

heads of foreign states or foreign governments enters the Ted Williams Tunnel. Sector three may preclude vessels, as necessary, from entering an area of the main ship channel, Boston Inner Harbor, fifty yards in all directions from a point directly above the Ted Williams Tunnel.

(4) Sector four will go into effect 15 minutes before the President, Vice President, or visiting heads of foreign states or foreign governments board the designated transport vessel. Sector four will preclude all vessels from approaching within three hundred yards in all directions from the designated vessel transporting the President, Vice President, or visiting heads of foreign states or foreign governments between Logan International Airport and any location in Boston Harbor.

(5) The activation of a particular sector of this security zone will be announced via Safety Marine Information Broadcasts and/or by locally issued notices.

(b) *Regulations.* (1) The general regulations covering security zones contained in 33 CFR 165.33 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: March 18, 1998.

**J. L. Grenier,**

*Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.*

[FR Doc. 98-8259 Filed 4-1-98; 8:45 am]

BILLING CODE 4910-15-M

## DEPARTMENT OF JUSTICE

### 48 CFR Chapter 28

#### Justice Acquisition Regulations; Implementation of the Federal Acquisition Reform Act, the Federal Acquisition Streamlining Act and the National Performance Review Recommendations

**AGENCY:** Justice Management Division, Justice.

**ACTION:** Final rule.

**SUMMARY:** The Department of Justice (DOJ) has rewritten 48 CFR Chapter 28, the Justice Acquisition Regulations, in its entirety in order to implement regulatory changes resulting from the

Federal Acquisition Reform Act, the Federal Acquisition Streamlining Act and to implement recommendations of the National Performance Review. This effort creates a new JAR that is simpler and less burdensome. This 1998 version of the JAR supersedes the 1985 version and all amendments (Justice Acquisition Circulars 85-1 through 97-1) issued prior to the date of publication of this final rule.

**EFFECTIVE DATE:** April 2, 1998.

#### FOR FURTHER INFORMATION CONTACT:

Janis Sposato, Procurement Executive, Justice Management Division (202) 514-3103.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule revises 48 CFR chapter 28 in its entirety. A proposed rule with request for comments was published in the **Federal Register** on January 9, 1998. The final rule differs from the proposed rule to make editorial corrections and incorporate comments as appropriate.

No comments were received from other than DOJ components. The comments were considered in developing the final rule.

##### B. Regulatory Flexibility Act

The Department of Justice certifies that this final rule will not 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 *et seq.*, because the amendment sets forth internal departmental procedures.

##### C. Paperwork Reduction Act

The final rule imposes no new information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (Pub. L. 96-511). All information collection requirements have been submitted to OMB. In those cases where an OMB control number has been assigned, the control number is included in the regulation.

##### List of Subjects in 48 CFR Parts 2801 through 2852

Government procurement.  
**Stephen R. Colgate,**  
*Assistant Attorney General for Administration.*

For the reasons set out in the preamble, Chapter 28 of Title 48 of the Code of Federal Regulations is revised as set forth below.

## CHAPTER 28—DEPARTMENT OF JUSTICE

### Subchapter A—General

Part 2801—Department of Justice Acquisition Regulation System  
Part 2802—Definitions of Words and Terms  
Part 2803—Improper Business Practices and Personal Conflicts of Interest  
Part 2804—Administrative Matters

### Subchapter B—Competition and Acquisition Planning

Part 2805—Publicizing Contract Actions  
Part 2806—Competition Requirements  
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### Subchapter C—Contracting Methods and Contract Types

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Part 2814—Sealed Bidding  
Part 2815—Contracting By Negotiation  
Part 2816—Types of Contracts  
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### Subchapter D—Socioeconomic Programs

Part 2819—Small Business Programs  
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Part 2831—Contract Cost Principles and Procedures  
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### Subchapter F—Special Categories of Contracting

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### Subchapter G—Contract Management

Part 2842—Contract Administration  
Part 2845—Government Property  
Part 2846—Quality Assurance

### Subchapter H—Clauses and Forms

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### Subchapter A—General

#### Part 2801—Department of Justice Acquisition Regulations System

##### Subpart 2801.1—Purpose, Authority, Issuance

2801.101 Purpose.  
2801.106 OMB approval under the Paperwork Reduction Act.

##### Subpart 2801.2—Administration

2801.270-1 Revisions.

**Subpart 2801.3—Agency Acquisition Regulations**

2801.304 Agency control and compliance procedures.

**Subpart 2801.4—Deviations From the FAR and JAR**

2801.403 Individual deviations.

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**Subpart 2801.6—Career Development, Contracting Authority, and Responsibilities**

2801.601 General.

2801.602 Contracting officers.

2801.602-3 Ratification of unauthorized commitments.

2801.603 Selection, appointment and termination of appointment.

2801.603-1 Department of Justice Acquisition Career Management Program.

2801.603-3 Appointment.

**Subpart 2801.70—Contracting Officer's Technical Representative**

2801.7001-701 General.

2801.7001-702 Selection, appointment, and limitation of authority.

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

**Subpart 2801.1—Purpose, Authority, Issuance****2801.101 Purpose.**

(a) The Justice Acquisition Regulations (JAR) in this chapter are established to provide procurement regulations that supplement the Federal Acquisition Regulation (FAR), 48 CFR chapter 1. As such, the regulations contained in the JAR will include coverage of only those areas where agency implementation is required by the FAR, or where Department of Justice (DOJ) policies and procedures exist that supplement FAR coverage and directly affect the contractual relationship between the Department and potential or existing contractors. The JAR will not repeat FAR coverage.

(b) The FAR contains many references to agency procedures. If the JAR does not include supplemental guidance under the corresponding part or subpart, it is because the FAR language is considered to be sufficient. In those instances where the JAR states "in accordance with bureau procedures," it does not mean that the bureau must have a procedure. It is intended that the bureau procedures are to be followed if they exist, however, it does not mean that the bureau must have a formal written procedure. Where both the JAR and bureau procedures do not address a FAR subject, the FAR guidance is to be followed.

(c) The JAR is not a complete system of regulations and must be used in conjunction with the FAR.

**2801.106 OMB approval under the Paperwork Reduction Act.**

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) and the Office of Management and Budget's (OMB) implementing regulations at 5 CFR part 1320, require that reporting and record keeping requirements affecting 10 or more members of the public be cleared by that office. The OMB control number for the collection of information under 48 CFR chapter 28 is 1103-0018.

**Subpart 2801.2—Administration****2801.270-1 Revisions.**

In addition to changes published in the **Federal Register**, the JAR will be amended by issuance of Justice Acquisition Circulars (JACs) containing loose-leaf replacement pages which revise parts, subparts, sections, subsections, paragraphs or subparagraphs. A vertical bar (edit bar) at the beginning or end of a line indicates that a change has been made within that line.

**Subpart 2801.3—Agency Acquisition Regulations****2801.304 Agency control and compliance procedures.**

Pursuant to FAR 1.304, the Procurement Executive (PE) is responsible for ensuring that bureau acquisition regulations and directives do not restrain the flexibilities found in the FAR. For this reason, bureau acquisition regulations shall be forwarded to the PE upon issuance. The PE reserves the right to revoke the regulations and directives in this chapter if they are determined to be restrictive.

**Subpart 2801.4—Deviations From the FAR and JAR****2801.403 Individual deviations.**

Individual deviations from the FAR or the JAR shall be approved by the head of the contracting activity (HCA). A copy of the deviation shall be included in the contract file. Copies of all deviations will be provided to the PE.

**2801.404 Class deviations.**

Requests for class deviations from the FAR or the JAR shall be submitted to the PE. The PE will consult with the chairperson of the Civilian Agency Acquisition Council, as appropriate, and send his/her recommendations to the Assistant Attorney General for Administration (AAG/A). The AAG/A will grant or deny requests for such deviations. For the purposes of this chapter, requests for deviations involving basic ordering agreements,

master type contracts, or situations where multiple awards are made from one solicitation, are considered to involve more than one contract and therefore considered to be class deviation requests.

**2801.470 Requests for class deviations.**

Requests for approval of class deviations from the FAR or the JAR shall be forwarded to the PE. Such requests will be signed by the Bureau Procurement Chief (BPC). Requests for class deviations shall be submitted as far in advance as the exigencies of the situation permit and shall contain sufficient written justification to evaluate the request.

**Subpart 2801.6—Career Development, Contracting Authority, and Responsibilities****2801.601 General.**

(a) In accordance with Attorney General Order 1687-93, the authority vested in the Attorney General with respect to contractual actions, for goods and services, is delegated to the following officials:

(1) AAG/A (for the offices, boards, and divisions (OBDs);

(2) Director, Federal Bureau of Investigation;

(3) Director, Federal Bureau of Prisons;

(4) Commissioner, Federal Prison Industries;

(5) Commissioner, Immigration and Naturalization Service;

(6) Administrator, Drug Enforcement Administration;

(7) Assistant Attorney General, Office of Justice Programs;

(8) Director, U.S. Marshals Service;

(9) Inspector General, Office of the Inspector General.

(b) The acquisition authority delegated to the officials in 2801.601(a) may be redelegated to subordinate officials as necessary for the efficient and proper administration of the Department's acquisition operations. Such redelegated authority shall expressly state whether it carries the power of redelegation of authority.

(c) The redelegation of contracting authority directly to specific persons without regard for intermediate organizational levels only establishes authority to represent the Government in its commercial business dealings. It is not intended to affect the organizational relationship between the contracting officers and higher administrative and supervisory levels in the performance of their duties.

**2801.602 Contracting officers.****2801.602-3 Ratification of unauthorized commitments.**

The HCA may delegate the authority to ratify unauthorized commitments to the chief of the contracting office, except for those actions effected by his or her office. Dollar thresholds for delegations made under this section will be determined by the HCA. Copies of all ratifications are to be provided to the PE.

**2801.603 Selection, appointment and termination of appointment.****2801.603-1 Department of Justice Acquisition Career Management Program.**

(a) Each Bureau Procurement Chief shall develop and manage an acquisition career management program for contracting personnel in his or her component, consistent and uniform with this section and the Department of Justice Acquisition Procurement Career Management Program.

(b) The program shall cover all contracting personnel in the following categories:

(1) General Schedule (GS-1102) Contracting Series;

(2) Contracting officers, regardless of General Schedule Series, with contracting authority above the simplified acquisition threshold;

(3) Purchasing Series (GS-1105), other individuals performing purchasing duties and individuals with contracting authority between the micro purchase and simplified acquisition thresholds.

(4) All Contracting Officer Representatives/Contracting Officer Technical Representatives, or equivalent positions.

(c) The program shall include:

(1) *Management information system.* Standardized information on the acquisition workforce will be collected and maintained. To the maximum extent practicable, such data requirements shall conform to the standards established by the Office of Personnel Management for the Central Personnel Data File and shall be compatible with the Department of Justice acquisition workforce management information system.

(2) *Individual assessments and development plans for personnel in the GS-1102 contracting series.* (i) An individual assessment by a supervisor of each covered employee's state of competence to perform the full range of potential duties of his or her job; and

(ii) An individual development plan to schedule classroom, on-the-job training, or other training to develop the employee's skill level to an appropriate

level in each area of competence necessary to perform his or her job.

(iii) Individual assessments and development plans should be designed to fit the needs of the component, but they should be built upon the units of competence and instruction prepared by the Federal Acquisition Institute whenever feasible. Individual development plans should attempt to bring the employee to an appropriate level of skill in all necessary competencies in the field of procurement. In general, a proficiency skill level of 3, as defined in Attachment 1 to Office of Federal Procurement Policy (OFPP) Policy Letter 92-3, shall be obtained for any contracting duty that is actually required to be performed on the job. Individual assessments and development plans should be reviewed annually and revised as appropriate, until the employee reaches the full competency level of his or her job.

(iv) Employees who perform only purchasing duties, regardless of occupational series, shall be required to obtain the requisite level of skill only in competencies involving simplified acquisitions. If the employee's duties are expanded to include contracting duties, then skill in procurement competencies must be assessed and developed.

(v) Individual assessments of covered employee skills shall be completed within 90 days of the employee's entry on duty.

(3) *Mandatory training.* Training shall be provided for the identified categories of contracting personnel to meet the minimum standards identified in OFPP Policy Letter 97-01.

(4) *Skills currency.* Contract Specialists (GS-1102) and contracting officers with authority to obligate funds above the micro-purchase threshold that have satisfied the mandatory training requirements, shall be provided the equivalent of at least 40 hours of continuing procurement and acquisition related education and training every two years for the purpose of maintaining the currency of acquisition knowledge and skills.

(5) *Program funding.* Bureau Procurement Chiefs are responsible for assessing the funding needs to provide for the education and training of their acquisition workforce and requesting such funding in the annual budget process.

**2801.603-3 Appointment.**

Contracting officers whose authority will be limited to micro-purchases shall be appointed in writing and include any limitations to that authority.

**Subpart 2801.70—Contracting Officer's Technical Representative****2801.7001-701 General.**

Contracting officers may appoint individuals selected by program offices to act as authorized representatives in the monitoring and administration of a contract. Such officials shall be designated as Contracting Officers' Technical Representatives (COTR's).

**2801.7001-702 Selection, appointment, and limitation of authority.**

(a) *COTR standards program.* This subpart sets forth policies and procedures for establishing standards for COTR's in DOJ. The program sets forth minimum standards for individuals to be eligible for an appointment as a COTR.

(b) *Applicability.* The eligibility requirements of this subpart apply to all individuals who are designated by the contracting officer as COTR's.

(c) *Eligibility standards.* To be determined eligible for an appointment as a DOJ COTR, the following standards must be met:

(1) The candidate must attend and successfully complete a minimum of a 16-hour basic COTR course; and

(2) The candidate must attend a minimum of 1 hour training specifically in procurement ethics, either through courses offered periodically by the Department, the bureaus, or a Government or commercial vendor.

(d) *Limitations.* Each COTR appointment made by the contracting officer shall clearly state that the representative is not an authorized contracting officer and does not have the authority under any circumstances to:

(1) Award, agree to award, or execute any contract, contract modification, notice of intent, or other form of binding agreement;

(2) Obligate, in any manner, the payment of money by the Government;

(3) Make a final decision on any contract matter which is subject to the clause at FAR 52.233-1, Disputes; or

(4) Terminate, suspend, or otherwise interfere with the contractor's right to proceed, or direct any changes in the contractor's performance that are inconsistent with or materially change the contract specifications.

(e) *Termination.* Termination of the COTR's appointment shall be made in writing by the contracting officer and shall give the effective date of the termination. The contracting officer shall promptly modify the contract once a COTR termination notice has been issued. A termination notice is not required when the COTR's appointment

terminates upon expiration of the contract.

(f) *Waivers*. No individual may serve as a COTR on any contract without the requisite training and signed COTR certificate for the file. In the rare event that there is an urgent requirement for a specific individual to serve as a COTR and the individual has not successfully completed the required training, the BPC may waive the training requirements and authorize the individual to perform the COTR duties, for a period of time not to exceed 120 days. The waiver will be granted in accordance with bureau procedures.

(g) *COTR clause*. The clause at 2852.201-70 is required in all contracts where a COTR is designated.

## PART 2802—DEFINITIONS OF WORDS AND TERMS

### Subpart 2.1—Definitions

2802.101 Definitions.

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

### Subpart 2.1—Definitions

#### 2802.101 Definitions.

Throughout this chapter, the following words and terms are used as defined in this subpart unless the context in which they appear clearly requires a different meaning, or a different definition is prescribed for a particular part or portion of a part.

(a) *Bureaus* means contracting activities. (See *contracting activity* in this subpart.)

(b) *Bureau procurement chief* means that supervisory official who is directly responsible for supervising, managing and directing all contracting offices of the bureau.

(c) *Chief of the contracting office* means that supervisory official who is directly responsible for supervising, managing and directing a contracting office.

(d) *Contracting activity* means a component within the Department which has been delegated procurement authority to manage contracting functions associated with its mission. See 2801.601(a).

(e) *DOJ* means the Department of Justice.

(f) *HCA* means head of the contracting activity i.e. those officials identified in 2801.601(a) having responsibility for supervising, managing, and directing the operations of the contracting activities.

(g) *JAR* means the Department of Justice Acquisition Regulations in 48 CFR chapter 28.

(h) *JMD* means the Justice Management Division.

(i) *OBDs* means the offices, boards, and divisions within the Justice Department.

(j) *PE* means the Procurement Executive for the Department of Justice.

## PART 2803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

### Subpart 2803.1 Safeguards

2803.101-3 Agency regulations.

2803.104 Procurement integrity.

2803.104-10 Violations or possible violations.

2803.104-70 Ethics program training requirements.

### Subpart 2803.2—Contractor Gratuities to Government Personnel

2803.203 Reporting suspected violations of the gratuities clause.

2803.204 Treatment of violations.

### Subpart 2803.3—Reports of Suspected Antitrust Violations

2803.301 General.

### Subpart 2803.9—Whistleblower Protections for Contractor Employees

2803.905 Procedures for investigating complaints.

2803.906 Remedies.

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

### Subpart 2803.1—Safeguards

#### 2803.101-3 Agency regulations.

The DOJ regulations governing Standards of Conduct are contained in 5 CFR part 2635.

#### 2803.104 Procurement integrity.

#### 2803.104-10 Violations or possible violations.

(a) Upon receipt of information of a violation or possible violation of section 27 of the Act, the contracting officer must do the following:

(1) Refer the matter to the Office of the Inspector General or other office designated in Attorney General Order 1931-94; and

(2) Make the determination required by FAR 3.104-10(a) and follow the procedures prescribed therein.

(b) The individual referenced in FAR 3.104-10(a)(1) is the Bureau Procurement Chief.

(c) The HCA must follow the criteria contained in FAR 3.104-10(g) when designating authority under this subpart.

(d) The HCA, or designee, shall refer information regarding actual or possible violations of section 27 of the Act to the Office of the Inspector General or other office designated in Attorney General Order 1931-94 for guidance before taking action.

(e) If the HCA, or designee, receiving the information of a violation, or possible violation, determines that award is justified by urgent and compelling circumstances, or is otherwise in the interest of the Government, then the contracting officer may be authorized to award the contract after notification to the Office of the Inspector General or other office designated in Attorney General Order 1931-94.

(f) The contracting officer will be advised, or directed by the HCA, or designee, as to the action to be taken. The types of actions that would normally be taken when a violation has occurred that affected the outcome of a procurement are listed in FAR 3.104-11(d).

(g) The PE shall be advised of all instances where violations have been determined to have occurred. Information must describe the violation as well as actions taken.

### § 2803.104-70 Ethics program training requirements.

It is the responsibility of the bureaus to provide training for "procurement officials" concerning the requirements of FAR 3.104. The bureau procurement training efforts should be coordinated with the Department's Ethics Official, who is responsible for developing agency ethics training plans, to include briefings on ethics and standards of conduct for employees who are contracting officers and procurement officials. The Ethics Official should be contacted directly to schedule training.

### Subpart 2803.2—Contractor Gratuities to Government Personnel

#### 2803.203 Reporting suspected violations of the gratuities clause.

DOJ personnel shall report suspected violations of the gratuities clause to the contracting officer or chief of the contracting office in writing. The report shall clearly state the circumstances surrounding the incident, including the nature of the gratuity, the behavior or action the gratuity was to influence, and the persons involved. The contracting officer, after review, shall forward the report along with his or her recommendations regarding the treatment of the violation in accordance with FAR 3.204(c) to the HCA or designee.

#### 2803.204 Treatment of violations.

(a) The HCA or designee shall determine whether adverse action against the contractor in accordance with FAR 3.204(c) should be taken. In reaching a decision, the HCA or designee shall consult with the

contracting activity's legal advisor and the Office of the Inspector General or other office designated in Attorney General Order 1931-94.

(b) Prior to taking any action against the contractor the HCA or designee shall allow the contractor the opportunity to present opposing arguments in accordance with FAR 3.204(b).

(c) The PE shall be advised of all instances where violations have been determined to have occurred. Information must describe the violation as well as actions taken.

#### **Subpart 2803.3—Reports of Suspected Antitrust Violations**

##### **2803.301 General.**

Reports of suspected antitrust violations shall be referred to the AG and PE in accordance with bureau procedures.

#### **Subpart 2803.9—Whistleblower Protections for Contractor Employees**

##### **2803.905 Procedures for investigating complaints.**

(a) The Inspector General shall conduct an investigation and provide a written report of findings to the HCA.

(b) The HCA will ensure that the Inspector General provides the report of finding as specified in FAR 3.905(c).

(c) The complainant and contractor shall be afforded the opportunity to submit a written response to the report of findings within 30 days to the HCA. Extensions of time to file a written response may be granted by the HCA.

(d) The HCA may at any time request additional investigative work be done on the complaint.

##### **2803.906 Remedies.**

(a) Upon determination that a contractor has subjected one of its employees to a reprisal for providing information, the HCA may take one or more actions specified in FAR 3.906(a).

(b) Whenever a contractor fails to comply with an order, the HCA shall request an action be filed for enforcement of such order in the United States district court.

#### **PART 2804—ADMINISTRATIVE MATTERS**

##### **Subpart 2804.4—Safeguarding Classified Information Within Industry**

###### **2804.402 General.**

###### **2804.403 Responsibilities of contracting officers.**

###### **2804.470 Contractor Personnel Security Program.**

###### **2804.470-1 Policy.**

###### **2804.470-2 Responsibilities.**

##### **Subpart 2804.5—Electronic Commerce in Contracting**

###### **2804.506 Exemptions.**

##### **Subpart 2804.6—Contract Reporting**

###### **2804.602 Federal Procurement Data System.**

##### **Subpart 2804.8—Government Contract Files**

###### **2804.805 Storage, handling, and disposal of contract files.**

##### **Subpart 2804.9—Information Reporting to the Internal Revenue Service**

###### **2804.901 Definitions.**

###### **2804.902 Contract information.**

###### **2804.970 Special reporting exceptions.**

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

##### **Subpart 2804.4—Safeguarding Classified Information Within Industry**

###### **2804.402 General.**

Classified acquisitions or contracts which require access to classified material, as defined in FAR 4.401, for their performance shall be subject to the policies, procedures, and instructions contained in departmental regulations and shall be processed in a manner consistent with those regulations.

###### **2804.403 Responsibilities of contracting officers.**

For proposed solicitations and contracts which may require access to classified material or where guard services are assigned to safeguard departmental activities in possession of classified information, the contracting officer shall consult with the COTR and the Director, Security and Emergency Planning Staff, JMD, to determine the appropriate security measures to safeguard such material and information.

###### **2804.470 Contractor Personnel Security Program.**

###### **2804.470-1 Policy.**

It is the policy of the Department of Justice that all acquisitions which allow unescorted contractor access to Government facilities or sensitive information contain, as appropriate, requirements for appropriate personnel security screening by the contractor. To the maximum extent practicable, contractors shall be made responsible for the performance of personnel security screening. The personnel security screening may vary from one acquisition to another, depending upon the type, context, duration and location of the work to be performed. Classified contracts are exempted from the requirements of this section because they are governed by the requirements of Executive Order 12829 (January 6, 1993).

##### **2804.470-2 Responsibilities.**

(a) The primary acquiring component, together with its Security Program Manager, is responsible for providing the contracting officer with the appropriate contractor personnel security screening requirements (including waiver requirements, if appropriate) to be included in the statement of work.

(b) The contracting officer is responsible for including in the contract file for all such acquisitions, a certification made by the responsible Security Program Manager that the personnel security requirements of the contract are adequate to ensure the security of Departmental operations, information and personnel.

(c) The Security Program Manager for the acquiring component is responsible for monitoring and ensuring that the contractor personnel security requirements of the contract are accomplished.

(d) For purposes of this section, the term Contracting Officer includes anyone empowered to place orders under Blanket Purchase Agreements (BPA) or any other existing contract vehicle and/or through the use of the government-wide commercial purchase card.

##### **Subpart 2804.5—Electronic Commerce in Contracting**

###### **2804.506 Exemptions.**

Pursuant to FAR 4.506(b), all determinations that FACNET processing is not cost-effective or practicable for the contracting officer, or portions thereof, shall be initiated by the HCA and submitted to the PE for processing to the Attorney General for signature.

##### **Subpart 2804.6—Contract Reporting**

###### **2804.602 Federal Procurement Data System.**

(a) Federal Procurement Data System (FPDS) reports shall be submitted to the Procurement Policy and Review Group (PPRG) within 20 days of the close of each of the first three quarters of the fiscal year and within 30 days after the close of the fourth quarter. Specific preparation procedures are contained in the FPDS Reporting Manual and the Product and Service Code Manual.

(b) Bureaus shall submit periodic reports of their subcontract activities, together with copies of their Standard Forms 295 and 294 to the Director, Office of Small and Disadvantaged Business Utilization (OSDBU) as required by that office.

(c) BPCs shall provide to the PE, the name, office, mailing address, and

telephone number of the individual who will provide day-to-day operational contact within the bureau for the implementation of the FPDS. Changes and updates shall be forwarded to PPRG within 10 days after they occur. It is the responsibility of the bureau contacts to ensure that all actions are reported and submitted to PPRG in a timely manner and that all statistics and reports are accurate, current, and complete. BPCs shall be responsible for validating the data.

#### **Subpart 2804.8—Government Contract Files**

##### **2804.805 Storage, handling, and disposal of contract files.**

In accordance with FAR 4.805, each bureau shall prescribe procedures for the handling, storing, and disposing of contract files.

#### **Subpart 2804.9—Information Reporting to the Internal Revenue Service**

##### **2804.901 Definitions.**

*Classified contract*, as used in this subpart, means a contract such that the fact of its existence of its subject matter has been designated and clearly marked or clearly represented, pursuant to the provisions of Federal law or an Executive Order, as requiring a specific degree of protection against unauthorized disclosure for reasons of national security.

*Confidential contract*, as used in this subpart, means a contract, the reporting of which to the Internal Revenue Service (IRS) as required under 26 U.S.C. 6050M, would interfere with the effective conduct of a confidential law enforcement activity, such as contracts for sites for undercover operations or contracts with informants, or foreign counterintelligence activity.

##### **2804.902 Contract information.**

(a) Pursuant to FAR 4.902, the HCA, or delegate, shall certify to the PE, in the format specified in this section, under penalty of perjury, that such official has examined the information submitted by that bureau as its FPDS data, that the data has been prepared pursuant to the requirement of 26 U.S.C. 6050M, and that, to the best of such official's knowledge and belief it is complied from bureau records maintained in the normal course of business for the purpose of making a true, correct and complete return as required by 26 U.S.C. 6050M.

(b) The following certification will be signed and dated by the HCA, or delegate, and submitted with each bureau quarterly FPDS report (as specified by 2804.602).

#### **CERTIFICATION**

I, \_\_\_\_\_ (Name),  
 \_\_\_\_\_ (Title) under  
 the penalties of perjury have examined the  
 information to be submitted by  
 \_\_\_\_\_ (Bureau) to the  
 Procurement Executive, for making  
 information returns on behalf of the  
 Department of Justice to the Internal Revenue  
 Service, and certify that this information has  
 been prepared pursuant to the requirements  
 of 26 U.S.C. 6050M and that it is to the best  
 of my knowledge and belief, a compilation of  
 bureau records maintained in the normal  
 course of business for the purpose of  
 providing true, correct and complete returns  
 as required by 26 U.S.C. 6050M.  
 Signature \_\_\_\_\_  
 Date \_\_\_\_\_

(c) The PE will certify the consolidated FPDS data for the Department, transmit the data to the Federal Procurement Data Center (FPDC) and authorize the FPDC to make returns to the IRS on behalf of the agency.

##### **2804.970 Special reporting exceptions.**

(a) The Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647) amended 26 U.S.C. 6050M to allow exceptions to the reporting requirements for certain classified or confidential contracts.

(b) The head of the agency has determined that the filing of information returns, as required by 26 U.S.C. 6050M, on confidential contracts, which involve law enforcement or foreign counterintelligence activities, would interfere with the effective conduct of those confidential law enforcement or foreign counterintelligence activities, and that the special reporting exceptions added to 26 U.S.C. 6050M by The Technical and Miscellaneous Revenue Act of 1988 to these types of contracts.

#### **Subchapter B—Competition and Acquisition Planning**

### **PART 2805—PUBLICIZING CONTRACT ACTIONS**

#### **Subpart 2805.2—Synopsis of Proposed Contract Actions**

2805.201-70 Departmental notification.

#### **Subpart 2805.3—Synopsis of Contract Awards**

2805.302-70 Department notification.

#### **Subpart 2805.5—Paid Advertisements**

2805.502 Authority.

2805.503-70 Procedures.

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

#### **Subpart 2805-2—Synopsis of Proposed Contract Actions**

##### **2805.201-70 Departmental notification.**

(a) A copy of each synopsis of a proposed contract action sent to the Department of Commerce, shall be furnished to the Director, Office of Small and Disadvantaged Business Utilization (OSDBU), Justice Management Division (JMD).

(b) Contracting officers shall document, in the contract file, that a copy of the notice has been forwarded to the OSDBU. A "cc" to the OSDBU on the file copy of the Commerce Business Daily (CBD) notice shall be considered adequate documentation.

#### **Subpart 2805.3—Synopsis of Contract Awards**

##### **2805.302-70 Departmental notification.**

(a) The contracting officer shall forward a copy of the synopsis of contract award, as prepared under FAR 5.302, to the Director, OSDBU, JMD.

(b) Contracting officers shall document in the contract file that a copy of the notice has been forwarded to the OSDBU. A "cc" to the OSDBU on the file copy of the CBD notice shall be considered adequate documentation.

#### **Subpart 2805.5—Paid Advertisements**

This subpart provides policies and procedures for the procurement of paid advertising as covered by 5 U.S.C. 302, 44 U.S.C. 3701, 3702, and 3703, and Title 7, Chapter 5-25.2, General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies.

##### **2805.502 Authority.**

(a) Authorization for paid advertising is required for newspapers only. Pursuant to 28 CFR 0.14, the authority to approve publication of paid advertisements in newspapers has been delegated to the officials listed in 2801.601(a). This authority may be redelegated as appropriate.

(b) Authority to purchase paid advertising must be granted in writing by an official delegated such authority. No advertisement, notice, or proposal will be published prior to receipt of advance written authority for such publication. No voucher for any such advertisement or publication will be paid unless there is presented, with the voucher, a copy of such written authority. Authority shall not be granted retroactively.

##### **2805.503-70 Procedures.**

(a) Agency officials exercising the authority delegated by 2805.502(a) and

(b) shall do so in accordance with the procedures set forth in FAR 5.503 and those in this subsection.

(b) Requests for procurement of advertising shall be accompanied by written authority to advertise or publish which sets forth justification and includes the names of newspapers or journals concerned, frequency and dates of proposed advertisements, estimated cost, and other pertinent information.

(c) Procedures for payment of vouchers are contained in Title 7, Chapter 5-25.2, General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies.

## **PART 2806—COMPETITION REQUIREMENTS**

### **Subpart 2806.3—Other Than Full and Open Competition**

- 2806.302 Circumstances permitting other than full and open competition.
- 2806.302-7 Public interest.
- 2806.302-70 Determination and findings.
- 2806.303 Justifications.
- 2806.303-1 Requirements.
- 2806.303-2 Content.
- 2806.304 Approval of the justification.

### **Subpart 2806.5—Competition Advocates**

- 2806.501 Requirement.
- 2806.502 Duties and responsibilities.

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

### **Subpart 2806.3—Other Than Full and Open Competition**

**2806.302 Circumstances permitting other than full and open competition.**

**2806.302-7 Public interest.**

**2806.302-70 Determination and findings.**

(a) *Procedure.* The determination and findings (D&F) required by FAR 6.302.7(c)(1) shall be prepared in the format provided in paragraph (b) of this subsection. The original D&F and documentation supporting the use of this exception to the requirement for full and open competition shall be submitted to PPRG, JMD, for concurrence and coordination to the Attorney General for signature.

(b) *Format.* The following format shall be used for the D&F:

**Department of Justice**

**Washington, DC 20530**

#### **Determination and Findings**

Authority To Use Other Than Full and Open Competition:

Upon the basis of the following findings and determination, which I hereby make pursuant to the authority of 41 U.S.C. 253(c)(7), as implemented by FAR 6.302-7, it is in the public interest to provide for other than full and open competition in the contract action described below.

Findings:

1. The (1) proposes to enter into a contract for the acquisition of (2).
2. Use of the authority cited above is necessary and in the public interest for the following reasons: (3)

Determination

For the reasons described above, it is necessary and in the public interest to use other than full and open competition in the proposed acquisition.

Signature \_\_\_\_\_  
Date \_\_\_\_\_

Notes:

- (1) Name of contracting activity.
- (2) Brief description of supplies or services.
- (3) Explain the need for use of the authority.

### **2806.303 Justifications.**

#### **2806.303-1 Requirements.**

Pursuant to FAR 6.303-1(d), a copy of the justification shall be forwarded through the Department's Competition Advocate to the Department's point of contact with the Office of the United States Trade Representative.

#### **2806.303-2 Content.**

In addition to the information required by FAR 6.303-2, justifications requiring the approval of the PE shall contain the following documents:

(a) A written Acquisition Plan as required by FAR 7.102 and part 2807 of this chapter. If a plan was not prepared, explain why planning was not feasible or accomplished.

(b) A copy of the CBD announcement or proposed announcement in accordance with the requirements of FAR 5.203.

(c) As part of the description of the supplies or services required in FAR 6.303-2, the justification shall include the statement of need as submitted by the requiring activity and any subsequent changes or revisions to the specifications.

(d) Any additional documentation that may be unique to the proposed procurement and is relevant to the justification.

#### **2806.304 Approval of the justification.**

(a) All justifications for contract actions over the contracting officer's approval dollar threshold shall be submitted to the BPC for concurrence before being forwarded to the contracting activity competition advocate for approval. Justifications requiring approval by the PE shall be further submitted for the concurrence of the contracting activity competition advocate and the HCA, or designee, before being forwarded to the PE for approval.

(b) After approval by the PE, the signed original will be returned to the

contracting activity and one copy will be retained by the PPRG, JMD.

(c) Pursuant to FAR 6.304(c), a class justification for other than full and open competition shall be approved in accordance with bureau procedures.

## **Subpart 2806.5—Competition Advocates**

### **2806.501 Requirement.**

In accordance with FAR 6.501:

(a) The Assistant Director, Procurement Policy and Review Group, Management and Planning Staff, Justice Management Division, has been designated as the Competition Advocate for the Department of Justice.

(b) The agency head will appoint, in each bureau, an official to be the contracting activity competition advocate. The contracting activity competition advocates shall be vested with the overall responsibility for competition activities within their contracting activity. No individual in the contracting office at or below the level of chief of the contracting office may serve as the contracting activity competition advocate. An individual at any level above the BPC may serve as contracting activity competition advocate.

### **2806.502 Duties and responsibilities.**

In addition to the duties and responsibilities set forth in FAR 6.502(b) and elsewhere in this chapter, contracting activity competition advocates shall:

(a) Actively enforce the Department's Competition Advocacy Program within the contracting activity and ensure that systems are established for the effective internal control of contracting activity functions and activities which implement the Department's Competition Advocacy Program.

(b) Implement specific goals and objectives to enhance competition and the acquisition of commercial items.

(c) Prepare and submit to the DOJ Competition Advocate, by November 30 of each year, an annual report of competition advocacy activities conducted during the prior fiscal year.

## **PART 2807—ACQUISITION PLANNING**

### **Subpart 2807.1—Acquisition Plans**

- 2807.102 Policy.
- 2807.102-70 Applicability.
- 2807.103 Agency-head responsibilities.
- 2807.103-70 Other officials' responsibilities.
- 2807.105 Contents of written acquisition plans.

### **Subpart 2807.5—Inherently Governmental Functions**

- 2807.503 Policy.



**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

### **Subpart 2807.1—Acquisition Plans**

#### **2807.102 Policy.**

(a)(1) In accordance with FAR 7.1, DOJ contracting activities shall perform acquisition planning and conduct market research for all acquisitions in order to promote and provide for:

- (i) Full and open competition (see FAR part 6);
- (ii) Maximum practicable competition for those acquisitions where full and open competition is not required by FAR part 6; and
- (iii) The acquisition of commercial items or, when commercial items are not available, nondevelopmental items to the maximum extent practicable.

(2) The degree of planning and market research may vary, depending on such factors as the acquisition's size, scope and complexity.

(b) Acquisition planning shall be the joint responsibility of both the contracting and program offices. All acquisition plans shall be prepared sufficiently in advance of solicitation release dates to ensure that requirements are presented in a way that promotes full and open competition and provides sufficient time for the identification and resolution of impediments that could delay the acquisition or lead to increased cost or technical risk.

#### **2807.102-70 Applicability.**

(a) Planning commensurate with the complexity and dollar value of the individual requirement shall be performed for all acquisitions, except for those acquisitions listed in paragraph (c) of this subsection which may be exempt from the planning process. Heads of contracting activities may authorize the use of oral plans for simple and/or small dollar acquisitions. When oral plans are used, the file should be documented with the name of the individual who approved the plan.

(b) Written acquisition plans shall be prepared for all major systems acquisitions as defined in 2834.002.

(c) The following types of acquisitions may be exempt from the acquisition planning program;

- (1) Architect-engineering services;
- (2) Unsolicited proposals (when deemed innovative and unique in accordance with FAR 15.5);
- (3) Regulated utility services where services are available from only one source;
- (4) Acquisitions made from or through other Government agencies; and
- (5) Contract modifications which exercise an option or add funds to an

incrementally funded contract (provided there is an approved acquisition planning document for the original action and there is no significant deviation from that plan).

#### **2807.103 Agency-head responsibilities.**

The AAG/A may establish acquisition planning criteria and thresholds for those bureaus who:

- (a) Fail to allow ample time for conducting competitive acquisitions;
- (b) Develop a pattern of awarding urgent requirements that generally restrict competition;
- (c) Fail to identify identical or like requirements that, where appropriate, can be combined under one solicitation and miss opportunities to obtain lower costs through volume purchasing, reduce administrative costs in processing one contract action versus multiple actions, and standardize goods and services.

#### **2807.103-70 Other officials' responsibilities.**

(a) In accordance with FAR 7.1, the HCA shall develop an acquisition planning program for all acquisitions to ensure that its needs are met in the most effective, economical, the timely manner.

(b) Heads of contracting activities have the flexibility to develop programs that are best suited to their individual needs. Criteria and thresholds shall be established at which increasingly greater detail and formality in the planning process is required. DOJ components are encouraged to keep paperwork to a minimum and to put a premium on simplicity.

(c) HCAs shall ensure that, during the acquisition planning phase, requirements personnel consider the use of:

- (1) The metric system of measurement consistent with 15 U.S.C. 2205(b); and
- (2) Environmentally preferable and energy-efficient products and services.

#### **2807.105 Contents of written acquisition plans.**

(a) HCAs shall prescribe format and content of acquisition planning documents that are commensurate with the complexity and dollar value of the individual acquisition (sample acquisition planning documents for both simple and complex acquisitions will be made available by PPRG, JMD, and may be used or modified as appropriate).

(b) HCAs shall include, at a minimum, the content elements at FAR 7.105 and 7.106 for all major systems acquisitions as defined in 2834.002.

### **Subpart 2807.5—Inherently Governmental Functions**

#### **2807.503 Policy.**

The requirements official shall provide the contracting officer, concurrent with the transmittal of the statement of work (or modification thereof), a written determination that none of the functions to be performed are inherently governmental. Any disputes concerning this determination shall be resolved by the contracting officer, after consultation with the requirements official. The contracting officer's determination shall be final.

### **PART 2808—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

#### **Subpart 2808.8—Acquisition of Printing and Related Supplies**

##### **2808.802 Policy.**

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

#### **Subpart 2808.8—Acquisition of Printing and Related Supplies**

##### **2808.802 Policy.**

The Director, Facilities and Administrative Services Staff, has been designated to serve as the central printing authority for the Department.

### **PART 2809—CONTRACTOR QUALIFICATIONS**

#### **Subpart 2809.4—Debarment Suspension, and Ineligibility**

##### **2809.402 Policy.**

- 2809.404 List of parties excluded from Federal procurement and nonprocurement programs.
- 2809.405 Effect of listing.
- 2809.405-1 Continuation of current contracts.

#### **Subpart 2809.5—Organizational and Consultant Conflict of Interest**

##### **2809.503 Waiver.**

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

#### **Subpart 2809.4—Debarment, Suspension, and Ineligibility**

##### **2809.402 Policy.**

Contracting activities shall:

- (a) Consider debarment or suspension of a contractor when cause is shown as listed under FAR 9.406-2 and FAR 9.407-2. Contracting staffs should consult with their appropriate legal counsel prior to making a decision to initiate debarment or suspension proceedings. If a determination is made that available facts do not justify beginning debarment or suspension proceedings, the file should be documented accordingly. This determination should be subject to



reconsideration if new information or additional fact-finding so justifies.

(b) If the decision is made to initiate debarment and/or suspension of a contractor, immediately prepare a notice in accordance with FAR 9.406-3(c) of FAR 9.407-3(c). The draft notice, along with the administrative file containing all relevant facts and analysis shall be forwarded to the PE, as the debarring and suspending official, following review by the activity's legal counsel and BPC.

(c) The PE shall:

(1) Review the notice and administrative file for sufficiency and provide for review by other DOJ officials as considered appropriate;

(2) If it is determined that action is warranted, give the contractor prompt notice of the proposed debarment or suspension, in accordance with FAR 9.406-3(c) or FAR 9.407-3(c);

(3) Direct additional fact-finding as necessary when material facts are in dispute.

(4) Notify the contractor of the final decision to debar or suspend, including a decision not to debar or suspend, in accordance with FAR 9.406-3(c) and FAR 9.407-3(c).

#### **2809.404 List of parties excluded From Federal procurement and nonprocurement programs.**

(a) The PE shall:

(1) Provide GSA notification of the information set forth in FAR 9.404(b) within five working days after debarring or suspending a contractor or modifying or rescinding such an action.

(2) Maintain agency-wide records of debarred or suspended contractors in accordance with FAR 9.404.

(b) Contracting activities shall provide an effective system to ensure that contracting staff consult the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" prior to soliciting offers from, awarding or extending contracts to, or consenting to subcontracts with contractors on the list.

#### **2809.405 Effect of listing.**

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and bureaus shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the HCA determines that there is a compelling reason for such action and the PE approves such determinations.

(b) Bids received from any listed contractor in response to an invitation for bids shall be entered on the abstract of bids, and rejected unless the HCA determines in writing that there is a

compelling reason to consider the bid and the PE approves such action.

(c) Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, nor shall discussions be conducted with a listed offeror during a period of ineligibility, unless the HCA determines in writing that there is a compelling reason to do so and the PE approves such action.

#### **2809.405-1 Continuation of current contracts.**

(a) In accordance with FAR 9.405-1, contracting activities may continue contracts or subcontracts in existence at the time a contractor is suspended or debarred unless it is determined that termination of the contract is in the best interest of the Government. In making this determination, contracting activities shall consider the seriousness of the act or omission leading to the debarment or suspension, the effect of debarment or suspension on the contractor's ability to continue operations, and the Department's ability to safeguard its interests and receive satisfactory performance.

(b) Contracting activities shall not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment, unless the HCA states, in writing, the compelling reasons for renewal or extension and the PE approves such action.

#### **Subpart 2809.5—Organizational and Consultant Conflicts of Interest**

##### **2809.503 Waiver.**

The HCA may waive any general rule or procedure of FAR 9.5 by determining that its application in a particular situation would not be in the Government's interest.

#### **PART 2811—DESCRIBING AGENCY NEEDS**

2811.001 Definitions.

2811.002 Policy.

##### **Subpart 2811.1—Selecting and Developing Requirements Documents**

2811.103 Market acceptance.

2811.104-70 Brand-name or equal description.

##### **Subpart 2811.6—Priorities and Allocations**

2811.603 Procedures.

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

##### **2811.001 Definitions.**

*Dual systems* means the use of both inch-pound and metric systems. For example, an item is designed, produced

and described in inch-pound values with soft metric values also shown for information or comparison purposes.

*Hybrid systems* means the use of both inch-pound and standard metric values in specifications, standards, supplies, and services; e.g., an engine with internal parts in metric dimensions and external fittings or attachments in inch-pound dimensions.

*Metric system* means the International System of Units established by the General Conference of Weights and Measures in 1960.

*Soft metric* means the result of mathematical conversion of inch-pound measurements to metric equivalents in specifications, standards, supplies, and services. The physical dimensions are not changed.

##### **2811.002 Policy.**

Consistent with the policy expressed in FAR 11.002(b), solicitations must include specifications and purchase descriptions stated in metric units of measurement whenever metric is the accepted industry system. Whenever possible, commercially developed metric specifications and internationally, or domestically developed voluntary standards, using metric measurements, must be adopted. While an industry is in transition to metric specifications, solicitations must include requirements documents stated in soft metric, hybrid, or dual systems, except when impractical or inefficient.

#### **Subpart 2811.1—Selecting and Developing Requirements Documents**

##### **2811.103 Market acceptance.**

Pursuant to FAR 11.103, the HCA or designee at a level not lower than the BPC has the authority to require offerors to demonstrate that the items offered meet the criteria set forth in FAR 11.103(a).

##### **2811.104-70 Brand-name or equal description.**

When a brand-name or equal description is used, the clause set forth in 2852.211-70, Brand-name or Equal, shall be inserted into the solicitation.

#### **Subpart 2811.6—Priorities and Allocations**

##### **2811.603 Procedures.**

The PE is the agency official delegated authority to exercise priority authority on behalf of the Department. Any request for a priority rating on a contract or order must be submitted to PPRG, JMD, in accordance with the procedures in this subpart.

(a) The requesting activity shall submit, to the PE, a description of the

supplies or services requiring a priority rating and a complete justification for the necessity of a rated order including the method and type of contract and the anticipated award date. The justification must also state the level of priority rating requested and comply with the requirements of the Defense Priorities and Allocations System.

(b) Upon receipt, the PPRG shall review the request for completeness and establish appropriate liaison with the Department of Commerce (DOC), the administering agency. Depending on the nature of the requirement, the PPRG may schedule a meeting with DOC officials to present the proposal. In such cases, a representative from the requiring activity may be requested to attend.

(c) DOJ activities requesting rated orders that concern classified material shall call PPRG before submitting their request to ensure appropriate transmission and handling between the requesting activity and PPRG.

## **PART 2812—ACQUISITION OF COMMERCIAL ITEMS**

### **Subpart 2812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items**

2812.302 Tailoring of provisions and clauses for the acquisition of commercial items.

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

### **Subpart 2812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items**

2812.302 Tailoring of provisions and clauses for the acquisition of commercial items.

Pursuant to FAR 12.302(c), the HCA or designee at a level not lower than the BPC is authorized to approve clauses or additional terms or conditions for inclusion in solicitations or contracts for commercial items that are inconsistent with customary commercial practices.

## **Subchapter C—Contracting Methods and Contract Types**

## **PART 2813—SIMPLIFIED ACQUISITION PROCEDURES**

### **Subpart 2813.3—Simplified Acquisition Methods**

2813.305 Imprest funds and third party drafts.

2813.307 Forms.

### **Subpart 2813.70—Certified Invoice Procedure**

2813.7001 Policy.

2813.7002 Procedures.

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75 (j) and 28 CFR 0.76(j).

### **Subpart 2813.3—Simplified Acquisition Methods**

2813.305 Imprest funds and third party drafts.

Regulations governing the operation and procedures of the imprest fund shall be contained in internal bureau regulations. Individuals delegated the authority to withdraw from the imprest fund are further subject to the limitations contained in their delegation memorandum.

#### **2813.307 Forms.**

In accordance with FAR 13.307, bureaus may use order forms other than Standard Form (SF) 1449, OF 347 and 348 and may print on those forms, clauses considered to be suitable for purchases.

(a) Contracting activities using the SF 44 will be responsible for instructing authorized users as to the limitations and procedures for use of the form as outlined in FAR 13.306.

(b) Since the SF 44 is an accountable form, a record shall be maintained of: serial numbers of the forms; to whom issued; and, the date issued. SF 44s shall be kept securely under lock and key to prevent unauthorized use. A reservation of funds shall be established to cover total anticipated expenditures prior to use of the SF 44.

### **Subpart 2813.70—Certified Invoice Procedure**

#### **2813.7001 Policy.**

Under limited circumstances as described in this subpart, supplies or services directly related to mission accomplishment, may be acquired on the open market from local suppliers at the site of the work or use point, using vendor's invoices under the certified invoice procedure, instead of issuing purchase orders. Certified invoice procedures may not be used to place orders under established contracts.

#### **2813.7002 Procedure.**

(a) Purchases utilizing the certified invoice procedure shall be effected only in accordance with FAR part 13 and this part 2813, subject to the following:

(1) The amount of any one purchase does not exceed the micro-purchase threshold;

(2) A purchase order is not required by either the supplier or the Government;

(3) Appropriate invoices can be obtained from the supplier; and,

(4) The items to be purchased shall be domestic source end products, except as provided in FAR subpart 25.1.

(b) Use of the certified invoice procedures does not eliminate the requirements in FAR part 13 or this part 2813 that are applicable to purchases of this dollar threshold.

(c) The chief of the contracting office, as defined in 2802.101(c), shall delegate the authority to use the certified invoice procedure. Each delegation must specify any limitations placed on the individual's use of these procedures, such as limits on the amount of each purchase, or limits on the commodities, or services which can be procured.

(d) Each individual using this purchasing technique shall require the supplier to immediately submit properly prepared invoices which itemize property or services furnished. Upon receiving the invoice, the individual making the purchase shall annotate the invoice with the date of receipt, verify the arithmetic accuracy of the invoiced amount and verify on the invoice that the supplies and/or services have been received and accepted. If the invoice is correct, the individual making the purchase shall sign the invoice indicating acceptance and immediately forward it to the appropriate administrative office. The invoice shall be approved by the appropriate administrative office and forwarded to the Finance Office for payment within 5 workdays after receipt of the invoice, or acceptance of supplies or services, whichever is later. Before forwarding the invoice to Finance, the administrative office shall place the following statement on the invoice, along with the accounting and appropriation data:

I certify that these goods and/or services were received on \_\_\_\_\_ (date) and accepted on \_\_\_\_\_ (date). Oral purchase was authorized and no confirming order has been issued.

Signature \_\_\_\_\_  
Date \_\_\_\_\_

Printed or Typed Name and Title

## **PART 2814—SEALED BIDDING**

### **Subpart 2814.4—Opening of Bids and Award of Contract**

2814.407 Mistakes in bids.

2814.407-3 Other mistakes disclosed before award.

2814.407-4 Mistakes after awards.

2814.409 Information to bidders.

2814.409-2 Award of classified contracts.

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

**Subpart 2814.4—Opening of Bids and Award of Contract****2814.407 Mistakes in bids.****2814.407-3 Other mistakes disclosed before award.**

(a) The authority to make determinations under paragraphs (a), (b), (c), and (d) of FAR 14.407-3 is delegated to the HCA or designee at a level not lower than the BPC.

(b) The following procedures shall be followed when submitting doubtful cases of mistakes in bids to the Comptroller General for an advance decision:

(1) Requests for advance decisions submitted to the Comptroller General in cases of mistakes in bids shall be made by the HCA.

(2) Requests for advance decisions shall be in writing, dated, signed by the requestor, addressed to the Comptroller General of the United States, General Accounting Office, Washington, D.C. 20548, and contain the following:

(i) The name and address of the party requesting the decision;

(ii) A statement of the question to be decided, a presentation of all relevant facts, and a statement of the requesting party's position with respect to the question; and

(iii) Copies of all pertinent records and supporting documentation.

**2814.407-4 Mistakes after award.**

Proposed determinations under FAR 14.407 shall be coordinated with legal counsel in accordance with bureau procedures.

**2814.409 Information to bidders.****2814.409-2 Award of classified contracts.**

In accordance with FAR 14.409-2, the contracting officer shall advise the unsuccessful bidders, including any who did not bid, to take disposition action in accordance with bureau procedures.

**PART 2815—CONTRACTING BY NEGOTIATION****Subpart 2815.2—Solicitation and Receipt of Proposals and Information****2815.205 Issuing solicitations.****2815.207 Handling proposals and information.****Subpart 2815.4—Contract Pricing****2815.404 Proposal analysis.****2815.404-2 Information to support proposal analysis.****2815.404-4 Profit.****2815.407-4 Should-cost review.****Subpart 2815.6—Unsolicited Proposals****2815.606 Agency procedures.**

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

**Subpart 2815.2—Solicitation and Receipt of Proposals and Information****2815.205 Issuing solicitations.**

Solicitations involving classified information shall be handled in accordance with the policies and procedures contained in Departmental regulations and other offices, boards, divisions, and bureaus (OBDBs) prescribed policies and regulations that supplement Departmental regulations.

**2815.207 Handling proposals and information.**

Classified proposals and quotations shall be handled in accordance with the current DOJ Order agency regulations and any supplemental directives or orders implemented by the OBDBs. Such supplemental regulations must have the prior approval of the AAG/A before implementation in accordance with the Departmental regulations.

**Subpart 2815.4—Contract Pricing****2815.404 Proposal analysis.****2815.404-2 Information to support proposal analysis.**

All requests for field pricing support shall be made by the contracting officer directly to the cognizant audit agency. A copy of the request for such services shall be sent to the Department of Justice Office of the Inspector General (OIG) at the address shown in this subsection at the time it is mailed to the cognizant audit agency. A copy of each report received shall also be sent to the OIG. Requests for other audit assistance may be made to the Assistant Inspector General for Audits, Suite 5000, 1425 New York Avenue, N.W., Washington, D.C. 20530.

**2815.404-4 Profit.**

If a 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 to negotiate a reasonable price or profit or fee without success, the contracting officer shall then refer the contract action to the HCA or designee.

**2815.407-4 Should-cost review.**

In acquisitions for which a program should-cost review is conducted, the required should-cost review team report shall be prepared in accordance with bureau procedures.

**Subpart 2815.6—Unsolicited Proposals****2815.606 Agency procedures.**

(a) Each contracting activity shall designate a point of contact for the receipt and handling of unsolicited proposals. Generally, the official designated shall be the BPC or immediate subordinate.

(b) The designated point of contact for each contracting activity shall provide for and coordinate receipt, review, evaluation, and final disposition of unsolicited proposals in accordance with FAR subpart 15.6.

**PART 2816—TYPES OF CONTRACTS****Subpart 2816.5—Indefinite-Delivery Contracts****2816.505 Ordering.****Subpart 2816.6—Time-and-Materials, Labor-Hour, and Letter Contracts****2816.601 Time-and-material contracts.****2816.602 Labor-hour contracts.****2816.603 Letter contracts.****2816.603-2 Application.****2816.603-3 Limitations.**

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75 (j) and 28 CFR 0.76(j).

**Subpart 2816.5—Indefinite-Delivery Contracts****2816.505 Ordering.**

(a) In accordance with FAR 16.505(b)(4), the Department of Justice Task Order and Delivery Order Ombudsman is the DOJ Competition Advocate.

(b) Heads of contracting activities shall designate a contracting activity Task Order and Delivery Order Ombudsman. This person may be the contracting activity competition advocate and must meet the qualification requirements of 2806.501(b).

(c) Contracting activity ombudsman shall review and resolve complaints from contractors concerning task or delivery orders placed by the contracting activity.

(d) Contractors not satisfied with the resolution of a complaint by a contracting activity ombudsman may request the Departmental Ombudsman to review the complaint.

**Subpart 2816.6—Time-and-Materials, Labor-Hour, and Letter Contracts****2816.601 Time-and-material contracts.**

In addition to the limitations listed in FAR 16.601(c), a time-and-materials contract may be used only after the contracting officer receives written approval from the chief of the contracting office. When the contracting officer is also the chief of the

contracting office, the approval to use a time-and-materials type contract will be made at a level above the contracting officer.

#### **2816.602 Labor-hour contracts.**

The limitations set forth in 2816.601 for time-and-material contracts also apply to labor-hour contracts.

#### **2816.603 Letter contracts.**

##### **2816.603-2 Application.**

In cases where the contracting officer and the contractor cannot negotiate the definitization of a letter contract within 180 days after the date of the letter contract, or before completion of 40 percent of the work to be performed, the contracting officer may, with the written approval of the PE, revise and extend the definitization schedule. However, in no event shall the extension of the definitization schedule extend beyond the lesser of an additional 180 day period or the completion of 80 percent of the work to be performed. If at the end of the extension, the contracting officer and the contractor cannot negotiate a definitive contract because of failure to reach an agreement on price or fee, the procedures set forth in FAR 51.216-25, 16.603-2, 15.8, and part 31 shall be followed, as applicable.

##### **2816.603-3 Limitations.**

A letter contract may be used only after the express written approval of the Procurement Executive. Requests for approval shall contain the rationale explaining why no other contract is suitable and shall include the approval of the HCA or designee. Under circumstances of compelling urgency which do not permit the time needed for written approval, oral approval must be obtained; however, written documentation to support the award and confirm the oral approval must be submitted as soon as practicable after award.

### **PART 2817—SPECIAL CONTRACTING METHODS**

#### **Subpart 2817.1—Multiyear Contracting**

2817.108 Congressional notification.

#### **Subpart 2817.6—Management and Operating Contracts**

2817.605 Award, renewal, and extension.

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j); and 28 CFR 0.76(j).

#### **Subpart 2817.1—Multiyear Contracting**

2817.108 Congressional notification.

Pursuant to FAR 17.108(a), the original congressional notification shall be submitted to PPRG, JMD, for concurrence, coordination to the

Attorney General, and subsequent transmission to the appropriate congressional committees.

#### **Subpart 2817.6—Management and Operating Contracts**

2817.605 Award, renewal, and extension.

In accordance with FAR 17.605(b), the contracting officer, following bureau procedures, shall review each management and operation contract, at appropriate intervals and at least once every 5 years.

### **Subchapter D—Socioeconomic Programs**

## **PART 2819—SMALL BUSINESS PROGRAMS**

#### **Subpart 2819.2—Policies**

2819.201 General policy.

#### **Subpart 2819.5—Set-Asides for Small Business**

2819.506 Withdrawing or modifying set-asides.

#### **Subpart 2819.6—Certificates of Competency and Determinations of Eligibility**

2819.602 Procedures.

2819.602-1 Referral.

#### **Subpart 2819.70—Forecasts of Expected Contract Opportunities**

2819.7001 General.

2819.7002 Procedures.

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

#### **Subpart 2819.2—Policies**

2819.201 General policy.

(a) The Office of Small and Disadvantaged Business Utilization (OSDBU) is organizationally attached to the Office of the Deputy Attorney General in accordance with 28 CFR 0.18a, but is located in JMD for administrative purposes.

(b) The Director, OSDBU, is responsible for the administration of the DOJ small and disadvantaged business programs in accordance with the duties described in 28 CFR 0.18a.

#### **Subpart 2819.5—Set-Asides for Small Business**

2819.506 Withdrawing or modifying set-asides.

(a) Before a contracting officer may withdraw or modify a small business set-aside, the contracting officer shall seek the concurrence of the Director, OSDBU.

(b) If the contracting officer and the Director, OSDBU, are unable to agree on the proposed withdrawal or

modification, the Director, OSDBU shall:

(1) Forward the matter to the Small Business Administration (SBA) procurement center representative assigned to the Department of Justice for resolution; or,

(2) Forward the matter to the PE for resolution if an SBA procurement center representative is not assigned to the Department of Justice.

#### **Subpart 2819.6—Certificates of Competency and Determinations of Eligibility**

2819.602 Procedures.

2819.602-1 Referral.

In accordance with FAR 19.602-1(a)(2), the matter shall be submitted to the Director, OSDBU, for subsequent referral to the cognizant SBA Regional Office.

#### **Subpart 2819.70—Forecasts of Expected Contract Opportunities**

2819.7001 General.

Section 501 of Public Law 100-656, the Business Opportunity Development Reform Act of 1988, requires executive agencies having contract actions in excess of \$50 million in Fiscal Year 1988 or later to prepare an annual forecast of expected contract opportunities, or classes of contract opportunities that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, are capable of performing.

2819.7002 Procedures.

The content and format of bureau annual forecasts of contract opportunities, as well as the updates to their contracting forecasts shall be as specified by the Director, OSDBU.

## **PART 2822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**

#### **Subpart 2822.1—Basic Labor Policies**

2822.101 Labor relations.

2822.101 General.

2822.101-3 Reporting labor disputes.

2822.10-3 Overtime.

2822.103-4 Approvals.

#### **Subpart 2822.4—Labor Standards for Contracts Involving Construction**

2822.406 Administration and enforcement.

2822.406-8 Investigations.

#### **Subpart 2822.13—Special Disabled and Vietnam Era Veterans**

2822.1303 Waivers.

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

**Subpart 2822.1—Basic Labor Policies****2822.101 Labor relations.****2822.101-1 General.**

All matters regarding labor relations shall be handled in accordance with bureau procedures.

**2822.101-3 Reporting labor disputes.**

The office administering the contract shall report, directly to the contracting officer, any potential or actual labor disputes that may interfere with performing any contracts under its cognizance.

**2822.103 Overtime.****2822.103-4 Approvals.**

The inclusion of a dollar amount greater than zero in paragraph (a) of the FAR clause 52.222-2, Payment For Overtime Premiums, must be approved at a level above the contracting officer. Such approval shall be reflected by the signature of the approving official on the contracting officer's written determination made in accordance with FAR 22.103-4.

**Subpart 2822.4—Labor Standards for Contracts Involving Construction****2822.406 Administration and enforcement.****2822.406-8 Investigations.**

Pursuant to FAR 22.406-8(d), the contracting officer shall prepare and forward the report of violations to the HCA or designee at a level not lower than the BPC. That official shall be responsible for processing the report in accordance with FAR 22.406-8(d)(2).

**Subpart 2822.13—Special Disabled and Vietnam Era Veterans****2822.1303 Waivers.**

In accordance with FAR 22.1303, all requests for waivers shall be forwarded from the HCA to PPRG, JMD, for processing to the Attorney General.

**PART 2823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE****Subpart 2823.1—Pollution Control and Clean Air and Water****2823.107 Compliance responsibilities.****Subpart 2823.3—Hazardous Material Identification and Material Safety Data****2823.303-70 Departmental contract clause.****Subpart 2823.4—Use of Recovered Materials****2823.403 Policy.****2823.404 Procedures.****2823.404-70 Affirmative procurement program for recycled materials.**

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

**Subpart 2823.1—Pollution Control and Clean Air and Water****2823.107 Compliance responsibilities.**

If a contracting officer becomes aware of noncompliance with clean air, water or other affected media standards in facilities used in performing nonexempt contracts, that contracting officer shall notify the Department of Justice Environmental Executive (DOJEE).

**Subpart 2823.3—Hazardous Material Identification and Material Safety Data****2823.303-70 Departmental contract clause.**

The contracting officer shall insert the clause at 2852.223-70, Unsafe Conditions Due to the Presence of Hazardous Material, in all solicitations and contracts, as appropriate, if the contract will require the performance of services on Government-owned or Government-leased facilities.

**Subpart 2823.4—Use of the Recovered Materials****2823.403 Policy.**

It is the policy of DOJ that its contracting activities and contractors that procure on behalf of DOJ, acquire EPA designated items in accordance with EPA's Comprehensive Procurement Guideline For Products Containing Recovered Materials (CPG) (40 CFR part 247). The recommended minimum recovered materials content of EPA designated items is set forth in EPA's Recovered Materials Advisory Notices (RMANs) and in E.O. 12873 as amended. These publications are available from the DOJEE.

**2823.404 Procedures.**

(a) The program office initiating the acquisition is responsible for determining if recovered materials should be included in the specification. Procurement offices are responsible for informing program offices of the requirement for writing specifications for designated items that include minimum content standards specified in the RMANs.

(b) If the program office chooses to procure designated items containing less than the minimum content standards, and program office must justify that decision in writing and include a copy of the signed justification with the procurement request package. FAR 23.404(b)(3) sets forth the only acceptable justifications for acquiring EPA designated items which do not meet the minimum

content standard. The contracting officer is the approving official for justifications made pursuant to FAR 23.404(b)(3). Contracting officers are responsible for including a signed copy of the justification in the acquisition file and submitting a copy of the approved justification to the DOJEE.

**2823.404-70 Affirmative procurement program for recycled materials.**

(a) *Recovered materials preference program.* Preference will be given to procuring and using products containing recovered materials rather than products made with virgin materials when adequate competition exists, and when price, performance and availability are equal.

(b) *Promotion program.* The DOJEE has primary responsibility for actively promoting the acquisition of products containing recycled materials throughout DOJ. Technical and procurement personnel will cooperate with the DOJEE to actively promote DOJ's Affirmative Procurement Program (APP).

(c) *Procedures for vendor estimation, verification and certification.*

(1) *Estimation.* The contractor shall provide estimates of the total percentage(s) of recovered materials for EPA designated items to be used in products or services provided.

(2) *Certification.* Contracting officers shall provide copies of all vendor and subcontractor certifications required by FAR 23.405(b) to the DOJEE.

(3) *Verification.* The DOJEE is responsible for periodically reviewing vendor certification documents and waivers as part of the annual review and monitoring process to determine if DOJ is in compliance with E.O. 12873 and subsequent amendments.

**PART 2824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION****Subpart 2824.2—Freedom of Information Act****2824.202 Policy.**

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

**Subpart 2824.2—Freedom of Information Act****2824.202 Policy.**

Procedures for processing Freedom of Information Act requests are set forth in Departmental regulations and 28 CFR part 16.

**PART 2825—FOREIGN ACQUISITION****Subpart 2825.2—Buy American Act—Construction Materials****2825.203 Evaluating offers.**

**Subpart 2825.3—Balance of Payments Program**

2825.302 Policy.

**Subpart 2825.9—Additional Foreign Acquisition Clauses**

2825.901 Omission of audit clause.

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

**Subpart 2825.2—Buy American Act—Construction Materials****2825.203 Evaluating offers.**

The HCA, or designee at a level not lower than the BPC, is the agency official authorized to make determination that using a particular domestic construction material would unreasonably increase the cost of the acquisition or would be impracticable.

**Subpart 2825.3—Balance of Payments Program****2825.302 Policy.**

The HCA, or designee at a level not lower than the BPC, is the agency official authorized to make determinations under FAR 25.302(b)(3), as well as authorize the use of a differential greater than 50 percent, as specified in FAR 25.302(c), for the evaluation of domestic and foreign offers under the Balance of Payments Program. All determinations made under this section shall be in writing and shall set forth the facts and circumstances supporting the determination. Determinations shall be reviewed and concurred in by the contracting activity's legal counsel.

**Subpart 2825.9—Additional Foreign Acquisition Clauses****2825.901 Omission of audit clause.**

The HCA, or designee at a level not lower than the BPC, is the agency official authorized to make determinations under FAR 25.901(c). All determinations made under this authority shall be reviewed and concurred in by the contracting activity's legal counsel prior to being approved by the authorized agency official.

**Subchapter E—General contracting Requirements****PART 2828—BONDS AND INSURANCE****Subpart 2828.1—Bonds**

2828.106 Administration.

2828.106-6 Furnishing information

**Subpart 2828.2—Sureties**

2828.204 Alternatives in lieu of corporate or individual sureties.

**Subpart 2828.3—Insurance**

2828.307-1 Group insurance plans.

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

**Subpart 2828.1—Bonds**

2828.106 Administration.

2828.106-6 Furnishing information.

In accordance with FAR 28.106-6(c), the HCA, or designee at a level not lower than the BPC, is the agency official authorized to furnish the certified copy of the bond and the contract.

**Subpart 2828.2—Sureties**

2828.204 Alternatives in lieu of corporate or individual sureties.

When contractors submit any of the types of security described in FAR 28.204-1 through 28.204-3 in lieu of furnishing sureties, the contracting officer shall enter into an agreement with the contractor covering a bank account, and suitable covenants protecting the Government's interest, in which the securities will be deposited to protect against their loss during the period of the bond obligation.

**Subpart 2828.3—Insurance**

2828.307-1 Group insurance plans.

Under cost-reimbursement contracts, before buying insurance under a group insurance plan, the contractor shall submit the plan to the contracting officer for review and approval. During review, the contracting office should utilize all sources of information available such as audit, industry practices, etc., to determine that acceptance of the group insurance plan, as submitted, is in the Government's best interest.

**PART 2829—TAXES****Subpart 2829.3—State and Local Taxes**

2829.303 Application of State and local taxes to Government contractors and subcontractors.

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

**Subpart 2829.3—State and Local Taxes**

2829.303 Application of State and local taxes to Government contractors and subcontractors.

(a) It is DOJ policy that DOJ contracts shall not contain clauses expressly designating prime contractors as agents

of the Government for the purpose of avoiding State and local taxes.

(b) Although circumstances may exist under which a contractor is an agent of the Government, even in the absence of a contract clause expressly designating a contractor as such, these circumstances should be extremely rare. Before any DOJ contracting activity may contend that any of its contractors are agents of the Government for the purpose of claiming immunity from State and local sales and use taxes, the matter will be referred to the AAG/A for review, and approval to ensure that DOJ policy is complied with and that the contracting activity's contention is fully in accordance with the pertinent legal principles and precedents. Each case forwarded will be reviewed by the HCA before referral to the AAG/A. The referral will include all pertinent data on which the contracting activity's contention is based, together with a thorough analysis of all relevant legal precedents.

(c) Whenever clauses, procedures, and business practices are cited by DOJ contracting activities to support the contention that a contractor is an agent of the Government for the purpose of immunity from a State or local sales or use tax, contracting activities should whenever possible, devise alternative clauses, procedures, and practices for future use which will accomplish their intended purpose without providing the basis for contention that the contractor is an agent of the Government for the purpose of immunity from State and local sales or use taxes. Any referral to the AAG/A for approval under this subpart shall include comments on the extent to which alternative clauses, procedures, or practices may be utilized to accomplish the intended purpose without providing the basis for the contention that the contractor is an agent of the Government for the purpose of immunity from State and local sales or use taxes.

**PART 2830—COST ACCOUNTING STANDARDS (CAS) ADMINISTRATION****SUBPART 2830.2—CAS Program Requirements**

2830.201-5 Waiver.

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

**Subpart 2830.2—CAS Program Requirements**

2830.201-5 Waiver

A request for a waiver of the Cost Accounting Standards requirements shall be forwarded to the HCA after the contracting officer has made the

determination required by FAR 30.201–5.

## **PART 2831—CONTRACT COST PRINCIPLES AND PROCEDURES**

### **SUBPART 2831.1 Applicability**

2831.101 Objectives.

2831.109 Advance agreements.

### **SUBPART 2831.2 Contracts With Commercial Organizations**

2831.205 Selected costs.

2831.205–32 Precontract costs.

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

### **Subpart 2831.1—Applicability**

#### **2831.101 Objectives.**

(a) The PE is the official authorized to grant individual deviations from the cost principles of FAR part 31. All requests for individual deviations must cite the facts and circumstances surrounding the request as well as attempts to negotiate contractor compliance.

(b) Requests for class deviations from the cost principles set forth in FAR part 31 will be forwarded through the PE prior to submission to the Civilian Agency Acquisition Counsel. Requests must contain the information required in paragraph (a) of this section.

#### **2831.109 Advance agreements.**

(a) The DOJ and bureau contracting officers are encouraged to negotiate advance agreements concerning the treatment of special or unusual costs to avoid possible subsequent disputes or disallowance of costs based upon unreasonableness or nonallowability. All such agreements shall be negotiated in accordance with FAR 31.109 prior to the contractor incurring such costs. Contracting officers are not authorized to agree to a treatment of costs which would be inconsistent with FAR part 31.

(b) Prior to negotiating an advance agreement, contracting officers shall make a written determination setting forth the reasons and rationale for entering into such agreements. In addition, the determination will set forth the nature, the duration, and which contract or contracts are covered by the proposed agreement. All determinations required by this subpart will be reviewed and approved at a level above the contracting officer prior to negotiation of the proposed agreement. The approved determination will be placed in the contract file.

(c) All advance agreements shall be in writing and shall set forth the nature, duration, and contract or contracts covered by the agreements. Advance agreements will be signed by both the

contractor and the contracting officer, and made a part of the contract file. Copies of executed advance agreements will be distributed to the cognizant audit office when applicable.

(d) All advance agreements will be incorporated in full in the subsequent contract(s) to which they pertain, prior to award.

### **SUBPART 2831.2—Contracts With Commercial Organizations**

#### **2831.205 Selected costs.**

#### **2831.205–32 Precontract costs.**

(a) Precontract cost authorizations shall be used only on cost reimbursement contracts, contain no provisions for payment of fees, and be treated as advance agreements in accordance with the provisions of FAR 31.109 and 2831.109.

(b) The following limitations apply to the execution of precontract cost authorizations.

(1) Contracts which are estimated to be greater than the simplified acquisition threshold may contain a precontract cost authorization providing the authorization is for a period of 60 days or less and the dollar amount does not exceed the lesser of the simplified acquisition threshold or one third of the total estimated costs (including fee if any) of the contract.

(2) the limitation expressed under paragraph (b) of this section may be increased in unusual circumstances as appropriate, with the written approval of the HCA, but in no event shall they exceed one-third of the total estimated costs (including fee if any) of the contract or be for periods of time which exceed 90 days.

## **PART 2832—CONTRACT FINANCING**

### **Subpart 2832.1—Non-Commercial Item Purchase Financing**

2832.114 Unusual contract financing.

### **Subpart 2832.4—Advance Payments for Non-commercial Items**

21831.402 General.

2832.407 Interest.

### **SUBPART 2832.9—Prompt Payment**

2832.903 Policy.

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

### **Subpart 2832.1—Non-Commercial Item Purchase Financing**

#### **2832.114 Unusual contract financing.**

The HCA, or designee at a level not lower than the BPC, is the official authorized to approve unusual contract financing as set forth in FAR 31.114.

### **Subpart 2832.4—Advance Payments for Non-Commercial Items**

#### **2832.402 General.**

(a) The authority to sign written determinations and findings with respect to making advance payments is vested in the HCA.

(b) Prior to awarding a contract which contains provisions for making advanced payments, the contract terms and conditions concerning advance payments must be approved at a level above the contracting officer, with advice and consent of the bureau's legal counsel.

(c) The contracting officer shall coordinate with the activity that is to provide contract financing for advance payments, the bureau's disbursing or finance office, or the Treasury Department, as appropriate, to ensure that all FAR and departmental requirements are met.

#### **2832.407 Interest.**

In cases where advance payments may be made on an interest free basis (FAR 32.407(d)), the intent to make such interest free advance payments, and the circumstance permitting interest free advance payments, shall be set forth in the original determination and findings and be approved in accordance with 2832.402.

### **Subpart 2832.9—Prompt Payment**

#### **2832.903 Policy.**

The HCA is responsible for promulgating policies and procedures to implement FAR 32.9 and to ensure that, when specifying due dates, full consideration will be given to the time reasonably required by Government officials to fulfill their administrative responsibilities under the contract.

## **PART 2833—PROTESTS, DISPUTES, AND APPEALS**

### **Subpart 2833.1—Protests**

2833.101 Definitions.

2833.102 General.

2833.103 Protests to the agency.

### **Subpart 2833.2—Disputes and Appeals**

2833.209 Suspected fraudulent claims.

2833.211 Contracting officer's decision.

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

### **Subpart 2833.1—Protests**

#### **2833.101 Definitions.**

(a) *Agency Protest Official* means the official, other than the contracting officer, designated to review and decide procurement protests filed with a contracting activity of the Department of Justice.



(1) This person will be at a level above that of the Contracting Officer, will be knowledgeable about the acquisition process in general and will have no programmatic interest in the procurement.

(2) This official shall be an individual designated by the head of the contracting activity and may be the Competition Advocate.

(b) *Deciding Official* means the person chosen by the protestor to decide the agency protest; it may be either the Contracting Officer or the Agency Protest Official.

(c) *Interested Party* means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

#### **2833.102 General.**

(a) This part describes policies and procedures for processing protests to the Department of Justice in accordance with Executive Order 12979, Agency Procurement Protests, dated October 25, 1995, and FAR 33.103. They are intended to be flexible and to provide for fair, quick, and inexpensive resolution of agency protests.

(b) Interested parties have the option of protesting to the Contracting Officer or to the Agency Protest Official.

(c) Contracting officers and potential protestors are encouraged to use their best efforts to resolve concerns through frank and open discussion, as required by FAR 33.103(b). In resolving concerns and/or protests, consideration should be given to the use of alternative dispute resolution techniques where appropriate.

(d) Responsibilities:

(1) Contracting Officers: (i) Include the provision at 2852.233-70 in all solicitations that are expected to exceed the simplified acquisition threshold.

(ii) If the protestor requests that the Contracting Officer decide the protest, or if the protest is silent on this issue, the Contracting Officer decides the protest using the procedures in this subpart and FAR 33.103.

(iii) If the protestor requests that the Agency Protest Official decide the protest, the Contracting Officer must ensure that the Agency Protest Official receives a copy of the materials served on the Contracting Officer within one business day after the filing date.

(2) Agency Protest Official: If the protestor requests that the Agency Protest Official decide the protest, the Official must use the procedures in this subpart and FAR 33.103 to provide an independent review of the issues raised in the protest.

#### **2833.103 Protests to the agency.**

(a) The filing time frames in FAR 33.103(e) apply. An agency protest is filed when the protest complaint is received at the location the solicitation designates for serving protests.

(b) An interested party filing an agency protest has the choice of requesting either that the Contracting Officer or the Agency Protest Official decide the protest.

(c) In addition to the information required by FAR 33.103(d)(2), the protest must:

(1) Indicate that it is a protest to the agency.

(2) Be filed with the Contracting Officer.

(3) State whether the protestor chooses to have the Contracting Officer or the Agency Protest Official decide the protest. If the protest is silent on this matter, the Contracting Officer will decide the protest.

(4) Indicate whether the protestor prefers to make an oral or written presentation of arguments in support of the protest to the deciding official.

(d) The decision by the Agency Protest Official is an alternative to a decision by the Contracting Officer on a protest. The Agency Protest Official will not consider appeals from a Contracting Officer's decision on an agency protest.

(e) The deciding official must conduct a scheduling conference with the protestor within five (5) days after the protest is filed. The scheduling conference will establish deadlines for oral or written arguments in support of the agency protest and for agency officials to present information in response to the protest issues. The deciding official may hear oral arguments in support of the agency protest at the same time as the scheduling conference, depending on availability of the necessary parties.

(f) Oral conferences may take place either by telephone or in person. Other parties may attend at the discretion of the deciding official.

(g) The protestor has only one opportunity to support or explain the substance of its protest. Department of Justice procedures do not provide for any discovery. The deciding official has discretion to request additional information from either the agency or the protestor. However, the deciding official will normally decide protests on the basis of information provided by the protestor and the agency.

(h) The preferred practice is to resolve protests through informal oral discussion.

(i) An interested party may represent itself or be represented by legal counsel. The Department of Justice will not

reimburse the protestor for any legal fees related to the agency protest.

(j) If an agency protest is received before contract award, the Contracting Officer must not make award unless the Head of the Contracting Activity makes a determination to proceed under FAR 33.103(f)(1). Similarly, if an agency protest is filed within ten (10) days after award, the Contracting Officer must stay performance unless the Head of the Contracting Activity makes a determination to proceed under FAR 33.103(f)(3). Any stay of award or suspension of performance remains in effect until the protest is decided, dismissed, or withdrawn.

(k) The deciding official must make a best effort to issue a decision on the protest within twenty (20) days after the filing date. The decision may be oral or written. If oral, the deciding official must send a confirming letter within three (3) days after the decision using a means that provides receipt. The confirming letter must include the following information:

(1) State whether the protest was denied, sustained or dismissed.

(2) Indicate the date the decision was provided.

(l) If the deciding official sustains the protest, relief may consist of any of the following:

(1) Recommendation that the contract be terminated for convenience or cause.

(2) Reopening the requirement.

(3) Amending the solicitation.

(4) Refraining from exercising contract options.

(5) Awarding a contract consistent with statute, regulation, and the terms of the solicitation.

(6) Other action that the deciding official determines is appropriate.

(m) If the Agency Protest Official sustains a protest, then within 30 days after receiving the Official's recommendations for relief, the Contracting Officer must either:

(1) Fully implement the recommended relief; or

(2) Notify the Agency Protest Official in writing of any recommendations have not been implemented and explain why.

(n) Proceedings on an agency protest may be dismissed or stayed if a protest on the same or similar basis is filed with a protest forum outside of the Department of Justice.

#### **Subpart 2833.2—Disputes and Appeals**

##### **2833.209 Suspected fraudulent claims.**

Contracting officers shall report suspected fraudulent claims to the Office of the Inspector General.

**2833.211 Contracting officer's decision.**

(a) The Agency Board of Contract Appeals (BCA), which will hear appeals from the decisions of bureau contracting officers, is the Department of Transportation BCA. The procedures set forth in 48 CFR chapter 63 shall apply.

(b) Pursuant to 28 CFR 0.45(i), the contact for all appeals of decisions of DOJ contracting officers which will be forwarded to the BCA under paragraph (a) of this section, is the Deputy Assistant Attorney General, Commercial Litigation Branch, Civil Division.

**Subchapter F—Special Categories of Contracting****PART 2834—MAJOR SYSTEM ACQUISITION****Subpart 2834.0—General**

2834.002 Policy.

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

**Subpart 2834.0—General**

2834.002 Policy.

In accordance with Pub. L. 98-577, the Small Business and Federal Procurement Competition Enhancement Act of 1984, an executive agency may establish a dollar threshold for the designation of a major system. Accordingly, dollar thresholds for a major system under Office of Management and Budget Circular A-109 are designated in this section.

(a) *Major automated information system.* Within the Department of Justice, a major automated information system is one whose life-cycle cost is in excess of \$100 million.

(b) *Major real property system.* (1) By purchase, when the assessed value of the property exceeds \$60 million.

(2) By lease, when the annual rental charges, including basic services (e.g., cleaning, guards, maintenance), exceed \$1.8 million.

(3) By transfer from another agency at no cost when the assessed value of the property exceeds \$12 million.

(c) *Research and Development (R&D) System.* Any R&D activity expected to exceed \$0.5 million, for the R&D phase is subject to OMB Circular A-109, unless exempted by the HCA.

(d) *Any other system or activity.* The HCA responsible for the system may designate any system or activity as a Major System under OMB Circular A-109 as a result of Departmental review, e.g., selected systems designed to support more than one principal organizational unit.

(e) *Exemption.* The AAG/A, upon recommendation by the HCA

responsible for the system, may determine that because of the routine nature of the acquisition, the system (e.g., an information system utilizing only off-the-shelf hardware or software) will be exempt from the OMB Circular A-109 process, although by virtue of the life cycle costs, it would otherwise be identified as "major" in response to OMB Circular A-109.

**Subchapter G—Contract Management****PART 2842—CONTRACT ADMINISTRATION****Subpart 2842.15—Contractor Performance Information**

2842.1502 Policy.

2842.1503 Procedures.

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

**Subpart 2842.15—Contractor Performance Information**

2842.1502 Policy.

The head of each contracting activity shall be responsible for establishing past performance evaluation procedures and systems as required by FAR 42.1502 and 42.1503.

2842.1503 Procedures.

Past performance evaluation procedures and systems shall include, to the greatest practicable extent, the evaluation and performance rating factors set forth in the Office of Federal Procurement Policy best practices guide for past performance.

**PART 2845—GOVERNMENT PROPERTY****Subpart 2845.1—General**

2845.105 Records of Government property.

**Subpart 2845.5—Management of Government Property in the Possession of Contractors**

2845.505-14 Report of Government Property.

**Subpart 2845.6—Reporting, Redistribution, and Disposal of Contractor Inventory**

2845.603 Disposal methods.

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

**Subpart 2845.1—General**

2845.105 Records of Government property.

If departmental elements maintain the Government's official property management records, the contract records may be kept as a separate account in the bureau's internal property management system, in which case the contracting officer or formally

designated property administrator shall serve as custodian of the account.

**Subpart 2845.5—Management of Government Property in the Possession of Contractors****2845.505-14 Report of Government Property.**

(a) In compliance with FAR 45.505-14, by January 31 of each year, DOJ contractors shall furnish the cognizant contracting officer an annual report of the DOJ property for which they are accountable as of the end of the calendar year.

(b) By March 1 of each year, bureaus shall submit a summary report of Departmental property furnished under each contract, as of the end of the calendar year, to the Facilities and Administrative Services Staff, Justice Management Division. The report shall be categorized in accordance with FAR 45.505 and shall include contracts for which the bureau maintains the official government records.

**Subpart 2845.6—Reporting, Redistribution, and Disposal of Contractor Inventory****2845.603 Disposal methods.**

Policies pertaining to reutilization and disposal of DOJ property, including requirements for internal screening, waivers, and disposal reporting, are prescribed in the Justice Property Management Regulations Subpart 128-43. Unless otherwise specified, the "plant clearance officer" shall be a designated utilization and disposal representative of a bureau's property management office.

**PART 2846—QUALITY ASSURANCE****Subpart 2846.6—Material Inspection and Receiving Reports****Subpart 2846.7—Warranties**

2846.704 Authority for use of warranties.

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

**Subpart 2846.6—Material Inspection and Receiving Reports**

Bureaus shall prescribe procedures and instructions for the use, preparation, and distribution of material inspection and receiving reports and commercial shipping document/packing lists to evidence Government inspection.

**Subpart 2846.7—Warranties****2846.704 Authority for use of warranties.**

The use of a warranty in an acquisition shall be approved at a level above the contracting officer.

**Subchapter H—Clauses and Forms****PART 2852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES****Subpart 2852.1—Instructions for Using Provisions and Clauses****2852.102 Incorporating provisions and clauses.****2852.102-270 Incorporation in full text.****Subpart 2852.2—Text of Provisions and Clauses****2852.201-70 Contracting Officer's Technical Representative (COTR).****2852.211-70 Brand-name or Equal.****2852.223-70 Unsafe Conditions Due to the Presence of Hazardous Material.****2852.233-70 Protests Filed Directly with the Department of Justice.**

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c);

28 CFR 0.75(j) and 28 CFR 0.76(j).

**Subpart 2852.1—Instructions for Using Provisions and Clauses****2852.102 Incorporating provisions and clauses.****2852.102-270 Incorporation in full text.**

JAR provisions or clauses shall be incorporated in solicitations and contracts in full text.

**Subpart 2852.2—Text of Provisions and Clauses****2852.201-70 Contracting Officer's Technical Representative (COTR).**

As prescribed in subpart 2801.70, insert the following clause:

**Contracting Officer's Technical Representative (COTR) (Jan. 1985)**

(a) Mr./Ms (Name) of (Organization) (Room No.), (Building), (Address), (Area Code & Telephone No.), is hereby designated to act as Contracting Officer's Technical Representative (COTR) under this contract.

(b) The COTR is responsible, as applicable, for: receiving all deliverable, inspecting and accepting the supplies or services provided hereunder in accordance with the terms and conditions of this contract; providing direction to the contractor which clarifies the contract effort, fills in details or otherwise serves to accomplish the contractual Scope of Work; evaluating performance; and certifying all invoices/vouchers for acceptance of the supplies or services furnished for payment.

(c) The COTR does not have the authority to alter the contractor's obligations under the contract, and/or modify any of the expressed terms, conditions, specifications, or cost of the agreement. If as a result of technical discussions it is desirable to alter/change contractual obligations or the Scope of Work, the Contracting Officer shall issue such changes.

(End of Clause)

**2852.211-70 Brand-name or Equal.**

As prescribed in 2811.104-70, insert the following clause:

**Brand-Name or Equal (Jan. 1985)**

(a) The terms "bid" and "bidders", as used in this clause, include the terms "proposal" and "offerors". The terms "invitation for bids" and "invitational", as used in their clause include the terms "request for proposal" and "request".

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

(c) Unless the bidder clearly indicates in his/her bid that he/she is offering an "equal" product, his/her bid shall be considered as offering the brand name product referenced in the invitation for bids.

(d)(1) If the bidder proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the invitation for bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determinations to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his/her bid as well as other information reasonably available to the purchasing activity. To ensure the sufficient information is available, the bidder must furnish as a part of his/her bid all description material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to: (i) determine whether the product offered meets the salient characteristics requirements of the invitation for bids, and (ii) established exactly what the bidder proposed to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or information otherwise available to the purchasing activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the invitation for bids, he/she shall: (i) include in his/her bid a clear description of such proposed modification, and (ii) clearly mark any description material to show the proposed modifications.

(3) Modifications proposed after the bid opening to make a product conform to a brand name product referenced in the invitation for bids will not be considered. (End of Clause)

**2852.223-70 Unsafe Conditions Due to the Presence of Hazardous Material.**

As prescribed in 2823.303-70, insert the following clause:

**Unsafe Conditions Due to the Presence of Hazardous Material (June 1996)**

(a) "Unsafe condition" as used in this clause means the actual or potential exposure of contractor or Government employees to a hazardous material as defined in Federal Standard No. 313, and any revisions thereto during the term of this contract, or any other material or working condition designated by the Contracting Officer's Technical Representative (COTR) as potentially hazardous and requiring safety controls.

(b) The Occupational Safety and Health Administration (OSHA) is responsible for issuing and administering regulations that require contractors to appraise its employees of all hazards to which they may be exposed in the course of their employment; proper conditions and precautions for safe use and exposure; and related symptoms and emergency treatment in the event of exposure.

(c) Prior to commencement of work, contractors are required to inspect for and report to the contracting officer or designee the presence of, or suspected presence of, any unsafe condition including asbestos or other hazardous materials or working conditions in areas in which they will be working.

(d) If during the performance of the work under this contract, the contractor or any of its employees, or subcontractor employees, discovers the existence of an unsafe condition, the contractor shall immediately notify the contracting officer, or designee, (with written notice provided not later than three (3) working days thereafter) of the existence of an unsafe condition. Such notice shall include the contractor's recommendations for the protection and the safety of Government, contractor and subcontractor personnel and property that may be exposed to the unsafe condition.

(e) When the Government receives notice of an unsafe condition from the contractor, the parties will agree on a course of action to mitigate the effects of that condition and, if necessary, the contract will be amended. Failure to agree on a course of action will constitute a dispute under the Disputes clause of this contract.

(f) Notice contained in this clause shall relieve the contractor or subcontractors from complying with applicable Federal, State, and local laws, codes, ordinances and regulations (including the obtaining of licenses and permits) in connection with hazardous material including but not limited to the use, disturbance, or disposal of such material.

(End of Clause)

**2852.233-70 Protests filed directly with the Department of Justice.**

As prescribed in 2833.102(d), insert a clause substantially as follows:

**Protests Filed Directly With the Department of Justice (Jan. 1998)**

(a) The following definitions apply in this provision:

(1) "Agency Protest Official" means the official, other than the contracting officer, designated to review and decide procurement protests filed with a contracting activity of the Department of Justice.

(2) "Deciding Official" means the person chosen by the protestor to decide the agency protest; it may be either the Contracting Officer or the Agency Protest Official.

(3) "Interested Party" means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

(b) A protest filed directly with the Department of Justice must:

(1) Indicate that it is a protest to the agency.

(2) Be filed with the Contracting Officer.

(3) State whether the protestor chooses to have the Contracting Officer or the Agency Protest Official decide the protest. If the protestor is silent on this matter, the Contracting Officer will decide the protest.

(4) Indicate whether the protestor prefers to make an oral or written presentation of arguments in support of the protest to the deciding official.

(5) Include the information required by FAR 33.103(a)(2):

(i) Name, address, facsimile number and telephone number of the protestor.

(ii) Solicitation or contract number.

(iii) Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protestor.

(iv) Copies of relevant documents.

(v) Request for a ruling by the agency.

(vi) Statement as to the form of relief requested.

(vii) All information establishing that the protestor is an interested party for the purpose of filing a protest.

(viii) All information establishing the timeliness of this protest.

(c) An interested party filing a protest with the Department of Justice has the choice of requesting either that the Contracting Officer or the Agency Protest Official decide the protest.

(d) The decision by the Agency Protest Official is an alternative to a decision by the Contracting Officer. The Agency Protest Official will not consider appeals from the Contracting Officer's decision on an agency protest.

(e) The deciding official must conduct a scheduling conference with the protestor within five (5) days after the protest is filed. The scheduling conference will establish deadlines for oral or written arguments in support of the agency protest and for many officials to present information in response to the protest issues. The deciding official may hear oral arguments in support of the agency protest at the same time as the scheduling conference, depending on availability of the necessary parties.

(f) Oral conferences may take place either by telephone or in person. Other parties may attend at the discretion of the deciding official.

(g) The protestor has only one opportunity to support or explain the substance of its protest. Department of Justice procedures do not provide for any discovery. The deciding official may request additional information from either the agency or the protestor. The deciding official will resolve the protest through informal presentations or meetings to the maximum extent practicable.

(h) An interested party may represent itself or be represented by legal counsel. The Department of Justice will not reimburse the protestor for any legal fees related to the agency protest.

(i) The Department of Justice will stay award or suspend contract Performance in accordance with FAR 33.103(f). The stay or suspension unless over-ridden, remains in effect until the protest is decided, dismissed, or withdrawn.

(j) The deciding official will make a best effort to issue a decision on the protest within twenty (20) days after the filing date. The decision may be oral or written.

(k) The Department of Justice may dismiss or stay proceeding on an agency protest if a protest on the same or similar basis is filed with a protest forum outside the Department of Justice.

(End of Clause)

[FR Doc. 98-8335 Filed 4-1-98; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Parts 571 and 572

[Docket No. NHTSA-98-3668]

RIN 2127-AG37

#### Side Impact Protection: Side Impact Dummy

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** This document makes two amendments to the specifications for the side impact test dummy and the procedure in NHTSA's side impact protection standard for positioning the dummy in a vehicle for compliance testing purposes. The first amendment adds plastic spacers to the dummy's lumbar spine to prevent a metal cable within the spine from contacting other metal parts in the spine ("snapping"). Some manufacturers believe that such contact can generate large spikes in the data obtained from the dummy. The second amendment specifies a procedure during the positioning of the dummy to fully extend the damper piston in the dummy's ribcage prior to the side impact test. These changes are intended to reduce to the extent possible any potential problems with the consistency of the data obtained from the dummy in a side impact crash test.

**DATES:** *Effective Date:* The amendments made in this rule are effective September 1, 1998.

*Incorporation by Reference Date:* The incorporation by reference of the material listed in this document is approved by the Director of the **Federal Register** as of September 1, 1998.

*Petition Date:* Any petitions for reconsideration must be received by NHTSA no later than May 18, 1998.

**ADDRESSES:** Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For nonlegal issues: Mr. Stan Backaitis, Office of Crashworthiness (telephone 202-366-4912). For legal issues: Ms. Deirdre Fujita, Office of the Chief Counsel (202-366-2992). Both can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

#### SUPPLEMENTARY INFORMATION:

Federal Motor Vehicle Safety Standard No. 214, *Side Impact Protection* (49 CFR 571.214), establishes minimum performance requirements for protection of occupants in side impact crashes. The standard specifies a dynamic side impact test using a side impact dummy (SID) instrumented with accelerometer sensors mounted in the thorax and pelvis. The specifications for the side impact dummy are set out at 49 CFR part 572, subpart F. Standard 214 requires that when vehicles are tested in accordance with the standard, the forces (the "Thoracic Trauma Index" (TTI(d)) measured by the SID must not exceed specified limits.

This rule amends the part 572 specifications for the SID and the procedure in Standard 214 for positioning the dummy in a vehicle for compliance testing purposes. The amendments were proposed in a September 24, 1996 notice of proposed rulemaking (NPRM). 61 FR 49992. (Docket No. 96-098, Notice 01.) The first amendment adds spacers into the top and bottom plates of the lumbar spine. The second amendment specifies a dummy positioning procedure that involves fully extending the damper piston in the dummy's ribcage. Both of these amendments are intended to reduce to the extent possible any potential problems with the consistency of the data obtained from the SID in a side impact crash test.

#### Lumbar Spine Inserts

The NPRM was issued in response to concerns that a number of motor vehicle manufacturers raised in connection with spikes in data obtained from side impact