

(3) The decision to use a repricing clause will depend upon the particular circumstances involved, including—

- (i) When the restructuring will take place;
- (ii) When restructuring savings will begin to be realized;
- (iii) The contract performance period; and
- (iv) The size of the potential dollar impact on the contract.

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DEPARTMENT OF STATE

48 CFR Parts 601, 602, 603, 604, 605, 606, 608, 609, 610, 611, 613, 614, 615, 616, 617, 619, 622, 623, 625, 626, 628, 629, 630, 631, 632, 633, 634, 636, 637, 639, 641, 642, 643, 644, 645, 646, 647, 649, 652, 653

[Public Notice No. 2925]

RIN 1400-AA71

Department of State Acquisition Regulation (DOSAR)

AGENCY: Office of the Procurement Executive, Department of State.

ACTION: Proposed rule.

SUMMARY: This proposed rule is being issued for comment in accordance with Section 4301 of the Federal Acquisition Reform Act of 1996 (Pub. L. 104-106). Section 4301 requires the elimination of certification requirements from the Department of State Acquisition Regulation (DOSAR) that are not specifically imposed by statute. In addition, this proposed rule adds one new certification required by statute and one new certification not required by statute but justified in accordance with section 29 of Public Law 104-106. This proposed rule also eliminates internal coverage from the codified section of the DOSAR. Finally, the proposed rule contains miscellaneous amendments and corrections needed to bring the DOSAR in line with recent changes in the Federal Acquisition Regulation.

DATES: Public comments must be received by January 29, 1999.

ADDRESSES: Comments may be sent to: Gladys Gines, Procurement Analyst, Department of State, Office of the Procurement Executive, 2201 C Street NW, Suite 603, State Annex Number 6, Washington, DC 20522-0602; e-mail address: ginesgg@state.gov.

FOR FURTHER INFORMATION CONTACT: Gladys Gines, telephone (703) 516-1691 or at the e-mail address specified above.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with Section 4301 of the Federal Acquisition Reform Act of 1996, the Department of State proposes to remove several certifications from the DOSAR. They are: 652.203-71, Certification Regarding Federal Employment (requirement not based in statute); 652.223-70, Estimates of the Total Percentage of Recovered Materials to be Utilized in the Performance of the Contract (superseded by FAR 52.223-9); and, 652.223-71, Certification of Minimum Content Actually Utilized in the Performance of the Contract (also superseded by FAR 52.223-9).

In conjunction with the review of the DOSAR to eliminate any certifications not based in statute, the Department looked at all current DOSAR provisions and clauses to determine if they could be eliminated or revised. In addition, the Department proposes to add several new certifications and clauses. Accordingly, the Department proposes to take the following actions:

- Eliminate the clause at 652.203-70, Prohibition Against the Use of Federal Employees.
- Eliminate the clauses at 652.204-70, Security Requirements, and 652.204-71, Security Requirements—Personnel. Both of these clauses implement requirements for contractors that have access to classified information. However, the Department falls under the National Industrial Security Program (NISP), which establishes a program to safeguard Federal Government classified information that is released to contractors. FAR 4.404 prescribes clauses for use by agencies covered by the NISP. The Department has determined that the FAR coverage is adequate and the DOSAR language is no longer required. The associated DOSAR prescription at 604.404-70 is also removed.
- Revise the provision at 652.206-70, Competition Advocacy/Ombudsman, to better explain the role of the Acquisition Ombudsman.
- Renumber the clause at 652.214-70, Notices, to 652.243-70. The associated prescription at 614.201-7-70(b) is also removed, and a new prescription is found at 643.104-70. The change was made because the clause deals with contract modifications, and is applicable to all contracts, not just those awarded using sealed bidding.
- Revise the provision at 652.214-71, Authorization to Perform, to clarify that (1) the requirement to obtain licenses, permits, etc. is in accordance with the date specified in the solicitation, (e.g., the date may be after contract award);

and (2) the requirement to obtain the licenses, permits, etc. applies only to the parties who will actually be performing the work, i.e., prime contractor, subcontractors or joint venture partner.

- Revise the clause at 652.216-71, Price Adjustment, for clarification purposes.
- Add a new clause at 652.219-71, Section 8(a) Direct Awards, to implement the Memorandum of Understanding between the Department and the Small Business Administration to allow for direct awards to contractors under the 8(a) Program. Subpart 619.8 is also revised accordingly.
- Eliminate the provisions and clauses at 652.223-72, Use of Double-Sided Copying in the Submission of Bids and Proposals; 652.223-73, Use of Double-Sided Copying in the Submission of Reports; 652.223-74, Use of Fly Ash as a Partial Replacement for Cement and Concrete; 652.223-75, Use of Recovered Materials in Building Insulation Products; 652.223-76, Use of Lubricating Oils Containing Re-Refined Oils; 652.223-77, Use of Retread Tires; and, 652.223-78, Use of Recovered Materials in Paper and Paper Products. These provisions and clauses have been superseded by FAR language incorporated in FACs 90-27 and 97-1. DOSAR Subpart 623.4 is revised in its entirety to conform to the new FAR requirements.
- Add a new certification at 652.225-70, Arab League Boycott of Israel, and a new clause at 652.225-71, Section 8(a) of the Export Administration Act of 1979, As Amended. This certification and clause are required by Section 565 of the Fiscal Year 94/95 Foreign Relations Authorizations Act (Pub. L. 103-236), which has continuing effect. A new Subpart 625.70 is also added.
- Add a new certification at 652.226-70, Certification of Status as a Minority Business Enterprise. This certification is not statutorily based. However, Federal agencies are required to report to the Minority Business Development Agency information concerning awards to minority-owned businesses, both large and small. Since this information is not readily available, this certification represents the most logical manner in which to gather this information. A justification for including this certification has been approved by the agency head. A new Part 626 is also added.
- Eliminate the clause at 652.228-73, Waiver of the Defense Base Act. The Department received a waiver from the Department of Labor for service contracts performed overseas for employees who are not U.S. citizens or

residents, or who are not hired in the U.S. Therefore, this clause is unnecessary. The associated prescription at 628.305(b)(3) is also removed.

- Combine the clauses at 652.228–71, Worker's Compensation Insurance (Defense Base Act)—Services, and 652.228–72, Worker's Compensation Insurance (Defense Base Act)—Construction, into one clause with an alternate. Since the two clauses were virtually identical, it was determined to make coverage for construction contracts an Alternate I. The clause prescriptions at 628.305(b) have been revised accordingly.

- Combine the provisions at 652.228–74, Defense Base Act Insurance Rates—Limitation—Services, and 652.228–75, Defense Base Act Insurance Rates—Limitation—Construction, into one provision. The associated prescriptions at 628.306(a) are revised accordingly.

- Combine the provisions at 652.228–76, Defense Base Act Insurance Rates—Limitation—Cost-Reimbursement, and 652.228–77, Defense Base Act Insurance Rates—Limitation—Labor-Hour and Time-and-Material, into one provision. The associated prescriptions at 628.307 and 628.307–70 are revised accordingly.

- Add a new clause at 652.229–71, Personal Property Disposition at Posts Abroad. Department of State regulations at 22 CFR part 136 require that contractors that may have importation or tax privileges in a foreign country because of their contractual relationship to the U.S. Government follow these regulations and the procedures established by the chief of mission. The regulations are intended to ensure that individuals do not profit personally from sales or other transactions with persons who are not themselves entitled to exemption from import restrictions, duties, or taxes. A new section 649.402 is added accordingly.

- Revise the clauses at 652.232–70, Payment Schedule and Invoice Submission (Fixed-Price), and 652.232–71, Voucher Submission (Cost-Reimbursement), to add the SF-1449 and to correct the block numbers to which the payment requests are to be sent.

- Add a new clause at 652.232–72, Limitation of Funds. This clause allows for the incremental funding of fixed-price, labor-hour, and time-and-material contracts for severable services. An associated prescription at 632.705–70 is also added.

- Add a new clause at 652.236–70, Accident Prevention. In accordance with a class deviation approved by the Procurement Executive, this clause will replace FAR 52.236–13 for use in

overseas construction contracts not exceeding \$500,000, since 52.236–13 refers to 29 CFR and the Corps of Engineers safety regulations and manuals which are not practical on such contracts overseas.

- Revise the clause at 652.237–71, Identification/Building Pass, to correct the address of the Building Pass Application Unit.

- Eliminate the clause at 652.246–70, Commercial Warranty. FAR Part 12, Acquisition of Commercial Items, contains adequate coverage in FAR 12.404 regarding warranties. Contracting officers shall follow the guidance in FAR 12.404(b) regarding use of express warranties. The associated prescription at 646.710–70 is also removed.

The proposed rule also eliminates internal coverage from the *codified* version of the DOSAR. The entire DOSAR, which may be found on the Internet (see DOSAR 601.105–3 for the Internet address), will contain both the codified and uncoded sections. This change is being made for ease of administration and updating of the DOSAR. Internal procedures which do not affect contractors or the public need not be published for comment. This is consistent with FAR 1.301(a)(2) which states, in part, that “* * * any agency head may issue or authorize the issuance of internal agency guidance at any organizational level”, and FAR 1.301(b) which states, in part, that “* * * Issuances under 1.301(a)(2) need not be publicized for public comment.” Removing such passages from the DOSAR will result in the Department being able to easily update these internal procedures without having to pursue the formal rulemaking process. As such, the following sections are deleted from the codified sections of the DOSAR:

- DOSAR 601.471, which contains procedural guidance to contracting officers for requesting deviations from the FAR or DOSAR.

- DOSAR 601.602–3 and 601.602–3–70 regarding ratification of unauthorized commitments. These sections contain detailed guidance on the authority levels for ratifications and the documentation requirements for unauthorized commitments.

- DOSAR 603.203 on reporting suspected violations of the Gratuities clause. This section contains procedural guidance for reporting such violations to internal DOS entities.

- DOSAR Subpart 603.3 on reporting suspected antitrust violations. This section contains procedural guidance for reporting such violations to internal DOS entities.

- DOSAR Subpart 604.2, which contains guidance on internal distribution of contractual documents.

- DOSAR Subpart 604.70 which contains guidance for internal review of solicitations and contracts by contracting officers and the Office of the Procurement Executive (A/OPE).

- DOSAR 605.207 on the preparation and transmittal of CBD synopses to A/OPE by overseas contracting activities.

- DOSAR Subpart 616.1 on selecting contract types. This provides internal guidance to overseas contracting officers on the limits of their authority in terms of awarding specific types of contracts.

- DOSAR Subpart 616.6, which describes determination and findings requirements for time-and-materials, labor-hour, and letter contracts.

- DOSAR Subpart 625.9 regarding the approval authority for foreign acquisition clauses.

- DOSAR 633.211, which provides instructions to the contracting officer on final decision letters and approval authorities.

- DOSAR 649.111 regarding internal approval authorities for the review of proposed termination settlements.

Finally, the proposed rule makes some technical amendments and corrections to conform the DOSAR to recent changes in the FAR. The more substantial changes are:

- Revision to 601.603–3 to provide guidance on temporary contracting officer warrants.

- Elimination of 601.670 regarding the Procurement Career Management Program. This elimination is consistent with FAC 90–23, which provided coverage on such programs in the FAR.

- Revision of 603.104 regarding procurement integrity requirements to conform to FAC 90–45.

- Addition of a new Subpart 603.9 to identify that the Procurement Executive is the agency head's designee for purposes of this subpart.

- Extension of the waiver in 605.202–70 to May 19, 2001, as approved by the agency head.

- Removal of Subpart 608.3 regarding utility services and the creation of a new Part 641, per FAC 90–23.

- Removal of Part 610 dealing with the Department's Metric Program and its inclusion in Part 611. FAC 90–32 revised FAR Part 10 to deal with market research. Information on describing agency needs was moved to FAR Part 11.

- Revision of Part 613 in its entirety to conform to the reorganization of FAR Part 13 as implemented in FAC 97–3.

- Revision of Subpart 614.2 for better clarity.

- Revision of Part 615 in its entirety to conform to the revision of FAR Part 15 as implemented in FAC 97-2.

- Addition of a new 616.505 to designate an ombudsman for task and delivery order contracts.

- Removal of 633.105 regarding protests to the GSBGA, as that forum was eliminated per FAC 90-41. Changes have also been made to 633.104, protests to GAO, to delete obsolete, internal coverage.

- Removal of 634.001, definition of "major system", as the FAR now provides a definition in FAR Part 2. Further information can be found in DOSAR Part 602.

- Removal of Part 639, Acquisition of Information Resources, per FAC 90-41, which eliminated the FIRMR.

- Addition of a new Subpart 647.2, Contracts for Transportation or for Transportation-Related Services. This subpart implements a class deviation approved by the Procurement Executive to revise the amount reflected in paragraph (c) of FAR 52.247-3, Contractor Liability for Loss of and/or Damage to Household Goods. The amount of \$5.00 per pound (or metric equivalent based on local currency) based on the total net weight is consistent with liability calculations found in International Through Government Bills of Lading (ITGBL).

II. Impact

The Department of State certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

III. Unfunded Mandates Act of 1995

The Unfunded Mandates Act of 1995 requires agencies to prepare several analytical statements before proposing any rule that may result in annual expenditures of \$100 million of State, local, and Indian tribal governments or the private sector. Since this proposed rule will not result in expenditures of this magnitude, the Department certifies that such statements are not necessary.

IV. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved under the Paperwork Reduction Act of 1980 by OMB, and were assigned control number 1405-0050.

List of Subjects in 48 CFR Parts 601, 602, 603, 604, 605, 606, 608, 609, 610, 611, 613, 614, 615, 616, 617, 619, 622, 623, 625, 626, 628, 629, 630, 631, 632, 633, 634, 636, 637, 639, 641, 642, 643, 644, 645, 646, 647, 649, 652, 653

Government procurement.

Accordingly, title 48, chapter 6 of the Code of Federal Regulations is amended as follows:

1. The authority citation for 48 CFR Parts 601, 602, 603, 604, 605, 606, 608, 609, 610, 614, 616, 617, 619, 620, 622, 623, 625, 626, 628, 629, 630, 631, 632, 633, 634, 636, 637, 639, 642, 643, 645, 646, 647, 649, 652, 653 continues to read as follows:

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SUBCHAPTER A—GENERAL

PART 601—DEPARTMENT OF STATE ACQUISITION REGULATION

601.105 [Redesignated as 601.106]

2. Section 601.105 is redesignated as section 601.106. A new section 601.105, consisting of section 601.105-3, is added to read as follows:

601.105 Issuance.

601.105-3 Copies.

The DOSAR is available on CD-ROM disks through the Department's INFOEXPRESS program, or through the Internet from A/OPE's Acquisition Website. The Internet address is: <http://www.statebuy.inter.net/home.htm>.

3. Newly designated section 601.106 is revised to read as follows:

601.106 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) requires that Federal agencies obtain approval from the Office of Management and Budget before collecting information from ten (10) or more members of the public. Individuals are not required to respond to information collection unless the OMB number and burden estimate information is provided. Accordingly, the information and recordkeeping requirements contained in this regulation have been approved by OMB under OMB Control Number 1405-0050. The burden estimate is 225,302 hours.

601.301 [Amended]

4. Section 601.301 is amended by redesignating paragraph (a)(1) as paragraph (a) and by removing paragraph (a)(2) in its entirety.

601.302 [Amended]

5. Section 601.302 is amended in the first sentence of paragraph (a) by

removing the words "and leases of real and personal property".

601.303 [Amended]

6. Section 601.303 is amended by correcting the citation at the end of paragraph (c) to read "FAR 1.105-2(c)".

601.471 [Amended]

7. Section 601.471 is removed.

8. The heading of Subpart 601.6 is revised to read as follows:

Subpart 601.6—Career Development, Contracting Authority, and Responsibilities

601.602-3 and 601.602-3-70 [Removed]

9. Section 601.602-3, and section 601.602-3-70, are removed.

10. Section 601.603-3 is amended by adding a title to paragraph (a); by revising the second sentence of paragraph (a); by revising paragraph (b) in its entirety; and, by adding a new paragraph (d), to read as follows:

601.603-3 Appointment.

(a) General. * * * The Procurement Executive appoints all DOS contracting officers, in conformance with FAR 1.603-3, with the one exception as noted in paragraph (b) of this section.

* * *

(b) Temporary warrants. The Chief of Mission is delegated the authority by the Procurement Executive to issue temporary contracting officer warrants for periods up to 90 calendar days in order to cover emergency, post-specific operational requirements (e.g., staffing gaps, medical evacuations, extended leave, etc.). These temporary appointments shall be executed on the Standard Form 1402, and a copy shall be furnished to A/OPE. The warrant shall contain both a dollar limitation of no more than \$100,000 and a specific time period (not to exceed 90 days) during which the warrant is effective.

* * * * *

(d) Personal services agreements. Individuals who may sign personal services agreements (PSAs) are limited to the following:

(1) An individual, or class of individuals, granted authority by the Director, PER/OE; or

(2) Individuals with contracting officer certificates of appointment.

601.603-70 [Amended]

11. Section 601.603-70 is amended—
(a) By adding a period after the words "and services" and removing the words "to sell personal property; and to lease real property." in the first sentence of paragraph (a)(1) introductory text;

(b) By adding a period after the words "Deputy Assistant Secretary for Foreign

Buildings” and removing the words “and to the Director for Acquisitions as the HCA.” in paragraph (a)(2);

(c) By removing the heading “Office of Acquisition” and inserting “Office of Logistics Management; Office of Acquisition Management (A/LM/AQM)” in its place; and by removing the words “and Deputy Director as the HCA” and inserting “or designee as the HCA” in their place in paragraph (a)(3);

(d) By removing the word “and” before the word “construction” and removing the word “of” after “construction” and by adding the words “and supplies for” after the word “construction” in paragraph (a)(7);

(e) By adding the word “supplies,” after the word “subsystems,” in paragraph (a)(8);

(f) By revising subparagraph (a)(9) to read as indicated below;

(g) By removing the words “Office of Acquisition” and inserting the acronym “A/LM/AQM” in their place in the second sentence of paragraph (b) introductory text;

(h) By removing the words “schedule contracts” and inserting the words “existing contracts up to the maximum ordering threshold or limitation” in their place in paragraphs (b)(1) through (b)(6); and

(i) By adding a new paragraph (b)(7), to read as follows:

601.603-70 Delegations of authority.

(a) * * *

(9) Regional Procurement Support Offices. The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies, equipment, publications, and services on behalf of overseas posts is delegated to each Director, Regional Procurement Support Office (RPSO) as the HCA at the following locations:

(i) RPSO Germany in conjunction with Embassy Bonn and Consulate General Frankfurt;

(ii) RPSO Tokyo in conjunction with Embassy Tokyo;

(iii) RPSO Singapore in conjunction with Embassy Singapore; and,

(iv) RPSO Florida in conjunction with the Florida Regional Center.

(b) * * *

(7) Office of Small and Disadvantaged Business Utilization. The authority to enter into and administer 8(a) purchase orders and contracts as a third party pursuant to the Memorandum of Understanding signed with the Small Business Administration.

601.670 [Removed]

12. Section 601.670 is removed.

PART 602—DEFINITIONS OF WORDS AND TERMS

13. Section 602.101-70 is amended by removing the definition of “local procurement”; and by adding, in alphabetical order, a definition of “major system” to read as follows:

602.101-70 DOSAR definitions.

* * * * *

Major System has the same definition as described in FAR 2.101; however, the Department of State’s dollar threshold as defined in paragraph (b) is \$30 million. The Under Secretary for Management is the head of the agency for the purposes of paragraph (c).

* * * * *

PART 603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

14. Subpart 603.1 is revised to read as follows:

Subpart 603.1—Safeguards

Sec.

603.104 Procurement integrity.

603.104-5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

603.104-10 Violations or possible violations.

Subpart 603.1—Safeguards

603.104 Procurement integrity.

603.104-5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) The following classes of persons may be authorized to receive contractor bid or proposal information or source selection information by the contracting officer or head of the contracting activity, who is the agency head’s designee, when such access is necessary to the conduct of an acquisition:

(1) Individuals involved in the selection process, such as the Contracting Officer’s Representative, technical evaluators, advisors, consultants, and the Source Selection Official;

(2) Clerical personnel directly involved in the acquisition;

(3) Supervisors in the contracting officer’s chain of command;

(4) Contracting personnel involved in reviewing or approving the solicitation, contract, or contract modification;

(5) Individuals from offices who may be required to perform pre-award audits, such as DCAA; and,

(6) Personnel in the following offices: Office of Small and Disadvantaged Business Utilization (A/SDBU), Office of

the Legal Adviser, Office of Legislative Affairs, Office of the Inspector General, Office of the Procurement Executive, the Small Business Administration, and the Office of Federal Contract Compliance Programs (Department of Labor).

(c) All information which is considered proprietary or source selection information shall be marked to prevent its unauthorized disclosure before award. This may be performed by marking each page of proprietary or source selection material with the statement “Source Selection Information—See FAR 3.104” or “Proprietary Information—See FAR 3.104”, as applicable. Alternatively, this requirement may be met by attaching Forms DS-1926, Proprietary Information (Cover Page), and DS-1927, Source Selection Information (Cover Page), to any proprietary and source selection information. Individuals responsible for preparing derivative documents which reference, cite, or paraphrase proprietary or source selection information, are responsible for marking such documents as indicated in this paragraph. The required marking or cover page shall be included when technical proposals are submitted for evaluation and when an audit is requested. After award, the procedures governing the Freedom of Information Act and related laws/regulations shall be followed regarding release of proprietary or source selection information.

603.104-10 Violations or possible violations.

(a)(1) The contracting officer shall report any violation or possible violation to the head of the contracting activity after he or she has reviewed the documentation and has concluded that there is no impact on the acquisition.

(d)(2)(ii)(B) The Procurement Executive is the agency head’s designee for the purposes of FAR 3.104-10(d)(2)(ii)(B).

603.203 [Removed]

15. Section 603.203 is removed.

Subpart 603.3—[Removed]

16. Subpart 603.3, consisting of section 603.303, is removed.

17. Section 603.405 is added to read as follows:

603.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) The contracting officer may request the Office of the Inspector General to develop further information if the facts available are deemed insufficient to determine whether an actual violation has occurred. The

contracting officer may also obtain the advice of the Office of the Legal Adviser as to the legality and general propriety of any information disclosed.

603.408 [Removed]

18. Section 603.408, consisting of section 603.408-1, is removed.

603.670 [Removed]

19. Section 603.670 is removed.
20. Subpart 603.9 is added to read as follows:

Subpart 603.9—Whistleblower Protections for Contractor Employees

Sec.
603.905 Procedures for investigating complaints.
603.906 Remedies.

Subpart 603.9—Whistleblower Protections for Contractor Employees

603.905 Procedures for investigating complaints.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.905.

603.906 Remedies.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.906.

PART 604—ADMINISTRATIVE MATTERS

Subpart 604.2—[Removed]

21. Subpart 604.2, consisting of section 604.202, is removed.

Subpart 604.4—[Removed]

22. Subpart 604.4, consisting of sections 604.404 and 604.404-70, is removed.

23. Subpart 604.5 is added to read as follows:

Subpart 604.5—Electronic Commerce in Contracting

Sec.
604.502 Policy.
604.505 FACNET certification.
604.505-2 Full certification.
604.506 Exemptions.

Subpart 604.5—Electronic Commerce in Contracting

604.502 Policy.

(b) The Procurement Executive is the agency head for the purpose of FAR 4.502(b).

604.505 FACNET certification.

604.505-2 Full certification.

(a)(3) The Assistant Secretary of State for Administration is the head of the agency for the purpose of FAR 4.505-2(a)(3).

604.506 Exemptions.

(b) The Assistant Secretary of State for Administration is the head of the agency for the purpose of FAR 4.506(b).

24. Subpart 604.70, consisting of sections 604.7001 and 604.7002, is removed.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 605—PUBLICIZING CONTRACT ACTIONS

25. Section 605.202-70 is amended by removing the date "June 15, 1998" and inserting the date "May 19, 2001" in its place in the last sentence of paragraph (a).

26. Section 605.207 is removed.

27. Section 605.303 is amended by inserting a comma after the word "Affairs"; and by adding the words "upon request," after the word "Affairs" in the first sentence of paragraph (a).

PART 606—COMPETITION REQUIREMENTS

28. Subpart 606.1, consisting of sections 606.101 and 606.101-70, is removed.

29. Section 606.302-6 is amended by removing "E.O. 12356" and inserting "E.O. 12958" in its place wherever it appears in paragraphs (c)(1) introductory text and (c)(1)(vi).

30. Section 606.304 is amended in paragraph (a)(2) by removing the amounts "\$100,000" and "\$1,000,000" and inserting "\$500,000" and "\$10,000,000" in their place, respectively.

31. Section 606.501 is amended by revising the first sentence of paragraph (b) to read as follows:

606.501 Requirement.

* * * * *

(b) A contracting activity competition advocate has been designated for A/LM/AQM. * * *

32. Section 606.570 is revised to read as follows:

606.570 Solicitation provision.

The contracting officer shall insert the provision at 652.206-70, Competition Advocate/Ombudsman, in all solicitations exceeding the simplified acquisition threshold.

PART 608—REQUIRED SOURCES OF SUPPLIES AND SERVICES

33. Part 608, consisting of subpart 608.3 and section 608.302, is removed.

PART 609—CONTRACTOR QUALIFICATIONS

34. Section 609.206, consisting of section 609.206-1, is added to read as follows:

609.206 Acquisitions subject to qualification requirements.

609.206-1 General.

(b) The authority prescribed in FAR 9.206-1(b) is delegated, without power of redelegation, to the head of the contracting activity.

35. Section 609.404 is amended by revising the section heading to read as follows:

609.404 List of parties excluded from federal procurement and nonprocurement programs.

36. Section 609.405 is amended by revising paragraphs (d)(4)(i) and (d)(4)(ii) to read as follows:

609.405 Effect of listing.

* * * * *

(d) * * *

(4)(i) For procurement actions (both domestic and overseas) that do not exceed the simplified acquisition threshold, contracting officers need not consult the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" prior to award. The list should be consulted whenever the contracting officer has reason to believe that a proposed contractor may appear on the list.

(ii) Contracting officers at domestic contracting activities shall review the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs", either in hard copy or electronic form, prior to awarding a procurement action exceeding the simplified acquisition threshold.

37. Section 609.406-3 is amended in paragraph (b)(7) by removing the number "10" and inserting the number "30" in its place.

38. Subpart 609.5 is amended by revising the heading to read as follows:

Subpart 609.5—Organizational and Consultant Conflicts of Interests

PART 610—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

39. Part 610, consisting of sections 610.002 and 610.002-70, is removed.

40. Part 611 is added to subchapter B to read as follows:

PART 611—DESCRIBING AGENCY NEEDS

Sec.

611.002 Policy.

611.002-70 Metric system implementation.

Subpart 611.1—Selecting and Developing Requirements Documents

611.103 Market acceptance.

Subpart 611.5—Liquidated Damages

611.502 Policy.

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.**611.002 Policy.****611.002-70 Metric system implementation.**

(a) Policy. The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205a, et. seq.), requires Federal agencies to establish implementing guidelines pursuant to metric policy to adopt the metric system as the preferred system of weights and measurements for United States trade and commerce. This section establishes the Department of State's metric conversion guidelines.

(b) Applicability. This section applies to all DOS acquisitions, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to U.S. firms.

(c) Definitions.

Dual system means the use of both traditional and metric systems. For example, an item is designated, produced and described in inch-pound values with soft metric values also shown for information or comparison.

Hard metric means the use of only standard metric (SI) measurements in specifications, standards, supplies and services.

Hybrid system means the use of both traditional and hard metric values in specifications, standards, supplies and services.

Measurement sensitive means any item having an application or meaning depending substantially on some measured quantity. For example, measurement sensitive items include product or performance criteria and standards binding on others, such as emission levels, size and weight limitations, etc.

Metric system means the International System of Units (Le System International d'Unites (SI)) of the International Bureau of Weights and Measures.

Metriation means any act that increases metric system use, including metric training and initiation or conversion of measurement sensitive processes and systems to the metric system.

Soft metric means the result of mathematical conversion of inch-pound measurements to metric equivalents. The physical dimensions, however, are not changed.

Traditional system of weights and measurements means the predominant weight and measurement system currently used in the United States, also referred to as the "inch-pound system." The traditional system includes such commonly used units as inch, foot, yard, mile, pint, quart, gallon, bushel, ounce (fluid and avoirdupois), pound, degree Fahrenheit, ampere, candela, and second.

(d) Procedures. (1) DOS contracting activities shall implement the metric system in a manner consistent with 15 U.S.C. 205a, et seq.

(2) All DOS contracting activities shall use the metric system in acquisition consistent with security, operations, economic, technical, logistical, training and safety requirements.

(3) The Department shall encourage industry to adopt the metric system by acquiring commercially available metric products and services that meet the Department's needs whenever practical. Toward this end, solicitations for DOS acquisitions shall:

(i) State all measurement sensitive requirements in metric terms whenever possible. Alternatives to hard metric are soft, dual and hybrid metric terms. The Metric Handbook for Federal Officials regarding the selection of proper metric units and symbols is available from the National Technical Information Service; and

(ii) For contracts expected to exceed \$500,000 contracting officers shall return to the requirements office all specifications and statements of work that are not expressed in some form of metric terms unless the requirements office has prepared a justification, for the approval of the contracting officer, for the use of non-metric specifications or statement of work. The justification shall be in a format as prescribed by the head of the contracting activity. Option year prices shall be considered when computing the \$500,000 threshold.

(4) Waivers are not required when ordering from Federal Supply Schedules.

(5) Valid justifications for non-metric specifications or statements of work include, but are not limited to:

(i) Existing specifications or standards are in inch-pound units, unless conversion of the existing specifications or standards is necessary or advantageous to the Government. Unnecessary retrofit of existing systems with new metric components should be

avoided if the total cost of the retrofit, including redesign costs, exceeds \$50,000;

(ii) Metric is not the accepted industry system with respect to a business-related activity; however, soft, hybrid, or dual systems may be used during the transition to hard metric;

(iii) The use of metric is impractical or is likely to cause significant inefficiencies or loss of markets to U.S. firms.

(6) The contracting officer shall review and, if acceptable, approve the waiver prior to the release of the solicitation. The waiver shall be placed in the contract file. If the waiver is not approved, the contracting officer shall return it to the requirements office with an explanation for the disapproval.

(7) The in-house operating metric costs shall be identified. Identification includes, but is not limited to, the cost of metric aids, tools, equipment, training and increased cost to develop metric specifications. All contracting activities and requirements offices shall maintain a record of any costs and/or savings brought about by metric conversion.

(8) Bulk (loose, unpacked) materials shall be specified and purchased in metric or dual units.

(9) Measuring devices, shop and laboratory equipment shall be purchased in metric or dual units.

(10) Shipping allowances, bills of lading and other shipping documents shall be expressed in metric or dual units.

Subpart 611.1—Selecting and Developing Requirements Documents**611.103 Market acceptance.**

(a) The head of the contracting activity is the agency head for the purpose of FAR 11.103(a).

Subpart 611.5—Liquidated Damages**611.502 Policy.**

(d) The head of the contracting activity is the agency head for the purpose of FAR 11.502(d).

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES**PART 613—SIMPLIFIED ACQUISITION PROCEDURES**

41. Part 613 is revised to read as follows:

PART 613—SIMPLIFIED ACQUISITION PROCEDURES

Sec.

Subpart 613.3—Simplified Acquisition Methods

613.303 Blanket purchase agreements (BPAs).

613.303-5 Purchases under BPAs.

613.305 Imprest funds and third party drafts.

613.305-3 Conditions for use.

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subpart 613.3—Simplified Acquisition Methods

613.303 Blanket purchase agreements (BPAs).

613.303-5 Purchases under BPAs.

(c) In accordance with FAR 13.303-5(c), BPAs shall be awarded to small businesses to the maximum extent practicable.

613.305 Imprest funds and third party drafts.

613.305-3 Conditions for use.

The Procurement Executive is the agency head's designee for the purposes of FAR 13.305-3(a).

PART 614—SEALED BIDDING

42. Subpart 614.2 is revised to read as follows:
Sec.

Subpart 614.2—Solicitation of Bids

614.201 Preparation of Invitation for Bids (IFB).

614.201-70 Use of English language.

614.201-6 Solicitation provisions.

614.201-6-70 DOSAR solicitation provision.

Subpart 614.2—Solicitation of Bids

614.201 Preparation of Invitation for Bids (IFB).

614.201-70 Use of English language.

Use of English language solicitations and contracts is mandatory unless a deviation has been approved by the Procurement Executive in accordance with 601.470. If any part of a contract is not written in the English language, the contracting officer shall attach an accurate English language translation of such part to the original and each copy of the contract, unless the contracting officer determines such action is infeasible.

614.201-6 Solicitation provisions.

614.201-6-70 DOSAR solicitation provision.

The contracting officer shall insert the provision at 652.214-71, Authorization to Perform, in all solicitations for contracts to be awarded or performed overseas.

43. Section 614.404-1 is amended by adding a new paragraph (f) to read as follows:

614.404-1 Cancellation of invitations after opening.

* * * * *

(f) The head of the contracting activity is the agency head for the purpose of FAR 14.404-1(f). This authority is not redelegable.

44. Section 614.406, consisting of sections 614.406-3 and 614.406-4, is redesignated as "614.407", "614.407-3", and "614.407-4", respectively.

45. Newly designated section 614.407-3 is amended by correcting "FAR 14.406" to read "FAR 14.407" where it appears in the first sentence; and, by correcting "FAR 14.406-3(f)" to read "FAR 14.407-3(f)" where it appears in the second sentence.

46. Newly designated section 614.407-4 is amended by correcting "FAR 14.406-4" to read "FAR 14.407-4" where it appears in the first sentence; and, by correcting "FAR 14.406-4(d)" to read "FAR 14.407-4(d)" where it appears in the second sentence.

PART 615—CONTRACTING BY NEGOTIATION

47. Part 615 is revised to read as follows:

PART 615—CONTRACTING BY NEGOTIATION

Sec.

Subpart 615.2—Solicitation and Receipt of Proposals and Information

615.204 Contract format.

615.205 Issuing solicitations.

615.205-70 Use of English language.

615.209 Solicitation provisions and contract clauses.

615.209-70 DOSAR solicitation provision.

Subpart 615.3—Source Selection

615.303 Responsibilities.

Subpart 615.6—Unsolicited Proposals

615.604 Agency points of contact.

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subpart 615.2—Solicitation and Receipt of Proposals and Information

615.204 Contract format.

(e) The Procurement Executive is the agency head's designee for the purposes of FAR 15.204(e).

615.205 Issuing solicitations.

(a) Contracting officers shall release copies of solicitation mailing lists in accordance with FAR 14.205-5(a). However, the list of those firms which actually submit proposals is not releasable. Requests for information

other than solicitation mailing lists shall be handled under the Freedom of Information Act.

615.205-70 Use of English language.

The requirements of DOSAR 614.201-70 also apply when contracting by negotiation.

615.209 Solicitation provisions and contract clauses.**615.209-70 DOSAR solicitation provision.**

The contracting officer shall insert the provision at 652.214-71, Authorization to Perform, in all solicitations for contracts to be awarded or performed overseas.

Subpart 615.3—Source Selection**615.303 Responsibilities.**

(a) The Procurement Executive is the agency head for the purposes of FAR 15.303(a).

Subpart 615.6—Unsolicited Proposals**615.604 Agency points of contact.**

(a)(4) The contact points for unsolicited proposals are the heads of the contracting activities.

PART 616—TYPES OF CONTRACTS

48. Subpart 616.1, consisting of sections 616.102, 616.102-70, is removed.

49. Subpart 616.3, consisting of sections 616.301-3 and 616.306, is removed.

50. Section 616.505 is re-designated as section 616.506, and the section heading is revised to read as follows:

616.506 Solicitation provisions and contract clauses.

51. Section 616.505-70 is re-designated as section 616.506-70.

52. A new section 616.505 is added to read as follows:

616.505 Ordering.

(b)(4) The Departmental Competition Advocate is designated the task and delivery order contract ombudsman.

53. Subpart 616.6, consisting of sections 616.603 and 616.603-2, is removed.

PART 617—SPECIAL CONTRACTING METHODS

54. Subpart 617.1 is revised to read as follows:

Subpart 617.1—Multiyear Contracting

Sec.

617.104 General.

617.105 Policy.

617.105-1 Uses.

617.108 Congressional notification.

Subpart 617.1—Multiyear Contracting**617.104 General.**

(b) The Procurement Executive is the agency head for the purpose of FAR 17.104(b).

617.105 Policy.**617.105-1 Uses.**

(d) In the event that funds for the continuation of such a contract are not made available into a subsequent fiscal year, the contract shall be canceled. Any cancellation costs incurred shall be paid from appropriations originally available for the performance of the contract, appropriations currently available for the acquisition of similar property or services and not otherwise obligated, or appropriations made for such cancellation payments.

617.108 Congressional notification.

(a) The Procurement Executive is the agency head for the purposes of FAR 17.108(a).

55. Section 617.504-70 is amended in paragraph (a) by adding the words "or their equivalents" after the words "Department deputy assistant secretaries."

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS**PART 619—SMALL BUSINESS PROGRAMS**

56. Part 619 is amended by revising the heading to read as set forth above.

57. Section 619.201 is amended in paragraph (d)(5) by removing the word "limitation" and adding the words "threshold, including commercial items using the simplified procedures of FAR Subpart 13.5," in its place; and, by revising paragraph (d)(18) to read as follows:

§ 619.201 General policy.

* * * * *

(d) * * *

(18) Participating in interagency programs relating to small and small disadvantaged business matters as authorized by the A/SDBU Operations Director.

58. Section 619.501 is amended by deleting the phrase "/Labor Surplus Area" from the title of the Form DS-1910.

59. Section 619.505 is amended by revising the section heading to read as follows:

619.505 Rejecting Small Business Administration recommendations.

60. Subpart 619.7 is amended by revising the subpart heading to read as follows:

Subpart 619.7—Subcontracting with Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

61. Section 619.705-3 is revised to read as follows:

619.705-3 Preparing the solicitation.

To further promote the use of small, disadvantaged, and women-owned firms by large prime contractors, contracting officers are encouraged to consider the adequacy of the subcontracting plans, and/or past performance in achieving negotiated subcontract goals, as part of the overall evaluation of the technical proposals.

62. Subpart 619.8 is revised to read as follows:

Subpart 619.8—Contracting with the Small Business Administration (The 8(a) Program)

Sec.

619.800 General.

619.801 Definitions.

619.803 Selecting acquisitions for the 8(a) program.

619.803-70 Responsibilities of the Office of Small and Disadvantaged Business Utilization (A/SDBU).

619.803-71 Simplified procedures for 8(a) acquisitions under MOUs.

619.804 Evaluation, offering, and acceptance.

619.804-2 Agency offering.

619.804-3 SBA acceptance.

619.804-3-70 SBA acceptance under MOUs for acquisitions exceeding \$100,000.

619.805 Competitive 8(a).

619.805-2 Procedures.

619.806 Pricing the 8(a) contract.

619.808 Contract negotiation.

619.808-1 Sole source.

619.810 SBA appeals.

619.811 Preparing the contracts.

619.811-1 Sole source.

619.811-2 Competitive.

619.811-3 Contract clauses.

619.812 Contract administration.

Subpart 619.8—Contracting with the Small Business Administration (The 8(a) Program)**619.800 General.**

(d) Utilizing Memoranda of Understanding (MOUs), the SBA has delegated its authority to contract directly with program participants under Section 8(a) of the Small Business Act to the Senior Procurement Executives of various Federal contracting activities. The Department of State has signed an MOU with SBA, effective May 6, 1998. Under the MOU, a contract may be awarded directly to an 8(a) firm on either a sole source or competitive basis. The SBA reserves the right to withdraw any delegation issued as a result of an MOU; however, any such withdrawal shall have no effect on

contracts currently awarded under the MOU.

619.801 Definitions.

National buy requirements includes all 8(a) contracts performed outside the United States and processed by the Small Business Administration.

619.803 Selecting the acquisitions for the 8(a) program.**619.803-70 Responsibilities of the Office of Small and Disadvantaged Business Utilization (A/SDBU).**

A/SDBU shall review the capabilities of 8(a) concerns and disseminate that information to DOS program and contracting personnel. As necessary, A/SDBU shall obtain from the SBA or 8(a) concerns supplemental information for DOS program and contracting personnel.

619.803-71 Simplified procedures for 8(a) acquisitions under MOUs.

Contracting activities may use the simplified acquisition procedures of FAR Part 13 and DOSAR Part 613 to issue purchase orders or contracts, not exceeding \$100,000, to 8(a) participants. The \$100,000 limitation for use of FAR Part 13 simplified acquisition procedures applies to the acquisition of both commercial and non-commercial items. The following applies to such acquisitions:

(a) Neither offering letters to, nor acceptance letters from, the SBA are required.

(b) The contracting activity shall use the SBA's PRO-Net database on the Internet (<http://www.sba.gov>) to establish that the selected 8(a) firm is a current program participant.

(c) Once an 8(a) contractor has been identified, the agency contracting officer shall establish the price with the selected 8(a) contractor.

(d) The contracting officer shall issue the purchase order or contract directly to the 8(a) firm in accordance with the provisions of FAR Part 13 and DOSAR Part 613. The contracting officer shall insert FAR clause 52.219-14, Limitations on Subcontracting, and DOSAR clause 652.219-71, Section 8(a) Direct Award, in all purchase orders and contracts awarded under this subsection. The contracting officer's title shall include the contracting activity, as follows: Contracting Officer for the Department of State [*insert contracting activity*]. In addition, in accordance with the MOU, A/SDBU staff who have been issued limited contracting officer warrants for this purpose, shall sign the purchase order or contract as a third party.

(e) The contracting officer shall forward to the SBA District Office serving the 8(a) firm a copy of the purchase order or contract within five days after the order is issued.

619.804 Evaluation, offering, and acceptance.

619.804-2 Agency offering.

(a) When applicable, this notification shall identify that the offering is in accordance with the MOU identified in 619.800.

619.804-3 SBA acceptance.

619.804-3-70 SBA acceptance under MOUs for acquisitions exceeding \$100,000.

(a) The SBA's decision whether to accept the requirement shall be transmitted to the contracting agency in writing within five working days of receipt of the offer.

(b) The SBA may request, and the contracting agency may grant, an extension beyond the five-day limit.

(c) SBA's acceptance letter should be faxed or e-mailed to the offering contracting agency.

(d) If the offering contracting agency has not received an acceptance or rejection of the offering from SBA within five days of SBA's receipt of the offering letter, the contracting agency may assume that the requirement has been accepted and proceed with the acquisition.

(e) The contents of the acceptance letter shall be limited to the eligibility of the recommended 8(a) contractor.

619.805 Competitive 8(a).

619.805-2 Procedures.

(a) 8(a) acquisitions may also be conducted using simplified acquisition procedures (see FAR Part 13). The award process is significantly streamlined where an MOU is in place.

(c)(3) For requirements exceeding \$100,000 processed under the MOU cited in 619.800, the contracting officer shall submit the name, address, and telephone number of the low offeror (in sealed bid acquisitions) or the apparent successful offeror (in negotiated acquisitions) to the SBA Business Opportunity Specialist at the field office servicing the identified 8(a) firm. The SBA shall determine the eligibility of the firm(s) and advise the contracting officer within two working days of the receipt of the request. If the firm is determined to be ineligible, the contracting officer shall submit information on the next low offeror or next apparent successful offeror, as applicable, to the cognizant SBA field office.

619.806 Pricing the 8(a) contract.

(a) When required by FAR Subpart 15.4, the contracting officer shall obtain certified cost or pricing data directly from the 8(a) contractor if the contract is being awarded under the MOU cited in 619.800.

619.808 Contract negotiation.

619.808-1 Sole source.

(a) If the acquisition is conducted under an MOU cited in 619.800, the 8(a) contractor is responsible for negotiating with the agency within the time established by the agency. If the 8(a) contractor does not negotiate within the established time and the agency cannot allow additional time, the agency may, after notification and approval by SBA, proceed with the acquisition from other sources.

(b) If the acquisition is conducted under an MOU cited in 619.800, the agency is delegated the authority to negotiate directly with the 8(a) participant; however, if requested by the 8(a) participant, the SBA may participate in the negotiations.

619.810 SBA appeals.

(d) The Procurement Executive is the agency head for the purposes of FAR 19.812(d).

619.811 Preparing the contracts.

619.811-1 Sole source.

(d) If the award is to be made under an MOU cited in 619.800, the contract to be awarded by the contracting activity to the 8(a) firm shall be prepared in accordance with the contracting activity's normal procedures, given contract type and dollar amount, that the contracting activity would use for a similar, non-8(a) acquisition, except for the following:

(1) The award form shall cite 41 U.S.C. 253(c)(5) or 10 U.S.C. 2304(c)(5), as appropriate, and 15 U.S.C. 637(a) as the authority for use of other than full and open competition.

(2) The contracting officer shall insert FAR 52.219-14, Limitations on Subcontracting, and DOSAR 652.219-71, Section 8(a) Direct Awards.

(3) For acquisitions exceeding \$100,000, the contracting activity shall include SBA's requirement number on the award document.

(4) A single award document shall be used between the agency and the 8(a) contractor, i.e., an SBA signature will not be required. The title of the agency contracting officer shall include the contracting activity, as follows: Contracting Officer for the Department of State [insert contracting activity]. In

addition, in accordance with the MOU, A/SDBU staff who have been issued limited contracting officer warrants for this purpose shall sign the contract as a third party. The 8(a) contractor's signature shall be placed on the award document as the prime contractor. The 8(a) contractor's name and address shall be placed in the "Awarded to" or "Contractor name" block on the appropriate form.

619.811-2 Competitive.

(a) If the award is made under the delegation of 8(a) contracting authority, competitive contracts for 8(a) firms shall be prepared in accordance with the same standards as 8(a) sole source contracts. See 619.811-1.

(b) If the acquisition is conducted under the MOU cited in 619.800, the process for obtaining signatures shall be as specified in 619.811-1(d)(4).

619.811-3 Contract clauses.

(d)(3) The contracting officer shall insert the clause at FAR 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, with its Alternate III (Deviation), in competitive solicitations and contracts exceeding \$100,000 when the acquisition is processed under the MOU cited in 619.800.

(f) The contracting officer shall insert the clause at FAR 52.219-14, Limitations on Subcontracting, and DOSAR 652.219-71, Section 8(a) Direct Awards, in all solicitations and contracts that are processed under the MOU cited at 619.800. The clauses at FAR 52.219-11, Special 8(a) Contract Conditions; 52.219-12, Special 8(a) Subcontract Conditions; and, 52.219-17, Section 8(a) Award, shall not be used.

619.812 Contract administration.

(d) The head of the contracting activity is the agency head for the purposes of FAR 19.812(d). Awards under the MOU cited in 619.800 are subject to 15 U.S.C. 637(a)(21). These contracts contain the clause at DOSAR 652.219-71, Section 8(a) Direct Awards, that requires the 8(a) contractor to notify the SBA and the contracting officer when ownership of the firm is being transferred.

PART 622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

63. Section 622.401 is removed.

64. Section 622.406-3 is removed.

65. Section 622.803 is added to read as follows:

622.803 Responsibilities.

(c) The Procurement Executive is the agency head for the purpose of FAR 22.803(c).

66. The heading of Subpart 622.13 is revised to read as follows:

Subpart 622.13—Disabled Veterans and Veterans of the Vietnam Era

67. The heading of Subpart 622.14 is revised to read as follows:

Subpart 622.14—Employment of Workers with Disabilities**PART 623—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

68. Subpart 623.4 is revised to read as follows:

Subpart 623.4—Use of Recovered Materials

Sec.

623.400 Scope of subpart.

623.404 Procedures.

Subpart 623.4—Use of Recovered Materials**623.400 Scope of subpart.**

The affirmative procurement program is applicable to all domestic acquisitions of items currently designated by an EPA guideline or by future guidelines promulgated by EPA. The requirements of this section are not applicable to acquisitions made and/or performed outside the United States or its possessions.

623.404 Procedures.

(b)(2) The requirements office initiating an acquisition is responsible for determining whether recovered materials should be included in the specifications. Requirements offices may purchase EPA designated items containing other than recovered materials only if one of the exemptions listed in FAR 23.404(b)(3) applies. If the requirements office determines to acquire EPA designated items that do not contain recovered materials, a written justification must be submitted to the head of the contracting activity.

(i) Contracts for the purchase of, or requiring the supply of, any EPA designated item shall require that the item conform to the EPA guidelines, unless an exception has been approved by the head of the contracting activity in accordance with FAR 23.404(b)(3) and DOSAR 623.404(b)(3).

(ii) Contracting officers shall promote the fact that the Department is seeking to buy items containing recovered materials at pre-bid and pre-proposal conferences, when appropriate. Other

means of promotion may include a specific notice on a solicitation's cover letter, calling attention to the requirement for recovered materials.

(iii) Contracting officers shall include FAR clause 52.223-9 to ensure that contractors estimate, certify, and verify the amount of recovered material used in the performance of the contract.

(iv) The effectiveness of the program shall be reviewed annually by A/OPE. An assessment will be made to determine if greater use of recovered materials is possible for the existing requirements or if recovered materials are causing undue delay, lack of competition, unreasonable prices, or an unacceptable level of performance.

(3) The head of the contracting activity is the agency head for the purpose of FAR 23.404(b)(3).

PART 625—FOREIGN ACQUISITION

69. Subpart 625.9, consisting of sections 625.901 and 625.903, is removed.

70. Subpart 625.70 is added to read as follows:

Subpart 625.70—Arab League Boycott and Related Provisions

Sec.

625.7001 Policy.

625.7002 Solicitation provision and contract clause.

Subpart 625.70—Arab League Boycott and Related Provisions**625.7001 Policy.**

(a) Section 565 of the Fiscal Year 94/95 Foreign Relations Authorizations Act (Pub. L. 103-236) prohibits the Department of State from entering into any contract that expends funds appropriated to the Department of State:

(1) With a foreign person that complies with the Arab League Boycott of Israel; or,

(2) With any foreign or United States person that discriminates in the award of subcontracts on the basis of religion.

This authority has continuing effect. Section 565 requires specific language to be included in all Invitations for Bids and Requests for Proposals with respect to a contract subject to Section 565's prohibitions.

(b) Section 565 may be waived on a country-by-country basis if such a waiver is in the national interest and necessary to carry on diplomatic functions.

625.7002 Solicitation provision and contract clause.

Contracting officers shall include the following provision and clause in all solicitations and contracts exceeding the simplified acquisition threshold, unless

a waiver has been granted in accordance with DOSAR 625.7001(b):

(a) 652.225-70, Arab League Boycott of Israel; and

(b) 652.225-71, Section 8(a) of the Export Administration Act, as amended.

71. Part 626 is added to subchapter D to read as follows:

PART 626—OTHER SOCIOECONOMIC PROGRAMS**Subpart 626.2—Minority Business Enterprise****626.200-70 Solicitation provision.**

The contracting officer shall insert the provision at 652.226-70, Certification of Status as a Minority Business Enterprise, in all solicitations issued by domestic contracting activities. If the solicitation is being issued using electronic commerce, the contracting officer shall use the provision with its Alternate I.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS**PART 628—BONDS AND INSURANCE**

72. Section 628.305 is amended by revising the second and third sentences of paragraph (b) introductory text and adding a fourth sentence to read as follows; and by removing paragraphs (b)(1), (b)(2), and (b)(3):

628.305 Overseas workers' compensation and war-hazard insurance.

* * * * *

(b) * * * In countries where local nationals and/or third country nationals will be employed to perform the contract, such countries have been waived by the Secretary of Labor. Whenever such insurance is required under the contract, the contracting officer shall insert the clause at 652.228-71, Worker's Compensation Insurance (Defense Base Act)—Services. If the contract is for construction, the contracting officer shall insert the clause with its Alternate I.

* * * * *

73. Section 628.306 is revised to read as follows:

628.306 Insurance under fixed-price contracts.

The contracting officer shall insert the provision at 652.228-74, Defense Base Act Insurance Rates—Limitation—Fixed-Price, in solicitations for fixed-price or construction contracts to be performed outside the United States by United States citizens, residents, and/or those hired in the United States.

74. Section 628.307 is revised to read as follows:

628.307 Insurance under cost-reimbursement contracts.

The contracting officer shall insert the provision at 652.228-76, Defense Base Act Insurance Rates—Limitation—Cost-Reimbursement, Labor-Hour, and Time-and-Materials, in solicitations for cost-reimbursement, labor-hour, or time-and-materials type contracts to be performed outside the United States by United States citizens, residents, and/or those hired in the United States.

75. Section 628.307-70 is removed.

PART 629—TAXES

76. Section 629.402, consisting of sections 629.402-1 and 629.402-1-70, is added to read as follows:

629.402 Foreign contracts.**629.402-1 Foreign fixed-price contracts.****629.402-1-70 DOSAR contract clause.**

The contracting officer shall insert the clause at 652.229-71, Personal Property Disposition at Posts Abroad, in all solicitations and contracts performed overseas.

PART 630—COST ACCOUNTING STANDARDS

77. Part 630 is removed.

PART 631—CONTRACT COST PRINCIPLES AND PROCEDURES

78. Subpart 631.2 is added to read as follows:

Subpart 631.2—Contracts with Commercial Organizations**631.205 Selected costs.****631.205-6 Compensation for personal services.**

(g)(3) The head of the contracting activity is the agency head's designee for the purpose of FAR 31.205-6(g)(3).

PART 632—CONTRACT FINANCING

79. Section 632.006, consisting of sections 632.006-1, 632.006-2, and 632.006-4, is added to read as follows:

PART 632—CONTRACT FINANCING

Sec.

- 632.006 Reduction or suspension of contract payments upon finding of fraud.
- 632.006-1 General.
- 632.006-2 Definitions.
- 632.006-4 Procedures.

632.006 Reduction or suspension of contract payments upon finding of fraud.**632.006-1 General.**

The Procurement Executive is the agency head for the purpose of FAR 32.006-1.

632.006-2 Definitions.

Remedy coordination official means the Assistant Inspector General for Investigations.

632.006-4 Procedures.

The Procurement Executive is the agency head for the purposes of FAR 32.006-4.

80. Subpart 632.1 is added to read as follows:

632.1 Non-Commercial Item Purchase Financing**632.114 Unusual contract financing.**

The Procurement Executive is the agency head for the purpose of FAR 32.114.

81. Subpart 632.2 is added to read as follows:

Subpart 632.2—Commercial Item Purchase Financing**632.201 Statutory authority.**

The head of the contracting activity is the agency head for the purpose of FAR 32.201.

82. Section 632.404 is added to read as follows:

632.404 Exclusions.

(a) Total advance payments may be authorized for the items listed in FAR 32.404(a), notwithstanding their designation as a commercial item and acquisition under FAR Part 12 procedures.

83. Subpart 632.7 is revised to read as follows:

Subpart 632.7—Contract Funding

Sec.

- 632.702 Policy.
- 632.702-70 DOS policy.
- 632.703 Contract funding requirements.
- 632.703-3 Contracts crossing fiscal years.
- 632.705 Contract clauses.
- 632.705-70 DOSAR contract clause.

Subpart 632.7—Contract Funding**632.702 Policy.****632.702-70 DOS policy.**

The Department's policy is to provide full funding for all contracts, to the maximum extent practicable. FAR 32.704 and 32.705-2 provide for incremental funding of cost-reimbursement contracts. Fixed-price, labor-hour, and time-and-materials contracts for severable services may also be incrementally funded if full funding is not available at the time of contract award and the contracting officer executes a determination and findings, approved by the requirements office, justifying the need for incremental funding due to the unavailability of funds.

632.703 Contract funding requirements.**632.703-3 Contracts crossing fiscal years.**

(b) The head of the contracting activity is the agency head for the purpose of FAR 32.703-3(b).

632.705 Contract clauses.**632.705-70 DOSAR contract clause.**

The contracting officer shall insert the clause at 652.232-72, Limitation of Funds, in incrementally funded fixed-price, labor-hour, and time-and-materials solicitations and contracts for severable services.

84. Section 632.803 is amended by adding the following sentence to the end of paragraph (b):

632.803 Policies.

(b) * * * The Directors, Regional Procurement Support Offices may approve the assignment of claims for contracts under their administration after obtaining legal consultation.

PART 633—PROTESTS, DISPUTES AND APPEALS

85. Section 633.102 is amended by removing the words "or the General Services Administration Board of Contract Appeals (GSBCA)".

86. Section 633.103 is revised to read as follows:

633.103 Protests to the agency.

(d)(4) The independent review as described in FAR 33.103(d)(4) shall be performed by the Departmental Competition Advocate.

87. Section 633.104 is revised to read as follows:

633.104 Protests to GAO.

(a) *General procedures.* The Office of the Assistant Legal Adviser for Buildings and Acquisitions (L/BA) coordinates the response of the Department of State to protests filed at the GAO. Contracting activities shall consult L/BA for guidance before taking any actions in response to a protest to GAO.

88. Section 633.105 is removed.

89. Section 633.211 is removed.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING**PART 634—MAJOR SYSTEM ACQUISITION**

90. Sections 634.001, 634.001-70, and 634.002 are removed.

91. Section 634.003 is amended in paragraph (a) by removing the second sentence.

92. Section 634.005-6 is amended by removing the period at the end of the sentence and adding the following

words to the end of the sentence "with power of redelegation to the Under Secretary for Management."

PART 636—CONSTRUCTION AND ARCHITECT-ENGINEERING CONTRACTS

93. Section 636.101-70 is amended by adding the following sentence:

636.101-70 Exception.

* * * The Deputy Assistant Secretary for Foreign Buildings Operations is authorized to waive the provisions of the FAR.

94. Subpart 636.5 is added to read as follows:

Subpart 636.5—Contract Clauses

636.513 Accident prevention.

(a) In accordance with a class deviation approved by the Procurement Executive, contracting officers at overseas contracting activities shall insert DOSAR 652.236-70, Accident Prevention, in lieu of FAR clause 52.236-13 when awarding construction contracts.

95. Section 636.602-1 is added to read as follows:

636.602-1 Selection criteria.

(b) The head of the contracting activity is the agency head's designee for the purpose of FAR 36.602-1(b).

PART 637—SERVICE CONTRACTING

96. Section 637.106 is removed.

97. Section 637.110 is amended by adding the following sentence to the end of paragraph (c):

637.110 Solicitation provisions and contract clauses.

* * * * *

(c) * * * Overseas contracting activities may add local holidays to the list included in paragraph (a) of the clause.

98. Subpart 637.2 is added to read as follows:

Subpart 637.2—Advisory and Assistance Services

637.204 Guidelines for determining availability of personnel.

The head of the contracting activity is the agency head for the purposes of FAR 37.204.

PART 639—ACQUISITION OF INFORMATION RESOURCES

99. Part 639, consisting of section 639.001-70, is removed.

100. Part 641 is added to subchapter F to read as follows:

PART 641—ACQUISITION OF UTILITY SERVICES

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subpart 641.2—Acquiring Utility Services

641.201 Policy.

(d) The Procurement Executive is the agency head for the purposes of FAR 41.201(d)(2)(i) and FAR 41.201(d)(3).

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 642—CONTRACT ADMINISTRATION

101. Subpart 642.7 is added to read as follows:

Subpart 642.7—Indirect Cost Rates

642.703 General.

642.703-2 Certificate of indirect costs.

(b) The head of the contracting activity is the agency head's designee for the purpose of FAR 42.703-2(b).

PART 643—CONTRACT MODIFICATIONS

102. Section 643.102-70 is revised by removing paragraph (b) and by removing the paragraph designation in paragraph (a).

103. Section 643.104, consisting of section 643.104-70, is added to read as follows:

643.104 Notification of contract changes.

643.104-70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.243-70, Notices, in all solicitations and contracts exceeding the micro-purchase threshold which are awarded or performed overseas.

104. Part 644 is added to subchapter G to read as follows:

PART 644—SUBCONTRACTING POLICIES AND PROCEDURES

Authority: 40 U.S.C. 486 (c); 22 U.S.C. 2658.

Subpart 644.3—Contractor's Purchasing System Reviews

644.302 Requirements.

(a) The Procurement Executive is the head of the agency for the purpose of FAR 44.302(a).

PART 645—GOVERNMENT PROPERTY

105. Subpart 645.4 is added to read as follows:

Subpart 645.4—Contractor Use and Rental of Government Property

645.403 Rental—Use and Charges clause.

(a) The head of the contracting activity is the agency head's designee for the purpose of FAR 45.403(a).

PART 646—QUALITY ASSURANCE

106. Part 646 is removed.

PART 647—TRANSPORTATION

107. Subpart 647.2 is added to read as follows:

Subpart 647.2—Contracts for Transportation or for Transportation-Related Services

647.207 Solicitation provisions, contract clauses, and special requirements.

647.207-7 Liability and insurance.

(e) The Procurement Executive has approved a class deviation for paragraph (c) of FAR clause 52.247-23, Contractor Liability for Loss of and/or Damage to Household Goods. The contracting officer shall indicate that the contractor shall indemnify the owner of the goods at a rate of \$5.00 per pound (or metric equivalent in local currency) based on the total net weight. The rate conforms with liability calculations found in International Through Government Bills of Lading (ITGBL).

PART 649—TERMINATION OF CONTRACTS

108. Section 649.111 is removed.

SUBCHAPTER H—CLAUSES AND FORMS

PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

109. Section 652.203-70 is removed.
110. Section 652.203-71 is removed.
111. Section 652.204-70 is removed.
112. Section 652.204-71 is removed.
113. Section 652.206-70 is revised to read as follows:

652.206-70 Competition Advocacy/Ombudsman.

As prescribed in 606.570, insert the following provision:

Competition Advocacy/Ombudsman (MO/YR)

(a) The Department of State's Competition Advocate is responsible for assisting industry in removing restrictive requirements from Department of State solicitations and removing barriers to full and open competition and use of commercial items. If such a solicitation is considered competitively restrictive or does not appear properly conducive to competition and commercial practices, potential offerors are

encouraged to first contact the contracting officer for the respective solicitation. If concerns remain unresolved, contact the Department of State Competition Advocate on (703) 516-1680, by fax at (703) 875-6155, or write to: Department of State, Competition Advocate, Office of the Procurement Executive (A/OPE), Suite 603, SA-6, Washington, DC 20522-0602.

(b) The Department of State's Acquisition Ombudsman has been appointed to hear concerns from potential offerors and contractors during the preaward and postaward phases of this acquisition. The role of the ombudsman is not to diminish the authority of the contracting officer, the Technical Evaluation Panel or Source Evaluation Board, or the selection official. The purpose of the ombudsman is to facilitate the communication of concerns, issues, disagreements, and recommendations of interested parties to the appropriate Government personnel, and work to resolve them. When requested and appropriate, the ombudsman will maintain strict confidentiality as to the source of the concern. The ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Interested parties are invited to contact the contracting activity ombudsman, [insert name], at [insert telephone and fax numbers]. For an American Embassy or overseas post, refer to the numbers below for the Department Acquisition Ombudsman. Concerns, issues, disagreements, and recommendations which cannot be resolved at a contracting activity level may be referred to the Department of State Acquisition Ombudsman at (703) 516-1680, by fax at (703) 875-6155, or write to: Department of State, Acquisition Ombudsman, Office of the Procurement Executive (A/OPE), Suite 603, SA-6, Washington, DC 20522-0602.

(End of provision)

114. Section 652.214-70 is removed and reserved.

115. Section 652.214-71 is revised to read as follows:

652.214-71 Authorization to Perform.

As prescribed in 614.201-6-70(c) and 615.209-70, insert the following provision:

Authorization to Perform (MO/YR)

(a) The offeror agrees, should it be selected for contract award, that

(1) It has obtained (or will obtain by the date specified in the solicitation), authorization to operate and do business in the country or countries in which this contract will be performed;

(2) It has obtained (or will obtain by the date specified in the solicitation), all necessary licenses and permits required to perform this contract; and

(3) It shall comply fully with all laws, decrees, labor standards and regulations of said country or countries during the performance of this contract.

(b) If the party actually performing the work will be a subcontractor or joint venture partner, then such subcontractor or joint venture partner agrees to the requirements of paragraph (a) of this provision.

(End of provision)

116. Section 652.216-70 is amended by revising the introductory text to read as follows:

652.216-70 Ordering—Indefinite-Delivery Contract.

As prescribed in 616.506-70, insert the following clause:

* * * * *

117. Section 652.216-71 is revised to read as follows:

652.216-71 Price Adjustment.

As prescribed in 616.203-4, insert a clause substantially the same as follows:

Price Adjustment (MO/YR)

(a) The contract price may be increased or decreased in actual costs of direct service labor which result directly from laws enacted and effective during the term of this contract by the [insert name of country] Government. Direct service labor costs include only the costs of wages and direct benefits (such as social security, health insurance, unemployment compensation insurance) paid to or incurred for the direct benefit of personnel performing services under one of the categories listed in Section [identify section number] of this contract. Price adjustments will include only changes in direct service labor costs incurred in order to comply with the requirements of the law. No adjustment will be made under this clause with respect to labor costs of personnel not performing direct service labor under the categories of Section [identify section number], nor for overhead, profit, general and administrative (G&A) costs, taxes or any other costs whatsoever.

(b) For the contracting officer to consider any request for adjustment, the contractor shall demonstrate in writing:

(1) That the change in the law occurred during the term of this contract and subsequent to the award date of this contract; and,

(2) That the change in the law could not have been reasonably anticipated prior to contract award; and,

(3) How the change in the law directly affects the contractor's costs under this contract.

(c) The contractor shall present data that clearly supports any request for adjustment. This data shall be submitted no later than 30 calendar days after the changes in the law have been made public. This data shall include, but not be limited to, the following:

(1) The calculation of the amount of adjustment requested; and,

(2) Documentation which identifies and provides the appropriate portions of the text of the particular law from which the request is derived.

(d) In order to establish the change between the requested adjusted rate and the original rate, the contractor shall support the appropriate data and composition of the original rate and the requested adjusted rate. This shall include details regarding specific hourly rates paid to individual employees. The allowable adjustment shall be limited to the extent to which increases in direct

service labor costs due to host country law changes are not offset by exchange rate gains. For contracts paid in U.S. dollars, the contractor's request for price adjustment shall present data reflecting:

(1) The exchange rate in effect on the date of the contractor's proposal that was accepted for the basic contract; and

(2) The current exchange rate and its effect on payment of workers in local currency.

(e) Only direct cost changes mandated by enacted laws shall be considered for adjustment under this contract. Changes for purposes of maintaining parity of pay between employees at the minimum mandated levels and employees already paid at levels above the newly mandated minimums shall not be considered. Therefore, if the contractor elects to increase payments to employees who are already being paid at or above the mandated amounts, such increased costs shall be borne solely by the contractor and shall not be justification for an increase in the hourly and monthly rates under this contract.

(f) Any request for adjustment shall be presented by signature of an officer or general partner of the contractor having overall responsibility for the conduct of the contractor's affairs.

(g) No adjustment shall be made to the contract price that relates to any indirect, overhead, or fixed costs, profit or fee. Only the changes in direct service labor wages (and any benefits based directly on wages) shall be considered by the U.S. Government as basis for contract price changes.

(h) No request by the contractor for an adjustment under this clause shall be allowed if asserted after final payment has been made under this contract.

(i) This clause shall only apply to laws enacted by the [insert name of country] Government meeting the criterion set forth in paragraph (b) of this clause. No adjustments shall be made due to currency fluctuations in exchange rates.

(End of clause)

118. Section 652.219-71 is added to read as follows:

652.219-71 Section 8(a) direct awards.

As prescribed in 619.811-3(f), insert the following clause:

Section 8(a) Direct Awards (MO/YR)

(a) This purchase order or contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to the Memorandum of Understanding between the Small Business Administration (SBA) and the Department of State (DOS). SBA retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and provides counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is: [To be completed by the contracting officer at the time of award]

(b) The DOS contracting officer is responsible for administering the purchase

order or contract and taking any action on behalf of the Government under the terms and conditions of the purchase order or contract. However, the DOS contracting officer shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the purchase order or contract. The DOS contracting officer shall also coordinate with SBA prior to processing any novation agreement. The DOS contracting officer may assign contract administration functions to a contract administration office.

(c) The contractor agrees:

(1) To notify the DOS contracting officer, simultaneous with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based, plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership and control; and,

(2) To adhere to the requirements of FAR 52.219-14, Limitations on Subcontracting. (End of clause)

119. Section 652.223-70 is removed.

120. Section 652.223-71 is removed.

121. Section 652.223-72 is removed.

122. Section 652.223-73 is removed.

123. Section 652.223-74 is removed.

124. Section 652.223-75 is removed.

125. Section 652.223-76 is removed.

126. Section 652.223-77 is removed.

127. Section 652.223-78 is removed.

128. Section 652.225-70 is added to read as follows:

652.225-70 Arab League Boycott of Israel.

As prescribed in 625.7002(a), insert the following provision:

Arab League Boycott of Israel (MO/YR)

(a) Definitions. As used in this provision:

Foreign person means any person other than a United States person as defined in this paragraph (a).

United States person means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as provided under the Export Administration Act of 1979, as amended.

(b) Certification. By submitting this offer, the offeror certifies that it is not:

(1) Taking or knowingly agreeing to take any action, with respect to the boycott of Israel by Arab League countries, which Section 8(a) of the Export Administration Act of 1979, as amended (50 U.S.C. 2407(a)) prohibits a United States person from taking; or,

(2) Discriminating in the award of subcontracts on the basis of religion.

(End of provision)

129. Section 652.225-71 is added to read as follows:

652.225-71 Section 8(a) of the Export Administration Act of 1979, as amended.

As prescribed in 625.7002(b), insert the following clause:

Section 8(a) of the Export Administration Act of 1979, as Amended (MO/YR)

(a) Section 8(a) of the U.S. Export Administration Act of 1979, as amended (50 U.S.C. 2407(a)), prohibits compliance by U.S. persons with any boycott fostered by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation. The Boycott of Israel by Arab League countries is such a boycott, and therefore, the following actions, if taken with intent to comply with, further, or support the Arab League Boycott of Israel, are prohibited activities under the Export Administration Act:

(1) Refusing, or requiring any U.S. person to refuse to do business with or in Israel, with any Israeli business concern, or with any national or resident of Israel, or with any other person, pursuant to an agreement of, or a request from or on behalf of a boycotting country;

(2) Refusing, or requiring any U.S. person to refuse to employ or otherwise discriminating against any person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person;

(3) Furnishing information with respect to the race, religion, or national origin of any U.S. person or of any owner, officer, director, or employee of such U.S. person;

(4) Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the State of Israel, with any business concern organized under the laws of the State of Israel, with any Israeli national or resident, or with any person which is known or believed to be restricted from having any business relationship with or in Israel;

(5) Furnishing information about whether any person is a member of, has made contributions to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the State of Israel; and,

(6) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement against doing business with the State of Israel.

(b) Under Section 8(a), the following types of activities are not forbidden "compliance with the boycott," and are therefore exempted from Section 8(a)'s prohibitions listed in paragraphs (a) (1) through (6) of this clause:

(1) Complying or agreeing to comply with requirements:

(i) Prohibiting the import of goods or services from Israel or goods produced or services provided by any business concern organized under the laws of Israel or by nationals or residents of Israel; or,

(ii) Prohibiting the shipment of goods to Israel on a carrier of Israel, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

(2) Complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms, other than with respect to carriers or route of shipments as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

(3) Complying or agreeing to comply in the normal course of business with the unilateral and specific selection by a boycotting country, or national or resident thereof, of carriers, insurance, suppliers of services to be performed within the boycotting country or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country;

(4) Complying or agreeing to comply with the export requirements of the boycotting country relating to shipments or transshipments of exports to Israel, to any business concern of or organized under the laws of Israel, or to any national or resident of Israel;

(5) Compliance by an individual or agreement by an individual to comply with the immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for information regarding requirements of employment of such individual within the boycotting country; and,

(6) Compliance by a U.S. person resident in a foreign country or agreement by such person to comply with the laws of that country with respect to his or her activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of that foreign country governing imports into such country of trademarked, trade named, or similarly specifically identifiable products, or components of products for his or her own use, including the performance of contractual services within that country, as may be defined by such regulations.

(End of clause)

130. Section 652.226-70 is added to read as follows:

652.226-70 Certification of status as a minority business enterprise.

As prescribed in 626.200-70, insert the following provision:

Certification of Status as a Minority Business Enterprise (MO/YR)

The Bidder/Offeror/Supplier certifies that is ☐ is ☐ is not ☐ [check one] a minority

business enterprise which is defined as a business which is at least 51 percent owned by one or more minority individuals or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority individuals, and whose management and daily operations are controlled by one or more such individuals. For purposes of this definition, minority individuals are:

[Check the applicable block]

[] Black Americans

[] Hispanic Americans

[] Native Americans

[] Asian-Pacific Americans

[] Other groups whose members are U.S.

citizens and are found to be disadvantaged by the Small Business Administration pursuant to Section 8(d) of the Small Business Act, as amended (15 U.S.C. 637(d)), or the Secretary of Commerce.

(End of provision)

Alternate I (MO/YR).

Certification of Status as a Minority Business Enterprise (Alternate I) (MO/YR)

(a) If you are a minority-owned business, please indicate in the comments section of your quote/response the applicable minority designation from those listed in paragraph (b) of this provision. If no comments are received, it shall be assumed that you are not a minority-owned business. This request for information is to assist the Department collect statistics on awards to minority-owned businesses and will not influence the award decision.

(b) A minority business enterprise is defined as a business which is at least 51 percent owned by one or more minority individuals or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority individuals, and whose management and daily operations are controlled by one or more such individuals. For purposes of this definition, minority individuals are: Black Americans; Hispanic Americans; Native Americans; Asian-Pacific Americans; and, other groups whose members are U.S. citizens and are found to be disadvantaged by the Small Business Administration pursuant to Section 8(d) of the Small Business Act, as amended (15 U.S.C. 637(d)), or the Secretary of Commerce.

(End of provision)

131. Section 652.228-70 is amended by revising the introductory text to read as follows:

652.228-70 Indemnification.

As prescribed in 628.7001(b), insert the following clause:

* * * * *

132. Section 652.228-71 is revised to read as follows:

652.228-71 Worker's Compensation Insurance (Defense Base Act)—Services

As prescribed in 628.305(b), insert the following clause:

Worker's Compensation Insurance (Defense Base Act)—Services (MO/YR)

(a) This clause supplements FAR 52.228-3.

(b) The contractor agrees to procure Defense Base Act (DBA) insurance pursuant to the terms of the contract between the Department of State and the Department's DBA insurance carrier unless the contractor has a DBA self-insurance program approved by the Department of Labor. The contractor shall submit a copy of the Department of Labor's approval to the contracting officer upon contract award. The current rate under the Department of State contract is [contracting officer insert rate] of compensation for services.

(c) Since the Department of State has obtained a waiver of DBA coverage for contractor employees who are not citizens of, residents of, or hired in the United States, the contractor agrees to provide such employees with worker's compensation benefits as required by the laws of the country in which the employees are working, or by the laws of the employee's native country, whichever offers greater benefits.

(d) The contractor agrees to insert a clause substantially the same as this one in all subcontracts to which the DBA is applicable. Subcontractors shall be required to insert a similar clause in any of their subcontracts subject to the DBA.

(e) Should the rates for DBA insurance coverage increase or decrease during the performance of this contract, the Department shall modify this contract accordingly.

(f) The contractor shall demonstrate to the satisfaction of the contracting officer that the insurance increase or decrease does not include any reserve for such insurance. Adjustment shall not include any overhead, profit, general and administrative expenses, etc.

(End of clause)

Alternate I (MO/YR). If the contract is for construction, as prescribed in 628.305(b), substitute the last sentence of paragraph (b) to read as follows: "The current rate under the Department of State contract is [contracting officer insert rate] of compensation for construction."

133. Section 652.228-72 is removed and reserved.

134. Section 652.228-73 is removed and reserved.

135. Section 652.228-74 is revised to read as follows:

652.228-74 Defense Base Act insurance rates—Limitation—Fixed-price.

As prescribed in 628.306, insert the following provision:

Defense Base Act Insurance Rates—Limitation—Fixed-Price (MO/YR)

(a) The Department of State has entered into a contract with an insurance carrier to provide DBA insurance to Department of State contractors at a contracted rate. The rates for this insurance are as follows:

Services @ [contracting officer insert current rate] of compensation; or Construction @ [contracting officer insert current rate] of compensation.

(b) Bidders/offerors should compute the total compensation (direct salary plus differential, but excluding per diem, housing

allowance and other miscellaneous post allowances) to be paid to employees who will be covered by DBA insurance and the cost of DBA insurance in their bid/proposal using the foregoing rate, and insert the totals in the spaces provided for the base year and each year thereafter, if applicable. The DBA insurance cost shall be included in the total fixed price. The DBA insurance costs shall be reimbursed directly to the contractor.

(1) Compensation of Covered Employees: _____

(2) Defense Base Act Insurance Costs: _____

(3) Total Cost: _____

(c) Bidders/offerors shall include a statement as to whether or not local nationals or third country nationals will be employed on the resultant contract.

(End of provision)

136. Section 652.228-75 is removed and reserved.

137. Section 652.228-76 is revised to read as follows:

652.228-76 Defense Base Act insurance rates—Limitation—Cost-reimbursement, labor-hour, and time-and-materials.

As prescribed in 628.307, insert the following provision:

Defense Base Act Insurance Rates—Limitation—Cost-Reimbursement, Labor-Hour, and Time-and-Materials (MO/YR)

(a) The Department of State has entered into a contract with an insurance carrier to provide DBA insurance to Department of State contractors at a contracted rate. In preparing the cost proposal, the offeror shall use the following rates in computing the cost for DBA insurance:

Services @ [contracting officer insert current rate] of compensation (direct salary plus differential, but excluding per diem, housing allowance, education allowance, and miscellaneous allowances); or

Construction @ [contracting officer insert current rate] of compensation.

(b) These rates apply to all job classifications in those particular categories. The successful offeror shall be advised of the name and address of the insurance broker who will process the DBA insurance coverage.

(c) Should an offeror compute or include higher DBA insurance rates, the rates shall be disallowed.

(d) Offerors shall include a statement as to whether or not local nationals or third country nationals will be employed on the resultant contract.

(End of provision)

138. Section 652.228-77 is removed.

139. Section 652.229-70 is amended by revising the introductory text to read as follows:

652.229-70 Excise tax exemption statement for contractors within the United States.

As prescribed in 629.401-70, insert the following clause:

* * * * *

140. Section 652.229-71 is added to read as follows:

652.229-71 Personal property disposition at posts abroad.

As prescribed in 629.402-1-70, insert the following clause:

Personal Property Disposition at Posts Abroad (MO/YR)

Regulations at 22 CFR Part 136 require that U.S. Government employees and their families do not profit personally from sales or other transactions with persons who are not themselves entitled to exemption from import restrictions, duties, or taxes. Should the contractor experience importation or tax privileges in a foreign country because of its contractual relationship to the United States Government, the contractor shall observe the requirements of 22 CFR Part 136 and all policies, rules, and procedures issued by the chief of mission in that foreign country.
(End of clause)

141. Section 652.232-70 is amended in paragraph (c) of the clause by revising the first sentence to read as follows:

652.232-70 Payment Schedule and Invoice Submission—(Fixed-Price).

* * * * *

Payment Schedule and Invoice Submission (Fixed-Price) (MO/YR)

* * * * *

(c) Invoice Submission. Invoices shall be submitted in an original and [contracting officer insert appropriate number of copies] to the office identified in Block 10 of the SF-26, Block 23 of the SF-33, or Block 18b of the SF-1449. * * *

* * * * *

142. Section 652.232-71 is amended in paragraph (a) by revising the last sentence to read as follows:

652.232-71 Voucher Submission (Cost-Reimbursement).

* * * * *

Voucher Submission (Cost-Reimbursement) (MO/YR)

(a) * * * All vouchers shall be submitted to the office identified in Block 10 of the SF-26, Block 23 of the SF-33, or Block 18b of the SF-1449.

* * * * *

143. Section 652.232-72 is added to read as follows:

652.232-72 Limitation of funds.

As prescribed in 632.705-70, insert the following clause:

Limitation of Funds (MO/YR)

(a) Of the total price in Section B (or the "Prices" section), only the amount stated on the contract award document or subsequent modifications is now available for payment and obligated under this contract. It is anticipated that from time to time, additional funds will be obligated under the contract until the total price of the contract is obligated.

(b) The Government is not obligated to pay or reimburse the contractor more than the amount obligated pursuant to this clause.

The contractor agrees to perform the contract up to the point at which the total amount paid and payable by the Government (including amounts payable for subcontracts and settlement costs if this contract is terminated for convenience) approximates but does not exceed the total amount obligated.

(c)(1) It is contemplated that funds now obligated under this contract will cover the work to be performed until [contracting officer insert date].

(2) If the contractor considers the funds obligated under this contract to be insufficient to cover the work to be performed until that date, or another date agreed to by the parties, the contractor shall notify the contracting officer in writing and indicate the date on which it expects expended funds to approximate 75 percent of the total amount obligated. The notice shall state the estimated amount of additional funds required to continue performance through the date specified in paragraph (c)(1) of this clause or another date agreed to by the parties.

(3) If, after notification is provided pursuant to paragraph (c)(2) of this clause, additional funds are not obligated, or an earlier date than the date in paragraph (c)(1) of this clause is not agreed to, the contractor shall not be obligated to continue performance under this contract (including actions under the termination clause of this contract) beyond the funds obligated for contract performance.

(d) When additional funds are obligated from time to time for continued performance of this contract, the contract shall be modified to increase the funds obligated and to indicate the period of performance for which funds are applicable. The contractor may notify the contracting officer as provided in paragraph (c)(2) of this clause regarding any additional funds obligated.

(e) If the contractor incurs additional costs or is delayed in the performance of work under this contract, solely by reason of the Government's failure to obligate additional funds in amounts sufficient for the timely performance of this contract, an equitable adjustment may be made to the price, or time of delivery, or both.

(f) This clause shall become inoperative upon obligation of funds sufficient to cover the full price stated in the contract, except for rights and obligations then existing under this clause.

(g) Nothing in this clause shall affect the Government's right to terminate the contract for convenience or default.

(End of clause)

144. Section 652.236-70 is added to read as follows:

652.236-70 Accident prevention.

As prescribed in 636.513, insert the following clause:

Accident Prevention (MO/YR)

(a) General. The contractor shall provide and maintain work environments and procedures which will safeguard the public and Government personnel, property, materials, supplies, and equipment exposed

to contractor operations and activities; avoid interruptions of Government operations and delays in project completion dates; and, control costs in the performance of this contract. For these purposes, the contractor shall:

(1) Provide appropriate safety barricades, signs and signal lights;

(2) Comply with the standards issued by any local government authority having jurisdiction over occupational health and safety issues; and,

(3) Ensure that any additional measures the contracting officer determines to be reasonably necessary for this purpose are taken.

(4) [The contracting officer shall specify additional requirements regarding safety if the work involves scaffolding or other work at heights above 2 meters, trenches or other excavation greater than 1 meter, earth moving equipment, electrical hazards, work in confined spaces (limited exits, potential for oxygen less than 19.5%, toxic or combustible atmosphere, potential for solid or liquid engulfment, or other hazards considered to be immediately dangerous to life or health such as water tanks, transformer vaults, sewers, cisterns, etc.), or hazardous materials (especially those used indoors, e.g., paints, solvents, etc.).]

(b) Records. The contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to or theft of property, materials, supplies, or equipment. The contractor shall report this data in the manner prescribed by the contracting officer.

(c) Subcontracts. The contractor shall be responsible for its subcontractors' compliance with this clause.

(d) Written program. Before commencing work, the contractor shall:

(1) Submit a written plan for implementing this clause; and,

(2) Meet with the contracting officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

(e) Notification. The contracting officer shall notify the contractor of any non-compliance with these requirements and the corrective actions required. This notice, when delivered to the contractor or the contractor's representative on site, shall be deemed sufficient notice of the non-compliance and corrective action required. After receiving the notice, the contractor shall immediately take corrective action. If the contractor fails or refuses to promptly take corrective action, the contracting officer may issue an order suspending all or part of the work until satisfactory corrective action has been taken. The contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any suspension of work order issued under this clause.

(End of clause)

145. Section 652.237-71 is amended by revising the clause date to "(MO/YR)"; and, in paragraph (c) of the clause by removing the words "Building Pass

Application Unit, Room 309, State Annex Number 1, Columbia Plaza., 22401 E Street, NW, Washington, DC” and inserting the words “Building Pass Application Unit, Room B266, Department of State, 2201 C Street, NW, Washington, DC” in their place.

146. Section 652.237–72 is amended by revising the clause date to “(MO/YR)”; and, in paragraph (a) of the clause by removing the words “President’s Day” from the list of designated holidays and inserting the words “Washington’s Birthday” in their place.

147. Section 652.242–70 is amended by revising the clause date to “(MO/YR)”; and by deleting the parenthetical “[insert name of COR]” in paragraph (b) of the clause and inserting the words “[insert job title of COR]” in their place.

148. Section 652.242–71 is amended by revising the introductory text to read as follows:

652.242–71 Notice of Shipments.

As prescribed in 642.1406–2–70(a), insert the following clause:

* * * * *

149. Section 652.242–72 is amended by revising the introductory text to read as follows:

652.242–71 Shipping Instructions.

As prescribed in 642.1406–2–70(b), insert the following clause:

* * * * *

150. Section 652.243–70 is added to read as follows:

652.243–70 Notices.

As prescribed in 643.104–70, insert the following clause:

Notices (MO/YR)

Any notice or request relating to this contract given by either party to the other shall be in writing. Said notice or request shall be mailed or delivered by hand to the other party at the address provided in the schedule of the contract. All modifications to the contract must be made in writing by the contracting officer.

(End of clause)

151. Section 652.246–70 is removed.

PART 653—FORMS

152. Section 653.213–70 is removed.

153. Section 653.219 is amended by revising the section heading to read as follows:

653.219 Small business programs.

154. Section 653.219–70 is revised to read as follows:

653.219–70 DOS form DS–1910, Small Business Agency Review—Actions Above the Simplified Acquisition Threshold.

As prescribed in 619.501(c), DS–1910 is prescribed for use in documenting set-aside decisions.

Dated: November 16, 1998.

Lloyd W. Pratsch,

Procurement Executive.

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