brief explanation of the award decision that explains why the unsuccessful quoter was not selected. If an award notice was not required to be posted to the GPE, also provide the information that would be included in an award notice (see 5.301(c)).

(c) *Notifications and debriefings of unsuccessful offerors.* When using the procedures in 12.201–2, follow the procedures in part 15 or 14 for notification of unsuccessful offerors and debriefings, as appropriate. When providing a debriefing, include the information listed at 52.212–1(e).

12.302 Subcontracts.

See requirements for subcontracts for commercial products and commercial services in subpart 44.4.

12.303 Cancellations.

(a) The Government may withdraw, amend, or cancel purchase orders by written notice to the supplier at any time before acceptance of the order occurs (see 12.201–1(b)).

(b) If the supplier did not accept the purchase order in writing, request that the supplier provide written acceptance of the cancellation.

(c) If the contractor does not accept the cancellation or claims that costs were incurred as a result of the contractor beginning performance under the purchase order, follow the procedures at 12.304 to terminate the purchase order.

12.304 Terminations.

(a) *General.* Follow the procedures in this section and the termination paragraphs of the clause at 52.212–4, when terminating contracts for commercial products or commercial services. Do not use the procedures in part 49.

(b) *Termination for cause.*

(1) Before terminating a contract for cause, send a cure notice to the contractor, unless the reason for the termination is late delivery.

(2) The Government's rights include any remedy available to any buyer in the commercial marketplace. The Government's preferred remedy is to acquire similar products or services from another contractor and charge the defaulted contractor for any excess reprocurement costs and any incidental or consequential damages incurred because of the termination.

(3) When a termination for cause is appropriate, send the contractor a written notification regarding the termination. At a minimum, this notification must include—

(i) A statement that the contract is terminated for cause;

(ii) The reasons for the termination;

(iii) Which remedies the Government intends to seek or date by which the Government will inform the contractor of the remedy; and

(iv) A statement that the notice constitutes a final decision of the contracting officer, and that the contractor has the right to appeal under the Disputes clause.

(4) Follow the procedures in part 42 to report termination information to the Responsibility/Qualification Information in *SAM.gov.*

(c) *Termination for the Government's convenience.* When terminating for the Government's convenience, the contractor may be entitled to certain payments. The parties should mutually agree upon the requirements of the termination proposal. Balance the Government's need to obtain sufficient documentation to support payment to the contractor against the goal of having a simple and expeditious settlement.

Subpart 12.4—Micro-Purchases

12.401 General.

(a) Agency heads are encouraged to delegate micro-purchase authority (see part 1).

(b) Micro-purchases do not require written provisions or clauses. This paragraph takes precedence over any other FAR requirement to the contrary but does not prohibit the use of any clause.

(c) The security prohibitions and exclusions addressed at subpart 40.2 apply to micro-purchases, unless an exception applies or waiver is granted according to that subpart. However, the provisions and clauses in that subpart are not used for micro-purchases.

(d) Paragraph (s), Unauthorized Obligations, of the clause at 52.212–4, Terms and Conditions—Commercial Products and Commercial Services, automatically applies to any micro-purchase, including those made with the Governmentwide commercial purchase card. This clause prevents violations of the Anti-Deficiency Act (31 U.S.C. 1341).

12.402 Purchase guidelines.

(a) To the extent practicable, distribute micro-purchases equitably among qualified suppliers.

(b) Micro-purchases may be awarded without soliciting competitive quotations if the contracting officer or individual appointed in accordance with 1.403–2(b) considers the price to be reasonable.

(c) The administrative cost of verifying the reasonableness of the price for purchases may more than offset potential savings from detecting instances of overpricing. Therefore, action to verify price reasonableness need only be taken if there is—

(1) A lack of understanding of competitive pricing; or

(2) Reason to suspect that a price is not reasonable.

(d) If the contracting officer solicited competitive quotations and made award to a supplier that did not provide the lowest quote, documentation of the award must include identification of the suppliers solicited and a brief explanation of the award decision.

12.403 Methods.

(a) Use the following methods as the primary means of making micro-purchases:

(1) *The Governmentwide commercial purchase card.* The Governmentwide commercial purchase card is authorized for use in making purchases of supplies, services, or construction. Contracting officers and other individuals designated according to part 1 may use the Governmentwide commercial purchase card. The card may be used only for purchases authorized by law or regulation.

(2) *Purchase orders.* Purchase orders (including orders against blanket purchase agreements) may be used to make micro-purchases. See 12.201–1.

(b) The SF 44, Purchase Order-Invoice-Voucher, is a multipurpose pocket-size purchase order form designed primarily for on-the-spot, over-the-counter purchases of supplies and nonpersonal services while away from the purchasing office or at isolated activities. Contracting officers may use it in limited circumstances and only when advantageous to the Government if all of the following conditions are satisfied:

(1) An agency authorizes use of the SF 44.

(2) The amount of the purchase is at or below the micro-purchase threshold or higher dollar thresholds established by an agency for purchases made under unusual and compelling urgency or in support of contingency operations.

(3) The supplies or services are immediately available, and one delivery and one payment will be made.

(4) Its use is determined to be more economical and efficient than use of the Governmentwide commercial purchase card.

(c) Imprest funds and third-party drafts may be used to acquire supplies or services if an agency receives authorization from the Department of Treasury to use these methods and the purchases are made in accordance with Part IV of the Treasury Financial Manual for Guidance of Departments and Agencies. An imprest fund transaction must not exceed $500 or such other limits as have been approved by the agency head. A third-party draft transaction must not exceed $2,500, unless authorized at a higher level in accordance with Treasury restrictions.

PART 13—SIMPLIFIED PROCEDURES FOR NONCOMMERCIAL ACQUISITIONS

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.

13.000 Scope of part.

This part implements simplified procedures for the acquisition of noncommercial products and services valued at or below the simplified acquisition threshold (SAT) in accordance with 41 U.S.C. 1901–1903, 1905, and 3305.

13.001 Applicability.

(a) The procedures in this part may be used only if—

(1) Unable to acquire products and services from mandatory sources and existing contracts according to part 8; and

(2) There are no commercial products or commercial services that can satisfy the agency's needs (see part 12).

(b) Follow the procedures in this part when procuring noncommercial products and services valued at greater than the micro-purchase threshold (MPT) but at or below the SAT, except—

(1) When procuring architect-engineering services, follow the short selection process at 36.202–4;

(2) When procuring construction as a noncommercial service, comply with the requirements in part 36 for construction contracts; and

(3) When procuring research and development, use the procedures in this part in conjunction with the procedures in part 35, as appropriate.

(c) Do not divide a requirement valued over the SAT merely to permit use of the procedures in this part.

(d) Go to *https://www.acquisition.gov/inapplicablelaws* for the lists of laws that do not apply to acquisitions valued at or below the SAT (41 U.S.C. 1905).

Subpart 13.1—Presolicitation

13.101 Competition.

(a) Agencies must promote competition to the maximum extent practicable when procuring noncommercial products and services valued at or below the SAT.

(b) Document the decision and the basis for the decision to conduct a sole source acquisition or to require brand name specifications without allowing for products with equivalent specifications (''brand name or equal'').

13.102 Small business.

Acquisitions of supplies or services that have an anticipated dollar value above the MPT, but at or below the SAT, must be set aside for small business concerns in accordance with 19.104–1. Include the North American Industry Classification System (NAICS) code and small business size standard in the solicitation.

13.103 Quality assurance.

Generally, inspection and acceptance should be at destination. Inspection at the contractor's location should be specified only if required by 46.404.

Subpart 13.2—Solicitation, Evaluation, and Award

13.201 Solicitation.

(a) *General.* The simplified procedures described at 12.201–1 for issuing requests for quotations (RFQs) also apply to noncommercial acquisitions. Agencies are encouraged to use additional innovative approaches and may leverage the other flexibilities identified in that section; however, if using blanket purchase agreements (BPAs), the maximum value of each individual purchase under a BPA may not exceed the SAT.

(b) *Forms and formats.*

(1) Use the Standard Form (SF) SF 18, Request for Quotations, and Optional Form (OF) 336, Continuation Sheet, to prepare the solicitation. The solicitation should be organized as follows:

(i) SF 18 and, if necessary, the OF 336.

(ii) Applicable contract clauses.

(iii) Any contract documents, exhibits, or attachments.

(iv) Applicable solicitation provisions.

(2) Agencies may use the form and format prescribed in part 36, when

using those procedures in conjunction with this subpart.

(c) *Procedures.* Comply with the requirements in part 5 for publicizing presolicitation notices and solicitations. Unless an exemption at 5.101(b) applies, publicize the acquisition as follows:

(2) Normally, post the solicitation in the Governmentwide Point of Entry (GPE) and, if applicable, include approved brand name justifications.

(3) The contracting officer may choose to solicit quotations directly from suppliers. When soliciting directly—

(i) Post a presolicitation notice in the GPE and, if applicable, include approved brand name justifications; and

(ii) To ensure maximum practicable competition, solicit quotations from at least three sources and, whenever practicable, ensure two were not included in the previous solicitation.

13.202 Evaluation.

Follow the procedures in 12.203 when establishing evaluation factors and a process to evaluate quotations. Notify potential quoters of the basis on which the agency will make the award decision. Exercise good business judgment in deciding whether to accept a quotation received after the due date or time.

13.203 Award.

(a) *Price reasonableness.* The contracting officer must determine the price to be fair and reasonable. Whenever possible, base price reasonableness on competitive quotations.

(b) *Documentation.* Include in the contract file a written description of the procedures used in awarding the purchase order and the number of quotations received.

(c) *Forms and format.* Use the Optional Form (OF) 347, Order for Supplies or Services; the OF 336, Continuation Sheet, or OF 348, Order for Supplies and Services Schedule—Continuation; or similar agency forms or automated formats to the maximum extent practicable.

13.204 Solicitation provisions and contract clauses.

(a) Insert provisions and clauses prescribed elsewhere in the FAR in purchase orders for noncommercial supplies or services valued at or below the SAT as required or applicable based on the clause prescriptions.

(b) Contracting officers may insert the clause at 52.213–4, Terms and Conditions—Simplified Acquisitions (Noncommercial), in noncommercial acquisitions valued at or below the SAT to provide a streamlined set of terms and conditions for inspection/acceptance, excusable delays, terminations, and warranties. This clause is either used in lieu of similar clauses prescribed for these purposes or tailored to incorporate only some of the streamlined terms and conditions, as necessary.

(c) Do not use the part 12 provisions or clause (*i.e.,* 52.212–1, 52.212–2, or 52.212–4) in noncommercial acquisitions.

Subpart 13.3—Postaward

13.301 Notifications.

Comply with the award notice posting requirements in subpart 5.3. Upon request from an unsuccessful quoter, provide a brief explanation of the award decision that explains why the unsuccessful quoter was not selected. If an award notice was not required to be posted to the Government point of entry, also provide the information that would be included in an award notice (see 5.301(c)).

13.302 Cancellations and terminations.

(a) The Government may withdraw, amend, or cancel purchase orders by written notice to the supplier at any time before acceptance of the order occurs (see 12.201–1(b)).

(b) If the supplier did not accept the purchase order in writing, request that the supplier provide written acceptance of the cancellation.

(c) If the supplier does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, follow the procedures in the termination clause in the purchase order (*e.g.,* 52.213–4 or 52.249–8).

13.303 Contract financing and payments.

(a) Unless agency regulations permit otherwise, do not provide financing for purchases valued at or below the SAT.

(b) See part 32 for payment procedures, including the option to use fast payment procedures.

Subpart 13.4—Micro-Purchases

13.401 General.

(a) Follow the procedures in 12.4 when making purchases valued at or below the MPT.

(b) For noncommercial acquisitions, the clause at 52.232–39, Unenforceability of Unauthorized Obligations, automatically applies to any micro-purchase, including those made with the Governmentwide commercial purchase card. This clause prevents violations of the Anti-Deficiency Act (31 U.S.C. 1341).

PART 15—CONTRACTING BY NEGOTIATION

Subpart 15.5—Unsolicited Proposals

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.

15.000 Scope.

This part addresses policies and procedures used in competitive and noncompetitive negotiated acquisitions. These acquisition procedures provide an opportunity for negotiation between the Government and an offeror(s) upon receipt of a proposal submitted in response to a request for proposals (RFP).

15.001 Definitions.

As used in this part—

Clarification means communication between the Government and an offeror where the offeror is given the opportunity to resolve minor or administrative errors or clarify certain aspects of their proposal, but does not result in an opportunity for offerors to submit a proposal revision.

Competitive range means the group of evaluated proposals that the contracting officer determines are best suited for negotiation.

Deficiency is any part of a proposal that does not conform to a material term of a RFP. A material term is one that affects price, quantity, quality, or delivery, or any prerequisites that the RFP requires to be met at the time of proposal submission.

Negotiation means communication between the Government and an offeror regarding an offeror's proposal that results in an opportunity for the offeror to submit a proposal revision. In noncompetitive negotiations, the proposal revision may occur verbally and be captured in the resultant contract.

Proposal modification is a change made to a proposal before the RFP closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

Proposal revision is a change to an offeror's proposal made after the RFP closing date, at the request of or as allowed by a contracting officer, as the result of negotiations.

Weakness means a flaw in the proposal that increases the risk of unsuccessful contract performance. A ''significant weakness'' in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.

15.002 Types of negotiated acquisition.

(a) *Noncompetitive acquisitions.* Noncompetitive, or sole source, acquisition is a process whereby an award is made to a single vendor without soliciting proposals from multiple sources. When using this acquisition strategy, remove unnecessary information and requirements from the RFP, including voluminous proposal preparation instructions and evaluation factors.

(b) *Competitive acquisitions.* Competitive acquisition is a process whereby an award is made after soliciting proposals from multiple sources. When using this acquisition strategy, tailor the complexity of the RFP, evaluation, and source selection decision to the circumstances of the acquisition, while maintaining a process that promotes an impartial and comprehensive evaluation of proposals, leading to selection of the proposal representing the best value to the Government.

Subpart 15.1—Presolicitation and Solicitation

15.100 Scope.

This subpart addresses policies and procedures for preparing RFPs and receiving proposals. RFPs are used in negotiated acquisitions to communicate Government requirements to prospective contractors and to request proposals.

15.101 Structuring a request for proposals.

(a) *Format.* Prepare written RFPs and resulting contracts using the uniform contract format (UCF) at 15.108.

(1) Streamlined RFPs may be used in non-competitive acquisitions and other acquisitions in which a standard RFP would be unnecessarily lengthy.

(2) Oral RFPs may be used when processing a written RFP would delay the acquisition of supplies or services to the detriment of the Government and an RFP is not required to be posted under part 5.

(b) *Exceptions.* Agencies do not need to use the UCF for:

(1) Construction and architect-engineer contracts.

(2) Subsistence contracts.

(3) Supplies or services contracts requiring special contract formats prescribed elsewhere in this part that are inconsistent with the UCF.

(4) Streamlined RFPs.

(5) Contracts exempted by the agency head or designee.

(c) *Minimum content when not using the uniform contract format.* When the UCF is not used, ensure—

(1) Competitive RFPs, at a minimum, describe the Government's requirement; any anticipated terms and conditions that will apply to the contract; the information required to be in the offeror's proposal; the factors and significant subfactors that will be used to evaluate the proposal and their relative importance; and one of the statements at 15.103(d).

(2) Streamlined RFPs are simplified to remove unnecessary information and requirements and, at a minimum, contain the following:

(i) RFP number and date;

(ii) Name, address, and telephone number of the contracting officer;

(iii) Type of contract contemplated;

(iv) Quantity, description, and required delivery dates for the item;

(v) Applicable representations and certifications;

(vi) Anticipated contract terms and conditions;

(vii) Proposal due date and time;

(viii) Other relevant information; *e.g.,* incentives, variations in delivery schedule, cost proposal support, and data requirements; and

(ix) For competitive streamlined RFPs, instructions to offerors and evaluation factors and significant subfactors in accordance with 15.103.

15.102 Developing a competitive source selection approach.

The goal of source selection is to select the proposal that represents the best value to the Government. To obtain best value, agencies use a range of approaches for evaluating competitive proposals, where the importance of cost or price varies relative to other factors such as technical merit and past performance. Agencies can obtain best value in competitive negotiated acquisitions by using any one or a combination of source selection approaches, including but not limited to the approaches mentioned in this section.

15.102–1 Tradeoff approach.

The tradeoff approach to source selection is appropriate when it may be in the Government's best interest to consider award to other than the lowest priced offeror or other than the highest technically rated offeror. This process permits tradeoffs among cost or price and non-cost or non-price factors. The anticipated benefits of a higher priced proposal must merit the additional cost.

15.102–2 Lowest price technically acceptable approach.

(a) *General.* The lowest price technically acceptable (LPTA) approach to source selection is appropriate when it is in the Government's best interest to award to the offeror that submits a technically acceptable proposal with the lowest evaluated price. This process does not permit tradeoffs.

(b) *Required Information.* When using this process, the RFP must—

(1) Identify the evaluation factors that establish the minimum requirements for acceptability; and

(2) Specify that the award will be made based on the lowest evaluated price of proposals meeting or exceeding the requirements for acceptability.

(c) *Limitations.* Except for DoD, in accordance with section 880 of the John S. McCain NDAA for FY 2019 (Pub. L. 115–232, 41 U.S.C. 3701 Note)—

(1) The LPTA source selection approach must only be used when—

(i) The agency can comprehensively and clearly describe the minimum requirements in terms of performance objectives, measures, and standards that will be used to determine the acceptability of proposals;

(ii) The agency would realize no, or minimal, value from a proposal that exceeds the minimum technical or performance requirements;

(iii) The agency believes the technical proposals will require no, or minimal, subjective judgment by the source selection authority (SSA) as to the desirability of one offeror's proposal versus a competing proposal;

(iv) The agency has a high degree of confidence that reviewing the technical proposals of all offerors would not result in the identification of characteristics that could provide value or benefit to the agency;

(v) The agency determined that the lowest price reflects the total cost, including operation and support, of the product(s) or service(s) being acquired; and

(vi) The contracting officer documents the contract file describing the circumstances that justify the use of the LPTA source selection process.

(2) Avoid, to the maximum extent practicable, using the LPTA source selection process in the case of a procurement that is predominantly for the acquisition of—

(i) Information technology services, cybersecurity services, systems engineering and technical assistance services, advanced electronic testing, audit or audit readiness services, health care services and records, telecommunications devices and services, munitions response services, or other knowledge-based professional services;

(ii) Personal protective equipment; or

(iii) Knowledge-based training or logistics services in contingency operations or other operations outside the United States.

15.102–3 Highest technically rated with a fair and reasonable price approach.

(a) *General.* (1) The highest technically rated with a fair and reasonable price approach to source selection is appropriate when the Government determines in advance that it would not be advantageous to consider tradeoffs between cost or price and non-cost or non-price factors; rather, the acquisition warrants paying any fair and reasonable price for the highest technically rated proposal.

(2) In this process, all proposals are evaluated based on the non-price factors outlined in the RFP. The price of the highest technically rated proposal is evaluated to determine if it is fair and reasonable in accordance with subpart 15.4.

(3) If the highest technically rated proposal's price is fair and reasonable, the proposal is selected for award. If the price is not fair and reasonable, the next highest technically rated proposal is evaluated to determine whether the price is fair and reasonable in accordance with subpart 15.4. This process continues until a contract is awarded to the highest technically rated responsible offeror with a fair and reasonable price.

(b) *Required information.* When using this process, the RFP must advise offerors that the Government will not consider tradeoffs between cost or price and non-cost or non-price factors, and that the highest technically rated proposal will be selected for award if it offers a fair and reasonable price.

15.102–4 Phased evaluation.

Phased evaluations, or a down-select process, may promote efficiency when evaluating proposals. An RFP can require phased submission of proposals, where offerors address specific evaluation factors with their initial proposal and address the remaining evaluation factors in subsequent proposals.

15.103 Establishing competitive evaluation factors and significant subfactors.

(a) *General.* A competitive award decision is based on evaluation factors and significant subfactors that are tailored to the acquisition. Evaluation factors and significant subfactors must represent the key areas of importance and emphasis to be considered in the source selection decision, and support meaningful differentiation between competing proposals. All factors and significant subfactors that will affect contract award and their relative importance must be stated clearly in the RFP (10 U.S.C. 3206(b)(1) and 41 U.S.C. 3306(b)(1)).

(b) *Required factors.* The evaluation factors and significant subfactors that apply to an acquisition and their relative importance are within the broad discretion of agency acquisition officials, subject to the following requirements:

(1) *Price or cost.*

(i) Price or cost to the Government must be evaluated in every competitive source selection (10 U.S.C. 3206(c)(1)(B) and 41 U.S.C. 3306(c)(1)(B)). Proposed price reductions under an offeror's other contracts cannot be used as an evaluation factor.

(ii) For DoD, NASA, and the Coast Guard, contracting officers may choose not to include price or cost as an evaluation factor for award in accordance with 16.601–2(b)(2).

(2) *Quality.* The quality of the product or service must be evaluated in every competitive source selection through consideration of one or more non-cost

evaluation factors such as technical excellence, management capability, personnel qualifications, prior experience, past performance, and compliance with RFP requirements (10 U.S.C. 3206(c)(1)(A) and 41 U.S.C. 3306(c)(1)(A)).

(3) *Past performance.*

(i) Past performance must be evaluated in every competitive source selection, unless the contracting officer documents the reason past performance is not an appropriate evaluation factor for the acquisition. This evaluation is separate from the responsibility determination required under part 9.

(ii) The RFP must—

(A) Describe the general approach for evaluating past performance information, including evaluating offerors with no relevant performance history; and

(B) Provide offerors an opportunity to: identify past or current contracts (including Federal, State, and local government, private sector, and other contracts) for efforts similar to the Government requirement, and provide information on problems encountered on the identified contracts and the offeror's corrective actions.

(c) *Situational factors.* For competitive RFPs that are not set aside for small business concerns, but involve consolidation or bundling, and offer a significant opportunity for subcontracting, include—

(1) A factor to evaluate past performance indicating the extent to which the offeror attained applicable goals for small business participation under contracts that required subcontracting plans (15 U.S.C. 637(d)(4)(G)(ii)); and

(2) A factor to evaluate the proposed small business subcontracting participation in the subcontracting plan (15 U.S.C. 637(d)(4)(G)(i)).

(d) *Factor importance.* In addition to stating the relative importance of each evaluation factor, and unless the exception at paragraph (b)(1)(ii) of this section applies, the RFP must also state, at a minimum, whether all evaluation factors other than cost or price, when combined, are—

(1) Significantly more important than cost or price;

(2) Approximately equal to cost or price; or

(3) Significantly less important than cost or price (10 U.S.C. 3206(c)(1)(C) and 41 U.S.C. 3306(c)(1)(C)).

15.104 Other considerations.

15.104–1 Oral presentations.

(a) Oral presentations may be used as a substitute for requesting portions of a written proposal information from offerors. Information on an offeror's capability, past performance, work plans or approaches, staffing resources, transition plans, or sample tasks can be suitable for oral presentations.

(b) Oral presentations may occur at any time during the source selection process. When requesting oral presentations, the RFP must provide offerors with the necessary information to prepare and provide the presentation.

15.104–2 Negotiations disclosure.

Competitive RFPs must advise offerors whether the Government intends to evaluate proposals and award a contract with or without conducting negotiations with offerors whose proposals have been determined to be within the competitive range (10 U.S.C. 3206(b)(2)(B)(i) and 41 U.S.C. 3306(b)(2)(B)(i)). FAR provision 52.215–1, *Instructions to Offerors-Competitive Acquisition,* and its *Alternate I,* contain this disclosure.

15.104–3 Limitation on tiered evaluations for multiple award contracts.

When soliciting for a multiple award contract, agencies must not create a tiered or cascading evaluation of small business offers, as described in 13 CFR 125.2, unless the agency has statutory authority to do so.

15.104–4 Request for cost or pricing data.

(a) *Required information.* In accordance with 15.402(a), the RFP must state—

(1) Whether certified cost or pricing data are required;

(2) That, in lieu of submitting certified cost or pricing data, the offeror may submit a request for exception from the requirement to submit certified cost or pricing data;

(3) Any requirement for data other than certified cost or pricing data, including a description of the data needed, the format required for submission, and the access to records needed to permit an adequate evaluation of the proposed price in accordance with 15.403–1; and

(4) The requirement for necessary preaward or postaward access to offeror's records.

(b) *Format for submission of data.*

(1) *Certified cost or pricing data.* Contracting officers may require submission of certified cost or pricing data in the format indicated in Table 15–1 at 15.408–2, specify an alternative format, or permit submission in the contractor's format, unless the data are required to be submitted on one of the termination forms specified in part 49.

(i) Offerors must describe any forward pricing rate agreements (FPRA) or other advance agreements in each specific pricing proposal to which the rates apply and identify the latest cost or pricing data already submitted in accordance with the FPRA.

(ii) Data supporting FPRAs, other advanced agreements, or final indirect cost proposals must be submitted in a form acceptable to the contracting officer.

(2) *Data other than certified cost or pricing data.* Data may be submitted in the offeror's own format unless the contracting officer decides that use of a specific format is essential for evaluating and determining that the price is fair and reasonable and the format has been described in the RFP.

15.104–5 Make-or-buy program.

(a) *General.*

(1) A make-or-buy program is the part of a contractor's written plan for a contract that identifies those major items to be produced or work efforts to be performed in the prime contractor's facilities and those to be subcontracted.

(2) The Government may choose to review and agree on the offeror's make-or-buy program when necessary to ensure negotiation of reasonable contract prices, satisfactory performance, or implementation of socioeconomic policies.

(b) *Acquisitions requiring make-or-buy programs.*

(1) Contracting officers may require offerors to submit make-or-buy program plans for acquisitions requiring certified cost or pricing data whose estimated value is $20 million or more, except when the proposed contract is for research or development and, if prototypes or hardware are involved, no significant follow-on production is anticipated.

(2) Only require offerors to submit make-or-buy programs for acquisitions whose estimated value is under $20 million if—

(i) It is determined that the information is necessary; and

(ii) The reasons are documented in the contract file.

(c) *RFP requirements.* When offerors must submit proposed make-or-buy programs, the RFP must include—

(1) A statement that the program and required supporting information must accompany the proposal; and

(2) A description of factors to be used in evaluating the proposed program.

(d) *Required information from offerors.*

(1) To facilitate an evaluation in accordance with 15.405–2, the information required from an offeror about a make-or-buy program must—

(i) Be confined to those major items or work efforts that normally would require company management review of the make-or-buy decision because they are complex, costly, needed in large quantities, or require additional equipment or real property to produce;

(ii) Not include raw materials, products, commercial services, and off-the-shelf items, unless their potential impact on contract cost or schedule is critical; and,

(iii) Not include items or work efforts estimated to cost less than 1 percent of the total estimated contract price or any minimum dollar amount set by the agency.

(2) To support a make-or-buy program, the following information must be provided by an offeror in its proposal:

(i) A description of each major item or work effort.

(ii) Categorization of each major item or work effort as ''must make,'' ''must buy,'' or ''can either make or buy.''

(iii) For each item or work effort categorized as ''can either make or buy,'' a proposal either to ''make'' or to ''buy.''

(iv) Reasons for categorizing items and work efforts as ''must make'' or ''must buy,'' and proposing to ''make'' or to ''buy'' those categorized as ''can either make or buy.'' The reasons must include the consideration given to the evaluation factors described in the RFP and must be in sufficient detail to permit the contracting officer to evaluate the categorization or proposal.

(v) Designation of the plant or division proposed to make each item or perform each work effort, and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(vi) Identification of proposed subcontractors, if known, and their location and size status.

(vii) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission.

(viii) Any other information the contracting officer requires in order to evaluate the program.

15.104–6 Should-cost review.

When a program should-cost review is planned in accordance with 15.405–4, state this fact in the acquisition plan and in the RFP.

15.104–7 Unit prices.

To facilitate the analysis at 15.404–5, require offerors to identify in their proposals those items of supply that they will not manufacture or to which they will not contribute significant value when adequate price competition is not anticipated. This requirement does not apply to acquisitions for commercial products or commercial services.

15.104–8 Advisory multistep process.

(a) Prior to releasing an RFP, agencies may publish a notice that provides a general description of the scope or purpose of the acquisition and invites potential offerors to submit information that allows the Government to advise offerors about their potential to be viable competitors in the upcoming RFP.

(b) When using this process, agencies must—

(1) Evaluate all responses in accordance with the criteria stated in the notice;

(2) Advise each respondent in writing either that it is likely to be a viable competitor or, based on the information submitted, that it is unlikely to be a viable competitor for the upcoming RFP;

(3) Advise respondents considered not to be viable competitors of the general basis for that opinion; and

(4) Inform all respondents that, notwithstanding the advice provided by the Government in response to their submissions, they may participate in the upcoming RFP.

15.105 Amending a request for proposal.

(a) *General.* When the Government changes its requirements or terms and conditions, amend the RFP.

(1) Amendments issued before the established time and date for receipt of proposals must be issued to all parties receiving the RFP.

(2) Amendments issued after the established time and date for receipt of proposals must be issued to all offerors that have not been eliminated from the competition.

(b) *Content.* At a minimum, each amendment must include—

(1) The name and address of issuing activity;

(2) The RFP number and date;

(3) The amendment number and date;

(4) The number of pages in the amendment;

(5) A description of the change being made;

(6) The contracting officer's name and contact information; and

(7) The revised RFP closing date, if applicable.

(c) *Forms.* Prescribed forms are not required to amend RFPs described in this part. Agencies may use Standard Form (SF) 30, *Amendment of Solicitation/Modification of Contract,* and Optional Form (OF) 309, *Amendment of Solicitation.*

(d) *Oral notices.* Oral notices may be used when time is of the essence. Document the contract file and formalize the notice with a written amendment.

(e) *Requirement changes.*

(1) Amend the RFP if the Government is interested in a proposal that involves a departure from the stated requirements. The amendment must not reveal the alternate solution proposed or any other information that is entitled to protection.

(2) Cancel the RFP and issue a new one, regardless of the stage of the acquisition if an amendment—

(i) Is proposed after proposals have been received, and

(ii) In the judgment of the contracting officer, based on market research or otherwise, has a requirement change that is so substantial it exceeds what prospective offerors reasonably could have anticipated as a change to the RFP, and additional sources likely would have submitted proposals had the change been in the RFP.

15.106 Submission, modification, revision, and withdrawal of proposals.

(a) *Submission.* Offerors are responsible for submitting proposals, and any revisions or modifications, so as to reach the Government office designated in the RFP by the time specified in the RFP.

(1) *Method.* Offerors may use any transmission method authorized in the RFP.

(2) *Time.* If no time is specified in the RFP, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposals are due.

(b) *Late submission.* (1) *General.* Any proposal, modification, or revision, that is received at the designated Government office after the exact time specified for receipt of proposals is ''late'' and will not be considered, unless it is received before award is made and the contracting officer determines that accepting the late proposal is in the Government's best interest and would not unduly delay the acquisition.

(2) *Proof of receipt.* Acceptable evidence to establish the time of receipt at the Government installation includes electronic timestamps, the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(3) *Notification.* Promptly notify any offeror if its proposal, modification, or revision was received late, and inform the offeror whether its proposal will be considered, unless contract award is

imminent and the award notice at 15.207–2 will suffice.

(4) *Documentation.* (i) When available, the file for each late proposal, modification, revision, or withdrawal received must include the date and hour of receipt; a statement regarding whether the proposal was considered for award, with supporting rationale; and the envelope, wrapper, or other evidence of date of receipt.

(ii) Late proposals and modifications that are not considered must be held unopened, unless opened for identification, until after award and then retained with other unsuccessful proposals.

(c) *Interruption.* If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the Government office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the RFP closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the RFP on the first work day on which normal Government processes resume.

(d) *Withdrawal.* Proposals may be withdrawn by written notice at any time before award. A copy of withdrawn proposals should be retained in the contract file.

(1) Extra copies of the withdrawn proposals may be destroyed or returned to the offeror at the offeror's request. Extremely bulky proposals must only be returned at the offeror's request and expense.

(2) Oral proposals in response to oral RFPs may be withdrawn orally. Document the contract file when oral withdrawals are made.

15.107 Receiving proposals.

(a) *Marking.* When there is no electronic record, contracting officers must mark proposals with the date and time of receipt and provide them to the designated officials.

(b) *Handling.* Proposals should be safeguarded from unauthorized disclosure throughout the source selection process in accordance with 3.104–4.

(c) *Unreadable proposals.* If any portion of a proposal is unreadable, immediately notify the offeror and permit the offeror to resubmit the unreadable portion of the proposal. Establish the method and time for resubmission after consultation with the offeror and document the file. For the purpose of determining timeliness under 15.106, the resubmission is considered as if it were received at the date and time of the original unreadable submission, provided the offeror complies with the time and format requirements established by the contracting officer for resubmission.

15.108 Uniform contract format.

RFPs using the UCF should include Parts I, II, III, and IV. Upon award, do not physically include Part IV in the resulting contract, but retain it in the contract file. The representations and certifications in Part IV are incorporated by reference in the contract through FAR clauses 52.204–19, *Incorporation by Reference of Representations and Certifications,* and 52.212–4, *Contract Terms and Conditions—Commercial Products and Commercial Services.*

15.108–1 Part I—The Schedule.

(a) *Section A, Solicitation/contract form.*

(1) Prescribed forms are not required to prepare RFPs described in this part. Agencies may use Optional Form (OF) 308, *Solicitation and Offer-Negotiated Acquisition,* or Standard Form (SF) 33, *Solicitation, Offer and Award,* to prepare RFPs.

(2) When other than OF 308 or SF 33 is used, include the following information on the first page of the RFP:

(i) Name, address, and location of issuing activity, including room and building where proposals or information must be submitted.

(ii) RFP number.

(iii) Date of issuance.

(iv) Closing date and time.

(v) Number of RFP pages.

(vi) Requisition or other purchase authority.

(vii) Brief description of item or service.

(viii) Requirement for the offeror to provide its name and complete address, including street, city, county, state, and zip code, and email address, if appropriate.

(ix) Proposal expiration date.

(b) *Section B, Supplies or services and prices/costs.* Include a brief description of the supplies or services, including any incidental deliverables.

(c) *Section C, Description/specifications/requirements.* Include any description or specifications needed in addition to Section B.

(d) *Section D, Packaging and marking.* Include packaging, packing, preservation, and marking requirements, if any.

(e) *Section E, Inspection and acceptance.* Include inspection, acceptance, quality assurance, and reliability requirements.

(f) *Section F, Deliveries or performance.* Include the requirements for time, place, and method of delivery or performance.

(g) *Section G, Contract administration data.* Include any required accounting and appropriation data and any required contract administration information or instructions not included in other sections of the UCF. Include a statement that the offeror should include the payment address in the proposal, if it is different from that shown for the offeror.

(h) *Section H, Special contract requirements.* Include a clear statement of any special contract requirements that are not included in Section I or in other sections of the UCF.

15.108–2 Part II—Contract Clauses.

Section I, Contract clauses. Include the clauses required by law or by this part and any additional clauses expected to be included in any resulting contract, if these clauses are not required in any other section of the UCF. An index may be inserted if this section's format is particularly complex.

15.108–3 Part III—List of Documents, Exhibits, and Other Attachments.

Section J, List of attachments. Include a list of the title, date, and number of pages for each attached document, exhibit, and other attachment. Cross references to material in other sections may be inserted, as appropriate.

15.108–4 Part IV—Representations and Instructions.

(a) *Section K, Representations, certifications, and other statements of offerors.* Include RFP provisions that require representations, certifications, or the submission of other information by offerors.

(b) *Section L, Instructions, conditions, and notices to offerors or respondents.* Include solicitation provisions and other information and instructions not required elsewhere to guide offerors in preparing proposals.

(1) Include the method(s) offerors may use to submit a proposal.

(2) Offerors may be instructed to submit proposals or information in a specific format or severable parts to facilitate evaluation. Agencies may also require the proposal to be further organized into sections (*e.g.,* administrative, management, technical, past performance, and certified cost and pricing data or data other than certified cost and pricing data).

(c) *Section M, Evaluation factors for award.* Identify all significant factors and any significant subfactors that will be considered in awarding the contract, their relative importance, and one of the phrases in 15.103(d), as required.

15.109 Solicitation provisions and contract clauses.

(a)(1) Insert the provision at 52.215–1, *Instructions to Offerors—Competitive Acquisition,* in competitive solicitations, other than those for commercial products or commercial services, where the Government intends to award a contract without negotiation with offerors.

(2) Use the provision with its *Alternate I* when the Government intends to award a contract after negotiation with offerors.

(3) Use the provision with its Alternate II when the Government will accept alternate proposals.

(b)(1) Insert the clause at 52.215–2, *Audit and Records-Negotiation* in solicitations and contracts except those for—

(i) Acquisitions valued at or below the SAT;

(ii) The acquisition of utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge; or

(iii) The acquisition of commercial products or commercial services exempted under 15.403–2.

(2) Reserved.

(3) Use the clause with its *Alternate II* when contemplating the award of a cost-reimbursement contract with State and local Governments, educational institutions, and other nonprofit organizations.

(4) Use the clause with its *Alternate III* when the head of the agency waives the examination of records by the Comptroller General in accordance with part 25.

(c) [Reserved]

(d) [Reserved]

(e) [Reserved]

(f) Insert the provision at 52.215–6, *Place of Performance,* in solicitations, other than those for commercial products or commercial services, when the place of performance is not specified by the Government.

(g) [Reserved]

(h) Insert the clause at 52.215–8, *Order of Precedence—Uniform Contract Format,* in solicitations and contracts, other than those for commercial products or commercial services, that use the UCF.

(i)(1) Insert the clause at 52.215–9, *Changes or Additions to Make-or-Buy Program,* in solicitations and contracts, other than those for commercial products or commercial services, when a make-or-buy program may be incorporated in the contract.

(2) When a less economical ''make'' or ''buy'' categorization is selected for one or more items of significant value, use the clause with—

(i) Its *Alternate I,* if a fixed-price incentive contract is contemplated; or

(ii) Its *Alternate II,* if a cost-plus-incentive-fee contract is contemplated.

(j) Insert the clause at 52.215–10, *Price Reduction for Defective Certified Cost or Pricing Data,* in solicitations and contracts when certified cost or pricing data will be required from the contractor or any subcontractor. Only include the clause in solicitations and contracts for commercial products (other than commercially available off-the-shelf (COTS) items) and/or commercial services—

(1) In noncompetitive acquisitions valued greater than $25 million for supplies and services treated as commercial products and commercial services in accordance with 12.001(b); or

(2) For DoD, NASA, and the Coast Guard, when acquiring a commercial product as defined in paragraph (3)(ii) of the definition of commercial product in part 2, and the total price of all such modifications under a particular contract action exceeds the greater of—

(i) The threshold for obtaining certified cost or pricing data in 15.403–3(a); or

(ii) 5 percent of the total price of the contract at the time of contract award.

(k) Insert the clause at 52.215–11, *Price Reduction for Defective Certified Cost or Pricing Data—Modifications,* in solicitations and contracts when certified cost or pricing data will be required from the contractor or any subcontractor for the pricing of contract modifications, and the clause at 52.215–10 has not been included. Only include the clause in solicitations and contracts for commercial products (other than COTS items) and/or commercial services—

(1) In noncompetitive acquisitions valued greater than $25 million for supplies and services treated as commercial products and commercial services in accordance with 12.001(b); or

(2) For DoD, NASA, and the Coast Guard, when acquiring a commercial product as defined in paragraph (3)(ii) of the definition of commercial product in part 2, and the total price of all such modifications under a particular contract action exceeds the greater of—

(i)The threshold for obtaining certified cost or pricing data in 15.403–3(a); or

(ii) 5 percent of the total price of the contract at the time of contract award.

(l)(1) Insert the clause at 52.215–12, *Subcontractor Certified Cost or Pricing Data,* in solicitations and contracts that include the clause at 52.215–10. Only include the clause in solicitations and contracts for commercial products (other than COTS items) and/or commercial services—

(i) In noncompetitive acquisitions valued greater than $25 million for supplies and services treated as commercial products and commercial services in accordance with 12.001(b); or

(ii) For DoD, NASA, and the Coast Guard, when acquiring a commercial product as defined in paragraph (3)(ii) of the definition of commercial product in part 2, and the total price of all such modifications under a particular contract action exceeds the greater of—

(A)The threshold for obtaining certified cost or pricing data in 15.403–3(a); or

(B) 5 percent of the total price of the contract at the time of contract award.

(2) Replace the clause with its Alternate I, without requiring consideration, upon the request of a contractor that was required to submit certified cost or pricing data in connection with a prime contract entered into before July 1, 2018.

(m)(1) Insert the clause at 52.215–13, *Subcontractor Certified Cost or Pricing Data—Modifications,* in solicitations and contracts that include the clause at 52.215–12. Only include the clause in solicitations and contracts for commercial products (other than COTS items) and commercial services—

(i) In noncompetitive acquisitions valued greater than $25 million for supplies and services treated as commercial products and/or commercial services in accordance with 12.001(b); or

(ii) For DoD, NASA, and the Coast Guard, when acquiring a commercial product as defined in paragraph (3)(ii) of the definition of commercial product in part 2, and the total price of all such modifications under a particular contract action exceeds the greater of—

(A)The threshold for obtaining certified cost or pricing data in 15.403–3(a); or

(B) 5 percent of the total price of the contract at the time of contract award.

(2) Replace the clause with its Alternate I, without requiring consideration, upon the request of a contractor that was required to submit certified cost or pricing data in connection with a prime contract entered into before July 1, 2018.

(n)(1) Insert the clause at 52.215–14, *Integrity of Unit Prices,* in solicitations and contracts except for—

(i) Acquisitions valued at or below the SAT;

(ii) Construction or architect-engineer services under part 36;

(iii) Utility services under part 41;

(iv) Service contracts where supplies are not required;

(v) Acquisitions of commercial products and commercial services; and

(vi) Contracts for petroleum products.

(2) Use the clause with its *Alternate I* when contracting without adequate price competition or when prescribed by agency regulations.

(o) Insert the clause at 52.215–15, *Pension Adjustments and Asset Reversions,* in solicitations and contracts when certified cost or pricing data is required or any preaward or postaward cost determinations will be subject to part 31. Only include the clause in solicitations and contracts for commercial products (other than COTS items) and/or commercial services—

(1) In noncompetitive acquisitions valued greater than $25 million for supplies and services treated as commercial products and commercial services in accordance with 12.001(b); or

(2) For DoD, NASA, and the Coast Guard, when acquiring a commercial product as defined in paragraph (3)(ii) of the definition of commercial product in part 2, and the total price of all such modifications under a particular contract action exceeds the greater of—

(i)The threshold for obtaining certified cost or pricing data in 15.403–3(a); or

(ii) 5 percent of the total price of the contract at the time of contract award.

(p) Insert the provision at 52.215–16, *Facilities Capital Cost of Money,* in solicitations, other than those for commercial products and commercial services, expected to result in contracts that are subject to the cost principles for contracts with commercial organizations.

(q) Insert the clause at 52.215–17, *Waiver of Facilities Capital Cost of Money,* in contracts, other than those for commercial products and commercial services, when the prospective contractor does not propose facilities capital cost of money in its proposal.

(r) Insert the clause at 52.215–18, *Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions,* in solicitations and contracts when certified cost or pricing data will be required or any preaward or postaward cost determinations will be subject to part 31. Only include the clause in solicitations and contracts for commercial products (other than COTS items) and/or commercial services—

(1) In noncompetitive acquisitions valued greater than $25 million for supplies and services treated as commercial products and commercial services in accordance with 12.001(b); or

(2) For DoD, NASA, and the Coast Guard, when acquiring a commercial product as defined in paragraph (3)(ii) of the definition of commercial product in part 2, and the total price of all such modifications under a particular contract action exceeds the greater of—

(i) The threshold for obtaining certified cost or pricing data in 15.403–3(a); or

(ii) 5 percent of the total price of the contract at the time of contract award.

(s) Insert the clause at 52.215–19, *Notification of Ownership Changes,* in solicitations and contracts when certified cost or pricing data is required or any preaward or postaward cost determination will be subject to subpart 31. Only include the clause in solicitations and contracts for commercial products (other than COTS items) and/or commercial services—

(1) In noncompetitive acquisitions valued greater than $25 million for supplies and services treated as commercial products and commercial services in accordance with 12.001(b); or

(2) For DoD, NASA, and the Coast Guard, when acquiring a commercial product as defined in paragraph (3)(ii) of the definition of commercial product in part 2, and the total price of all such modifications under a particular contract action exceeds the greater of—

(i) The threshold for obtaining certified cost or pricing data in 15.403–3(a); or

(ii) 5 percent of the total price of the contract at the time of contract award.

(t)(1) Considering the hierarchy at 15.403–1(a), insert the provision at 52.215–20, *Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data,* in solicitations if it is anticipated that certified cost or pricing will be required. Only include the clause in solicitations and contracts for commercial products (other than COTS items) and/or commercial services—

(i) In noncompetitive acquisitions valued greater than $25 million for supplies and services treated as commercial products and commercial services in accordance with 12.001(b); or

(ii) For DoD, NASA, and the Coast Guard, when acquiring a commercial product as defined in paragraph (3)(ii) of the definition of commercial product in part 2, and the total price of all such modifications under a particular contract action exceeds the greater of—

(A) The threshold for obtaining certified cost or pricing data in 15.403–3(a); or

(B) 5 percent of the total price of the contract at the time of contract award.

(2) Use the provision with its *Alternate I* to specify a format for certified cost or pricing data other than the format required by Table 15–1 at 15.408–2;

(3) Use the provision with its *Alternate II* if copies of the proposal are to be sent to the administrative contracting officer (ACO) and contract auditor;

(4) Use the provision with its *Alternate III* if submission via electronic media is required; and

(5) Replace the provision with its *Alternate IV* if it is anticipated that certified cost or pricing data will not be required

(u)(1) Considering the hierarchy at 15.403–1(a), insert the clause at 52.215–21, *Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications,* in solicitations and contracts if it is anticipated that certified cost or pricing data will be required for modifications. This clause provides instructions to contractors on how to request an exception from the requirement to submit certified cost or pricing data. Only include the clause in solicitations and contracts for commercial products (other than COTS items) and commercial services—

(i) In noncompetitive acquisitions valued greater than $25 million for supplies and services treated as commercial products and commercial services in accordance with 12.001(b); or

(ii) For DoD, NASA, and the Coast Guard, when acquiring a commercial product as defined in paragraph (3)(ii) of the definition of commercial product in part 2, and the total price of all such modifications under a particular contract action exceeds the greater of—

(A) The threshold for obtaining certified cost or pricing data in 15.403–3(a); or

(B) 5 percent of the total price of the contract at the time of contract award.

(2) Use the clause with its *Alternate I* to specify a format for certified cost or pricing data other than the format required by Table 15–1 at 15.408–2;

(3) Use the clause with its *Alternate II* if copies of the proposal are to be sent to the ACO and contract auditor;

(4) Use the clause with its *Alternate III* if submission via electronic media is required; and

(5) Replace the provision with its *Alternate IV* if it is anticipated that certified cost or pricing data will not be required.

(v) Insert the provision at 52.215–22, *Limitations on Pass-Through Charges—*

Identification of Subcontract Effort, in solicitations, other than those for commercial products and commercial services, containing the clause at 52.215–23.

(w)(1) Insert the clause 52.215–23, *Limitations on Pass-Through Charges,* in solicitations, contracts, and task or delivery orders, other than those for commercial products and commercial services—

(i) For civilian agencies, when contemplating the award of a cost-reimbursement type contract, and the value of the acquisition exceeds the SAT; or

(ii) For DoD, when value of the acquisition exceeds the threshold for obtaining cost or pricing data at 15.403–3(a) and contemplating the award of any contract type except—

(A) A firm-fixed-price contract awarded on the basis of adequate price competition;

(B) A fixed-price contract with economic price adjustment awarded on the basis of adequate price competition; or

(C) A fixed-price incentive contract awarded on the basis of adequate price competition.

(2) When it is appropriate, the clause may be used in solicitations and contracts for any contract type that is valued below the thresholds identified in 15.109(w)(1).

(3) Use the clause with its *Alternate I* when the prospective contractor has demonstrated that its functions provide added value to the contracting effort and there are no excessive pass-through charges.

Subpart 15.2—Evaluation and Award

15.200 Scope.

This subpart addresses policies and procedures for evaluating and negotiating competitive proposals and awarding contracts.

15.201 Source selection responsibilities.

(a) Agency heads are responsible for source selection. A contracting officer is designated as the SSA, unless the agency head appoints another individual for a particular acquisition or group of acquisitions.

(b) The SSA must—

(1) Establish an evaluation team tailored for the acquisition that includes appropriate contracting, legal, logistics, technical, and other expertise to ensure a comprehensive evaluation of proposals;

(2) Approve the source selection approach or acquisition plan, if applicable, before issuance of the request for proposal (RFP);

(3) Ensure consistency among the RFP requirements, notices to offerors, proposal preparation instructions, evaluation factors and subfactors, solicitation provisions or contract clauses, and data requirements;

(4) Ensure that proposals are evaluated based solely on the factors and subfactors contained in the RFP (10 U.S.C. 3303(c) and 41 U.S.C. 3703(c));

(5) Consider the recommendations of advisory boards or panels, when applicable; and

(6) Select the offeror or offerors whose proposal is the best value to the Government (10 U.S.C. 3303(c) and 41 U.S.C. 3703(c)). The SSA may reject all proposals received in response to a RFP, if doing so is in the best interest of the Government.

(c) Contracting officers must—

(1) After release of a RFP, serve as the focal point for inquiries from actual or prospective offerors;

(2) After receipt of proposals, control communications with offerors;

(3) When negotiating noncompetitive proposals, evaluate the proposal and document the reasonableness of the offered prices in accordance with subpart 15.4; and

(4) Award the contract(s).

(d) *Limitations.* Government personnel involved in the acquisition must not engage in conduct that—

(1) Favors one offeror over another;

(2) Reveals an offeror's technical solution, including—

(i) Unique technology;

(ii) Innovative and unique uses of commercial products or commercial services; or

(iii) Any information that would compromise an offeror's intellectual property to another offeror;

(3) Reveals an offeror's price without that offeror's permission.

(4) Reveals the names of individuals providing information about an offeror's past performance; or

(5) Knowingly furnishes source selection information in violation of the procurement integrity requirements of part 3 and 41 U.S.C. 2102 and 2107.

15.202 Evaluating competitive proposals.

(a) *General.* (1) Proposal evaluation is an assessment of the proposal and an offeror's ability to perform the prospective contract successfully. Agencies must evaluate each competitive proposal based solely on the factors and subfactors in the RFP and document the evaluation.

(2) *Clarifications.* (i) Clarifications can be used to enhance the Government's understanding of a proposal, allow reasonable interpretation of a proposal, or facilitate the Government's evaluation process. Clarifications include, but are not limited to, addressing–

(A) Ambiguities of the proposal;

(B) Other concerns such as perceived deficiencies, weaknesses, errors, omissions, or mistakes;

(C) The relevance of an offeror's past performance information; and

(D) Adverse past performance information to which the offeror has not previously had an opportunity to respond.

(ii) Additional information or documentation may be requested provided it does not alter the cost/price or other material elements of the proposal or cure a material omission in the proposal.

(iii) Clarifications may occur, at the contracting officer's discretion, at any time after receipt of proposals through contract award. Contracting officers are not required to conduct clarifications with an offeror. If the contracting officer conducts clarifications with one or more offerors, it is not required to conduct clarifications with any other offeror.

(3) *Oral Presentations.* Maintain a record of oral presentations to document what the Government relied upon in making the source selection decision. The method and level of detail of the record (*e.g.,* videotaping, audio tape recording, written record, Government notes, copies of offeror briefing slides or presentation notes) is at the discretion of the SSA. When an oral presentation includes information that the parties intend to include in the contract as material terms or conditions, the information must be put in writing and incorporated in the proposal and any resultant contract. Incorporation by reference of oral statements is not permitted.

(b) *Technical evaluation.*

(1) When using the lowest price technically acceptable (LPTA) approach, proposals are evaluated for technical acceptability only.

(2) When using the tradeoff approach, the evaluation must include—

(i) An assessment of each offeror's ability to accomplish the technical requirements; and

(ii) An evaluation of the relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation.

(3) If teleworking is not prohibited, agencies must not unfavorably evaluate a proposal that includes telework unless the contracting officer executes a written determination in accordance with part 7.

(c) *Past performance evaluation.*

(1) *No past performance information.* An offeror without a record of relevant

past performance or for whom information on past performance is not available may not be evaluated favorably or unfavorably on past performance.

(2) *LPTA source selection process.* If past performance is evaluated when using the LPTA source selection process, contracting officers must only determine if the performance is technically acceptable and not perform a comparative assessment of the information.

(3) *Considerations.* Evaluations must be consistent with the terms of the RFP and should consider the following:

(i) The information provided by the offeror, as well as information obtained from any other sources.

(ii) The currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance. The SSA determines the relevance of similar past performance information.

(iii) Any information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition.

(iv) The past performance of the joint venture, when evaluating a proposal from a joint venture. If the joint venture does not demonstrate past performance for award, the past performance of each party to the joint venture must be considered.

(4) *Small business.* When using the LPTA source selection approach and a small business would have been in contention for award, but their past performance is determined to be unacceptable, the matter must be referred to the SBA for a Certificate of Competency determination.

(d) *Cost or price evaluation.* Agencies must purchase supplies and services from responsible sources at fair and reasonable prices. Contracting officers are responsible for evaluating and documenting the reasonableness of the awarded price in accordance with subpart 15.4.

15.203 Competitive award without negotiation.

Competitive awards may be made without negotiations if the RFP states that the Government intends to evaluate proposals and make award without negotiation. If the RFP includes such a notice and the Government determines it is necessary to negotiate, the rationale for doing so must be documented in the contract file (10 U.S.C. 3303(a)(2) and 41 U.S.C. 3703(a)(2)).

15.204 Competitive award with negotiation.

15.204–1 Establishing a competitive range.

(a) *Competitive range.* A competitive range must be established if the RFP states that the Government intends to evaluate proposals and make award after negotiating with offerors whose proposals have been determined to be in the competitive range.

(b) *Narrowing the competitive range for efficiency.* When establishing the competitive range, it may determined that the number of proposals that might otherwise be included in the competitive range exceeds the number at which an efficient competition can be conducted. The number of proposals in the competitive range may be limited to the greatest number that will permit an efficient competition among the most highly evaluated proposals (10 U.S.C. 3303 and 41 U.S.C. 3703).

(c) *Notice.* Written notice must be provided to unsuccessful offerors in accordance with 15.206–1(a).

15.204–2 Competitive negotiations.

(a) *General.* The scope and extent of negotiations are a matter of contracting officer judgment.

(b) *Requirement.*

(1) Contracting officers must—

(i) Negotiate with each offeror within the competitive range; and

(ii) Tailor the negotiation to the offeror's proposal, but at a minimum, indicate to, or negotiate with, each offeror any deficiencies or significant weaknesses in the proposal.

(2) Contracting officers may further negotiate with an offeror, if necessary. Having further negotiation with a particular offeror does not obligate contracting officers to have further negotiations with any other offerors.

(3) Contracting officers may also negotiate other aspects of the offeror's proposal that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal's potential for award. Contracting officers are not required to negotiate every area where the proposal could be improved.

(4) When an RFP states that evaluation credit will be given for technical solutions exceeding any mandatory minimums, contracting officers may negotiate with offerors for increased performance beyond any mandatory minimums, and suggest to offerors that have exceeded any mandatory minimums (in ways that are not integral to the design), that their proposals would be more competitive if the excesses were removed and the proposed price decreased.

(c) *Elimination from the competitive range.* A proposal must be eliminated from consideration for award when it is determined that a proposal should no longer be included in the competitive range. Written notice of this decision must be provided to unsuccessful offerors in accordance with 15.206–1(a).

(1) When a proposal is eliminated, no further revisions to the proposal can be accepted or considered.

(2) A proposal may be eliminated from the competitive range at any time upon concluding that the offeror is unlikely to receive an award. An additional negotiation with the offeror is not required prior to taking such action.

(d) *Proposal revision.*

(1) When negotiations with an offeror are finished, and that offeror has not been eliminated from the competitive range, provide the offeror with—

(i) An opportunity to submit a proposal revision; and

(ii) A notice requiring the proposal revision in writing and stating that the Government intends to make award without obtaining further revisions.

(2) Each offeror with a proposal still within the competitive range must be given a common cut off date or an equal amount of time to submit their proposal revision.

15.205 Source selection decision.

The source selection decision must represent the SSA's independent judgement and be based on a comparative assessment of proposals against all source selection criteria in the RFP. The source selection decision must be documented and include the rationale for any business judgments and tradeoffs made or relied on by the SSA, including benefits associated with additional costs. The documentation does not need to quantify the tradeoffs that led to the decision.

15.206 Preaward notices and debriefings.

(a) *Definition.* Day, as used in this section, has the meaning set forth at part 33.

(b) *Applicability.* Sections 15.206 through 15.206–2 apply to competitive proposals, except for those using the other competitive procedures described in subpart 6.1 for architect-engineer contracts and basic and applied research. The procedures for award notification, with reasonable modification, should be followed for contracts awarded using those other competitive procedures.

15.206–1 Preaward notices.

(a) *Notice of exclusion or elimination from competitive range.* Notify offerors promptly in writing when their proposals are excluded from the competitive range or otherwise eliminated from the competition. The notice must state the basis for the determination and that proposal revisions will not be considered. These offerors may request a debriefing in accordance with 15.206–2 and 15.301.

(b) *Notice of small business set-aside award.*

(1) When using a set-aside for small business, HUBZone, the Service-Disabled Veteran-Owned Small Business (SDVOSB) Program, or the Women-Owned Small Business (WOSB) Program, notify each offeror, in writing, prior to award and upon completion of negotiations and determinations of responsibility—

(i) Of the name and address of the apparently successful offeror; and

(ii) That the Government will not consider subsequent revisions of the offeror's proposal.

(2) This notice is in addition to any notice of exclusion from competitive range.

(3) This notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay or when the contract is entered into under the 8(a) program.

15.206–2 Preaward debriefing.

Offerors excluded from the competitive range or otherwise excluded from the competition before award may request a debriefing before award (10 U.S.C. 3305 and 41 U.S.C. 3705). The contracting officer should chair any debriefing held. Individuals who conducted evaluations must provide support.

(a) *Request timeframe.*

(1) Offerors may request a preaward debriefing by submitting a written request for debriefing to the contracting officer within 3 days after receipt of the notice of exclusion from the competition.

(2) At the offeror's request, this debriefing may be delayed until after award. If the debriefing is delayed until after award, it must include all information normally provided in a postaward debriefing. Debriefings delayed pursuant to this paragraph could affect the timeliness of any protest filed subsequent to the debriefing.

(3) If the offeror does not submit a timely request, the offeror need not be given either a preaward or a postaward debriefing. Offerors are entitled to no more than one debriefing for each proposal.

(b) *Method.* Debriefings may be done by any method acceptable to the contracting officer.

(c) *Content.*

(1) At a minimum, preaward debriefings must include—

(i) The agency's evaluation of significant elements in the offeror's proposal;

(ii) A summary of the rationale for eliminating the offeror from the competition; and

(iii) Reasonable responses to relevant questions about whether source selection procedures contained in the RFP, applicable regulations, and other applicable authorities were followed by the agency.

(2) A summary of the debriefing must be included in the contract file.

(d) *Nondisclosure.* Preaward debriefings must not disclose—

(1) The number of offerors;

(2) The identity of other offerors;

(3) The content of other offerors' proposals;

(4) The ranking of other offerors;

(5) The evaluation of other offerors; or

(6) Any of the information prohibited in 15.301(f).

(e) *Delay until after award.* Contracting officers must make every effort to debrief the unsuccessful offeror as soon as practicable, but may refuse the request for a debriefing if it is not in the best interests of the Government to conduct a debriefing at that time.

(1) The rationale for delaying the debriefing must be documented in the contract file.

(2) If the debriefing is delayed, it must be provided no later than the time postaward debriefings are provided under 15.301. In that event, the contracting officer must include the information at 15.301(e) in the debriefing.

15.207 Award.

15.207–1 Award to successful offeror.

(a) *General.* Award a contract to the successful offeror by furnishing the executed contract or other notice of the award to that offeror.

(b) *Award document.* (1) OF 307, *Contract Award;* SF 26, *Award/Contract;* or SF 33, *Solicitation, Offer and Award,* may be used to award negotiated contracts in which the signature of both parties on a single document is appropriate. Do not use Block 18 of SF 26.

(2) When not using the OF 307, SF26, or SF 33 to award the contract:

(i) The first page of the award document must include—

(A) The Government's acceptance statement from Block 15 of the OF 307, exclusive of the Item 3 reference language; and

(B) The contracting officer's name, signature, and date.

(ii) If the award document includes information that is different than the signed proposal, as amended by the offeror's written correspondence, the first page of the award document must include—

(A) The contractor's agreement statement from Block 14 of the OF 307; and

(B) The signature of the contractor's authorized representative.

15.207–2 Award notice.

(a) *Definition. Day,* as used in this subsection, has the meaning set forth at part 33.

(b) *Requirement.* Within 3 days after the date of contract award, provide written notification to each offeror whose proposal was in the competitive range but was not selected for award (10 U.S.C. 3304 and 41 U.S.C. 3704) or had not previously received a notice in accordance with 15.206–1(a). The notice must include—

(1) The number of offerors solicited;

(2) The number of proposals received;

(3) The name and address of each offeror receiving an award;

(4) The items, quantities, and any stated unit prices of each award.

(i) If the number of items or other factors makes listing any stated unit prices impracticable at that time, only the total contract price need be furnished in the notice.

(ii) The items, quantities, and any stated unit prices of each award must be made publicly available, upon request; and

(5) In general terms, the reason(s) the offeror's proposal was not accepted, unless the price information in paragraph (b)(4) of this section readily reveals the reason. An offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information must not be disclosed to any other offeror.

(c) Upon request, provide the information in paragraph (a) of this section to unsuccessful offerors that received a preaward notice of exclusion from the competitive range.

Subpart 15.3—Postaward

15.300 Scope.

This subpart addresses postaward actions and considerations for negotiated contracts. The procedures for postaward debriefings, protests, and mistakes do not apply to contracts awarded using the other competitive procedures described in subpart 6.1 for architect-engineer contracts and basic and applied research. The procedures for postaward debriefings, protests, and mistakes, with reasonable modification, should be followed for contracts awarded using those other competitive procedures.

15.301 Postaward debriefing of offerors.

(a) *Definition. Day,* as used in this section, has the meaning set forth at part 33.

(b) *Request for a postaward debriefing.* The awardee and offerors that received the award notice at 15.207–2 may request a postaward debriefing after receiving a notice of contract award. Contracting officers must chair any debriefing held and individuals who conducted evaluations must provide support.

(c) *Request timeframe.*

(1) Offerors may request a postaward debriefing by submitting a written request for the debriefing to the contracting officer within 3 days after receipt of the award notice in accordance with 15.207–2. Such offerors must be debriefed and furnished the basis for the selection decision and contract award.

(2) To the maximum extent practicable, the debriefing should occur within 5 days after receipt of the written request. Offerors that requested a postaward debriefing in lieu of a preaward debriefing, or whose debriefing was delayed for compelling reasons beyond contract award, also should be debriefed within this time period.

(3) Untimely debriefing requests may be accommodated.

(4) An offeror that was notified of its exclusion from the competitive range is not entitled to a postaward debriefing if the offeror failed to submit a timely preaward debriefing request, however such a request may be accommodated.

(5) The deadlines for filing protests are not extended when the Government accommodates an untimely debriefing request or an offeror's request to delay a preaward debriefing until after award. Preaward debriefings delayed pursuant to 15.206–2(a)(2) could affect the timeliness of any protest filed subsequent to the debriefing.

(d) *Method.* Debriefings may be conducted by any method acceptable to the contracting officer.

(e) *Content.*

(1) At a minimum, the debriefing information must include—

(i) The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;

(ii) The overall evaluated cost or price and technical rating, if applicable, of the successful offeror and the debriefed offeror, and past performance information, if applicable, on the debriefed offeror;

(iii) The overall ranking of all offerors, when any ranking was developed by the agency during the source selection;

(iv) A summary of the rationale for award;

(v) For acquisitions of commercial products, the make and model of the product to be delivered by the successful offeror;

(vi) Reasonable responses to relevant questions about whether source selection procedures contained in the request for proposals (RFP), applicable regulations, and other applicable authorities were followed by the agency;

(2) An official summary of the debriefing must be included in the contract file.

(f) *Nondisclosure.* The debriefing must not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, the debriefing must not reveal any information prohibited from disclosure by part 24 or exempt from release under the Freedom of Information Act (FOIA) (5 U.S.C. 552) including—

(1) Trade secrets;

(2) Privileged or confidential manufacturing processes and techniques;

(3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and

(4) The names of individuals providing reference information about an offeror's past performance.

15.302 Protests against award.

(a) Protests against award in negotiated acquisitions must be handled in accordance with part 33. Use of agency protest procedures that incorporate the alternative dispute resolution provisions of E.O. 12979 is encouraged for both preaward and postaward protests.

(b) If a protest causes the agency, within 1 year of contract award, to—

(1) Issue a new RFP on the protested contract award, provide the information in paragraph (c) of this section to all prospective offerors for the new RFP; or

(2) Issue a new request for revised proposals on the protested contract award, provide the information in paragraph (c) of this section to offerors that were in the competitive range and are requested to submit revised proposals.

(c) The following information should be provided to appropriate parties:

(1) Information provided to unsuccessful offerors in any debriefings conducted on the original award regarding the successful offeror's proposal; and

(2) Other nonproprietary information that would have been provided to the original offerors.

15.303 Discovery of mistakes.

Mistakes in a contractor's proposal that are disclosed after award must be processed substantially in accordance with the procedures for mistakes in bids in part 14.

15.304 Defective certified cost or pricing data after award.

(a)(1) If, after award, certified cost or pricing data are found to be inaccurate, incomplete, or noncurrent as of the date of final agreement on price or an earlier date agreed upon by the parties given on the contractor's or subcontractor's Certificate of Current Cost or Pricing Data, the Government is entitled to a price adjustment, including profit or fee, of any significant amount by which the price was increased because of the defective data.

(i) This entitlement is ensured by including in the contract one of the clauses prescribed in 15.109(j) and (k), and is set forth in the clauses at 52.215–10, *Price Reduction for Defective Certified Cost or Pricing Data,* and 52.215–11, *Price Reduction for Defective Certified Cost or Pricing Data—Modifications.*

(ii) The clauses give the Government the right to a price adjustment for defects in certified cost or pricing data submitted by the contractor, a prospective subcontractor, or an actual subcontractor.

(2) In arriving at a price adjustment, contracting officers must consider the time by which the certified cost or pricing data became reasonably available to the contractor, and the extent to which the Government relied upon the defective data.

(3) The clauses referred to in paragraph (a)(1)(i) of this subsection recognize that the Government's right to a price adjustment is not affected by any of the following circumstances:

(i) The contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position;

(ii) The contracting officer should have known that the certified cost or pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under such contract; or

(iv) Certified cost or pricing data were required; however, the contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data relating to the contract.

(4) Subject to paragraphs (a)(5) and (6) of this subsection, allow an offset for any understated certified cost or pricing data submitted in support of price negotiations, up to the amount of the Government's claim for overstated pricing data arising out of the same pricing action (*e.g.,* the initial pricing of the same contract or the pricing of the same change order).

(5) An offset must be allowed only in an amount supported by the facts and if the contractor—

(i) Certifies to the contracting officer that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset in the amount requested; and

(ii) Proves that the certified cost or pricing data were available before the ''as of'' date specified on the Certificate of Current Cost or Pricing Data but were not submitted. Such offsets need not be in the same cost groupings (*e.g.,* material, direct labor, or indirect costs).

(6) An offset must not be allowed if—

(i) The understated data were known by the contractor to be understated before the ''as of'' date specified on the Certificate of Current Cost or Pricing Data; or

(ii) The Government proves that the facts demonstrate that the price would not have increased in the amount to be offset even if the available data had been submitted before the ''as of'' date specified on the Certificate of Current Cost or Pricing Data.

(7)(i) In addition to the price adjustment, the Government is entitled to recovery of any overpayment plus interest on the overpayments. The Government is also entitled to penalty amounts on certain of these overpayments. Overpayment occurs only when payment is made for supplies or services accepted by the Government. Overpayments do not result from amounts paid for contract financing, as defined in part 32.

(ii) In calculating the interest amount due, contracting officers must—

(A) Determine the defective pricing amounts that have been overpaid to the contractor;

(B) Consider the date of each overpayment (the date of overpayment for this interest calculation must be the date payment was made for the related completed and accepted contract items; or for subcontract defective pricing, the date payment was made to the prime contractor, based on prime contract progress billings or deliveries, which included payments for a completed and accepted subcontract item); and

(C) Apply the underpayment interest rate(s) in effect for each quarter from the time of overpayment to the time of repayment, utilizing rate(s) prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2).

(iii) In arriving at the amount due for penalties on contracts where the submission of defective certified cost or pricing data was a knowing submission, obtain an amount equal to the amount of overpayment made. Obtain the advice of counsel before taking any contractual actions concerning penalties,

(iv) In the demand letter, include—

(A) The repayment amount;

(B) The penalty amount (if any);

(C) The interest amount through a specified date; and

(D) A statement that interest will continue to accrue until repayment is made.

(b) If, after award, the contracting officer learns or suspects that the data furnished were not accurate, complete, and current, or were not adequately verified by the contractor as of the time of negotiation, request an audit to evaluate the accuracy, completeness, and currency of the data. The Government may evaluate the profit-cost relationships only if the audit reveals that the data certified by the contractor were defective. Do not reprice the contract solely because the profit was greater than forecast or because a contingency specified in the submission failed to materialize.

(c) For each advisory audit received based on a postaward review that indicates defective pricing, make a determination as to whether or not the data submitted were defective and relied upon. Before making such a determination, give the contractor an opportunity to support the accuracy, completeness, and currency of the data in question. Prepare a memorandum documenting both the determination and any corrective action taken as a result. Send one copy of this memorandum to the auditor and, if the contract has been assigned for administration, one copy to the ACO. A copy of the memorandum or other notice of the contracting officer's determination must be provided to the contractor. When the contracting officer determines that the contractor submitted defective cost or pricing data, ensure, in accordance with agency procedures, that information relating to the final determination is reported as part of the contractor's performance information in accordance with part 42. Agencies must ensure updated information that changes a contracting officer's prior final determination is reported into the FAPIIS module of Contractor Performance Assessment Reporting System in the event of a—

(1) Contracting officer's decision in accordance with the Contract Disputes statute;

(2) Board of Contract Appeals decision; or

(3) Court decision.

(d) If both the contractor and subcontractor submitted, and the contractor certified, or should have certified, cost or pricing data, the Government has the right, under the clauses at 52.215–10, *Price Reduction for Defective Certified Cost or Pricing Data,* and 52.215–11, *Price Reduction for Defective Certified Cost or Pricing Data—Modifications,* to reduce the prime contract price if it was significantly increased because a subcontractor submitted defective data. This right applies whether these data supported subcontract cost estimates or supported firm agreements between subcontractor and contractor.

(e) If Government audit discloses defective subcontractor certified cost or pricing data, the information necessary to support a reduction in prime contract and subcontract prices may be available only from the Government. To the extent necessary to secure a prime contract price reduction, contracting officers should make this information available to the prime contractor or appropriate subcontractors, upon request. If release of the information would compromise Government security or disclose trade secrets or confidential business information, the contracting officers must release it only under conditions that will protect it from improper disclosure. Information made available under this paragraph must be limited to that used as the basis for the prime contract price reduction. In order to afford an opportunity for corrective action, give the prime contractor reasonable advance notice before determining to reduce the prime contract price.

(1) When a prime contractor includes defective subcontract data in arriving at the price but later awards the subcontract to a lower priced subcontractor (or does not subcontract for the work), any adjustment in the prime contract price due to defective subcontract data is limited to the difference (plus applicable indirect cost and profit markups) between the subcontract price used for pricing the prime contract, and either the actual subcontract price or the actual cost to the contractor, if not subcontracted, provided the data on which the actual

subcontract price is based are not themselves defective.

(2) Under cost-reimbursement contracts and under all fixed-price contracts except firm-fixed-price contracts and fixed-price contracts with economic price adjustment, payments to subcontractors that are higher than they would be had there been no defective subcontractor certified cost or pricing data must be the basis for disallowance or nonrecognition of costs under the clauses prescribed in 15.109(j) and (k). The Government has a continuing and direct financial interest in such payments that is unaffected by the initial agreement on prime contract price.

15.305 Estimating systems.

(a) Cognizant audit activities, when appropriate, must establish and manage regular programs for reviewing selected contractors' estimating systems or methods, in order to reduce the scope of reviews to be performed on individual proposals, expedite the negotiation process, and increase the reliability of proposals. The results of estimating system reviews must be documented in survey reports.

(b) Auditors must send a copy of the estimating system survey report and a copy of the official notice of corrective action required to each contracting office and contract administration office having substantial business with that contractor. Significant deficiencies not corrected by the contractor must be considered in subsequent proposal analyses and negotiations.

Subpart 15.4—Contract Pricing

15.400 Scope.

This subpart contains cost and price negotiation policies and procedures for pricing negotiated prime contracts (including subcontracts) and contract modifications, including modifications to contracts awarded by sealed bidding.

15.401 Definitions.

As used in this subpart—

Price means cost plus any fee or profit applicable to the contract type.

Subcontract (except as used in 15.405–2) also includes a transfer of commercial products or commercial services between divisions, subsidiaries, or affiliates of a contractor or a subcontractor (10 U.S.C. 3701(2) and 41 U.S.C. 3501(a)(2)).

15.402 General.

(a) *Requirement for cost or pricing data.* In establishing the reasonableness of the offered prices—

(1) Obtain certified cost or pricing data when required by 15.403–3, along with data other than certified cost or pricing data as necessary to establish a fair and reasonable price; or

(2) When certified cost or pricing data are not required by 15.403–3, obtain data other than certified cost or pricing data as necessary to establish a fair and reasonable price (10 U.S.C. 3705(a) and 41 U.S.C. 3505(a)).

(b) *Obtaining data.* Obtain the type and quantity of data necessary to establish a fair and reasonable price, but not more data than is needed. The submission of additional data sufficient to support the determination of the fair and reasonable price is required if a fair and reasonable price cannot be established from an analysis of the data obtained or submitted to date.

(c) *Independent Price.* Price each contract separately and independently and do not—

(1) Consider proposed price reductions under other contracts;

(2) Consider losses or profits realized or anticipated under other contracts; or

(3) Include in a contract price any amount for a specified contingency, to the extent that the contract provides for a price adjustment based upon the occurrence of that contingency.

15.403 Obtaining cost or pricing data.

15.403–1 Data other than certified cost or pricing data.

(a) *Order of preference.* For acquisitions that do not require certified cost or pricing data, generally use the following order of preference to determine the type of data to require:

(1) No additional data from the offeror, when adequate price competition exists (see 15.403–2);

(2) Data related to prices (*e.g.,* established catalog or market prices, sales to non-governmental and governmental entities), relying first on—

(i) Data available within the Government; then

(ii) Data obtained from sources other than the offeror; and then, if necessary,

(iii) Data obtained from the offeror; then,

(3) Cost data to the extent necessary for the contracting officer to determine a fair and reasonable price.

(b) *Requirement.*

(1) Require submission of data other than certified cost or pricing data to the extent necessary to determine a fair and reasonable price (10 U.S.C. 3705(a) and 41 U.S.C. 3505(a)). At a minimum, the data must include appropriate data on the prices at which the same item or similar items have previously been sold, adequate for determining the reasonableness of the price. This data is not required when price reasonableness is established through adequate price competition or prices set by law or regulation, unless paragraph (e) of this subsection applies.

(2) Data other than certified cost or pricing data may be required to determine the cost realism of competing proposals or to evaluate competing approaches.

(c) *Data Requests.* When requesting data—

(1) Use the contractor's format for data submission, but see 15.104–4(b)(2);

(2) Ensure that data used to support price negotiations are sufficiently current to permit negotiation of a fair and reasonable price; and

(3) Limit requests for updated data to the data that affect the adequacy of the proposal for negotiations (*e.g.,* changes in price lists).

(d) *Refusals to submit data.* As specified in section 808 of the Strom Thurmond NDAA for FY 1999 (Pub. L. 105–261), an offeror who does not comply with a requirement to submit data for a contract or subcontract in accordance with paragraph (a)(1) of this subsection is ineligible for award unless the head of the contracting activity (HCA) determines that it is in the best interest of the Government to make the award to that offeror, based on consideration of the following:

(1) The effort made to obtain the data.

(2) The need for the item or service.

(3) Increased cost or significant harm to the Government if award is not made.

(e) *Data when adequate price competition exists.* If adequate price competition exists, but there are unusual circumstances in which additional data are necessary to determine the reasonableness of price, obtain the additional data from sources other than the offeror, to the maximum extent practicable. In addition, request data to determine the cost realism of competing proposals or to evaluate competing approaches.

(f) *Data for commercial products and commercial services.* When acquiring a commercial product or commercial service—

(1) Use price analysis to determine whether the price is fair and reasonable;

(2) Require the offeror to submit data other than certified cost or pricing data when the contracting officer is unable to determine a price fair and reasonable after obtaining data from sources other than the offeror. This data may include history of sales to non-governmental and governmental entities, cost data, or any other information the contracting officer requires;

(3) Limit requests for sales data to data for the same or similar items during a relevant time period;

(4) To the maximum extent practicable, request data in the format regularly maintained by the offeror as part of its commercial operations;

(5) Do not disclose outside the Government data obtained relating to commercial products or commercial services that is exempt from disclosure under part 24 or the FOIA (5 U.S.C. 552(b)); and

(6) For services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, see 15.403–2(c)(3)(ii).

15.403–2 Prohibitions on obtaining certified cost or pricing data.

(a) *At or below the simplified acquisition threshold.* Certified cost or pricing data must not be obtained for acquisitions at or below the SAT.

(b) *Exceptions to certified cost or pricing data requirem*ents. Do not require certified cost or pricing data to support any contracts, subcontracts, or modifications—

(1) When the contracting officer determines that prices agreed upon are based on adequate price competition (see standards in paragraph (c)(1) of this subsection);

(2) When the contracting officer determines that prices agreed upon are based on prices set by law or regulation (see standards in paragraph (c)(2) of this subsection);

(3) When a commercial product or commercial service is being acquired (see standards in paragraph (c)(3) of this subsection);

(4) When a waiver has been granted (see standards in paragraph (c)(4) of this subsection); or

(5) When modifying a contract or subcontract for commercial products or commercial services (see standards in paragraph (c)(3) of this subsection).

(c) *Standards for exceptions*—

(1) *Adequate price competition.* (i) A price is based on adequate price competition when—

(A) Two or more responsible offerors, competing independently, submit priced offers that satisfy the Government's expressed requirement;

(B) Award will be made to the offeror whose proposal represents the best value where price is a substantial factor in source selection; and

(C) There is no finding that the price of the otherwise successful offeror is unreasonable. Any finding that the price is unreasonable must be supported by a statement of the facts and approved at a level above the contracting officer.

(ii) For agencies other than DoD, NASA, and the Coast Guard, a price is also based on adequate price competition when

(A) There was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors, competing independently, would submit priced proposals in response to the request for proposal's (RFP) expressed requirement, even though only one proposal is received from a responsible offeror and if—

(*1*) Based on the proposal received, the contracting officer can reasonably conclude that the proposal was submitted with the expectation of competition, *e.g.,* circumstances indicate that—

(*i*) The offeror believed that at least one other offeror was capable of submitting a meaningful proposal; and

(*ii*) The offeror had no reason to believe that other potential offerors did not intend to submit a proposal; and

(*2*) The determination that the proposed price is based on adequate price competition and is reasonable has been approved at a level above the contracting officer; or

(B) Price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items, adjusted to reflect changes in market conditions, economic conditions, quantities, or terms and conditions under contracts that resulted from adequate price competition.

(2) *Prices set by law or regulation.* Pronouncements in the form of periodic rulings, reviews, or similar actions of a governmental body, or embodied in the laws, are sufficient to set a price.

(3) *Commercial products and commercial services.*

(i) Any acquisition that the contracting officer determines meets the commercial product or commercial service definition in 2.101, or any modification, as defined in paragraph (3)(i) of the commercial product definition, that does not change a commercial product to other than commercial, is exempt from the requirement for certified cost or pricing data. If the contracting officer determines that a product or service claimed to be commercial is not, and that no other exception or waiver for certified cost or pricing data applies, the submission of certified cost or pricing data is required.

(ii) In accordance with section 41 U.S.C. 3501:

(A) When purchasing services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, they may be considered commercial services (thus meeting the purpose of 41 U.S.C. chapter 35 and 10 U.S.C. chapter 271 for truth in negotiations) only if the contracting officer determines in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price of such services.

(B) In order to make this determination, the offeror may be asked to submit prices paid for the same or similar commercial services under comparable terms and conditions by both Government and commercial customers; and

(C) If the contracting officer determines that the information described in paragraph (c)(3)(ii)(B) of this section is not sufficient to determine the reasonableness of price, other relevant information regarding the basis for price or cost, including information on labor costs, material costs and overhead rates may be requested.

(iii) The following requirements apply to minor modifications defined in paragraph (3)(ii) of the definition of a commercial product at 2.101 that do not change the commercial product to other than commercial:

(A) For acquisitions funded by any agency other than DoD, NASA, or Coast Guard, such modifications of a commercial product are exempt from the requirement for submission of certified cost or pricing data.

(B) For acquisitions funded by DoD, NASA, or Coast Guard, such modifications of a commercial product are exempt from the requirement for submission of certified cost or pricing data provided the total price of all such modifications under a particular contract action does not exceed the greater of the threshold for obtaining certified cost or pricing data in 15.403–3(a) or 5 percent of the total price of the contract at the time of contract award.

(C) For acquisitions funded by DoD, NASA, or Coast Guard such modifications of a commercial product are not exempt from the requirement for submission of certified cost or pricing data on the basis of the exemption provided for at 15.403–2(c)(3) if the total price of all such modifications under a particular contract action exceeds the greater of the threshold for obtaining certified cost or pricing data in 15.403–3(a) or 5 percent of the total price of the contract at the time of contract award.

(iv) Any acquisition for other than commercial products or services treated as commercial products or commercial services at 12.001(b), except sole source contracts greater than $25 million, is exempt from the requirements for certified cost or pricing data (41 U.S.C. 1903).

(4) *Waivers.*

(i) In exceptional cases, the HCA may, without power of delegation, waive the requirement for submission of certified cost or pricing data if the price can be determined to be fair and reasonable without submission of certified cost or pricing data. The authorization for the waiver and the supporting rationale must be in writing.

(ii) If the HCA has waived the requirement for submission of certified cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates must be considered as having been required to provide certified cost or pricing data. Consequently, award of any lower-tier subcontract expected to exceed the certified cost or pricing data threshold requires the submission of certified cost or pricing data unless—

(A) An exception otherwise applies to the subcontract; or

(B) The waiver specifically includes the subcontract and the rationale supporting the waiver for that subcontract.

15.403–3 Certified cost or pricing data.

(a) *Threshold.* Unless an exception at 15.403–2 applies, obtain certified cost or pricing data when an action meets or exceeds the threshold of $2.5 million (for prime contracts awarded on or after July 1, 2018). The threshold is $950,000 for prime contracts awarded prior to July 1, 2018, unless otherwise stated in the contract. Consider requesting a waiver when the standards at 15.403–2(c)(4) can be met.

(b) *Actions requiring certified cost or pricing data.* Certified cost or pricing data are required before completing any of the following actions expected to exceed the current threshold or, in the case of existing contracts, the threshold specified in the existing contract:

(1) The award of any negotiated contract (except for undefinitized actions such as letter contracts).

(2) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor were required to furnish certified cost or pricing data.

(3) The modification of any sealed bid or negotiated contract (whether or not certified cost or pricing data were initially required) or any subcontract covered by paragraph (b)(2) of this subsection.

(i) Price adjustment amounts must consider both increases and decreases (*e.g.,* a $500,000 modification resulting from a reduction of $2,000,000 and an increase of $1,500,000 is a $3,500,000 pricing adjustment exceeding the $2,500,000 threshold). This requirement does not apply when unrelated and separately priced changes for which certified cost or pricing data would not otherwise be required are included for administrative convenience in the same modification.

(ii) Negotiated final pricing actions (*e.g.,* termination settlements and total final price agreements for fixed-price incentive and redeterminable contracts) are contract modifications requiring certified cost or pricing data if—

(A) The total final price agreement for such settlements or agreements exceeds the pertinent threshold set forth at paragraph (a) of this subsection; or

(B) The partial termination settlement plus the estimate to complete the continued portion of the contract exceeds the pertinent threshold set forth at paragraph (a) of this subsection.

(iii) Certified cost or pricing data are not required for modifications—

(A) Solely for overrun funding or interim billing price adjustments; or

(B) To exercise an option at the price established at contract award or initial negotiation.

(c) *Required documentation from offerors.* When certified cost or pricing data are required, require the contractor or prospective contractor to submit to the contracting officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

(1) The certified cost or pricing data and data other than certified cost or pricing data required by the contracting officer to determine that the price is fair and reasonable.

(2) A *Certificate of Current Cost or Pricing Data,* in the format specified in 15.403–4, certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of agreement on price or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

(d) *Inflation adjustments.* When a clause refers to the certified cost or pricing threshold and the threshold is adjusted for inflation pursuant to part 1, the changed threshold applies throughout the remaining term of the contract, unless there is another threshold adjustment.

(e) *Requests for certified data below the threshold.* Unless prohibited because an exception at 15.403–2 applies, the HCA without power of delegation, may authorize the contracting officer to obtain certified cost or pricing data for pricing actions below the pertinent threshold in paragraph (a) of this subsection, provided the action exceeds the SAT. The HCA must justify the requirement for certified cost or pricing data and provide a written finding that certified cost or pricing data are necessary to determine whether the price is fair and reasonable and the facts supporting that finding.

(f) *Delayed exception.* If certified cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply, the data must not be considered certified cost or pricing data and must not be certified in accordance with 15.403–4.

(g) *Foreign governments.* The requirements of this subsection also apply to contracts entered into by an agency on behalf of a foreign government.

15.403–4 Certificate of current cost or pricing data.

(a) When certified cost or pricing data are required, require the contractor to execute a Certificate of Current Cost or Pricing Data, using the format in this paragraph, and must include the executed certificate in the contract file.

Certificate of Current Cost or Pricing Data

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in part 2 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403–3) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of ______* are accurate, complete, and current as of ______**. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm ______________________________

Signature __________________________

Name ______________________________

Title ______________________________

Date of execution * * * ______________

* Identify the proposal, request for price adjustment, or other submission involved, giving the appropriate identifying number (*e.g.,* RFP No.).

** Insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

* * * Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

(End of certificate)

(b) The certificate does not constitute a representation as to the accuracy of the contractor's judgment on the estimate of future costs or projections. It applies to the data upon which the judgment or estimate was based. This distinction between fact and judgment should be clearly understood. If the contractor had information reasonably available at the time of agreement showing that the negotiated price was not based on accurate, complete, and current data, the contractor's responsibility is not limited by any lack of personal knowledge of the information on the part of its negotiators.

(c) The contracting officer and contractor are encouraged to reach a prior agreement on criteria for establishing closing or cutoff dates when appropriate in order to minimize delays associated with proposal updates. Closing or cutoff dates should be included as part of the data submitted with the proposal and, before agreement on price, data should be updated by the contractor to the latest closing or cutoff dates for which the data are available. Use of cutoff dates coinciding with reports is acceptable, as certain data may not be reasonably available before normal periodic closing dates (*e.g.,* actual indirect costs). Data within the contractor's or a subcontractor's organization on matters significant to contractor management and to the Government will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition.

(d) Possession of a Certificate of Current Cost or Pricing Data is not a substitute for examining and analyzing the contractor's proposal.

15.404 Proposal analysis.

(a) *General.* The objective of proposal analysis is to ensure that the final agreed-to price is fair and reasonable.

(1) Contracting officers are responsible for evaluating the reasonableness of the offered prices. The analytical techniques and procedures described in this section may be used, individually or in combination with others, to ensure that the final price is fair and reasonable. The complexity and circumstances of each acquisition should determine the level of detail of the analysis required.

(2) Price analysis must be used when certified cost or pricing data are not required. When a fair and reasonable price cannot be determined through price analysis alone, cost analysis may also be used to evaluate data other than certified cost or pricing data to determine cost reasonableness or cost realism.

(3) Cost analysis must be used when certified cost or pricing data are required. However, price analysis must be used to verify that the overall price offered is fair and reasonable.

(4) Cost realism must be used when contemplating the award of a cost-reimbursement contract.

(b) *Advice and assistance.* The advice and assistance of other experts may be requested to ensure that an appropriate analysis is performed. Recommendations or conclusions regarding the Government's review or analysis of an offeror's or contractor's proposal must not be disclosed to the offeror or contractor without the concurrence of the contracting officer.

(c) *Mistakes and discrepancies in data.* Any discrepancy or mistake of fact (such as duplications, omissions, and errors in computation) contained in the certified cost or pricing data or data other than certified cost or pricing data submitted in support of a proposal must be brought to the contracting officer's attention.

15.404–1 Price analysis.

(a) *General.* Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

(b) *Techniques.* The Government may use various price analysis techniques and procedures to ensure a fair and reasonable price, including, but not limited to, the following:

(1) Comparison of proposed prices received in response to the RFP.

(2) Comparison of the proposed prices to historical prices paid, whether by the Government or other than the Government, for the same or similar items. This method may be used for commercial products or commercial services including those ''of a type'' or when requiring minor modifications for commercial products.

(i) The prior price must be a valid basis for comparison. If there has been a significant time lapse between the last acquisition and the present one, if the terms and conditions of the acquisition are significantly different, or if the reasonableness of the prior price is uncertain, then the prior price may not be a valid basis for comparison.

(ii) The prior price must be adjusted to account for materially differing terms and conditions, quantities and market and economic factors. For similar items, also adjust the prior price to account for material differences between the similar item and the item being procured.

(iii) Expert technical advice should be obtained when analyzing similar items, or commercial products or commercial services that are ''of a type'', or requiring minor modifications for commercial products, to ascertain the magnitude of changes required and to assist in pricing the required changes.

(3) Use of parametric estimating methods/application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.

(4) Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.

(5) Comparison of proposed prices with independent Government cost estimates.

(6) Comparison of proposed prices with prices obtained through market research for the same or similar items.

(7) Analysis of data other than certified cost or pricing data provided by the offeror.

(c) *Preferred method of analysis.* The techniques at 15.404–1(b)(1) and (2) are the preferred methods for price analysis. However, if the contracting officer determines that information on competitive proposed prices or previous contract prices is not available or is insufficient to determine that the price is fair and reasonable, use any of the remaining techniques as appropriate to the circumstances applicable to the acquisition. The fact that a price is included in a catalog does not, in and of itself, make it fair and reasonable.

(d) *Value analysis.* Value analysis can give insight into the relative worth of a product and the Government may use it in conjunction with the price analysis techniques listed in paragraph (b) of this section.

15.404–2 Cost analysis.

(a) *General.* Cost analysis is the review and evaluation of any separate cost elements and profit or fee in an offeror's or contractor's proposal, as needed to determine a fair and reasonable price or to determine cost realism, and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

(b) *Techniques.* The Government may use various cost analysis techniques and procedures to ensure a fair and reasonable price, including, but not limited to, the following:

(1) Verification of cost data or pricing data and evaluation of cost elements, including—

(i) The necessity for, and reasonableness of, proposed costs, including allowances for contingencies;

(ii) Projection of the offeror's cost trends, on the basis of current and historical cost or pricing data;

(iii) Reasonableness of estimates generated by appropriately calibrated and validated parametric models or cost-estimating relationships; and

(iv) The application of audited or negotiated indirect cost rates, labor rates, and cost of money or other factors.

(2) Evaluating the effect of the offeror's current practices on future costs. In conducting this evaluation, contracting officers must ensure that the effects of inefficient or uneconomical past practices are not projected into the future. In pricing production of recently developed complex equipment, contracting officers should perform a trend analysis of basic labor and materials, even in periods of relative price stability.

(3) Comparison of costs proposed by the offeror for individual cost elements with—

(i) Actual costs previously incurred by the same offeror;

(ii) Previous cost estimates from the offeror or from other offerors for the same or similar items;

(iii) Other cost estimates received in response to the Government's request;

(iv) The independent Government cost estimate by technical personnel; and

(v) Forecasts of planned expenditures.

(4) Verification that the offeror's cost submissions are in accordance with the contract cost principles and procedures in part 31 and, when applicable, the requirements and procedures in 48 CFR chapter 99.

(5) Review to determine whether any cost data or pricing data, necessary to make the offeror's proposal suitable for negotiation, have not been either submitted or identified in writing by the offeror. If there are such data, contracting officers must attempt to obtain and use them in the negotiations or make satisfactory allowance for the incomplete data.

(6) Analysis of the results of any make-or-buy program reviews, in evaluating subcontract costs.

15.404–3 Cost realism analysis.

(a) *General.* Cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the offeror's technical proposal.

(b) *Probable Cost.* Cost realism analyses must be performed on cost-reimbursement contracts to determine the probable cost of performance for each offeror.

(1) The probable cost may differ from the proposed cost and should reflect the Government's best estimate of the cost of any contract that is most likely to result from the offeror's proposal. The probable cost must be used for purposes of evaluation to determine the best value.

(2) The probable cost is determined by adjusting each offeror's proposed cost, and fee when appropriate, to reflect any additions or reductions in cost elements to realistic levels based on the results of the cost realism analysis.

(c) *Competitive fixed-price-type contracts.* Cost realism analyses may also be used on competitive fixed-price incentive contracts or, in exceptional cases, on other competitive fixed-price-type contracts when new requirements may not be fully understood by competing offerors, there are quality concerns, or past experience indicates that contractors' proposed costs have resulted in quality or service shortfalls. Results of the analysis may be used in performance risk assessments and responsibility determinations. However, proposals must be evaluated using the criteria in the RFP, and the offered prices must not be adjusted as a result of the analysis.

15.404–4 Technical cost or price analysis.

(a) *Labor and materials.* At a minimum, the technical analysis must examine the types and quantities of material proposed and the need for the types and quantities of labor hours and the labor mix. Any other data that may be pertinent to an assessment of the offeror's ability to accomplish the technical requirements or to the cost or price analysis of the service or product being proposed should also be included in the analysis.

(b) *Technical assistance.* Contracting officers should request:

(1) Personnel having specialized knowledge, skills, experience, or capability in engineering, science, or management perform a technical analysis of the proposed types and quantities of materials, labor, processes, special tooling, equipment or real property, the reasonableness of scrap and spoilage, and other associated factors set forth in the proposal(s) in order to determine the need for and reasonableness of the proposed resources, assuming reasonable economy and efficiency.

(2) Technical assistance in evaluating pricing related to items that are ''similar to'' items being purchased, or commercial products or commercial services that are ''of a type'', or requiring minor modifications for commercial products, to ascertain the magnitude of changes required and to assist in pricing the required changes.

15.404–5 Unit prices.

(a) *General.* Except when pricing an item on the basis of adequate price competition or catalog or market price, unit prices must reflect the intrinsic value of an item or service and be in proportion to an item's base cost (*e.g.,* manufacturing or acquisition costs).

(b) *Price distortion.* (1) Except for the acquisition of commercial products, when offerors identify items of supply that they will not manufacture or to which they will not contribute significant value, the information must be used to determine whether the intrinsic value of an item has been distorted through application of overhead and whether such items should be considered for breakout.

(2) Any method of distributing costs to line items that distorts the unit prices must not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. (10 U.S.C. 3703(a)(1)(A) and 41 U.S.C. 3503(a)(1)(A)).

15.404–6 Unbalanced pricing.

(a) *General.* (1) Unbalanced pricing may increase performance risk and could result in payment of unreasonably high prices. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly over or understated as indicated by the application of cost or price analysis techniques.

(2) The greatest risks associated with unbalanced pricing occur when—

(i) Startup work, mobilization, first articles, or first article testing are separate line items;

(ii) Base quantities and option quantities are separate line items; or

(iii) The evaluated price is the aggregate of estimated quantities to be ordered under separate line items of an indefinite-delivery contract.

(b) *Policy.* (1) All proposals with separately priced line items or subline items must be analyzed to determine if the prices are unbalanced. If cost or price analysis techniques indicate that an proposal is unbalanced consider—

(i) The risks to the Government associated with the unbalanced pricing in determining the competitive range and in making the source selection decision; and

(ii) Whether award of the contract will result in paying unreasonably high prices for contract performance.

(2) A proposal may be rejected if the contracting officer determines that the lack of balance poses an unacceptable risk to the Government.

15.404–7 Review and justification of pass-through contracts.

(a) *Policy.* When an offeror informs the contracting officer, pursuant to clause 52.215–22, *Limitations on Pass-Through Charges-Identification of Subcontractor Effort,* that it intends to award subcontracts for more than 70 percent of the total cost of work to be performed under the contract, task or delivery order—

(1) Consider the availability of alternative contract vehicles and the feasibility of contracting directly with a subcontractor or subcontractors that will perform the bulk of the work. If such alternative approaches are selected, any resulting RFP must be issued in accordance with the competition requirements under part 6;

(2) Make a written determination that the contracting approach selected is in the best interest of the Government; and

(3) Document the basis for such determination. (section 802 of the NDAA for FY 2013 (Pub. L. 112.239)).

(b) *Exemption.* Contract actions set aside for small business, 8(a), HUBZone, SDVOSB, and WOSB concerns are exempt from the requirements of this subsection (see section 1615 of the NDAA for FY 2014 (Pub. L. 113–66)).

15.404–8 Subcontract pricing considerations.

(a) *Policy.* Contracting officers are responsible for the determination of a fair and reasonable price for the prime contract, including subcontracting costs. To support this effort, the prime contractor or subcontractor must—

(1) Conduct appropriate cost or price analyses to establish the reasonableness of proposed subcontract prices;

(2) Include the results of these analyses in the price proposal; and

(3) When required by paragraph (b) of this subsection, submit subcontractor certified cost or pricing data to the Government as part of its own certified cost or pricing data.

(b) *Certified cost or pricing data.* Any contractor or subcontractor that is required to submit certified cost or pricing data also must obtain and analyze certified cost or pricing data before awarding any subcontract, purchase order, or modification expected to exceed the certified cost or pricing data threshold, unless an exception in 15.403–2 applies to that action.

(1) The contractor must submit, or cause to be submitted by the subcontractor(s), certified cost or pricing data to the Government for subcontracts that are the lower of either—

(i) $20 million or more; or

(ii) Both more than the pertinent certified cost or pricing data threshold and more than 10 percent of the prime contractor's proposed price, unless the contracting officer believes such submission is unnecessary.

(2) Require the contractor or subcontractor to submit to the Government (or cause submission of) subcontractor certified cost or pricing data below the thresholds in paragraph (b)(1) of this section and data other than certified cost or pricing data that the contracting officer considers necessary for adequately pricing the prime contract.

(3) Subcontractor certified cost or pricing data must be submitted in the format provided in Table 15–1 of 15.408–2 or the alternate format specified in the RFP.

(4) Subcontractor certified cost or pricing data must be current, accurate, and complete as of the date of price agreement, or, if applicable, an earlier date agreed upon by the parties and specified on the contractor's Certificate of Current Cost or Pricing Data. Contractors must update subcontractor's data, as appropriate, during source selection and negotiations.

(5) If there is more than one prospective subcontractor for any given work, the contractor need only submit to the Government certified cost or pricing data for the prospective subcontractor most likely to receive the award.

(c) *Approved purchasing system.* In determining the reasonableness of the prime contract price, consider whether a contractor or subcontractor has an approved purchasing system, has performed cost or price analysis of proposed subcontractor prices, or has negotiated the subcontract prices before negotiation of the prime contract. This does not relieve contracting officers from the responsibility to analyze the contractor's submission, including subcontractor's certified cost or pricing data.

15.404–9 Profit.

(a) *General.* This subsection prescribes policies for establishing the profit or fee portion of the Government prenegotiation objective in price negotiations based on cost analysis.

(b) *Policy.* Structured approaches (see paragraph (d) of this subsection) for determining profit or fee prenegotiation objectives provide a discipline for ensuring that all relevant factors are considered.

(1) Subject to the authorities in part 1, agencies making noncompetitive contract awards over $100,000 totaling $50 million or more a year—

(i) Must use a structured approach for determining the profit or fee objective in those acquisitions that require cost analysis (Agencies may use another agency's structured approach); and

(ii) May prescribe specific exemptions for situations in which mandatory use of a structured approach would be clearly inappropriate.

(2) When the price negotiation is based on cost analysis, contracting officers in agencies that have a structured approach must use it to analyze profit. When not using a structured approach, contracting officers must comply with paragraph (d)(1) of this subsection in developing profit or fee prenegotiation objectives.

(3) When the price negotiation is not based on cost analysis, contracting officers are not required to analyze profit.

(c) *Contracting officer responsibilities.* Contracting officers—

(1) Must use the Government prenegotiation cost objective amounts as the basis for calculating the profit or fee prenegotiation objective.

(2) Must not require any prospective contractor to submit breakouts or supporting rationale for its profit or fee objective but may consider it, if it is submitted voluntarily.

(3) Before applying profit or fee factors, must exclude-

(i) From the pre-negotiation cost objective amounts, the purchase cost of contractor-acquired property that is categorized as equipment, as defined in FAR 45, and where such equipment is to be charged directly to the contract; and

(ii) Facilities capital cost of money included in the cost objective amounts. If the prospective contractor fails to identify or propose facilities capital cost of money in a proposal for a contract that will be subject to the cost principles for contracts with commercial organizations, facilities capital cost of money will not be an allowable cost in any resulting contract.

(4) Must not negotiate a price or fee that exceeds the following statutory limitations, imposed by 10 U.S.C. 3322(b) and 41 U.S.C. 3905:

(i) For experimental, developmental, or research work performed under a cost-plus-fixed-fee contract, the fee must not exceed 15 percent of the contract's estimated cost, excluding fee.

(ii) For architect-engineer services for public works or utilities using cost-type contracts, the estimated cost and fee for production and delivery of designs, plans, drawings, and specifications must not exceed 6 percent of the estimated cost of construction of the public work or utility, excluding fees.

(iii) For other cost-plus-fixed-fee contracts, the fee must not exceed 10 percent of the contract's estimated cost, excluding fee.

(iv) The contracting officer's signature on the price negotiation memorandum or other documentation supporting determination of fair and reasonable price documents the contracting officer's determination that the statutory price or fee limitations have not been exceeded.

(5) May use the basic contract's profit or fee rate as the prenegotiation objective for a change or modification, if that change or modification calls for essentially the same type and mix of work as the basic contract and is of relatively small dollar value compared to the total contract value.

(d) *Profit-analysis factors*—

(1) *Common factors.* Unless it is clearly inappropriate or not applicable, each factor outlined in paragraphs (d)(1)(i) through (vi) of this subsection must be considered by agencies in developing their structured approaches and by contracting officers in analyzing profit, whether or not using a structured approach.

(i) *Contractor effort.* This factor measures the complexity of the work and the resources required of the prospective contractor for contract performance. Greater profit opportunity should be provided under contracts requiring a high degree of professional and managerial skill and to prospective contractors whose skills, facilities, and technical assets can be expected to lead to efficient and economical contract performance. The subfactors in paragraphs (d)(1)(i)(A) through (D) of this subsection must be considered in determining contractor effort, but they may be modified in specific situations to accommodate differences in the categories used by prospective contractors for listing costs—

(A) *Material acquisition.* This subfactor measures the managerial and technical effort needed to obtain the required purchased parts and material, subcontracted items, and special tooling. Considerations include the complexity of the items required, the number of purchase orders and subcontracts to be awarded and administered, whether established sources are available or new or second sources must be developed, and whether material will be obtained through routine purchase orders or through complex subcontracts requiring detailed specifications. Profit consideration should correspond to the managerial and technical effort involved.

(B) *Conversion direct labor.* This subfactor measures the contribution of direct engineering, manufacturing, and other labor to converting the raw materials, data, and subcontracted items into the contract items. Considerations include the diversity of engineering, scientific, and manufacturing labor skills required and the amount and quality of supervision and coordination needed to perform the contract task.

(C) *Conversion-related indirect costs.* This subfactor measures how much the indirect costs contribute to contract performance. The labor elements in the allocable indirect costs should be given the profit consideration they would receive if treated as direct labor. The other elements of indirect costs should be evaluated to determine whether they merit only limited profit consideration because of their routine nature, or are elements that contribute significantly to the proposed contract.

(D) *General management.* This subfactor measures the prospective contractor's other indirect costs and general and administrative (G&A) expense, their composition, and how much they contribute to contract performance. Considerations include how labor in the overhead pools would be treated if it were direct labor, whether elements within the pools are routine expenses or instead are elements that contribute significantly to the proposed contract, and whether the elements require routine as opposed to unusual managerial effort and attention.

(ii) *Contract cost risk.*

(A) This factor measures the degree of cost responsibility and associated risk that the prospective contractor will assume as a result of the contract type contemplated and considering the reliability of the cost estimate in relation to the complexity and duration of the contract task. Determination of contract type should be closely related to the risks involved in timely, cost-effective, and efficient performance. This factor should compensate contractors proportionately for assuming greater cost risks.

(B) The contractor assumes the greatest cost risk in a closely priced firm-fixed-price contract under which it agrees to perform a complex undertaking on time and at a predetermined price. Some firm-fixed-price contracts may entail substantially less cost risk than others because, for example, the contract task is less complex or many of the contractor's costs are known at the time of price agreement, in which case the risk factor should be reduced accordingly. The contractor assumes the least cost risk in a cost-plus-fixed-fee level-of-effort contract, under which it is reimbursed those costs determined to be allocable and allowable, plus the fixed fee.

(C) In evaluating assumption of cost risk, contracting officers must, except in unusual circumstances, treat time-and-materials, labor-hour, and firm-fixed-price, level-of-effort term contracts as cost-plus-fixed-fee contracts.

(iii) *Federal socioeconomic programs.* This factor measures the degree of support given by the prospective contractor to Federal socioeconomic programs, such as those involving small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, WOSB concerns, veteran-owned, HUBZone, SDVOSB concerns, sheltered workshops for workers with disabilities, and energy conservation. Greater profit opportunity should be provided contractors that have displayed unusual initiative in these programs.

(iv) *Capital investments.* This factor takes into account the contribution of contractor investments to efficient and economical contract performance.

(v) *Cost-control and other past accomplishments.* This factor allows additional profit opportunities to a prospective contractor that has previously demonstrated its ability to perform similar tasks effectively and economically. In addition, consideration should be given to measures taken by the prospective contractor that result in productivity improvements, and other cost-reduction accomplishments that will benefit the Government in follow-on contracts.

(vi) *Independent development.* Under this factor, the contractor may be provided additional profit opportunities in recognition of independent development efforts relevant to the contract end item without Government assistance. The contracting officer should consider whether the development cost was recovered directly or indirectly from Government sources.

(2) *Additional factors.* In order to foster achievement of program objectives, each agency may include additional factors in its structured approach or take them into account in the profit analysis of individual contract actions.

15.405 Special cost or pricing areas.

15.405–1 Inaccurate, incomplete, or noncurrent cost or pricing data.

(a) If, before agreement on price, the contracting officer learns that any certified cost or pricing data submitted are inaccurate, incomplete, or noncurrent, immediately bring the matter to the attention of the prospective contractor, whether the defective data increase or decrease the contract price.

(b) Consider any new data submitted to correct the deficiency, or consider the inaccuracy, incompleteness, or noncurrency of the data when negotiating the contract price. The price negotiation memorandum must reflect the adjustments made to the data or the corrected data used to negotiate the contract price.

15.405–2 Make-or-buy programs.

(a) *Evaluation, negotiation, and agreement.* Evaluate and negotiate proposed make-or-buy programs as soon as practicable after their receipt and before contract award.

(1) When the program is to be incorporated in the contract and the design status of the product being acquired does not permit accurate precontract identification of major items or work efforts, contracting officers must notify the prospective contractor in writing that these items or efforts, when identifiable, must be added under the clause at 52.215–9, *Changes or Additions to Make-or-Buy Program.*

(2) Contracting officers normally must not agree to proposed ''make items'' when the products or services are not regularly manufactured or provided by the contractor and are available—quality, quantity, delivery, and other essential factors considered—from another firm at equal or lower prices, or when they are regularly manufactured or provided by the contractor, but are available—quality, quantity, delivery, and other essential factors considered—from another firm at lower prices. Contracting officers may agree to these as ''make items'' if an overall lower Governmentwide cost would result or it is otherwise in the best interest of the Government. If this situation occurs in any fixed-price incentive or cost-plus-incentive-fee contract, specify these items in the contract and state that they are subject to paragraph (d) of the clause at 52.215–9, *Changes or Additions to Make-or-Buy Program.* If the contractor proposes to reverse the categorization of such items during contract performance, the contract price must be subject to equitable reduction.

(b) *Incorporating make-or-buy programs in certain existing contracts.* The make-or-buy program may be incorporated in negotiated contracts for—

(1) Major systems or their subsystems or components, regardless of contract type; or

(2) Other supplies and services if—

(i) The contract is a cost-reimbursable contract, or a cost-sharing contract in which the contractor's share of the cost is less than 25 percent; and

(ii) The contracting officer determines that technical or cost risks justify Government review and approval of changes or additions to the make-or-buy program.

15.405–3 Forward pricing rate agreements.

(a) All data submitted in connection with the FPRA, updated as necessary, form a part of the total data that the offeror certifies to be accurate, complete, and current at the time of agreement on price for an initial contract or for a contract modification.

(b) Use FPRA rates as bases for pricing all contracts, modifications, and other contractual actions to be performed during the period covered by the agreement. Conditions that may affect the agreement's validity must be reported promptly to the ACO. If the ACO determines that a changed condition invalidates the agreement, the ACO must notify all interested parties of the extent of its effect and status of efforts to establish a revised FPRA.

(c) Do not require certification at the time of agreement for data supplied in support of FPRA's or other advance agreements. When a FPRA or other advance agreement is used to price a contract action that requires a certificate, the certificate supporting that contract action must cover the data supplied to support the FPRA or other advance agreement, and all other data supporting the action.

15.405–4 Should-cost review.

(a) *General.* (1) Should-cost reviews are a specialized form of cost analysis. Should-cost reviews differ from traditional evaluation methods because they do not assume that a contractor's historical costs reflect efficient and economical operation. Instead, these reviews evaluate the economy and efficiency of the contractor's existing work force, methods, materials, equipment, real property, operating systems, and management. These reviews are accomplished by a multi-functional team of Government contracting, contract administration, pricing, audit, and engineering representatives. The objective of should-cost reviews is to promote both short and long-range improvements in the contractor's economy and efficiency in order to reduce the cost of performance of Government contracts. In addition, by providing rationale for any recommendations and quantifying their impact on cost, the Government will be better able to develop realistic objectives for negotiation.

(2) There are two types of should-cost reviews: program should-cost review and overhead should-cost review. These should-cost reviews may be performed together or independently. The scope of a should-cost review can range from a large-scale review examining the contractor's entire operation (including plant-wide overhead and selected major subcontractors) to a small-scale tailored review examining specific portions of a contractor's operation.

(b) *Program should-cost review.*

(1) A program should-cost review is used to evaluate significant elements of direct costs, such as material and labor, and associated indirect costs, usually associated with the production of major systems. When a program should-cost review is conducted relative to a contractor proposal, a separate audit report on the proposal is required.

(2) A program should-cost review should be considered, particularly in the case of a major system acquisition, when—

(i) Some initial production has already taken place;

(ii) The contract will be awarded on a sole source basis;

(iii) There are future year production requirements for substantial quantities of like items;

(iv) The items being acquired have a history of increasing costs;

(v) The work is sufficiently defined to permit an effective analysis and major changes are unlikely;

(vi) Sufficient time is available to plan and adequately conduct the should-cost review; and

(vii) Personnel with the required skills are available or can be assigned for the duration of the should-cost review.

(3) Decide which elements of the contractor's operation have the greatest potential for cost savings and assign the available personnel resources accordingly. The expertise of on-site Government personnel should be used,

when appropriate. While the particular elements to be analyzed are a function of the contract work task, elements such as manufacturing, pricing and accounting, management and organization, and subcontract and vendor management are normally reviewed in a should-cost review.

(4) In acquisitions for which a program should-cost review is conducted, a separate program should-cost review team report, prepared in accordance with agency procedures, is required. Consider the findings and recommendations contained in the program should-cost review team report when negotiating the contract price. After completing the negotiation, provide the ACO a report of any identified uneconomical or inefficient practices, together with a report of correction or disposition agreements reached with the contractor. Establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

(c) *Overhead should-cost review.*

(1) An overhead should-cost review is used to evaluate indirect costs, such as fringe benefits, shipping and receiving, real property, and equipment, depreciation, plant maintenance and security, taxes, and G&A activities. It is normally used to evaluate and negotiate an FPRA with the contractor. When an overhead should-cost review is conducted, a separate audit report is required.

(2) The following factors should be considered when selecting contractor sites for overhead should-cost reviews:

(i) Dollar amount of Government business.

(ii) Level of Government participation.

(iii) Level of noncompetitive Government contracts.

(iv) Volume of proposal activity.

(v) Major system or program.

(vi) Corporate reorganizations, mergers, acquisitions, or takeovers.

(vii) Other conditions (*e.g.,* changes in accounting systems, management, or business activity).

(3) The objective of the overhead should-cost review is to evaluate significant indirect cost elements in-depth, and identify and recommend corrective actions regarding inefficient and uneconomical practices. If it is conducted in conjunction with a program should-cost review, a separate overhead should-cost review report is not required. However, the findings and recommendations of the overhead should-cost team, or any separate overhead should-cost review report, must be provided to the ACO. The ACO should use this information to form the basis for the Government position in negotiating an FPRA with the contractor. The ACO must establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

15.406 Data to support proposal analysis.

(a) *Field pricing assistance.*

(1) Request field pricing assistance when the information available at the buying activity is inadequate to determine a fair and reasonable price. The request must reflect the minimum essential supplementary information needed to conduct a technical or cost or pricing analysis.

(2) Tailor the type of information and level of detail requested in accordance with the specialized resources available at the buying activity and the magnitude and complexity of the required analysis. Field pricing assistance is generally available to provide—

(i) Technical, audit, and special reports associated with the cost elements of a proposal, including subcontracts;

(ii) Information on related pricing practices and history;

(iii) Information to help contracting officers determine commerciality and a fair and reasonable price, including—

(A) Verifying sales history to source documents;

(B) Identifying special terms and conditions;

(C) Identifying customarily granted or offered discounts for the item;

(D) Verifying the item to an existing catalog or price list;

(E) Verifying historical data for a product or service previously not determined commercial that the offeror is now trying to qualify as a commercial product or commercial service; and

(F) Identifying general market conditions affecting determinations of commerciality and a fair and reasonable price.

(iv) Information relative to the business, technical, production, or other capabilities and practices of an offeror.

(b) *Reporting field pricing information.*

(1) Field pricing review results, including supporting rationale, may be reported directly to the contracting officer orally, in writing, or by any other method acceptable to the contracting officer.

(i) Contracting officers and field pricing experts are encouraged to use telephonic and/or electronic means to request and send pricing information.

(ii) When it is necessary to have written technical and audit reports, request that the audit agency concurrently forward the audit report to the requesting contracting officer and the ACO. The completed field pricing assistance results may reference audit information, but need not reconcile the audit recommendations and technical recommendations. A copy of the information submitted to the contracting officer by field pricing personnel must be provided to the audit agency.

(2) Audit and field pricing information, whether written or reported telephonically or electronically, must be made a part of the official contract file.

(c) *Audit assistance for prime contracts or subcontracts.*

(1) Contact the cognizant audit office directly to request assistance, particularly when an audit is the only field pricing support required. The audit office must send the audit report, or otherwise transmit the audit recommendations, directly to the contracting officer.

(i) The auditor must not reveal the audit conclusions or recommendations to the offeror/contractor without obtaining the concurrence of the contracting officer. However, the auditor may discuss statements of facts with the contractor.

(ii) Contracting officers must be notified immediately of any information disclosed to the auditor after submission of a report that may significantly affect the audit findings and, if necessary, a supplemental audit report must be issued.

(2) Do not request a separate preaward audit of indirect costs unless the information already available from an existing audit, completed within the preceding 12 months, is considered inadequate for determining the reasonableness of the proposed indirect costs (41 U.S.C. 4706 and 10 U.S.C. 3841).

(3) The auditor is responsible for the scope and depth of the audit. Copies of updated information that will significantly affect the audit must be provided to the auditor by the contracting officer.

(4) General access to the offeror's books and financial records is limited to the auditor. This limitation does not preclude the contracting officer or the ACO, or their representatives, from requesting that the offeror provide or make available any data or records necessary to analyze the offeror's proposal.

(d) *Deficient proposals.*

(1) The ACO or the auditor, as appropriate, must notify the contracting officer immediately if the data provided for review is so deficient as to preclude review or audit, or if the contractor or offeror has denied access to any records

considered essential to conduct a satisfactory review or audit. Oral notifications must be confirmed promptly in writing, including a description of deficient or denied data or records.

(2) Immediately take appropriate action to obtain the required data. Should the offeror/contractor again refuse to provide adequate data, or provide access to necessary data, withhold the award or price adjustment and refer the contract action to a higher authority, providing details of the attempts made to resolve the matter and a statement of the practicability of obtaining the supplies or services from another source.

15.407 Price negotiation.

(a) The purpose of performing cost or price analysis is to develop a negotiation position that permits the contracting officer and the offeror an opportunity to reach agreement on a fair and reasonable price. A fair and reasonable price does not require that agreement be reached on every element of cost, nor is it mandatory that the agreed price be within the contracting officer's initial negotiation position. Contracting officers are responsible for exercising the requisite judgment needed to reach a negotiated settlement with the offeror and is solely responsible for the final price agreement. However, when significant audit or other specialist recommendations are not adopted, provide rationale that supports the negotiation result in the price negotiation documentation.

(b) The contracting officer's primary concern is the overall price the Government will actually pay. The contracting officer's objective is to negotiate a contract of a type and with a price providing the contractor the greatest incentive for efficient and economical performance. The negotiation of a contract type and a price are related and should be considered together with the issues of risk and uncertainty to the contractor and the Government.

(c) The Government's cost objective and proposed pricing arrangement directly affect the profit or fee objective. Because profit or fee is only one of several interrelated variables, contracting officers must not agree on profit or fee without concurrent agreement on cost and type of contract.

(d) If, however, the contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable, and the contracting officer has taken all authorized actions (including determining the feasibility of developing an alternative source) without success, the contracting officer must refer the contract action to a level above the contracting officer and document the contract file.

15.408 Documentation.

15.408–1 Prenegotiation objectives.

(a) The prenegotiation objectives establish the Government's initial negotiation position and are based on the results of the contracting officer's analysis of the offeror's proposal.

(b) Establish prenegotiation objectives before negotiating a pricing action. The scope and depth of the analysis supporting the objectives should be directly related to the dollar value, importance, and complexity of the pricing action. When cost analysis is required, document the pertinent issues to be negotiated, the cost objectives, and a profit or fee objective.

15.408–2 Documenting the negotiation.

(a) Document in the contract file the principal elements of the negotiated agreement. The documentation (*e.g.,* price negotiation memorandum) must include the following:

(1) The purpose of the negotiation.

(2) A description of the acquisition, including appropriate identifying numbers (*e.g.,* RFP No.).

(3) The name, position, and organization of each person representing the contractor and the Government in the negotiation.

(4) The current status of any contractor systems (*e.g.,* purchasing, estimating, accounting, and compensation) to the extent they affected and were considered in the negotiation.

(5) If certified cost or pricing data were not required in the case of any price negotiation exceeding the certified cost or pricing data threshold, the exception used and the basis for it.

(6) If certified cost or pricing data were required, the extent to which the contracting officer—

(i) Relied on the certified cost or pricing data submitted and used them in negotiating the price;

(ii) Recognized as inaccurate, incomplete, or noncurrent any certified cost or pricing data submitted; the action taken by the contracting officer and the contractor as a result; and the effect of the defective data on the price negotiated; or

(iii) Determined that an exception applied after the data were submitted and, therefore, considered not to be certified cost or pricing data.

(7) A summary of the contractor's proposal, any field pricing assistance recommendations, including the reasons for any pertinent variances from them, the Government's negotiation objective, and the negotiated position.

(i) When the determination of a fair and reasonable price is based on cost analysis, the summary must address each major cost element.

(ii) When determination of a fair and reasonable price is based on price analysis, the summary must include the source and type of data used to support the determination.

(8) The most significant facts or considerations controlling the establishment of the prenegotiation objectives and the negotiated agreement including an explanation of any significant differences between the two positions.

(9) To the extent such direction has a significant effect on the action, a discussion and quantification of the impact of direction given by Congress, other agencies, and higher-level officials (*i.e.,* officials who would not normally exercise authority during the award and review process for the instant contract action).

(10) The basis for the profit or fee prenegotiation objective and the profit or fee negotiated.

(11) Documentation of fair and reasonable pricing.

(b) Whenever field pricing assistance has been obtained, forward a copy of the negotiation documentation to the office(s) providing assistance. When appropriate, information on how advisory field support can be made more effective should be provided separately.

Table 15–1—Instructions for Submitting Cost/Price Proposals When Certified Cost or Pricing Data Are Required

This document provides instructions for preparing a contract pricing proposal when certified cost or pricing data are required.

Note 1: There is a clear distinction between submitting certified cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of certified cost or pricing data is met when all accurate certified cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the Contracting Officer or an authorized representative. As later data come into your possession, it should be submitted promptly to the Contracting Officer in a manner that clearly shows how the data relate to the offeror's price proposal. The requirement for submission of certified cost or pricing data continues up to the time of agreement on price, or an earlier date agreed upon between the parties if applicable.

Note 2: By submitting your proposal, you grant the Contracting Officer or an authorized representative the right to examine records that formed the basis for the pricing proposal. That examination can take place at any time before award. It may include those books, records, documents, and other types of factual data (regardless of form or whether the data are specifically referenced or included in the proposal as the basis for pricing) that will permit an adequate evaluation of the proposed price.

I. General Instructions

A. You must provide the following information on the first page of your pricing proposal:

(1) RFP, contract, and/or modification number;

(2) Name and address of offeror;

(3) Name, telephone number, and email address of the point of contact;

(4) Name of contract administration office (if available);

(5) Type of contract action (that is, new contract, change order, price revision/redetermination, letter contract, unpriced order, or other);

(6) Proposed cost; profit or fee; and total;

(7) Whether you will require the use of Government property in the performance of the contract, and, if so, what property;

(8) Whether your organization is subject to cost accounting standards (CAS); whether your organization has submitted a CASB Disclosure Statement, and if it has been determined adequate; whether you have been notified that you are or may be in noncompliance with your Disclosure Statement or CAS (other than a noncompliance that the cognizant Federal agency official has determined to have an immaterial cost impact), and, if yes, an explanation; whether any aspect of this proposal is inconsistent with your disclosed practices or applicable CAS, and, if so, an explanation; and whether the proposal is consistent with your established estimating and accounting principles and procedures and FAR part 31, *Cost Principles,* and, if not, an explanation;

(9) The following statement: This proposal reflects our estimates and/or actual costs as of this date and conforms with the instructions in the RFP and FAR 15.408–2, Table 15–1. By submitting this proposal, we grant the Contracting Officer and authorized representative(s) the right to examine, at any time before award, those records, which include books, documents, accounting procedures and practices, and other data, regardless of type and form or whether such supporting information is specifically referenced or included in the proposal as the basis for pricing, that will permit an adequate evaluation of the proposed price.

(10) Date of submission; and

(11) Name, title, and signature of authorized representative.

B. In submitting your proposal, you must include an index, appropriately referenced, of all the certified cost or pricing data and information accompanying or identified in the proposal. In addition, you must annotate any future additions and/or revisions, up to the date of agreement on price, or an earlier date agreed upon by the parties, on a supplemental index.

C. As part of the specific information required, you must submit, with your proposal—

(1) Certified cost or pricing data (as defined at FAR 2.101). You must clearly identify on your cover sheet that certified cost or pricing data are included as part of the proposal.

(2) Information reasonably required to explain your estimating process, including—

(i) The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and

(ii) The nature and amount of any contingencies included in the proposed price.

D. You must show the relationship between line item prices and the total contract price. You must attach cost-element breakdowns for each proposed line item, using the appropriate format prescribed in the ''Formats for Submission of Line Item Summaries'' section of this table. You must furnish supporting breakdowns for each cost element, consistent with your cost accounting system.

E. When more than one line item is proposed, you must also provide summary total amounts covering all line items for each element of cost.

F. Whenever you have incurred costs for work performed before submission of a proposal, you must identify those costs in your cost/price proposal.

G. If you have reached an agreement with Government representatives on use of forward pricing rates/factors, identify the agreement, include a copy, and describe its nature.

H. As soon as practicable after final agreement on price or an earlier date agreed to by the parties, but before the award resulting from the proposal, you must, under the conditions stated in FAR 15.403–4, submit a Certificate of Current Cost or Pricing Data.

II. Cost Elements

Depending on your system, you must provide breakdowns for the following basic cost elements, as applicable:

A. *Materials and services.* Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.). Include raw materials, parts, components, assemblies, and services to be produced or performed by others. For all items proposed, identify the item and show the source, quantity, and price. Conduct price analyses of all subcontractor proposals. Conduct cost analyses for all subcontracts when certified cost or pricing data are submitted by the subcontractor. Include these analyses as part of your own certified cost or pricing data submissions for subcontracts expected to exceed the appropriate threshold in FAR 15.403–3(a). Submit the subcontractor certified cost or pricing data and data other than certified cost or pricing data as part of your own certified cost or pricing data as required in paragraph IIA(2) of this table. These requirements also apply to all subcontractors if required to submit certified cost or pricing data.

(1) *Adequate Price Competition.* Provide data showing the degree of competition and the basis for establishing the source and reasonableness of price for those acquisitions (such as subcontracts, purchase orders, material order, etc.) exceeding, or expected to exceed, the appropriate threshold set forth at FAR 15.403–3(a) priced on the basis of adequate price competition. For interorganizational transfers priced at other than the cost of comparable competitive commercial work of the division, subsidiary, or affiliate of the contractor, explain the pricing method (see FAR 31).

(2) *All Other.* Obtain certified cost or pricing data from prospective sources for those acquisitions (such as subcontracts, purchase orders, material order, etc.) exceeding the threshold set forth in FAR 15.403–3(a) and not otherwise exempt, in accordance with FAR 15.403–2. Also provide data showing the basis for establishing source and reasonableness of price. In addition, provide a summary of your cost analysis and a copy of certified cost or pricing data submitted by the prospective source in support of each subcontract, or purchase order that is the lower of either $20 million or more,

or both more than the pertinent certified cost or pricing data threshold and more than 10 percent of the prime contractor's proposed price. Also submit any information reasonably required to explain your estimating process (including the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price). The Contracting Officer may require you to submit cost or pricing data in support of proposals in lower amounts. Subcontractor certified cost or pricing data must be accurate, complete and current as of the date of final price agreement, or an earlier date agreed upon by the parties, given on the prime contractor's Certificate of Current Cost or Pricing Data. The prime contractor is responsible for updating a prospective subcontractor's data. For standard commercial products fabricated by the offeror that are generally stocked in inventory, provide a separate cost breakdown, if priced based on cost. For interorganizational transfers priced at cost, provide a separate breakdown of cost elements. Analyze the certified cost or pricing data and submit the results of your analysis of the prospective source's proposal. When submission of a prospective source's certified cost or pricing data is required as described in this paragraph, it must be included as part of your own certified cost or pricing data. You must also submit any data other than certified cost or pricing data obtained from a subcontractor, either actually or by specific identification, along with the results of any analysis performed on that data.

B. *Direct Labor.* Provide a time-phased (*e.g.,* monthly, quarterly, etc.) breakdown of labor hours, rates, and cost by appropriate category, and furnish bases for estimates.

C. *Indirect Costs.* Indicate how you have computed and applied your indirect costs, including cost breakdowns. Show trends and budgetary data to provide a basis for evaluating the reasonableness of proposed rates. Indicate the rates used and provide an appropriate explanation.

D. *Other Costs.* List all other costs not otherwise included in the categories described above (*e.g.,* special tooling, travel, computer and consultant services, preservation, packaging and packing, spoilage and rework, and Federal excise tax on finished articles) and provide bases for pricing.

E. *Royalties.* If royalties exceed $1,500, you must provide the following information on a separate page for each separate royalty or license fee:

(1) Name and address of licensor.

(2) Date of license agreement.

(3) Patent numbers.

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

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

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

(7) Unit price of contract item.

(8) Number of units.

(9) Total dollar amount of royalties.

(10) If specifically requested by the Contracting Officer, a copy of the current license agreement and identification of applicable claims of specific patents (see part 27 and 31).

F. *Facilities Capital Cost of Money.* When you elect to claim facilities capital cost of money as an allowable cost, you must submit Form CASB CMF and show the calculation of the proposed amount (see 31.205–10 and 48 CFR 9904.414).

III. Formats for Submission of Line Item Summaries

A. New Contracts (Including Letter Contracts)

Cost elements (1)	Proposed contract estimate—total cost (2)	Proposed contract estimate—unit cost (3)	Reference (4)

Column and Instruction

(1) Enter appropriate cost elements.

(2) Enter those necessary and reasonable costs that, in your judgment, will properly be incurred in efficient contract performance. When any of the costs in this column have already been incurred (*e.g.,* under a letter contract), describe them on an attached supporting page. When preproduction or startup costs are significant, or when specifically requested to do so by the Contracting Officer, provide a full identification and explanation of them.

(3) Optional, unless required by the Contracting Officer.

(4) Identify the attachment in which the information supporting the specific cost element may be found. (Attach separate pages as necessary.)

B. Change Orders, Modifications, and Claims

Cost elements (1)	Estimated cost of all work deleted (2)	Cost of deleted work already performed (3)	Net cost to be deleted (4)	Cost of work added (5)	Net cost of change (6)	Reference (7)

Column and Instruction

(1) Enter appropriate cost elements.

(2) Include the current estimates of what the cost would have been to complete the deleted work not yet performed (not the original proposal estimates), and the cost of deleted work already performed.

(3) Include the incurred cost of deleted work already performed, using actuals incurred if possible, or, if actuals are not available, estimates from your accounting records. Attach a detailed inventory of work, materials, parts, components, and hardware already purchased, manufactured, or performed and deleted by the change, indicating the cost and proposed disposition of each line item. Also, if you desire to retain these items or any portion of them, indicate the amount offered for them.

(4) Enter the net cost to be deleted, which is the estimated cost of all

deleted work less the cost of deleted work already performed. Column (2) minus Column (3) equals Column (4).

(5) Enter your estimate for cost of work added by the change. When nonrecurring costs are significant, or when specifically requested to do so by the Contracting Officer, provide a full identification and explanation of them. When any of the costs in this column have already been incurred, describe them on an attached supporting schedule.

(6) Enter the net cost of change, which is the cost of work added, less the net cost to be deleted. Column (5) minus Column (4) equals Column (6). When this result is negative, place the amount in parentheses.

(7) Identify the attachment in which the information supporting the specific cost element may be found. (Attach separate pages as necessary.)

C. Price Revision/Redetermination

Cutoff date (1)	Number of units completed (2)	Number of units to be completed (3)	Contract amount (4)	Redetermination proposal amount (5)	Difference (6)	Cost elements (7)	Incurred cost—preproduction (8)	Incurred cost—completed units (9)	Incurred cost—work in process (10)	Total incurred cost (11)	Estimated cost to complete (12)	Estimated total cost (13)	Reference (14)

(Use as applicable)

Column and Instruction

(1) Enter the cutoff date required by the contract, if applicable.

(2) Enter the number of units completed during the period for which experienced costs of production are being submitted.

(3) Enter the number of units remaining to be completed under the contract.

(4) Enter the cumulative contract amount.

(5) Enter your redetermination proposal amount.

(6) Enter the difference between the contract amount and the redetermination proposal amount. When this result is negative, place the amount in parentheses. Column (4) minus Column (5) equals Column (6).

(7) Enter appropriate cost elements. When residual inventory exists, the final costs established under fixed-price-incentive and fixed-price-redeterminable arrangements should be net of the fair market value of such inventory. In support of subcontract costs, submit a listing of all subcontracts subject to repricing action, annotated as to their status.

(8) Enter all costs incurred under the contract before starting production and other nonrecurring costs (usually referred to as startup costs) from your books and records as of the cutoff date. These include such costs as preproduction engineering, special plant rearrangement, training program, and any identifiable nonrecurring costs such as initial rework, spoilage, pilot runs, etc. In the event the amounts are not segregated in or otherwise available from your records, enter in this column your best estimates. Explain the basis for each estimate and how the costs are charged on your accounting records (*e.g.,* included in production costs as direct engineering labor, charged to manufacturing overhead). Also show how the costs would be allocated to the units at their various stages of contract completion.

(9) Enter in Column (9) the production costs from your books and records (exclusive of preproduction costs reported in Column (8)) of the units completed as of the cutoff date.

(10) Enter in Column (10) the costs of work in process as determined from your records or inventories at the cutoff date. When the amounts for work in process are not available in your records but reliable estimates for them can be made, enter the estimated amounts in Column (10) and enter in Column (9) the differences between the total incurred costs (exclusive of preproduction costs) as of the cutoff date and these estimates. Explain the basis for the estimates, including identification of any provision for experienced or anticipated allowances, such as shrinkage, rework, design changes, etc. Furnish experienced unit or lot costs (or labor hours) from inception of contract to the cutoff date, improvement curves, and any other available production cost history pertaining to the item(s) to which your proposal relates.

(11) Enter total incurred costs (Total of Columns (8), (9), and (10)).

(12) Enter those necessary and reasonable costs that in your judgment will properly be incurred in completing the remaining work to be performed under the contract with respect to the item(s) to which your proposal relates.

(13) Enter total estimated cost (Total of Columns (11) and (12)).

(14) Identify the attachment in which the information supporting the specific cost element may be found. (Attach separate pages as necessary.)

Subpart 15.5—Unsolicited Proposals

15.500 Scope.

This subpart contains policies and procedures for the submission, receipt, evaluation, and acceptance or rejection of unsolicited proposals.

15.501 Definitions.

As used in this subpart—

Advertising material means material designed to acquaint the Government with a prospective contractor's present products, services, or potential capabilities, or designed to stimulate the Government's interest in buying such products or services.

Commercial product or commercial service offer means an offer of a commercial product or commercial service that the vendor wishes to see introduced in the Government's supply system as an alternate or a replacement for an existing supply item. This term does not include innovative or unique configurations or uses of commercial products or commercial services that are being offered for further development and that may be submitted as an unsolicited proposal.

Contribution means a concept, suggestion, or idea presented to the Government for its use with no indication that the source intends to devote any further effort to it on the Government's behalf.

15.502 General.

(a) *Purpose.* Unsolicited proposals allow unique and innovative ideas or approaches developed outside the Government to be made available to Government agencies for use in accomplishing their missions.

(b) *Intent.* Unsolicited proposals are offered with the intent that the Government will award a contract to the offeror for research and development (R&D) or other efforts supporting the Government mission. Only the cognizant contracting officer has the authority to bind the Government regarding unsolicited proposals.

(c) *Early communication.* Preliminary contact with technical and other appropriate agency personnel before preparing a detailed unsolicited proposal or submitting proprietary information to the Government may save considerable time and effort for both parties.

(d) *Information for potential offerors.* Agencies must make the following information available to potential offerors of unsolicited proposals:

(1) Definition and content of an unsolicited proposal acceptable for formal evaluation.

(2) Requirements concerning responsible prospective contractors and organizational conflicts of interest.

(3) Guidance on preferred methods for submitting ideas/concepts to the Government, such as any agency: upcoming RFP; Broad Agency Announcements (BAA); Small Business Innovative Research programs (SBIR); Small Business Technology Transfer (STTR) programs; program research and development announcements; or grant programs.

(4) Agency points of contact for information regarding advertising, contributions, and other types of transactions similar to unsolicited proposals.

(5) Information sources on agency objectives and areas of potential interest.

(6) Procedures for submission and evaluation of unsolicited proposals.

(7) Instructions for identifying and marking proprietary information so that it is protected and restrictive legends conform to this subpart.

(e) *Prohibitions.*

(1) Government personnel should not use any data, concept, idea, or other part of an unsolicited proposal as the basis, or part of the basis, for a RFP or in negotiations with any other firm unless the offeror is notified of and agrees to the intended use. This prohibition does not preclude using any data, concept, or idea in the proposal that also is available from another source without restriction.

(2) Government personnel should not disclose restrictively marked information included in an unsolicited proposal. The disclosure of such information concerning trade secrets, processes, operations, style of work, apparatus, and other matters, except as authorized by law, may result in criminal penalties under 18 U.S.C. 1905.

15.503 Preparing unsolicited proposals.

15.503–1 Scope of proposals.

(a) Unsolicited proposals may be submitted for new and innovative ideas that do not already fall under topic areas publicized under BAA, SBIR topics, STTR topics, program R&D announcements, or any other Government-initiated RFP or program.

(b) A valid unsolicited proposal must—

(1) Be innovative and unique;

(2) Be independently originated and developed by the offeror;

(3) Be prepared without Government supervision, endorsement, direction, or direct Government involvement;

(4) Include sufficient detail to permit a determination that Government support could be worthwhile and the proposed work could benefit the agency's research and development or other mission responsibilities;

(5) Not be an advance proposal for a known agency requirement that can be acquired by competitive methods; and

(6) Not address a previously published agency requirement.

(c) Advertising material, commercial product or commercial service offers, contributions, or routine correspondence on technical issues, are not unsolicited proposals.

(d) Unsolicited proposals in response to a publicized general statement of agency needs are considered to be independently originated.

15.503–2 Content of proposals.

Unsolicited proposals must contain the following information to permit consideration in an objective and timely manner:

(a) Basic information including—

(1) Offeror's name and address and type of organization; *e.g.,* profit, nonprofit, educational, small business;

(2) Names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes;

(3) Identification of proprietary data to be used only for evaluation purposes;

(4) Names of other Federal, State, or local agencies or parties receiving the proposal or funding the proposed effort;

(5) Date of submission; and

(6) Signature of a person authorized to represent and contractually obligate the offeror.

(b) Technical information including—

(1) Concise title and short abstract of the proposed effort;

(2) A reasonably complete discussion stating the objectives of the effort or activity, the method of approach and extent of effort to be employed, the nature and extent of the anticipated results, and the manner in which the work will help to support accomplishment of the agency's mission;

(3) Names and biographical information on the offeror's key personnel who would be involved, including alternates; and

(4) Type of support needed from the agency; *e.g.,* Government property or personnel resources.

(c) Supporting information including—

(1) Proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation;

(2) Period of time for which the proposal is valid (a 6-month minimum is suggested);

(3) Type of contract preferred;

(4) Proposed duration of effort;

(5) Brief description of the organization, previous experience, relevant past performance, and facilities to be used;

(6) Other statements, if applicable, about organizational conflicts of interest, security clearances, and environmental impacts; and

(7) The names and telephone numbers of agency technical or other agency points of contact already contacted regarding the proposal.

15.503–3 Restricting use and disclosure of data.

(a) Unsolicited proposals may include data that the offeror does not want disclosed to the public for any purpose or used by the Government except for evaluation purposes. If the offeror wishes to restrict the use and disclosure of data, the title page must be marked the following legend:

Use and Disclosure of Data

This proposal includes data that must not be disclosed outside the Government and must not be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate this proposal. However, if a contract is awarded to this offeror as a result of, or in connection with, the submission of these data, the Government must have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in these data if they are obtained from another source without restriction. The data subject to this restriction are contained in Sheets [*insert numbers or other identification of sheets*].

(b) The offeror must also mark each sheet of data it wishes to restrict with the following legend: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(c) An offeror should identify trade secrets, commercial or financial information, and privileged or confidential information to the Government

15.504 Receipt and initial review of unsolicited proposals.

(a) Agencies must establish procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals. The procedures must include controls on the reproduction and disposition of proposal material, particularly data identified by the offeror as subject to duplication, use, or disclosure restrictions; and identify agency points of contact to coordinate the receipt and handling of unsolicited proposals.

(b) Agencies may decline evaluation or consideration of unsolicited proposals submitted concurrently to more than one agency, or distributed in bulk.

15.504 Initial Review.

(a) Before beginning a comprehensive evaluation, the agency contact point must determine if the proposal—

(1) Is a valid unsolicited proposal, as described at 15.503–1(b);

(2) Is suitable for submission in response to an existing agency requirement;

(3) Is related to the agency mission;

(4) Contains sufficient technical information and cost-related or price-related information for evaluation;

(5) Has overall scientific, technical, or socioeconomic merit;

(6) Has been approved by a responsible official or other representative authorized to obligate the offeror contractually; and

(7) Complies with the marking requirements of this subpart.

(b) If the proposal meets these requirements, the contact point must promptly acknowledge receipt and process the proposal.

(c) If a proposal is rejected because the proposal does not meet these requirements, the agency contact point must promptly inform the offeror in writing of the reasons for rejection and the proposed disposition of the unsolicited proposal.

15.504–2 Handling use and disclosure of data restrictions.

(a) *Alternate legend.* When an unsolicited proposal meeting the requirements at 15.504–1(a) is marked with a legend different from that at 15.503–3, the agency point of contact must—

(1) Return the proposal to the offeror and notify them that the proposal cannot be considered because it is impracticable for the Government to comply with the legend and that the agency will consider the proposal if it is resubmitted with the proper legend; and

(2) Unless the offeror clearly states in writing that no restrictions are imposed on the disclosure or use of the data contained in the proposal, mark the unsolicited proposal as follows:

Unsolicited Proposal—Use of Data Limited

All Government personnel must exercise extreme care to ensure that the information in this proposal is not disclosed to an individual who has not been authorized access to such data in accordance with FAR part 3, and is not duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of the proposal, without the written permission of the offeror. If a contract is awarded on the basis of this proposal, the terms of the contract must control disclosure and use. This notice does not limit the Government's right to use information contained in the proposal if it is obtainable from another source without restriction. This is a Government notice, and must not by itself be construed to impose any liability upon the Government or Government personnel for disclosure or use of data contained in this proposal.

(3) Not use this notice to justify withholding of a record, or to improperly deny the public access to a record, where an obligation is imposed by FOIA (5 U.S.C. 552).

(b) *Evaluation by personnel outside of the agency or the Government.*

(1) When an agency receives an unsolicited proposal from other than an educational or nonprofit organization or institution, and an evaluation by Government personnel outside the agency or non-Government personnel is necessary, written permission must be obtained from the offeror before releasing the proposal for evaluation. The agency point of contact should—

(i) Attach a cover sheet marked with the legend in paragraph (a)(2) of this section;

(ii) Change the beginning of the legend to read ''All Government and non-Government personnel * * * ''; and

(iii) Require any non-Government evaluator to agree in writing that data in the proposal will not be disclosed to persons outside the Government.

(2) When an agency receives an unsolicited proposal without a restrictive legend from an educational or nonprofit organization or institution, and evaluation outside of the Government is necessary, the agency point of contact should follow paragraphs (b)(1)(i) through (iii) of this section.

(3) When an agency receives an unsolicited proposal with a restrictive legend from an educational or nonprofit organization or institution, and evaluation by non-Government personnel is necessary, the agency point of contact must—

(i) Follow paragraphs (b)(1)(i) through (iii) of this section; and

(ii) Obtain written permission from the offeror before releasing the proposal for evaluation.

15.505 Evaluation of unsolicited proposals.

(a) Agencies must evaluate unsolicited proposals for energy savings performance contracts in accordance with the procedures in 10 CFR 436.33(b).

(b) The agency point of contact must coordinate the evaluation of proposals and attach the legend at 15.504–2(a)(2) to each copy of the proposal distributed for evaluation.

(c) When evaluating unsolicited proposals, evaluators should consider, at a minimum, the following factors:

(1) Unique, innovative and meritorious methods, approaches, or concepts demonstrated by the proposal;

(2) Overall scientific, technical, or socioeconomic merits of the proposal;

(3) Potential contribution of the effort to the agency's specific mission;

(4) Offeror's capabilities, related experience, facilities, techniques, or unique combinations of these that are integral factors for achieving the proposal objectives;

(5) Qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel critical to achieving the proposal objectives; and

(6) Realism of the proposed cost.

(d) Evaluators must notify the agency point of contact of their recommendations when the evaluation is complete.

(e) A favorable evaluation of an unsolicited proposal does not, in itself, justify awarding a contract without providing for full and open competition. The agency point of contact should return an unsolicited proposal to the offeror, citing reasons, when its substance—

(1) Is available to the Government without restriction from another source;

(2) Closely resembles a pending competitive acquisition requirement;

(3) Does not relate to the activity's mission; or

(4) Does not demonstrate an innovative and unique method, approach, or concept, or is otherwise not deemed a meritorious proposal.

15.506 Criteria for acceptance and negotiation of an unsolicited proposal.

Begin negotiations on a sole source basis only when—

(a) An unsolicited proposal receives a favorable comprehensive evaluation;

(b) A justification and approval is obtained in accordance with part 6;

(c) The agency technical office sponsoring the contract furnishes the necessary funds; and

(d) The requirements for posting a presolicitation notice of a proposed contract action are met.

PART 38 [Removed and Reserved]

■ 2. Remove and reserve part 38, consisting of section 38.000 and subparts 38.1 and 38.2.

■ 3. Revise part 44 to read as follows:

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

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.

44.000 Scope of part.

(a) This part prescribes policies and procedures for consent to subcontracts or advance notification of subcontracts, and for review and approval of contractors' purchasing systems.

(b) The consent and advance notification requirements of subpart 44.2 do not apply to prime contracts for commercial products or commercial services.

44.001 Definitions.

As used in this part—

Contractor means the total contractor organization or a separate entity of it, such as an affiliate, division, or plant, that performs its own purchasing.

Contractor purchasing system review (CPSR) means the complete assessment of a contractor's purchasing of material and services, subcontracting, and subcontract management from developing the requirement through completing subcontract performance.

Subcontract means any contract as defined in subpart 2.1 entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

Subpart 44.1—[Reserved]

Subpart 44.2—Evaluation and award.

44.201 Consent to subcontracts and requirements for advance notice.

44.201–1 Consent requirements.

(a) If the contractor has an approved purchasing system, consent is required for subcontracts specifically identified by the contracting officer in paragraph (d) of 52.244–2, Subcontracts. The contracting officer may require consent to subcontract to protect the Government because of the subcontract type, complexity, or value, or because the subcontract needs special surveillance.

(b) If the contractor does not have an approved purchasing system, consent to subcontract is required for certain subcontracts identified in paragraph (c) of 52.244–2, Subcontracts.

44.201–2 Advance notification requirements.

Under cost-reimbursement contracts, the contractor is required by statute to notify the contracting officer as follows:

(a) For the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, unless the contractor maintains an approved purchasing system, 10 U.S.C. 3322(c) requires notification before the award of any cost-plus-fixed-fee subcontract, or any fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(b) For civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, even if the contractor has an approved purchasing system, 41 U.S.C. 3905 requires notification before the award of any cost-plus-fixed-fee subcontract, or any fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

44.201–3 Contracting officer's responsibilities.

(a) The contracting officer responsible for consent (see part 42 regarding delegation) must review the contractor's notification (*i.e.,* request to subcontract) and supporting data to ensure that the proposed subcontract is appropriate for the risks involved and consistent with current policy and sound business judgment.

(b) Careful and thorough review and consideration of the request to subcontract is necessary when—

(1) The contractor's purchasing system or performance is inadequate;

(2) Close working relationships or ownership affiliations between the contractor and subcontractor may preclude free competition or result in higher prices;

(3) Subcontracts are proposed for award on a noncompetitive basis, at prices that appear to be unreasonable, or at higher prices than those offered to the Government in comparable circumstances; or

(4) Subcontracts are proposed on a cost-reimbursement, time-and-materials, or labor-hour basis.

(c) If the advance notification or consent requirements were satisfied for certain subcontracts evaluated during negotiations, the contracting officer must identify those subcontracts in paragraph (j) of the clause at 52.244–2. Designation of specific subcontractors during contract negotiations does not in itself satisfy the requirements for advance notification or consent pursuant to the clause at 52.244–2.

44.201–4 Consent limitations.

(a) The contracting officer's consent to a subcontract or approval of the contractor's purchasing system does not constitute a determination of the acceptability of the subcontract terms or price, or of the allowability of costs, unless the consent or approval specifies otherwise.

(b) Contracting officers must not consent to—

(1) Cost-reimbursement subcontracts if the fee exceeds the fee limitations in part 15;

(2) Subcontracts providing for payment on a cost-plus-a-percentage-of-cost basis;

(3) Subcontracts obligating the contracting officer to deal directly with the subcontractor; or

(4) Subcontracts that make the results of arbitration, judicial determination, or voluntary settlement between the prime contractor and subcontractor binding on the Government.

44.201–5 Contract clauses.

(a)(1) Insert the clause at 52.244–2, Subcontracts, in solicitations and contracts, other than those for commercial products or commercial services, when contemplating—

(i) A cost-reimbursement contract;

(ii) A labor-hour, time-and-materials, or letter contract that exceeds the simplified acquisition threshold; or

(iii) A fixed-price contract that exceeds the simplified acquisition threshold under which unpriced contract actions (including unpriced modifications or unpriced delivery orders) are anticipated.

(2) If a cost-reimbursement contract is planned, for civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, use the clause with its Alternate I.

(3) Use of this clause is not required in—

(i) Fixed-price architect-engineer contracts; or

(ii) Contracts for mortuary services, refuse services, or shipment and storage of personal property, when an agency-prescribed clause on approval of subcontractors' facilities is required.

(b) The contracting officer may insert the clause at 52.244–4, Subcontractors and Outside Associates and Consultants (Architect-Engineer Services), in architect-engineer contracts.

(c) When contracting by negotiation, insert the clause at 52.244–5, Competition in Subcontracting, in solicitations and contracts, other than those for commercial products and commercial services, when the contract amount is expected to exceed the simplified acquisition threshold, unless—

(1) A firm-fixed-price contract, awarded on the basis of adequate price competition or whose prices are set by law or regulation, is planned; or

(2) A time-and-materials, labor-hour, or architect-engineer contract is planned.

Subpart 44.3—Postaward

44.301 Contractors' purchasing systems reviews.

44.301–1 Objective.

The objective of a contractor purchasing system review (CPSR) is to assess the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting. The review provides the basis for granting, withholding, or withdrawing approval of the contractor's purchasing system.

44.301–2 Requirements.

(a) The responsible contracting officer (see part 42 regarding delegation) must determine if a CPSR is needed based on factors such as the past performance of the contractor, and the volume, complexity and dollar value of subcontracts.

(b) If a determination is made under paragraph (a) to conduct a CPSR, at least every three years the contracting officer must determine whether a CPSR is needed.

(c) The contracting officer must monitor a contract to ensure that the contractor is effectively managing its purchasing program.

(d) Surveillance must be accomplished in accordance with a plan developed by the contracting officer with the assistance of subcontracting, audit, pricing, technical, or other specialists as necessary. The plan should cover pertinent phases of a contractor's purchasing system and pertinent operations that affect the contractor's purchasing and subcontracting.

44.301–3 Responsibilities for granting, withholding or withdrawing approval.

The contracting officer is responsible for granting, withholding, or withdrawing approval of a contractor's purchasing system, and must—

(a) Approve a purchasing system only after determining that the contractor's purchasing policies and practices are efficient and adequately protect the Government's interests; and

(b) Promptly notify the contractor in writing after granting, withholding, or withdrawing approval.

44.301–4 Notice.

(a) The notice granting purchasing system approval must include—

(1) Identification of the plant or plants covered by the approval;

(2) The effective date of approval; and

(3) A statement that system approval—

(i) Applies to all Federal Government contracts at that plant to the extent that cross-servicing arrangements exist;

(ii) Waives the contractual requirement for advance notification in fixed-price contracts, but not for cost-reimbursement contracts;

(iii) Waives the contractual requirement for consent to subcontracts in fixed-price contracts and for specified subcontracts in cost-reimbursement contracts but not for those subcontracts, if any, selected for special surveillance and identified in the contract Schedule; and

(iv) May be withdrawn at any time at the contracting officer's discretion.

(b) In certain circumstances, the contracting officer may require consent for certain subcontracts or classes of subcontracts even though the contractor's purchasing system is approved. The system approval notification must identify the class or classes of subcontracts requiring consent. When sufficient weaknesses in a particular area of subcontracting are identified, requiring consent to subcontract provides the contracting officer additional visibility. See 52.244–2(d).

44.301–5 Withholding or withdrawing approval.

(a) The contracting officer must withhold or withdraw approval of a contractor's purchasing system when major weaknesses exist or when the contractor is unable to provide enough information upon which to make an affirmative determination. The contracting officer may withdraw approval at any time based on a determination that the contractor's purchasing system has deteriorated or to protect the Government's interest.

(b) When approval is withheld or withdrawn, the contracting officer must notify the contractor in writing within 10 days after completing the review. The notice must specify the deficiencies that must be corrected to qualify the system for approval and request the contractor to furnish within 15 days a plan to correct the deficiencies. If the plan is accepted, the contracting officer must make a follow-up review as soon as the contractor notifies the contracting officer that the deficiencies have been corrected.

(c) The contracting officer must withhold or withdraw approval when the contractor consistently does not comply with requirements.

Subpart 44.4—Subcontracts for Commercial Products and Commercial Services

44.401 Definition.

Subcontract, as used in this subpart, includes a transfer of commercial products or commercial services between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

44.402 Requirements.

(a) *Preference.* Require contractors and subcontractors to incorporate, to the maximum extent practicable, commercial products, commercial services, or nondevelopmental items as components of items supplied to the agency.

(b) *Flowdown.* The clauses listed in the clause at 52.244–6, Subcontracts for

Commercial Products and Commercial Services, flow down to subcontracts for commercial products and commercial services as indicated in the specific clause. Do not require a contractor or subcontractor to apply to any of its divisions, subsidiaries, affiliates, subcontractors, or suppliers that are furnishing commercial products, commercial components, or commercial services a clause that is not listed in 52.244–6.

(c) *Inapplicable laws.* A list of laws that do not apply to subcontracts for the acquisition of commercial products, including commercially available off-the-shelf items, or commercial services is available at *www.acquisition.gov/inapplicablelaws.*

44.403 Contract clause.

Insert the clause at 52.244–6, Subcontracts for Commercial Products and Commercial Services, in solicitations and contracts, including those for commercial products (other than commercially available off-the-shelf (COTS) items) and commercial services.

PART 51 [Removed and Reserved]

■ 4. Remove and reserve part 51, consisting of section 51.000 and subparts 51.1 and 51.2.

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.

52.208–4 through 52.208–7 [Removed and Reserved]

■ 6. Remove and reserve sections 52.208–4 through 52.208–7.

■ 7. Revise section 52.208–9 to read as follows:

52.208–9 Contractor Use of Mandatory Sources of Supply or Services.

As prescribed in 8.105–1(b), insert the following clause:

Contractor Use of Mandatory Sources of Supply or Services (DATE)

(a) Certain supplies or services to be provided under this contract for use by the Government are required by law to be obtained from nonprofit agencies participating in the program operated by the Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) under 41 U.S.C. 8504. The Committee operates under the name AbilityOne Commission. Additionally, some of these supplies are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The Contractor must obtain mandatory supplies or services to be provided for Government use under this contract from the specific sources indicated in the contract schedule.

(b) The Contractor must immediately notify the Contracting Officer if a mandatory source is unable to provide the supplies or services by the time required, or if the quality of supplies or services provided by the mandatory source is unsatisfactory. The Contractor must not purchase the supplies or services from other sources until the Contracting Officer has notified the Contractor that the Committee or an AbilityOne central nonprofit agency has authorized purchase from other sources.

(c) Price and delivery information for the mandatory supplies is available from the Contracting Officer for the supplies obtained through the DLA/GSA/VA distribution facilities. For mandatory supplies or services that are not available from DLA/GSA/VA, price and delivery information is available from the appropriate central nonprofit agency. Payments must be made directly to the source making delivery. Points of contact for AbilityOne central nonprofit agencies are:

(1) National Industries for the Blind (*www.NIB.org*), 3000 Potomac Avenue, Alexandria, VA 22305, (703) 310–0500; and

(2) SourceAmerica (*www.SourceAmerica.org*) (formerly known as the National Industries for the Severely Handicapped), 8401 Old Courthouse Road, Vienna, VA 22182, (571) 226–4660.

(End of clause)

■ 8. Add sections 52.208–XX and 52.208–YY to read as follows:

52.208–XX Government Supply Sources.

As prescribed in 8.105–2(c), insert the following clause:

Government Supply Sources (DATE)

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization vests in the Government unless otherwise specified in the contract. The provisions of the clause at FAR 52.245–1, Government Property, apply to all property acquired under such authorization.

(End of clause)

52.208–YY GSA Fleet Vehicles and Related Services.

As prescribed in 8.105–3(c), insert the following clause:

GSA Fleet Vehicles and Related Services (DATE)

The Contracting Officer may issue the Contractor an authorization to obtain GSA Fleet vehicles and related services for use in the performance of this contract. The use, service, and maintenance of GSA Fleet vehicles and the use of related services by the Contractor must be in accordance with 41 CFR 101–39 and 41 CFR 102–34.

(End of clause)

■ 9. Revise sections 52.212–1 and 52.212–2 to read as follows:

52.212–1 Instructions to Offerors—Commercial Products and Commercial Services.

As prescribed in 12.205(a)(1), insert the following provision:

Instructions to Offerors—Commercial Products and Commercial Services (DATE)

(a) *Submission of offers.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. As a minimum, offers must include—

(1) The solicitation number;

(2) The name, address, telephone number of the Offeror;

(3) The Offeror's Unique Entity Identifier (UEI) and, if applicable, Electronic Funds Transfer (EFT) indicator;

(4) Information necessary to evaluate the factors contained in the provision at 52.212–2 or as described in the solicitation;

(5) Responses to provisions that require Offeror completion of information, representations, and certifications (other than those collected via the System for Award Management (SAM)); and

(6) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and any solicitation amendments.

(b) *Period for acceptance of offers.* The Offeror agrees to hold the prices in its offer firm for 60 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(c) *Late submissions, modifications, revisions, and withdrawals of offers.*

(1) Offerors are responsible for submitting offers and any modifications or revisions to the Government office designated in the solicitation by the time specified in the solicitation.

(2) Any offer, modification, or revision received after the time specified for receipt of offers is "late" and will not be considered unless it is received before award is made and the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition and is in the Government's best interests. However, a late modification of an otherwise successful offer that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(3) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(4) Offerors may withdraw their offers by written notice to the Government received at any time before award.

(d) *Contract award (not applicable to Invitation for Bids).* The Government intends to evaluate offers and award a contract without negotiations with Offerors. Therefore, the Offeror's initial offer should contain the Offeror's best terms. However, the Government reserves the right to conduct negotiations, if necessary. The Government may reject any or all offers if such action is in the public interest, accept other than the lowest offer, and waive informalities and minor irregularities in offers received.

(e) *Debriefings.* If a postaward debriefing is given to requesting Offerors, the Government will disclose the following information, if applicable:

(1) The agency's evaluation of the significant weak or deficient factors in the debriefed Offeror's offer.

(2) The overall evaluated cost or price and technical rating of the successful Offeror and the debriefed Offeror and past performance information on the debriefed Offeror.

(3) The overall ranking of all Offerors when any ranking was developed by the agency during source selection.

(4) A summary of the rationale for award.

(5) For acquisitions of commercial products, the make and model of the product to be delivered by the successful Offeror.

(6) Reasonable responses to relevant questions posed by the debriefed Offeror as to whether the agency followed source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities.

(End of provision)

52.212–2 Evaluation—Commercial Products and Commercial Services.

As prescribed in 12.205(a)(2), insert the following provision:

Evaluation—Commercial Products and Commercial Services (DATE)

(a) *Evaluation factors.* The Government will award a contract resulting from this solicitation to the Offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors will be used to evaluate offers:

[Insert evaluation factors in the relative order of importance. For requests for proposals, state: Evaluation factors other than price when combined are [significantly more important than price/approximately equal to price/significantly less important] than price. For invitations for bids, list only price and price-related factors.]

(b) *Options (if applicable).* The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. The evaluation of options does not obligate the Government to exercise the option(s).

(c) *Notice of award.* A written notice of award or acceptance of an offer furnished to the successful Offeror within the time for acceptance specified in the offer, will result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

52.212–3 [Removed and Reserved]

■ 10. Remove and reserve section 52.212–3.

■ 11. Revise section 52.212–4 to read as follows:

52.212–4 Terms and Conditions—Commercial Products and Commercial Services.

As prescribed in 12.205(b), insert the following clause:

Terms and Conditions—Commercial Products and Commercial Services (DATE)

(a) *Definitions.* The clause at Federal Acquisition Regulation (FAR) 52.202–1, Definitions, is incorporated by reference.

(b) *Inspection/Acceptance.* The Contractor must only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post acceptance rights—

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(c) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (*e.g.,* use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(d) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(e) *Disputes.* This contract is subject to 41 U.S.C. chapter 71, Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal, or action arising under or relating to this contract will be a dispute to be resolved in accordance with the clause FAR 52.233–1, Disputes, which is incorporated in this contract by reference. The Contractor must proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(f) *Excusable delays.* The Contractor will be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence. Examples of occurrences include acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. When an excusable delay occurs, the Contractor must—

(1) Notify the Contracting Officer in writing as soon as possible;

(2) Remedy the delay as quickly as possible; and

(3) Notify the Contracting Officer when the occurrence is over.

(g) *Invoice.* The Government will handle invoices according to the Prompt Payment Act (31 U.S.C. 3903) and 5 CFR part 1315. The Contractor must submit invoices to the address designated in the contract to receive invoices. An invoice must include the information required by 5 CFR 1315.9(b).

(h) *Patent indemnity.* The Contractor must indemnify the Government and its officers, employees, and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment*—

(1) *Items accepted.* Payment will be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(3) *Discount.* In connection with any discount offered for early payment, time will be computed from the date of the invoice. For the purpose of computing the discount earned, payment will be considered to have been made on the date that appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(4) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor must—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (*e.g.,* duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact; and

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(5) *Interest.*

(i) All amounts that become payable by the Contractor to the Government under this contract will bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate will be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each 6-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final decisions.* The Contracting Officer will issue a final decision as required by FAR part 33 if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment, unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see FAR part 32).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision must identify the same due date as the original demand for payment.

(v) Amounts will be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a termination for cause.

(vi) The interest charge will be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures for interest credits prescribed in FAR part 32 in effect on the date of this contract.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract will remain with the Contractor until, and will pass to the Government upon—

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor must immediately stop all work and must immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor will be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor will not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor will not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. The Government will send a cure notice to the Contractor, unless the reason for the termination is late delivery. In the event of termination for cause, the Government will not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor will be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination will be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract will pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered under this contract are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 49 U.S.C. 40118, Government-financed air transportation; and 41 U.S.C. chapter 21 relating to procurement integrity.

(r) *Order of precedence.* Any inconsistencies in this solicitation or contract must be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Disputes, Payments, Invoice, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause.

(3) Other contract clauses incorporated in the solicitation or contract.

(4) Addenda to this solicitation or contract.

(5) Solicitation provisions incorporated in the solicitation.

(6) Other paragraphs of this clause.

(7) Other documents, exhibits, and attachments.

(8) The specification.

(s) *Unauthorized obligations.*

(1) Except as stated in paragraph (s)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following will govern:

(i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government-authorized end user will be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an ''I agree'' click box or other comparable mechanism (*e.g.,* ''click-wrap'' or ''browse-wrap'' agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (s)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(t) *Comptroller General examination of record.* This paragraph applies if this contract was awarded using other than sealed bid procedures and is in excess of the simplified acquisition threshold on the date of award of this contract.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, will have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor must make available at its offices, at all reasonable times, the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR part 4, longer period required by statute, or periods specified in other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated must be made available

for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract must be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This clause does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(u) *Incorporation by reference.* The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

(End of clause)

Alternate I (DATE). As prescribed at 12.205(b)(1)(i), substitute the following paragraphs (a), (b), (i), (l), and (m) for paragraphs (a), (b), (i), (l), and (m) in the basic clause.

(a) The clause at Federal Acquisition Regulation (FAR) 52.202–1, Definitions, is incorporated by reference. As used in this clause—

Direct materials means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

Hourly rate means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are—

(1) Performed by the contractor;

(2) Performed by the subcontractors; or

(3) Transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.

Materials means—

(1) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the contractor under a common control;

(2) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;

(3) Other direct costs (*e.g.,* incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.);

(4) The following subcontracts for services which are specifically excluded from the hourly rate: *[Insert any subcontracts for services to be excluded from the hourly rates prescribed in the schedule.];* and

(5) Indirect costs specifically provided for in this clause.

Subcontract means any contract, as defined in FAR 2.101, entered into with a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract including transfers between divisions, subsidiaries, or affiliates of a contractor or subcontractor. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) *Inspection/Acceptance.*

(1) The Government has the right to inspect and test all materials furnished and services performed under this contract at all places and times before acceptance. The Government will perform inspections and tests in a manner that will not unduly delay the work.

(2) If the Government performs inspection or tests on the premises of the Contractor or a subcontractor, the Contractor must furnish and must require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(3) Unless otherwise specified in the contract, the Government will accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they will be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(4) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (b)(6) of this clause, the cost of replacement or correction will be determined under paragraph (i) of this clause, but the ''hourly rate'' for labor hours incurred in the replacement or correction will be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified below, the portion of the ''hourly rate'' attributable to profit will be 10 percent. The Contractor must not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, must disclose the corrective action taken. *[Insert portion of labor rate attributable to profit.]*

(5)(i) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government may—

(A) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or

(B) Terminate this contract for cause.

(ii) Failure to agree to the amount of increased cost to be charged to the Contractor will be a dispute under the Disputes clause of the contract.

(6) Notwithstanding paragraphs (b)(4) and (5) of this clause, the Government may, at any time, require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to—

(i) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or

(ii) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(7) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(8) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.

(9) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property will be governed by the clause pertaining to Government property.

(i) *Payments.*

(1) *Work performed.* The Government will pay the Contractor as follows upon the submission of commercial invoices approved by the Contracting Officer:

(i) *Hourly rate.*

(A) The amounts will be computed by multiplying the appropriate hourly rates prescribed in the contract by the number of direct labor hours performed. Fractional parts of an hour will be payable on a prorated basis.

(B) The rates will be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by individuals that do not meet the qualifications specified in the contract, unless specifically authorized by the Contracting Officer.

(C) Invoices may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer) to the Contracting Officer or the authorized representative.

(D) When requested by the Contracting Officer or the authorized representative, the Contractor must substantiate invoices (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the contract, or other substantiation specified in the contract.

(E) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule will not be varied by virtue of the Contractor having performed work on an overtime basis.

(*1*) If no overtime rates are provided in the Schedule and the Contracting Officer approves overtime work in advance, overtime rates will be negotiated.

(*2*) Failure to agree upon these overtime rates will be treated as a dispute under the Disputes clause of this contract.

(*3*) If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(ii) *Materials.*

(A) If the Contractor furnishes materials that meet the definition of a commercial product at FAR 2.101, the price to be paid for such materials will not exceed the Contractor's established catalog or market price, adjusted to reflect the—

(*1*) Quantities being acquired; and

(*2*) Any modifications necessary because of contract requirements.

(B) Except as provided for in paragraph (i)(1)(ii)(A) and (D)(2) of this clause, the Government will reimburse the Contractor the actual cost of materials (less any rebates, refunds, or discounts received by the contractor that are identifiable to the contract) provided the Contractor—

(*1*) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or

(*2*) Makes these payments within 30 days of the submission of the Contractor's payment request to the Government and such payment is in accordance with the terms and conditions of the agreement or invoice.

(C) To the extent able, the Contractor must—

(*1*) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(*2*) Give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that are identifiable to the contract.

(D) Unless listed below, other direct and indirect costs will not be reimbursed.

(*1*) *Other direct costs.* The Government will reimburse the Contractor on the basis of actual cost for the following, provided such costs comply with the requirements in paragraph (i)(1)(ii)(B) of this clause: *[Insert each element of other direct costs (e.g., travel, computer usage charges, etc. Insert* "*None*" *if no reimbursement for other direct costs will be provided. If this is an indefinite delivery contract, the Contracting Officer may insert* "*Each order must list separately the elements of other direct charge(s) for that order or, if no reimbursement for other direct costs will be provided, insert 'None'*"*.]*

(*2*) *Indirect costs (material handling, subcontract administration, etc.).* The Government will reimburse the Contractor for indirect costs on a pro-rata basis over the period of contract performance at the following fixed price: *[Insert a fixed amount for the indirect costs and payment schedule. Insert* "*$0*" *if no fixed price reimbursement for indirect costs will be provided. (If this is an indefinite delivery contract, the Contracting Officer may insert* "*Each order must list separately the fixed amount for the indirect costs and payment schedule or, if no reimbursement for indirect costs, insert 'None').*"*]*

(2) *Total cost.* The total cost to the Government for the performance of this contract must not exceed the ceiling price set forth in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor must notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during the performance of this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the stated ceiling price, the Contractor must so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performance of this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the revised estimate of the total amount of effort to be required under the contract.

(3) *Ceiling price.* The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor will not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer notifies the Contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that will constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase will be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(4) *Access to records.* At any time before final payment under this contract, the Contracting Officer (or authorized representative) will have access to the following (access must be limited to the listing below unless otherwise agreed to by the Contractor and the Contracting Officer):

(i) Records that verify that the employees whose time has been included in any invoice meet the qualifications for the labor categories specified in the contract;

(ii) For labor hours (including any subcontractor hours reimbursed at the hourly rate in the schedule), when timecards are required as substantiation for payment—

(A) The original timecards (paper-based or electronic);

(B) The Contractor's timekeeping procedures;

(C) Contractor records that show the distribution of labor between jobs or contracts; and

(D) Employees whose time has been included in any invoice for the purpose of verifying that these employees have worked the hours shown on the invoices.

(iii) For material and subcontract costs that are reimbursed on the basis of actual cost—

(A) Any invoices or subcontract agreements substantiating material costs; and

(B) Any documents supporting payment of those invoices.

(5) *Overpayments/Underpayments.* Each payment previously made will be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Contracting Officer not to have been properly payable and will also be subject to reduction for overpayments or to increase for underpayments. The Contractor must promptly pay any such reduction within 30 days unless the parties agree otherwise. The Government will pay any such increases within 30 days, unless the parties agree otherwise. The Contractor's payment will be made by check. If the Contractor becomes aware of a duplicate invoice payment or that the Government has otherwise overpaid on an invoice payment, the Contractor must—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (*e.g.,* duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) *Interest.*

(i) All amounts that become payable by the Contractor to the Government under this contract will bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate will be the interest rate established by the Secretary of the Treasury, as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as established by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) The Contracting Officer will issue a final decision if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer.

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision must identify the same due date as the original demand for payment.

(v) Amounts will be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge will be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in FAR part 32 in effect on the date of this contract.

(viii) Upon receipt and approval of the invoice designated by the Contractor as the "completion invoice" and supporting documentation, and upon compliance by the Contractor with all terms of this contract, any outstanding balances will be paid within 30 days unless the parties agree otherwise. The completion invoice, and supporting documentation, must be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(7) *Release of claims.* The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, must execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(i) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible to exact statement by the Contractor.

(ii) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(8) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(9) *Discount.* In connection with any discount offered for early payment, time will be computed from the date of the invoice. For the purpose of computing the discount earned, payment will be considered to have been made on the date that appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor must immediately stop all work under this contract and must immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor will be paid an amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the contract, less any hourly rate payments already made to the Contractor plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system that have resulted from the termination. The Contractor will not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor will not be paid for any work performed or costs incurred that reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon written request, with adequate assurances of future performance. The Government will send a cure notice to the Contractor, unless the reason for the termination is late delivery. Subject to the terms of this contract, the Contractor will be paid an amount computed under paragraph (i), Payments, of this clause, but the ''hourly rate'' for labor hours expended in furnishing work not delivered to or accepted by the Government will be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified in paragraph (b)(4) of this clause, the portion of the ''hourly rate'' attributable to profit will be 10 percent. In the event of termination for cause, the Contractor will be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination will be deemed a termination for convenience.

52.212–5 [Removed and Reserved]

■ 12. Remove and reserve section 52.212–5.

52.213–1 through 52.213–3 [Removed and Reserved]

■ 13. Remove and reserve sections 52.213–1 through 52.213–3.

■ 14. Revise section 52.213–4 to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Noncommercial).

As prescribed in 13.204(b), insert the following clause:

Terms and Conditions—Simplified Acquisitions (Noncommercial) (DATE)

(a) *Inspection/Acceptance.* The Contractor must only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post acceptance rights—

(1) Within a reasonable period of time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Excusable delays.* The Contractor will be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence. Examples of occurrences include acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. When an excusable delay occurs, the Contractor must—

(1) Notify the Contracting Officer in writing, as soon as possible;

(2) Remedy the delay as quickly as possible; and

(3) Notify the Contracting Officer in writing, when the occurrence is over.

(c) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor must immediately stop all work and must immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor will be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor will not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor will not be paid for any work performed or costs incurred which reasonably could have been avoided.

(d) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. The Government will send a cure notice to the Contractor, unless the reason for the termination is late delivery. In the event of termination for cause, the Government will not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor will be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination will be deemed a termination for convenience.

(e) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(End of clause)

■ 15. Revise sections 52.215–1 and 52.215–2 to read as follows:

52.215–1 Instructions to Offerors—Competitive Acquisition.

As prescribed in 15.109(a)(1), insert the following provision:

Instructions to Offerors—Competitive Acquisition (DATE)

(a) *Definitions.* As used in this provision—

In writing, writing, or *written* means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

Proposal modification is a change made to a proposal before the request for proposal closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

Proposal revision is a change to material elements of a proposal made after the request for proposal closing date, at the request of or as allowed by a Contracting Officer, as the result of negotiations.

Time, if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period must include the next working day.

(b) *Amendments to requests for proposals.* If this request for proposal (RFP) is amended, all terms and conditions that are not amended remain unchanged. Offerors must acknowledge receipt of any amendment to this RFP by the date and time specified in the amendment(s).

(c) *Submission, modification, revision, and withdrawal of proposals.*

(1)(i) Proposals and proposal modifications must be—

(A) Submitted using the method and the format specified in the RFP;

(B) Addressed to the office specified in the RFP; and

(C) Showing the time and date specified for receipt, the RFP number, and the name and address of the Offeror.

(ii) Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i)(B) and (C) of this provision.

(2) The first page of the proposal must show—

(i) The RFP number;

(ii) The name, address, and telephone number of the Offeror (and electronic address if available);

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the RFP and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

(iv) Names, titles, and telephone number (and electronic addresses if available) of persons authorized to negotiate on the Offeror's behalf with the Government in connection with this RFP; and

(v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent must be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3)(i) Offerors are responsible for submitting proposals, and any modifications or revisions, so as to reach the Government office designated in the RFP by the time specified in the RFP. If no time is specified in the RFP, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii) Any proposal, modification, or revision, received at the Government office designated in the RFP after the exact time specified for receipt of proposals is ''late'' and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late proposal is in the Government's best interest and would not unduly delay the acquisition.

(iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the RFP, and urgent Government requirements preclude amendment of the RFP, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the RFP on the first work day on which normal Government processes resume.

(v) Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral RFPs may be withdrawn orally. Proposals may be withdrawn in person by an Offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.

(4) Unless otherwise specified in the RFP, the Offeror may propose to provide any item or combination of items.

(5) Offerors must submit proposals in response to this RFP in English, unless otherwise permitted by the RFP, and in U.S. dollars, unless the provision at FAR 52.225–17, Evaluation of Foreign Currency Offers, is included in the RFP.

(6) Offerors may submit modifications to their proposals at any time before the RFP closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) *Expiration date.* Proposals in response to this RFP will be valid for the number of days specified on the RFP cover sheet (unless a different period is proposed by the Offeror).

(e) *Restriction on disclosure and use of data.* Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, must—

(1) Mark the title page with the following legend: This proposal includes data that must not be disclosed outside the Government and must not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this Offeror as a result of, or in connection with, the submission of this data, the Government must have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [*insert numbers or other identification of sheets*]; and

(2) Mark each sheet of data it wishes to restrict with the following legend: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) *Contract award.*

(1) The Government intends to award a contract or contracts resulting from this RFP to the responsible Offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the RFP.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract without negotiations with Offerors (except clarifications as described in FAR 15.202(b)). Therefore, the Offeror's initial proposal should contain the Offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct negotiations if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly evaluated proposals.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the Offeror specifies otherwise in the proposal.

(6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(7) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(8) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(9) A written award or acceptance of proposal mailed or otherwise furnished to the successful Offeror within the time specified in the proposal will result in a binding contract without further action by either party.

(10) If a post-award debriefing is given to requesting Offerors, the Government must disclose the following information, if applicable:

(i) The agency's evaluation of the significant weaknesses or deficiencies in the debriefed Offeror's proposal.

(ii) The overall evaluated cost or price and technical rating of the successful and the debriefed Offeror and past performance information on the debriefed Offeror.

(iii) The overall ranking of all Offerors, when any ranking was developed by the agency during source selection.

(iv) A summary of the rationale for award.

(v) For acquisitions of commercial products, the make and model of the product to be delivered by the successful Offeror.

(vi) Reasonable responses to relevant questions posed by the debriefed Offeror as to whether source selection procedures set forth in the RFP, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

Alternate I (DATE). As prescribed in 15.109(a)(2), replace paragraph (f)(4) of the basic provision with the following paragraph (f)(4):

(f)(4) The Government intends to evaluate proposals and award a contract after conducting negotiations with Offerors whose proposals have been determined to be within the competitive range. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly evaluated proposals. Therefore, the Offeror's initial proposal should contain the Offeror's best terms from a price and technical standpoint.

Alternate II (DATE). As prescribed in 15.109(a)(3), add the following paragraph (c)(9) to the basic provision:

(c)(9) Offerors may submit proposals that depart from stated requirements. Such proposals must clearly identify why acceptance of the proposal would be advantageous to the Government. Any deviations from the terms and conditions of the RFP, as well as the comparative advantage to the Government, must be clearly identified and explicitly defined. The Government reserves the right to amend the RFP to allow all Offerors an opportunity to submit revised proposals based on the revised requirements.

52.215–2 Audit and Records—Negotiation.

As prescribed in 15.109(b)(1), insert the following clause:

Audit and Records—Negotiation (DATE)

(a) *Definition.* As used in this clause, *records* includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor must maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, must have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination must include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) *Certified cost or pricing data.* If the Contractor is required to submit certified cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the certified cost or pricing data, must have the right to examine and audit all of the Contractor's records, including computations and projections, related to—

(1) The proposal for the contract, subcontract, or modification;

(2) Communications on the proposal(s), including those related to negotiating;

(3) Pricing of the contract, subcontract, or modification; or

(4) Performance of the contract, subcontract or modification.

(d) *Comptroller General.* (1) The Comptroller General of the United States, or an authorized representative, must have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer must have the right to examine and audit the supporting records and materials, for the purpose of evaluating-

(1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and

(2) The data reported.

(f) *Availability.* The Contractor must make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified for contractor record retention in Part 4 of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the Contractor must make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor must make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) *Subcontracts.* (1) The Contractor must insert the substance of this clause, including this paragraph (g), in all subcontracts, other than those for commercial products or commercial services, that—

(i) Exceed the simplified acquisition threshold, as defined in FAR part 2 on the date of subcontract award; and

(ii) Are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these—

(A) For which certified cost or pricing data are required; or

(B) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

(2) The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government contract.

(End of clause)

Alternate I [Reserved].

Alternate II (DATE). As prescribed in 15.109(b)(3), add the following paragraph (h) to the clause:

(h) The provisions of the OMB Uniform Guidance at 2 CFR part 200, subpart F apply to this contract.

Alternate III (DATE). As prescribed in 15.109(b)(4), delete paragraph (d) of the clause and redesignate the remaining paragraphs accordingly, then replace the redesignated paragraph (e) of the basic clause with the following paragraph (e):

(e) *Availability.* The Contractor must make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), and (d) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified for contractor record retention in Part 4 of the Federal Acquisition Regulation, or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the Contractor must make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor must make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

52.215–3 and 52.215–5 [Removed and Reserved]

■ 16. Remove and reserve sections 52.215–3 and 52.215–5.

■ 17. Revise section 52.215–6 to read as follows:

52.215–6 Place of Performance.

As prescribed in 15.109(f), insert the following provision:

Place of Performance (DATE)

(a) The Offeror, in the performance of any contract resulting from this request for proposals, ☐ intends, ☐ does not intend [*check applicable block*] to use one or more plants or facilities located at a different address from the address of the Offeror as indicated in this proposal.

(b) The Offeror must provide the following information in the space below if it checks ''intends'' in paragraph (a) of this provision:

Place of performance (street address, city, state, county, zip code)	Name and address of owner and operator of the plant or facility if other than Offeror or respondent

(End of provision)

■ 18. Revise sections 52.215–8 through 52.215–23 to read as follows:

52.215–8 Order of Precedence—Uniform Contract Format.

As prescribed in 15.109(h), insert the following clause:

Order of Precedence—Uniform Contract Format (DATE)

Any inconsistency in this request for proposal or contract must be resolved by giving precedence in the following order:

(a) The Schedule (excluding the specifications).

(b) Representations and other instructions.

(c) Contract clauses.

(d) Other documents, exhibits, and attachments.

(e) The specifications.

(End of clause)

52.215–9 Changes or Additions to Make-or-Buy Program.

As prescribed in 15.109(i)(1), insert the following clause:

Changes or Additions to Make-or-Buy Program (DATE)

(a) The Contractor must perform in accordance with the make-or-buy program incorporated in this contract. If the Contractor proposes to change the program, the Contractor must, reasonably in advance of the proposed change—

(1) Notify the Contracting Officer in writing; and

(2) Submit a justification in sufficient detail to permit evaluation.

(3) Changes in the place of performance of any ''make'' items in the program are subject to this requirement.

(b) For items deferred at the time of negotiation of this contract for later addition to the program, the Contractor must, at the earliest possible time—

(1) Notify the Contracting Officer of each proposed addition; and

(2) Provide a justification in sufficient detail to permit evaluation.

(c) Modification of the make-or-buy program to incorporate proposed changes or additions must be effective upon the Contractor's receipt of the Contracting Officer's written approval.

(End of clause)

Alternate I (DATE). As prescribed in 15.109(i)(2)(i) add the following paragraph (d) to the clause:

(d) If the Contractor desires to reverse the categorization of ''make'' or ''buy'' for any item or items designated in the contract as subject to this paragraph, it must—

(1) Support its proposal with certified cost or pricing data in accordance with FAR 15.408–2, Table 15–1, when required by FAR 15.403–3, and data other than certified cost or pricing data, to permit evaluation; and

(2) After approval is granted, promptly negotiate with the Contracting Officer an equitable reduction in the contract price in accordance with paragraph (k) of the Incentive Price Revision—Firm Target clause or paragraph (m) of the Incentive Price Revision—Successive Targets clause of this contract.

Alternate II (DATE). As prescribed in 15.109(i)(2)(ii), add the following paragraph (d) to the clause:

(d) If the Contractor desires to reverse the categorization of ''make'' or ''buy'' for any item or items designated in the contract as subject to this paragraph, it must—

(1) Support its proposal with certified cost or pricing data in accordance with FAR 15.408–2, Table 15–1, when required by FAR 15.403–3, and data other than certified cost or pricing data, to permit evaluation;

(2) Support its proposal with cost or pricing data to permit evaluation; and

(3) After approval is granted, promptly negotiate with the Contracting Officer an equitable reduction in the contract's total estimated cost and fee in accordance with paragraph (e) of the Incentive Fee clause of this contract.

52.215–10 Price Reduction for Defective Certified Cost or Pricing Data.

As prescribed in 15.109(j), insert the following clause:

Price Reduction for Defective Certified Cost or Pricing Data (DATE)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because—

(1) The Contractor or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Contractor certified cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost must be reduced accordingly and the contract must be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract must be limited to the amount, plus applicable overhead and profit markup, by which the actual subcontract, or the actual cost to the Contractor if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data.

(c)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current certified cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the certified cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by paragraph (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts must be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the certified cost or pricing data were available before the ''as of'' date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset must not be allowed if—

(A) The understated data were known by the Contractor to be understated before the ''as of'' date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the ''as of'' date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor must be liable to and must pay the United States at the time such overpayment is repaid—

(1) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted certified cost or pricing data that were incomplete, inaccurate, or noncurrent.

(End of clause)

52.215–11 Price Reduction for Defective Certified Cost or Pricing Data—Modifications.

As prescribed in 15.109(k), insert the following clause:

Price Reduction for Defective Certified Cost or Pricing Data—

Modifications (DATE)

(a) This clause must become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data in Federal Acquisition Regulation (FAR) 15.403–3(a) on the date of execution of the modification, except that this clause does not apply to any modification if an exception under FAR 15.403–2 applies.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because the Contractor or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data; a subcontractor or prospective subcontractor furnished the Contractor certified cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or any of these parties furnished data of any description that were not accurate, the price or cost must be reduced accordingly and the contract must be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract must be limited to the amount, plus applicable overhead and profit markup, by which the actual subcontract, or the actual cost to the Contractor if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data.

(d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current certified cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the certified cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by paragraph (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts must be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the certified cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset must not be allowed if—

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor must be liable to and must pay the United States at the time such overpayment is repaid—

(1) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted certified cost or pricing data that were incomplete, inaccurate, or noncurrent.

(End of clause)

52.215–12 Subcontractor Certified Cost or Pricing Data.

As prescribed in 15.109(l)(1), insert the following clause:

Subcontractor Certified Cost or Pricing Data (DATE)

(a) *Submission of data.* Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data in Federal Acquisition Regulation (FAR) 15.403–3(a), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data in FAR 15.403–3(a), the Contractor must require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408–2, Table 15–1 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403–2 applies. If the threshold for submission of certified cost or pricing data specified in FAR 15.403–3(a) is adjusted for inflation as set forth in FAR part 1, then the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment.

(b) *Certification.* The Contractor must require the subcontractor to certify in substantially the form prescribed in FAR 15.403–4 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) *Subcontracts.* In all subcontracts, other than those for commercial products or commercial services, that, when entered into, exceed the threshold for submission of certified cost or pricing data at FAR 15.403–3(a), the Contractor must insert either—

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of certified cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215–13, *Subcontractor Certified Cost or Pricing Data—Modifications.*

(End of clause)

Alternate I (DATE). As prescribed in 15.109(l)(2), replace paragraph (a) of the basic clause with the following paragraph (a):

(a) *Submission of data.* Unless an exception under FAR 15.403–2 applies, the Contractor must require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408–2, Table 15–1 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price) before awarding any subcontract expected to exceed $2.5 million under any prime contract awarded before July 1, 2018.

52.215–13 Subcontractor Certified Cost or Pricing Data—Modifications.

As prescribed in 15.109(m)(1), insert the following clause:

Subcontractor Certified Cost or Pricing Data—Modifications (DATE)

(a) *General.* The requirements of paragraphs (b) and (c) of this clause must—

(1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data in Federal Acquisition Regulation (FAR) 15.403–3(a) on the date of execution of the modification; and

(2) Be limited to such modifications.

(b) *Submission of data.* Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data in FAR 15.403–3(a), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data in FAR 15.403–3(a), the Contractor must require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408–2, Table 15–1 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403–2 applies. If the threshold for submission of certified cost or pricing data specified in FAR 15.403–3(a) is adjusted for inflation as set forth in FAR part 1, then the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment.

(c) *Certification.* The Contractor must require the subcontractor to certify in substantially the form prescribed in FAR 15.403–4 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) *Subcontracts.* The Contractor must insert the substance of this clause, including this paragraph (d), in all subcontracts, other than those for commercial products or commercial services, that exceed the threshold for submission of certified cost or pricing data in FAR 15.403–3(a) on the date of agreement on price or the date of award, whichever is later.

(End of clause)

Alternate I (DATE). As prescribed in 15.109(m)(2), replace paragraphs (a), (b), and (d) of the basic clause with the following for paragraphs (a), (b), and (d):

(a) *General.* The requirements of paragraphs (b) and (c) of this clause must—

(1) Become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403–3(a); and

(2) Be limited to such modifications.

(b) *Submission of data.* Unless an exception under FAR 15.403–2 applies, the Contractor must require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408–2, Table 15–1 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price) before modifying a subcontract under a prime contract awarded before July 1, 2018 if the modification involves a pricing adjustment expected to exceed $2.5 million.

(d) *Subcontracts.* The Contractor must insert the substance of this clause, including this paragraph (d), in all subcontracts, other than those for commercial products or commercial services, that exceed $2.5 million.

52.215–14 Integrity of Unit Prices.

As prescribed in 15.109(n)(1), insert the following clause:

Integrity of Unit Prices (DATE)

(a) *Cost distribution.* Any proposal submitted for the negotiation of prices for items of supplies must distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (*e.g.,* manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices must not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of certified cost or pricing data not otherwise required by law or regulation.

(b) *Identification of certain supplies.* When requested by the Contracting Officer, the Offeror/Contractor must also identify those supplies that it will not manufacture or to which it will not contribute significant value.

(c) *Subcontracts.* The Contractor must include the substance of this clause, less paragraph (b), in all subcontracts except those—

(1) Valued at or below the simplified acquisition threshold, as defined in Federal Acquisition Regulation (FAR) 2.101 on the date of subcontract award;

(2) For construction or architect-engineer services under FAR part 36;

(3) For utility services under FAR part 41;

(4) For services where supplies are not required;

(5) For commercial products and commercial services; or

(6) For petroleum products.

(End of clause)

Alternate I (DATE). As prescribed in 15.109(n)(2), replace paragraph (b) of the basic clause with the following paragraph (b):

(b) The Offeror/Contractor must also identify those supplies that it will not manufacture or to which it will not contribute significant value.

52.215–15 Pension Adjustments and Asset Reversions.

As prescribed in 15.109(o), insert the following clause:

Pension Adjustments and Asset Reversions (DATE)

(a) *Notification of termination.* The Contractor must promptly notify the Contracting Officer in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.

(b) *Adjustment amount.* For segment closings, pension plan terminations, or curtailment of benefits, the amount of the adjustment must be—

(1) For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99), the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413–50(c)(12); and

(2) For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413–50(c)(12), except the numerator of the fraction at 48 CFR 9904.413–50(c)(12)(vi) must be the sum of the pension plan costs allocated to all non-CAS covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) subpart 31.2 or for which certified cost or pricing data were submitted.

(c) *Equitable share.* For all other situations where assets revert to the Contractor, or such assets are constructively received by it for any reason, the Contractor must, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share must reflect the Government's participation in pension costs through those contracts for which certified cost or pricing data were submitted or that are subject to FAR subpart 31.2.

(d) *Subcontracts.* The Contractor must include the substance of this clause in all subcontracts, other than those for commercial products or commercial services, for which it is anticipated that certified cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to FAR part 31.

(End of clause)

52.215–16 Facilities Capital Cost of Money.

As prescribed in 15.109(p), insert the following provision:

Facilities Capital Cost of Money (DATE)

(a) Facilities capital cost of money will be an allowable cost under the contemplated contract, if the criteria for allowability in

FAR 31.205–10(b) are met. One of the allowability criteria requires the Offeror to propose facilities capital cost of money in its proposal.

(b) If the Offeror does not propose this cost, it will be an unallowable cost under a contract awarded to the Offeror as a result of this solicitation.

(End of provision)

52.215–17 Waiver of Facilities Capital Cost of Money.

As prescribed in 15.109(q), insert the following clause:

Waiver of Facilities Capital Cost of Money (DATE)

The Contractor did not include facilities capital cost of money as a proposed cost of this contract. Therefore, it is an unallowable cost under this contract.

(End of clause)

52.215–18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.

As prescribed in 15.109(r), insert the following clause:

Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (DATE)

(a) *Notification of termination.* The Contractor must promptly notify the Contracting Officer in writing when the Contractor determines that it will terminate or reduce the benefits of a PRB plan.

(b) *Equitable share.* If PRB fund assets revert or inure to the Contractor, or are constructively received by it under a plan termination or otherwise, the Contractor must refund or credit the Government for its equitable share. The equitable share must reflect the Government's previous participation in PRB costs through those contracts for which certified cost or pricing data were required or which were subject to cost principles of the Federal Acquisition Regulation subpart 31.2. When determining or agreeing on the method for recovery of the Government's equitable share, the contracting parties should consider the following methods: cost reduction, amortizing the credit over a number of years (with appropriate interest), cash refund, or some other agreed upon method. Should the parties be unable to agree on the method for recovery of the Government's equitable share, through good faith negotiations, the Contracting Officer must designate the method of recovery.

(c) *Subcontracts.* The Contractor must insert the substance of this clause, including this paragraph (c), in all subcontracts, other than those for commercial products or commercial services, for which it is anticipated that certified cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to FAR part 31.

(End of clause)

52.215–19 Notification of Ownership Changes.

As prescribed in 15.109(s), insert the following clause:

Notification of Ownership Changes (DATE)

(a) *Notification.* The Contractor must notify the Administrative Contracting Officer (ACO), in writing, within 30 days, when:

(1) The Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records; or

(2) Changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) *Responsibilities.* The Contractor must—

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide the ACO or designated representative ready access to the records upon request;

(3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(c) *Subcontracts.* The Contractor must include the substance of this clause, including this paragraph (c), in all subcontracts, except those for commercial products or commercial services, for which it is anticipated that certified cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to FAR part 31.

(End of clause)

52.215–20 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.

As prescribed in 15.109(t)(1), insert the following provision:

Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data (DATE)

(a) *Exceptions from certified cost or pricing data.* (1) In lieu of submitting certified cost or pricing data, Offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Commercial product and commercial service exception.* For a commercial product and commercial service exception, the Offeror must submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include—

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.,* wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;

(B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market;

(C) For items included on an active Federal Supply Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Offeror's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for certified cost or pricing data.* If the Offeror is not granted an exception from the requirement to submit certified cost or pricing data, the following applies:

(1) The Offeror must prepare and submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in accordance with the instructions contained in Table 15–1 of FAR 15.408–2, which is incorporated by reference with the same force and effect as though it were inserted here in full text. The instructions in Table 15–1 are incorporated as a mandatory format to be used in this contract, unless the Contracting Officer and the Contractor agree to a different format and change this clause to use Alternate I.

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the Offeror must submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.403–4.

(End of provision)

Alternate I (DATE). As prescribed in 15.109(t)(2), replace paragraph (b)(1) of the basic provision with the following paragraph (b)(1):

(b)(1) The Offeror must submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in the following format: [*Insert description of the data and format that are required, and include access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.408–2, Table 15–1, Note 2. The description may be inserted at the time of issuing the request for proposals, or the Contracting Officer may specify that the Offeror's format will be acceptable, or the description may be inserted as the result of negotiations.*]

Alternate II (DATE). As prescribed in 15.109(t)(3), add the following paragraph (c) to the basic provision:

(c) When the proposal is submitted, also submit one copy each to the Administrative Contracting Officer, and the Contract Auditor.

Alternate III (DATE). As prescribed in 15.109(t)(4), add the following paragraph (c) to the basic provision (if Alternate II is also used, redesignate the following paragraph as paragraph (d)).

(c) Submit the cost portion of the proposal via the following electronic media: [*Insert media format, e.g., electronic spreadsheet format, electronic mail, etc.*]

Alternate IV (DATE). As prescribed in 15.109(t)(5), replace the basic provision with the following:

(a) Submission of certified cost or pricing data is not required.

(b) Provide data described below: [*Insert description of the data, format, and access to records needed in accordance with 15.104–4(a)(3).*]

52.215–21 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications.

As prescribed in 15.109(u)(1), insert the following clause:

Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications (DATE)

(a) *Exceptions from certified cost or pricing data.*

(1) In lieu of submitting certified cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth in Federal Acquisition Regulation (FAR) 15.403–3(a) on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in paragraphs (a)(1)(i) and (ii) of this clause. If the threshold for submission of certified cost or pricing data specified in FAR 15.403–3(a) is adjusted for inflation as set forth in FAR part 1, the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—

(i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) Information on modifications of contracts or subcontracts for commercial products or commercial services.

(A) If—

(*1*) The original contract or subcontract was granted an exception from certified cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial product or commercial service; and

(*2*) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial product or commercial service, to a contract or subcontract for the acquisition of other than a commercial product or commercial service.

(B) For a commercial product and commercial service exception, the Contractor must provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include—

(*1*) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.,* wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(*2*) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(*3*) For items included on an active Federal Supply Schedule (FSS) contract, proof that an exception has been granted for the FSS item.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for certified cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit certified cost or pricing data, the following applies:

(1) The Contractor must submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in accordance with the instructions contained in Table 15–1 of FAR 15.408–2, which is incorporated by reference with the same force and effect as though it were inserted here in full text. The instructions in Table 15–1 are incorporated as a mandatory format to be used in this contract, unless the Contracting Officer and the Contractor agree to a different format and change this clause to use Alternate I.

(2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor must submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.403–4.

(End of clause)

Alternate I (DATE). As prescribed in 15.109(u)(2), replace paragraph (b)(1) of the basic clause with the following paragraph (b)(1).

(b)(1) The Contractor must submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments prepared in the following format: [*Insert description of the data and format that are required and include access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.408–2, Table 15–1, Note 2. The description may be inserted at the time of issuing the request for proposals, or the Contracting Officer may specify that the Offeror's format will be acceptable, or the description may be inserted as the result of negotiations.]*

Alternate II (DATE). As prescribed in 15.109(u)(3), add the following paragraph (c) to the basic clause:

(c) When the proposal is submitted, also submit one copy each to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

Alternate III (DATE). As prescribed in 15.109(u)(4), add the following paragraph (c) to the basic clause (if Alternate II is also used, redesignate the following paragraph as paragraph (d)):

(c) Submit the cost portion of the proposal via the following electronic media: [*Insert media format*]

Alternate IV (DATE). As prescribed in 15.109(u)(5), replace the basic provision with the following:

(a) Submission of certified cost or pricing data is not required.

(b) Provide data described below: [*Insert description of the data, format, and access to records needed in accordance with 15.104–4(a)(3).*]

52.215–22 Limitations on Pass-Through Charges—Identification of Subcontract Effort.

As prescribed in 15.109(v), use the following provision:

Limitations on Pass-Through Charges—Identification of Subcontract Effort (DATE)

(a) *Definitions.* Added value, excessive pass-through charge, subcontract, and subcontractor, as used in this provision, are defined in the clause of this request for proposals entitled ''Limitations on Pass-Through Charges'' (FAR 52.215–23).

(b) *General.* The Offeror's proposal must exclude excessive pass-through charges.

(c) *Performance of work by the Contractor or a subcontractor.* (1) The Offeror must identify in its proposal the total cost of the work to be performed by the Offeror, and the total cost of the work to be performed by each subcontractor, under the contract, task order, or delivery order.

(2) If the Offeror intends to subcontract more than 70 percent of the total cost of work to be performed under the contract, task order, or delivery order, the Offeror must identify in its proposal—

(i) The amount of the Offeror's indirect costs and profit/fee applicable to the work to be performed by the subcontractor(s); and

(ii) A description of the added value provided by the Offeror as related to the work to be performed by the subcontractor(s).

(3) If any subcontractor proposed under the contract, task order, or delivery order intends to subcontract to a lower-tier subcontractor more than 70 percent of the total cost of work to be performed under its subcontract, the Offeror must identify in its proposal—

(i) The amount of the subcontractor's indirect costs and profit/fee applicable to the work to be performed by the lower-tier subcontractor(s); and

(ii) A description of the added value provided by the subcontractor as related to the work to be performed by the lower-tier subcontractor(s).

(End of provision)

52.215–23 Limitations on Pass-Through Charges.

As prescribed in 15.109(w)(1) and (2), use the following clause:

Limitations on Pass-Through Charges (DATE)

(a) *Definitions.* As used in this clause—

Added value means that the Contractor performs subcontract management functions that the Contracting Officer determines are a benefit to the Government (*e.g.,* processing orders of parts or services, maintaining inventory, reducing delivery lead times, managing multiple sources for contract requirements, coordinating deliveries, performing quality assurance functions).

Excessive pass-through charge, with respect to a Contractor or subcontractor that adds no or negligible value to a contract or subcontract, means a charge to the Government by the Contractor or subcontractor that is for indirect costs or profit/fee on work performed by a subcontractor (other than charges for the costs of managing subcontracts and any applicable indirect costs and associated profit/fee based on such costs).

No or negligible value means the Contractor or subcontractor cannot demonstrate to the Contracting Officer that its effort added value to the contract or subcontract in accomplishing the work performed under the contract (including task or delivery orders).

Subcontract means any contract, as defined in Federal Acquisition Regulation (FAR) part 2, entered into by a subcontractor to furnish supplies or services for performance of the contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

Subcontractor, as defined in FAR part 44, means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

(b) *General.* The Government will not pay excessive pass-through charges. The Contracting Officer must determine if excessive pass-through charges exist.

(c) *Reporting.* Required reporting of performance of work by the Contractor or a subcontractor. The Contractor must notify the Contracting Officer in writing if—

(1) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of work to be performed under the contract, task order, or delivery order. The notification must identify the revised cost of the subcontract effort and must include verification that the Contractor will provide added value; or

(2) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification must identify the revised cost of the subcontract effort and must include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

(d) *Recovery of excessive pass-through charges.* If the Contracting Officer determines that excessive pass-through charges exist;

(1) For other than fixed-price contracts, the excessive pass-through charges are unallowable in accordance with the provisions in FAR 31; and

(2) For applicable DoD fixed-price contracts, the Government must be entitled to a price reduction for the amount of excessive pass-through charges included in the contract price.

(e) *Access to records.* (1) The Contracting Officer, or authorized representative, must have the right to examine and audit all the Contractor's records (as defined at FAR 52.215–2(a)) necessary to determine whether the Contractor proposed, billed, or claimed excessive pass-through charges.

(2) For those subcontracts to which paragraph (f) of this clause applies, the Contracting Officer, or authorized representative, must have the right to examine and audit all the subcontractor's records (as defined at FAR 52.215–2(a)) necessary to determine whether the subcontractor proposed, billed, or claimed excessive pass-through charges.

(f) *Subcontracts.*

(1) For contracts with agencies other than DoD, the Contractor must insert the substance of this clause, including this paragraph (f), in all cost-reimbursement subcontracts, other than those for commercial products and commercial services, that exceed the simplified acquisition threshold, as defined in FAR part 2 on the date of subcontract award.

(2) For contracts with DoD, the Contractor must insert the substance of this clause, including this paragraph (f), in all cost-reimbursement and fixed-price subcontracts that exceed the threshold for obtaining cost or pricing data at FAR 15.403–3(a) on the date of subcontract award, except those that are—

(i) For a commercial product or commercial service;

(ii) A firm-fixed price subcontract awarded on the basis of adequate price competition;

(iii) A firm-fixed price subcontract with economic price adjustment awarded on the basis of adequate price competition; or

(iv) A fixed-price incentive subcontract awarded on the basis of adequate price competition.

(End of clause)

Alternate I (DATE). As prescribed in 15.109(w)(3), Replace paragraph (b) of the basic clause, with the following paragraph (b):

(b) *General.* The Government will not pay excessive pass-through charges. The Contracting Officer has determined that there will be no excessive pass-through charges, provided the Contractor performs the disclosed value-added functions.

■ 19. Revise sections 52.244–2, 52.244–4, 52.244–5, and 52.244–6 to read as follows:

52.244–2 Subcontracts.

As prescribed in 44.201–5(a)(1), insert the following clause:

Subcontracts (DATE)

(a) *Definitions.* As used in this clause—

Approved purchasing system means a Contractor's purchasing system that has been reviewed and approved in accordance with part 44 of the Federal Acquisition Regulation (FAR).

Consent to subcontract means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

Subcontract means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.

(c) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that—

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds—

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, or 5 percent of the total estimated cost of the contract.

(d) If the Contractor has an approved purchasing system, the Contractor nevertheless must obtain the Contracting Officer's written consent before placing the following subcontracts:

(e)(1) The Contractor must notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor's current, complete, and accurate certified cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting—

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason certified cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor's certified cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's certified cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation must identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (b), (c), or (d) of this clause.

(f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system will constitute a determination—

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(g) No subcontract or modification thereof placed under this contract will provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts must not exceed the fee limitations in FAR part 15.

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

(i) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR subpart 44.3.

(j) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

(End of clause)

Alternate I (DATE). As prescribed in 44.201–5(a)(2), substitute the following paragraph (e)(2) for paragraph (e)(2) of the basic clause:

(e)(2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c) or (d) of this clause, the Contractor nevertheless must notify the Contracting Officer reasonably in advance of entering into any cost-plus-fixed-fee subcontract, or fixed-price subcontract that exceeds either the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, or 5 percent of the total estimated cost of this contract. The notification must include the information required by paragraphs (e)(1)(i) through (iv) of this clause.

52.244–4 Subcontractors and Outside Associates and Consultants (Architect-Engineer Services).

As prescribed in 44.201–5(b), insert the following clause:

Subcontractors and Outside Associates and Consultants (Architect-Engineer Services) (DATE)

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor must obtain the Contracting Officer's written consent before making any substitution for these subcontractors, associates, or consultants.

(End of clause)

52.244–5 Competition in Subcontracting.

As prescribed in 44.201–5(c), insert the following clause:

Competition in Subcontracting (DATE)

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

(b) If the Contractor is an approved mentor under the DoD Mentor-Protégé Program (10 U.S.C. 4902), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.

(End of clause)

52.244–6 Subcontracts for Commercial Products and Commercial Services.

As prescribed in 44.403, insert the following clause:

Subcontracts for Commercial Products and Commercial Services (DATE)

(a) *Definitions.* As used in this clause—

Commercial product, commercial service, and *nondevelopmental item* have the meanings contained in Federal Acquisition Regulation (FAR) 2.101.

Subcontract has the meaning at FAR 44.401.

(b) *Requirements.*

(1) To the maximum extent practicable, the Contractor must incorporate, and require its subcontractors at all tiers to incorporate, commercial products, commercial services, or non-developmental items as components of items to be supplied under this contract.

(2) If a clause in the following table is included in the contract, the Contractor must insert the clause in subcontracts for commercial products or commercial services and must flow down the requirements of the clause to subcontracts as indicated in the specific clause:

No.	Title	Date
52.203–13	Contractor Code of Business Ethics and Conduct	DATE.
52.203–17	Contractor Employee Whistleblower Rights	DATE.
52.203–19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements	DATE.
52.204–9	Personal Identity Verification of Contractor Personnel	DATE.
52.219–8 *	Utilization of Small Business Concerns	DATE.
52.222–35	Equal Opportunity for Veterans	DATE.
52.222–36	Equal Opportunity for Workers with Disabilities	DATE.
52.222–37	Employment Reports on Veterans	DATE.
52.222–40	Notification of Employee Rights Under the National Labor Relations Act	DATE.
52.222–41	Service Contract Labor Standards	DATE.
52.222–50	Combating Trafficking in Persons	DATE.
52.222–50 with Alt I	Combating Trafficking in Persons, with its Alternate I	DATE.
52.222–51	Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements.	DATE.
52.222–53	Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements	DATE.
52.222–54	Employment Eligibility Verification	DATE.
52.222–62	Paid Sick Leave Under Executive Order 13706	DATE.
52.224–3	Privacy Training	DATE.
52.224–3 with Alt I	Privacy Training, with Alternate I	DATE.
52.225–26	Contractors Performing Private Security Functions Outside the United States	DATE.
52.232–40	Providing Accelerated Payments to Small Business Subcontractors	DATE.
52.240–3	Security Prohibitions and Exclusions	DATE.
52.240–3 with Alt I	Security Prohibitions and Exclusions, with its Alternate I	DATE.
52.247–64	Preference for Privately Owned U.S.-Flag Commercial Vessels	DATE.

* Include only if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR 19.109(a)(1) on the date of subcontract award, the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.

(c) *Subcontracts.* The Contractor must include the terms of this clause, including this paragraph (c), in subcontracts, including those for commercial products (other than COTS items) or commercial services awarded under this contract.

(End of clause)

52.251–1 and 52.251–2 [Removed and Reserved]

■ 20. Remove and reserve sections 52.251–1 and 52.251–2.

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