

DEPARTMENT OF THE INTERIOR**Office of the Secretary****48 CFR Chapter 14**

RIN 1093-AA11

Acquisition Regulation Rewrite**AGENCY:** Office of the Secretary, Interior.**ACTION:** Interim final rule.

SUMMARY: The Department of the Interior (DOI) is taking interim final action on administrative changes to the Department of the Interior Acquisition Regulation (DIAR). This action revises the DIAR, 48 CFR Chapter 14, but does not impose any new requirements on DOI contractors. The revisions in this interim final rule will make minor corrections to and streamline DOI acquisition processes to be consistent with and non-duplicative of the Federal Acquisition Regulation (FAR). Some DIAR coverage is being revised and obsolete material is being removed. FAR clauses are now available that provide coverage for the DIAR clauses that are removed by this rule.

DATES: This rule is effective on May 17, 2010. Submit comments by June 14, 2010.

ADDRESSES: You may submit comments on the rulemaking through the Federal eRulemaking Portal at <http://www.regulations.gov>. Please use the Regulation Identifier Number (RIN) 1093-AA11 in your message. Follow the instructions on the Web site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Tiffany A. Schermerhorn, Senior Procurement Analyst, Office of Acquisition and Property Management, Office of the Secretary, telephone (202) 513-0747, fax (202) 219-4244, or e-mail tiffany_schermerhorn@ios.doi.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

This rule revises the Department of the Interior Acquisition Regulation (DIAR) in order to update references to other federal and Departmental directives, remove obsolete material and references, and clarify and streamline internal policies and procedures.

This rule is a result of the DIAR Rewrite Project. DOI is undertaking this project to revise the DIAR to maintain consistency with the FAR and make other administrative changes. No DOI clauses are being changed, with the exception of the removal of obsolete clauses. We view this as a noncontroversial amendment and anticipate no adverse comment. This

rule does not impose any new requirements on DOI contractors. All changes are minor and are consistent with the FAR. We are providing an opportunity for the public to comment on this interim rule and will carefully consider and respond to any comments that we receive. We have found good cause to publish this rule without prior proposal. We have determined that it would be impracticable, unnecessary, and contrary to the public interest to delay publication of this rule in final form pending an opportunity for public comment.

II. Procedural Matters**1. Public Availability of Comments**

Public availability of comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

2. Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

3. The Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements on small entities.

4. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

5. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

6. Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, this proposed rule does not have significant takings implications. This rule does not impose conditions or limitations on the use of any private property; consequently, a takings implication assessment is not required.

7. Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, this rule does not have Federalism implications. This rule does not substantially or directly affect the relationship between Federal and State governments or impose costs on States or localities. A Federalism Assessment is not required.

8. Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) of the Order.

9. Paperwork Reduction Act of 1995

This rule does not contain an information collection, as defined by the Paperwork Reduction Act.

10. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

11. Data Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

12. Effects on the Energy Supply

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

13. Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, which sections where you feel lists or tables would be useful, etc.

List of Subjects in 48 CFR Chapter 14

Government Procurement.

Dated: March 22, 2010.

Pamela K. Haze,

Deputy Assistant Secretary, Budget, Finance, Performance and Acquisition.

■ For the reasons set out in the preamble, we are revising Chapter 14 of Title 48 Code of Federal Regulations to read as follows:

Title 48—Federal Acquisition Regulations System
 CHAPTER 14—DEPARTMENT OF THE INTERIOR
 SUBCHAPTER A—GENERAL
 PART 1401—DEPARTMENT OF THE INTERIOR ACQUISITION REGULATION SYSTEM
 PART 1402—DEFINITIONS OF WORDS AND TERMS

PART 1403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST
 PART 1404—ADMINISTRATIVE MATTERS
 SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING
 PART 1405—PUBLICIZING CONTRACT ACTIONS
 PART 1406—COMPETITION REQUIREMENTS
 PART 1407—ACQUISITION PLANNING
 PART 1408—REQUIRED SOURCES OF SUPPLIES AND SERVICES
 PART 1409—CONTRACTOR QUALIFICATIONS
 PARTS 1410—1412 [RESERVED]
 SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES
 PART 1413—SIMPLIFIED ACQUISITION PROCEDURES
 PART 1414—SEALED BIDDING
 PART 1415—CONTRACTING BY NEGOTIATION
 PART 1416—TYPES OF CONTRACTS
 PART 1417—SPECIAL CONTRACTING METHODS
 PART 1418—[RESERVED]
 SUBCHAPTER D—SOCIOECONOMIC PROGRAMS
 PART 1419—SMALL BUSINESS PROGRAMS
 PARTS 1420—1421 [RESERVED]
 PART 1422—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS
 PART 1423—[RESERVED]
 PART 1424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION
 PART 1425—FOREIGN ACQUISITION
 PART 1426—OTHER SOCIOECONOMIC PROGRAMS
 SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS
 PART 1427—PATENTS, DATA, AND COPYRIGHTS
 PART 1428—BONDS AND INSURANCE
 PART 1429—TAXES
 PART 1430—COST ACCOUNTING STANDARDS ADMINISTRATION
 PART 1431—CONTRACT COST PRINCIPLES AND PROCEDURES
 PART 1432—CONTRACT FINANCING
 PART 1433—PROTESTS, DISPUTES, AND APPEALS
 SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING
 PART 1434—[RESERVED]
 PART 1435—RESEARCH AND DEVELOPMENT CONTRACTING
 PART 1436—CONSTRUCTION AND ARCHITECT—ENGINEER CONTRACTS
 PART 1437—SERVICE CONTRACTING
 PARTS 1438—1441 —[RESERVED]
 SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1442—CONTRACT ADMINISTRATION AND AUDIT SERVICES
 PART 1443—CONTRACT MODIFICATIONS
 PART 1444—[RESERVED]
 PART 1445—GOVERNMENT PROPERTY
 PART 1446—QUALITY ASSURANCE
 PART 1447—[RESERVED]
 PART 1448—VALUE ENGINEERING
 PART 1449—TERMINATION OF CONTRACTS
 PART 1450—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT
 PART 1451—USES OF GOVERNMENT SOURCES BY CONTRACTORS
 PART 1452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES
 SUBCHAPTER A—GENERAL

PART 1401—DEPARTMENT OF THE INTERIOR ACQUISITION REGULATION SYSTEM**Subpart 1401.1—Purpose, Authority, Issuance**

Sec.

1401.105–3 Copies.

Subpart 1401.2—Administration

1401.201 Maintenance of the Federal Acquisition Regulation (FAR).

1401.201–1 The Civilian Agency Acquisition Council (CAAC).

Subpart 1401.3—Agency Acquisition Regulations

1401.301 Policy.

1401.301–70 Definitions.

1401.303 Publication and codification.

1401.304 Agency control and compliance procedures.

1401.370 Acquisition Managers' Partnership.

Subpart 1401.4—Deviations from the FAR and DIAR

1401.403 Individual deviations.

1401.404 Class deviations.

1401.405 Deviations pertaining to treaties and executive agreements.

Subpart 1401.6—Career Development, Contracting Authority, and Responsibilities

1401.601 General.

1401.602 Contracting officers.

1401.602–1 Authority.

1401.602–3 Ratification of unauthorized commitments.

1401.603 Selection, appointment and termination of appointment.

1401.603–1 General.

1401.603–2 Selection.

1401.603–3 Appointment.

1401.670 Contracting officers' representatives.

1401.670–1 Contract clause.

Subpart 1401.70—Acquisition Reviews

1401.7000 Scope of subpart.

1401.7001 Review and approval of contract actions.

- 1401.7001-1 Review and approval by Assistant Secretaries.
- 1401.7001-2 Legal review by the Office of the Solicitor.
- 1401.7001-3 Administrative review and approval by bureaus and offices.
- 1401.7001-4 Acquisition performance measurement systems.
- 1401.7001-5 Acquisition Management Reviews (AMRs).

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1401.1—Purpose, Authority, Issuance

1401.105-3 Copies.

Copies of the Department of the Interior Acquisition Regulation (DIAR) and Department-wide internal guidance may be obtained from the Office of Acquisition and Property Management, Office of the Secretary, U.S. Department of the Interior, 1849 C Street (MS 2607-MB), NW., Washington, DC 20240. Additional information on DOI may be obtained on the Internet at <http://www.doi.gov/pam>.

Subpart 1401.2—Administration

1401.201 Maintenance of the Federal Acquisition Regulation (FAR).

1401.201-1 The Civilian Agency Acquisition Council (CAAC).

The Department of the Interior is represented on the CAAC by a member of the Office of Acquisition and Property Management (PAM).

Subpart 1401.3—Agency Acquisition Regulations

1401.301 Policy.

(a)(1) Subject to the authorities in paragraph (c) of this section, the Department issues acquisition regulations which implement or supplement the FAR under the DIAR System. The regulation, as part of the FAR system, is issued in accordance with the policy in FAR 1.301(a)(1).

(2) Subject to the authorities in paragraph (c) of this section, the Department also issues internal guidance and instructions under the DIAR System in accordance with the policy in FAR 1.301(a)(2).

(b) Public participation in promulgating acquisition regulations, which are published in the **Federal Register**, shall follow the Department's rulemaking procedures prescribed in Part 318, Chapter 5 of the Departmental Manual (318 DM 5) and the procedures in FAR Subpart 1.5.

(c) Regulations and internal guidance under the DIAR System are issued pursuant to the authority of the Secretary of the Interior under 5 U.S.C.

301 and 40 U.S.C. 486(c). This authority has been delegated to the Assistant Secretary—Policy, Management and Budget under Part 209, Chapter 4.1A of the Departmental Manual (209 DM 4.1A).

1401.301-70 Definitions.

(a) "Implement," as used in this subpart, means coverage that expands upon or specifically indicates the manner of compliance with related higher level coverage.

(b) "Supplement," as used in this subpart, means material for which there is no counterpart in higher-level coverage.

1401.303 Publication and codification.

(a)(1) Implementing and supplementing regulations issued under the DIAR System are codified under Chapter 14 in Title 48, Code of Federal Regulations and shall parallel the FAR in format, arrangement, and numbering system.

(2)(i) Department-wide regulations are assigned parts 1401 through 1479 under 48 CFR, Chapter 14.

(ii) Where material in the FAR requires no implementation, there will be no corresponding number in the DIAR. Thus, there are gaps in the DIAR sequence of numbers where the FAR, as written, is deemed adequate. Supplemental material shall be numbered as specified in FAR 1.303.

(3) Bureau-wide regulations are authorized for codification in Appendices to Chapter 14, as assigned by the Director, PAM, in accordance with 1401.304(a)(3).

(b) Regulations implementing the FAR or DIAR are numbered using Parts 1401 through 1479. Supplemental material is numbered using Parts 1480 through 1499. Numbers for implementing or supplementing regulations by bureaus/offices are preceded by a prefix to the number 14 (indicating Chapter 14—DIAR) for the organization indicated by lettered appendices as follows:

- (1) Bureau of Indian Affairs—BIA
- (2) Bureau of Reclamation—WBR
- (3) National Business Center—NBC
- (4) Bureau of Land Management—LLM
- (5) U.S. Geological Survey—WGS
- (6) Office of Surface Mining Reclamation & Enforcement—LSM
- (7) Minerals Management Service—LMS
- (8) National Park Service—FNP
- (9) U.S. Fish and Wildlife Service—FWS

(c) *e.g.*, FAR 1.3 then DIAR 1401.3 [Department level] then in Appendix A, BIA 1401.3 [Bureau level].

1401.304 Agency control and compliance procedures.

(a)(1) The DIAR System is under the direct oversight and control of the Director, PAM, who is responsible for reviewing and preparing the issuance of all Department-wide and bureau-wide acquisition regulations published in the **Federal Register** to ensure compliance with FAR Part 1. Review procedures are contained in Part 401 of the Departmental Manual (401 DM) and paragraph (a)(3) of this section. One copy of all material issued shall be furnished to the Director, PAM, at the time of issuance.

(2) The Director, PAM, is also responsible for reviewing and issuing unpublished Department-wide internal guidance under the DIAR System.

(3) A bureau wishing to issue bureau-wide regulations shall submit a request to the Director, PAM, for authority to proceed with the regulation. The request shall include a justification for the regulation and a proposed outline of the regulation and the significant contents of the coverage to be included. The Director, PAM, shall review the request to determine whether the regulation should be considered for inclusion in the DIAR or FAR. If a determination is made that the regulation is appropriate for inclusion in the DIAR or FAR, PAM will process the regulation accordingly. If a determination is made that the regulation is appropriate for inclusion in bureau-wide regulations only, the Director, PAM, shall assign an appendix to 48 CFR Chapter 14 and authorization shall be granted for the bureau to proceed with the regulation in accordance with the procedures referenced in 1401.301(b). Rulemaking notices shall be submitted to the Director, PAM, for processing of AS/PMB approval under 401 DM 1.4C(3), before the appropriate program Assistant Secretary signs them.

(4) HCAs are responsible for establishing and implementing formal procedures for oversight and control of all unpublished bureau-wide internal guidance issued to implement FAR or DIAR requirements. The Director, PAM, shall review and approve these procedures and they shall include:

(i) Provisions for centralized issuance of all guidance and instructions using a directives system;

(ii) Methods for periodic review and updating of all issuances;

(iii) Distribution processes which ensure timely receipt by all affected contracting offices; and

(iv) Provisions for maintaining compliance with FAR 1.304.

(b) The Director, PAM, is responsible for evaluating coverage under the DIAR

System to determine applicability to other agencies and for recommending coverage to the FAR Secretariat for inclusion in the FAR.

1401.370 Acquisition Managers' Partnership.

(a) The Acquisition Managers' Partnership (AMP) is a forum for DOI's senior acquisition management community to work cooperatively and continuously to improve the management, efficiency and effectiveness of its procurement services in support of DOI's mission.

(b) The AMP consists of the BPCs and representatives from PAM and OSDDBU.

(c) The AMP Charter provides that the Chairperson and Associate Chairperson are leadership roles that will rotate annually. The AMP Chairperson determines when the partnership will meet and develops meeting agendas. The Chairperson will distribute the meeting minutes to all members.

Subpart 1401.4—Deviations from the FAR and DIAR

1401.403 Individual deviations.

(a) The Director, PAM, is authorized to approve deviations of FAR provisions (see FAR 1.4) or DIAR provisions which affect only one contracting action.

(b) Requests for deviations under paragraph (a) of this section shall be submitted by the BPC and include justification for the deviation.

(c) A copy of the approved deviation shall be included in the contract file.

1401.404 Class deviations.

(a) The Director, PAM, is authorized to approve class deviations of FAR or DIAR provisions which affect more than one contracting action.

(b) Requests for deviations under paragraph (a) of this section shall be submitted by the HCA and include justification for the deviation and the number of contracting actions which will be affected.

(c) For a FAR class deviation the Director, PAM, shall consult with the CAAC, as required in FAR 1.404(a)(1), before authorizing the deviation.

(d) A copy of each approved class deviation shall be referenced in the contract file.

(e) Recommended revisions to the FAR and a copy of each approved class FAR deviation shall be transmitted to the FAR Secretariat by the Director, PAM, as required in FAR 1.404.

1401.405 Deviations pertaining to treaties and executive agreements.

(a) The Director, PAM, is responsible for transmitting to the FAR Secretariat

the information required in FAR 1.405(d).

(b) For deviations not authorized by FAR 1.405(b) or (c), the Director, PAM, shall process the request for deviation through the FAR Secretariat.

(c) Deviations authorized or requested under paragraph (d) or (e) of this section shall be submitted by the HCA to the Director, PAM for further action.

Subpart 1401.6—Career Development, Contracting Authority, and Responsibilities

1401.601 General.

(a) The authority and responsibility vested in the Secretary to contract for authorized supplies and services is delegated to Assistant Secretaries.

(b) The contracting authority and responsibility delegated to Assistant Secretaries may be redelegated to heads of bureaus and offices under their supervision in accordance with 200 DM 3. Such redelegations are published in bureau chapters of the Part 200 series of the Departmental Manual.

(c) Bureau heads and assistant or associate heads thereof (known as HCAs as defined in 1402.1) may redelegate contracting authority only as prescribed in 1401.603.

1401.602 Contracting officers.

1401.602–1 Authority.

Information on the limits of CO's authority shall be maintained by the HCA as required in FAR 1.602–1.

1401.602–3 Ratification of unauthorized commitments.

(a) The HCA may redelegate ratification authority to the CCO as defined in Subpart 1402.1 and implemented in bureau procedures.

(b) Legal concurrence is required prior to ratification of unauthorized actions for amounts greater than the micropurchase threshold.

(c) Nonratifiable commitments shall be coordinated with the SOL.

1401.603 Selection, appointment and termination of appointment.

1401.603–1 General.

BPCs are authorized to select and appoint COs and terminate their appointment as prescribed in the Department's Certificate of Appointment (COA) Manual. Copies of the manual may be obtained at <http://www.doi.gov/pam/Acqworkfor.html>.

1401.603–2 Selection.

COs, regardless of series or organizational placement, must be certified at a level commensurate with their appointment level, as prescribed in

the Department's Federal Acquisition Certification in Contracting (FAC-C) Program Manual. Director, PAM, is the approving authority for all new and reinstated FAC-C certifications. BPCs are authorized to approve renewal FAC-C certifications.

1401.603–3 Appointment.

Purchase card holders may be appointed in writing or in accordance with the bureau/office procedures within the constraints of DOI Integrated Charge Card Program Policy Manual located at <http://www.doi.gov/pam/chargecard>. Additional guidance is available in the GSA Smart Pay program at <http://www.gsa.gov/smartpay>.

1401.670 Contracting officers' representatives.

When a CO elects to appoint an individual to act as an authorized representative in the administration of a contract, such appointment must be made in accordance with the DOI Contracting Officers' Representative Manual available at <http://www.doi.gov/pam/Acqworkfor.html>.

1401.670–1 Contract clause.

Insert the clause at 1452.201–70 in solicitations and contracts under which a COR or COTR will be appointed. Complete the fill-in before award.

Subpart 1401.70—Acquisition Reviews

1401.7000 Scope of subpart.

This subpart sets forth requirements for review and approval of contract actions and the conduct of acquisition management reviews.

1401.7001 Review and approval of contract actions.

1401.7001–1 Review and approval by Assistant Secretaries.

Contract actions shall be reviewed and approved by Assistant Secretaries as prescribed in 211–255 DM. Their approvals shall be obtained before requesting any other approvals prescribed in the DIAR.

1401.7001–2 Legal review by the Office of the Solicitor.

The Office of the Solicitor (SOL) will review for legal sufficiency selected types and portions of contract actions from Bureaus and offices as required by the FAR, DIAR, and Department-wide policy. COs may request SOL advice or guidance on acquisition-related matters at any time. Matters related to legal sufficiency reviews that cannot be resolved between the respective CO and SOL Attorney-Advisor must be submitted for resolution to the HCA and the Assistant Solicitor for Acquisitions

and Intellectual Property, Washington, DC.

1401.7001-3 Administrative review and approval by bureaus and offices.

(a) Administrative review and approval requirements for contract actions shall be established by the HCA and issued as internal bureau procedures. At a minimum, the review and approval requirements must address a representative percentage of the overall contract actions within a bureau/office. The procedures shall include:

(1) Identifying the type and dollar amounts of the actions to be reviewed based on the volume and nature of the contracting office workload;

(2) Designating the stage(s) in the acquisition process when the review(s) shall be performed;

(3) Establishing review and approval levels based on the type and dollar amount of the action and the capabilities of the reviewing office;

(4) Specifying what information is required to review the action, which includes creating a review and approval form and mechanism for following up on the correction of deficiencies noted in the review; and

(5) Providing for periodic review of procedures and revision as required, to assure necessary controls are maintained.

1401.7001-4 Acquisition performance measurement systems.

(a) The acquisition performance measurement system is a three-pronged approach that includes self assessment, statistical data for validation and flexible quality reviews and assessment techniques. This system is required to:

(1) Evaluate the effectiveness and efficiency of bureau and office acquisition systems;

(2) Assess the adequacy of policies, procedures and regulations governing the acquisition process; and

(3) Identify and implement changes necessary to improve the systems.

(b) HCA's are responsible for ensuring contracting activity compliance with law and regulations through the review and oversight process.

1401.7001-5 Acquisition Management Reviews.

Acquisition Management Reviews (AMRs) are to be conducted using the Government Accountability Office's (GAO) "Framework for Assessing the Acquisition Function at Federal Agencies" available at <http://www.gao.gov/new.items/d05218g.pdf>.

PART 1402—DEFINITIONS OF WORDS AND TERMS

Subpart 1402.1—Definitions

Sec.

1402.101 Definitions.

1402.170 Acronyms.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1402.1—Definitions

1402.101 Definitions.

As used in this part:

Bureau procurement chief (BPC) is defined as the senior GS-1102 official in a bureau or office. His/her authority may be delegated, unless specified otherwise, to the CCO. If the BPC is also the CO for an action requiring approval of the BPC, then approval shall be at the HCA level.

Chief of the contracting office (CCO) is defined as the senior GS-1102 within a contracting office unless otherwise specified by bureau/office regulation. If the CCO is also the Contracting Officer (CO) for an action requiring approval of the CCO, then approval shall be at a level above the CCO in accordance with bureau procedures.

Contracting activity is defined as an office with delegated procurement authority. Within the Office of the Secretary (OS), the Office of Inspector General (OIG) is a contracting activity. *The National Business Center (NBC)* contracts for the OS.

Head of the agency (also called "agency head") is defined as the Secretary of the Interior and the Assistant Secretary—Policy, Management and Budget (AS/PMB).

Head of the contracting activity (HCA) is defined as the assistant or associate administrative head of each bureau and office who has overall responsibility for managing contracting. In reference to the OS, the HCAs are the Assistant Inspector General for Management and Policy and the Director, NBC. The authority of the HCA may be redelegated to the BPC unless otherwise specified.

Senior procurement executive is defined as the Director, Office of Acquisition and Property Management (PAM).

1402.170 Acronyms.

A&E Architect & Engineering

ACMIS Acquisition Career

Management Information System

AMP Acquisition Manager's

Partnership

AMR Acquisition Management Review

AS/PMB Assistant Secretary—Policy, Management and Budget

BPA Blanket Purchase Agreement

BPC Bureau Procurement Chief

BUDS Business Utilization Development Specialist

CA Competition Advocate

CAAC Civilian Agency Acquisition Council

CAS Cost Accounting Standards

CASB Cost Accounting Standards Board

CBCA Civilian Board of Contract Appeals

CCO Chief of the Contracting Office

CERCLA Comprehensive Environmental Response,

Compensation and Liability Act

CFR Code of Federal Regulations

CIO Chief Information Officer

CO Contracting Officer

COA Certificate of Appointment

COI Conflicts of Interest

COR Contracting Officer's Representative

COTR Contracting Officer's Technical Representative

DISP Defense Industrial Security Program

DM Departmental Manual

DOI Department of the Interior

DOL Department of Labor

EC Electronic Commerce

FAR Federal Acquisition Regulation

FBMS Financial Business Management System

FPDS—NG Federal Procurement Data System—Next Generation

GAO Government Accountability Office

GIDEP Government-Industry Data Exchange Program

GPE Government Point of Entry

GPO Government Printing Office

GSA General Services Administration

GSBCA General Services Board of Contract Appeals

HCA Head of the Contracting Activity

IT Information Technology

IPMD Interior Property Management Directives

MBDA Minority Business Development Agency

OCIO Office of Chief Information Officer

OIG/IG Office of Inspector General/Inspector General

OFPP Office of Federal Procurement Policy

OHA Office of Hearings and Appeals

OMB Office of Management and Budget

OS Office of the Secretary

OSDBU Office of Small and Disadvantaged Business Utilization

PAM Office of Acquisition and Property Management

PMO Property Management Officer

PNM Procurement Negotiation Memorandum

SAT Simplified Acquisition Threshold

SBA Small Business Administration

SOL Office of the Solicitor
TFM Treasury Financial Manual
U.S.C. United States Code
VECP Value Engineering Change
Proposal

PART 1403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1403.1—Safeguards

Sec.
1403.101 Standards of conduct.
1403.101-3 Agency regulations.
1403.101-70 Technical evaluators and advisors.
1403.104 Procurement integrity.
1403.104-2 Applicability.
1403.104-4 Disclosure, protection and marking of contractor bid or proposal information and source selection information.
1403.104-7 Violations or possible violations.

Subpart 1403.2—Contractor Gratuities to Government Personnel

1403.203 Reporting suspected violations of the Gratuities clause.
1403.204 Treatment of violations.

Subpart 1403.3—Reports of Suspected Antitrust Violations

1403.303 Reporting suspected antitrust violations.

Subpart 1403.4—Contingent Fees

1403.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 1403.5—Other Improper Business Practices

1403.570 Restrictions on contractor advertising.
1403.570-1 Policy.
1403.570-2 Procedures.
1403.570-3 Contract clause.

Subpart 1403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1403.602 Exceptions.
1403.603 Responsibilities of the contracting officer.

Subpart 1403.7—Voiding and Rescinding Contracts

1403.704 Policy.
1403.705 Procedures.

Subpart 1403.8—Limitation on the Payment of Funds to Influence Federal Transactions

1403.804 Policy.
1403.806 Processing suspected violations.

Subpart 1403.10—Contractor Code of Business Ethics and Conduct

1403.1004 Contract clause.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1403.1—Safeguards

1403.101 Standards of conduct.

1403.101-3 Agency regulations.

(a) Policy. DOI regulations governing the conduct and responsibilities of regular and special employees are contained in 43 CFR Part 20. Additional guidance is contained in the DOI publication "Ethics Guide for Department of the Interior Employees." Copies of the Guide can be obtained from the Bureau/Office Ethics Office or on the Internet at <http://www.doi.gov/ethics/>. With regard to the provisions of 43 CFR Part 20, officials who participate personally and substantially in DOI procurements (as defined in FAR 3.104-3), may not solicit or accept any gift, gratuity, favor, entertainment, loan or anything of monetary value from a competing contractor during the conduct of a procurement.

(b)(1) Officials may not accept or solicit from any competing contractor any services that involve the development of specifications, statements of work, evaluation criteria, or formal cost estimates to be used in a procurement unless such services are formally contracted for pursuant to the FAR and DIAR, and until the organizational COI provisions in FAR Subpart 9.5 have been fully addressed. This does not preclude COs from issuing formal Requests for Comment (RFC) or draft RFPs.

(2) IT resources shall not be accepted, installed or utilized by the Department on a no cost, free of charge basis (this includes donated equipment but not public domain software), except as permitted by law.

1403.101-70 Technical evaluators and advisors.

(a) Technical evaluators and advisors, including members of proposal evaluation committees, must render impartial, technically sound, and objective assistance and advice.

(b) With the exception of contracting personnel, proposal evaluators and advisors are not required to file a Confidential Financial Disclosure Report (SF450) unless they occupy positions identified in 43 CFR 20.735.30(b). Therefore, when an individual is appointed as an evaluator or advisor, he/she must sign and return to the CO a Conflict of Interest Certificate in a format approved by the HCA. If a potential COI exists, the appointee must not be allowed to evaluate or advise on an offeror's proposal until the conflict has been resolved with the servicing Ethics Counselor.

(c) During the evaluation process, each evaluator and advisor is responsible for ensuring that there are no financial or employment interests that conflict or give the appearance of conflicting with his or her duty to evaluate proposals impartially and objectively. Examples of situations that may be prohibited or represent a potential COI include:

(1) Financial interest, including stocks and bonds, in a firm that submits, or is expected to submit, an offer in response to the solicitation;

(2) Outstanding financial commitments to any actual or potential offeror;

(3) Employment in any capacity, even if otherwise permissible, by any actual or potential offeror;

(4) Employment within the last 12 months by an actual or potential offeror;

(5) Any non-vested pension or re-employment rights, or interest in profit sharing or stock bonus plans arising out of past employment by an actual or potential offeror; or

(6) Employment of any member of the immediate family by an actual or potential offeror.

(d) Bureaus shall include a notice similar to the following in all correspondence notifying employees of appointments to serve as technical evaluators or advisors, formally called Technical Evaluation Panels (TEP) and/or Source Evaluation Boards (SEB):

You shall not solicit or accept any gift, gratuity, favor, entertainment, loan, or anything of monetary value from a competing contractor involved in any action for which you participate personally and substantially under this delegation of authority. You are also reminded of other conduct prohibitions in FAR 3.104-3, including negotiating with competing contractors for future employment, disclosure of contractor bid or proposal information or source selection information, and post-Government employment restrictions.

Such notice shall include an acknowledgement of receipt signed and returned by the employee.

1403.104 Procurement integrity.

1403.104-2 Applicability.

Construction contracts (or subcontracts in such cases where the tribal contractor has subcontracted the activity) awarded under the authority of the Indian Self-Determination and Education Assistance Act, Public Law 93-638, as amended, are subject to the provisions promulgated under that Act.

1403.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) The following classes of persons may be authorized access to contractor

bid or proposal information and source selection information to the extent necessary to accomplish their requisite duties and responsibilities with respect to a particular procurement:

(1) Individuals who generate contract requirements, including program and technical experts involved in the development of statements of work, specifications or similar documents;

(2) Contracting personnel acting in support of the CO;

(3) Secretarial, clerical and administrative personnel of the contracting activity directly involved in the procurement;

(4) Supervisors in the CO's chain of command;

(5) Attorneys in the SOL;

(6) OIG contract auditors, and auditors of other agencies such as the Defense Contract Audit Agency (DCAA) and DHHS when requested to perform contract audits by the OIG;

(7) Engineers and other technical support personnel who provide support to the CO;

(8) Small Business Technical Advisors and BUDS;

(9) SBA personnel responsible for reviewing determinations related to set-aside acquisitions, determining the small business status of offerors, processing applications for Certificates of Competency, reviewing subcontracting plans, or awarding contracts under the 8(a) program;

(10) Personnel in DOL responsible for making eligibility determinations or for processing preaward EEO clearances;

(11) Personnel who review bid protests in the GAO and the CBCA;

(12) Personnel serving on technical evaluation boards or source selection evaluation boards;

(13) Contract clearance personnel;

(14) Departmental and bureau/office Competition Advocates;

(15) Personnel in the Congressional liaison offices;

(16) Agency ethics official and servicing Ethics Counselors;

(17) Members of Congress and members of their staff. (See also DIAR 1405.403.); and

(18) Anyone specifically authorized by the CO.

1403.104-7 Violations or possible violations.

(a)(1) The CO's determination that there is no impact on the procurement due to a possible violation of the Procurement Integrity Act and decision to proceed with contract award shall receive concurrence from an individual one level above the CO.

(2) In case of nonconcurrence with the CO's determination, the HCA shall

provide a copy of the reported violation and recommended action to the OIG in accordance with Part 111 DM 3. The CO, in consultation with the SOL and the OIG, must justify the compelling circumstances for immediate award and obtain approval to proceed from the BPC without the power of redelegation. Copies of the determination to proceed with the award will be sent to the Director, PAM, for submission to the AS/PMB.

Subpart 1403.2—Contractor Gratuities to Government Personnel

1403.203 Reporting suspected violations of the Gratuities clause.

When suspected violations of the clause at FAR 52.203-3, Gratuities, become known to a Federal Government employee, the matter shall be reported, in writing, to the cognizant CO or the CO's supervisor, as appropriate. The report shall clearly state the alleged circumstances surrounding the incident or incidents in which the contractor offered or gave a gratuity to a Federal Government employee and intended to obtain a contract or favorable treatment under a contract because of the gratuity. The date(s), location(s) and name(s) of all parties involved in the incident shall be included in the report.

1403.204 Treatment of violations.

(a) The CO will provide the contractor with a formal notice that summarizes the events involving the suspected violation and affords the contractor the opportunity to take the action(s) listed under FAR 3.204(b). The notice shall contain a time limit for reply and shall be sent by certified mail return receipt requested. The CO will submit the report, additional documentary evidence and other pertinent information to the HCA for disposition with a recommended course of action. A copy of this submission must also be sent to the Deputy Assistant Inspector General for Investigations. In consultation with the SOL and the OIG, and based on the results of any further discussion with the contractor, its counsel or witnesses, the HCA may make a recommendation to the Director, PAM, pursuant to FAR 3.204(c) and shall provide formal notice to the contractor of such recommendation.

(b) If the decision involves the termination of a contract (see FAR 3.204(c)(1)), the CO will be responsible for implementing the decision.

Subpart 1403.3—Reports of Suspected Antitrust Violations

1403.303 Reporting suspected antitrust violations.

(a) Reports on suspected violations of antitrust laws as required by FAR 3.303 shall be prepared by the CO, reviewed by the SOL, and submitted by the HCA directly to the Attorney General, Department of Justice. A copy of this submission must also be sent to the Deputy Assistant Inspector General for Investigations.

(b) Depending on the nature of the suspected violation or the disposition of the matter, the HCA may recommend debarment or suspension in accordance with FAR 9.406-2(a)(2) or 9.407-2(a)(2) and Subpart 1409.4.

Subpart 1403.4—Contingent Fees

1403.405 Misrepresentation or violations of the Covenant Against Contingent Fees.

(a) In addition to notifying the CO, the matter must also be reported to the Deputy Assistant Inspector General for Investigations and the HCA.

(b) The HCA may recommend debarment and suspension in accordance with Subpart 1409.4.

(c) The CCO shall consult with the SOL and OIG prior to forwarding a report of suspected fraudulent or criminal violations to the Department of Justice for action.

Subpart 1403.5—Other Improper Business Practices

1403.570 Restrictions on contractor advertising.

1403.570-1 Policy.

Award of a contract does not signify endorsement of the supplies or services purchased, nor does it signify agreement with any views espoused by officials of the awardee. It is vital to the integrity of the procurement system to avoid even the appearance of an improper preference toward a particular vendor. Therefore, contractors shall not be permitted to publicize, or otherwise circulate, promotional materials that state or imply Governmental endorsement of a product, service or position which the contractor represents.

1403.570-2 Procedures.

If a contractor requests a determination as to the propriety of such promotional material, the response shall be coordinated with the cognizant Public Affairs Office and Ethics Officer.

1403.570-3 Contract clause.

CO's shall include the clause at 1452.203-70, Restriction on

Endorsements, in all solicitations, contracts and agreements which are not executed in accordance with FAR Parts 12 or 13.

Subpart 1403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1403.602 Exceptions.

The HCA, without the power of redelegation, is authorized to except a contract from the policy in FAR 3.601. However, no exceptions may be granted where the proposed contractor is owned or controlled by a Government employee or one or more members of the employee's immediate family and the employee or any subordinate is serving as a procurement official on the proposed contract.

1403.603 Responsibilities of the contracting officer.

The CO shall prepare a written determination and findings for the signature of the HCA when requesting authorization to allow a contract award to a Government employee or business concern or other organization owned or substantially owned or controlled by one or more Government employees.

Subpart 1403.7—Voiding and Rescinding Contracts

1403.704 Policy.

The HCA is authorized to declare void and rescind contracts in accordance with the procedures in FAR 3.705.

1403.705 Procedures.

(a) *Reporting.* The facts concerning any final conviction for any violation of 18 U.S.C. 201–224 involving or relating to any contract awarded by a bureau or office shall be set forth in a report and submitted by the HCA to the Civil Division of the Department of the Justice. The report shall also contain a recommendation to initiate a debarment action. If debarment is recommended, the procedures in 1409.406–3(a) shall be followed. Copies of the report shall be provided to Director, PAM, and the Deputy Assistant Inspector General for Investigations for informational purposes.

(b) *Notice of Proposed Action.* Based upon review of the report in paragraph (a) of this section and after consultation with the SOL and the OIG, as appropriate, the HCA shall give notice of the proposed action to the contractor in accordance with the requirements of FAR 3.704(c).

(c) *Final Agency Decision.* The HCA shall make the final decision on voiding

and rescinding contracts in accordance with the requirements of FAR 3.705(e).

Subpart 1403.8—Limitation on the Payment of Funds to Influence Federal Transactions

1403.804 Policy.

The BPC shall receive copies of contractor disclosures and forward them to the Director, PAM, for submission to Congress.

1403.806 Processing suspected violations.

Suspected violations shall be referred to the HCA. The HCA, in consultation with the SOL and OIG, shall act in accordance with FAR 3.807.

Subpart 1403.10—Contractor Code of Business Ethics and Conduct

1403.1004 Contract clause.

(a) In all awards expected to exceed \$3,000,000, including options, for which performance is expected to exceed 120 days, except purchases conducted in accordance with FAR Part 12 and contracts to be performed entirely outside the United States, replace “\$5,000,000” with “\$3,000,000” in paragraph (d) of FAR 52.203–14.

(b) Insert the following into paragraph (b)(3) of the same clause: “Downloadable hotline posters as well as instructions for obtaining a hard copy poster are available at <http://www.doioig.gov/hotline>.”

PART 1404—ADMINISTRATIVE MATTERS

Subpart 1404.4—Safeguarding Classified Information within Industry

Sec.

1404.402 General.

1404.403 Responsibilities of contracting officers.

Subpart 1404.7—Contractor Records Retention

1404.702 Applicability.

Subpart 1404.8—Contract Files

1404.802 Contract files.

1404.804 Closeout of contract files.

1404.804–70 Release of claims.

1404.805 Disposal of contract files.

Subpart 1404.70—Deposit of Contract Publications

1404.7001 General.

1404.7002 Policy.

1404.7003 Exceptions.

1404.7004 Procedures.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1404.4—Safeguarding Classified Information Within Industry

1404.402 General.

(a) The DOI has entered into an agreement with the DOD to be covered by the National Industrial Security Program (NISP). The agreement is contained in 443 DM 1, Appendix 1.

(b) Classified acquisitions or contracts (see FAR 4.401) shall be subject to the instructions contained in the DOD publications listed in FAR 4.402(b).

1404.403 Responsibilities of contracting officers.

(a) For proposed solicitations that may require access to Departmental classified information, the CO shall consult with the Office of Managing Risk and Public Safety for guidance on NISP in accordance with 443 DM 1.

(b) For proposed contracts where the contractor provides service for the handling and transmission of registered or certified mail at activities that customarily receive and transmit classified information (see FAR 4.401), the contractor shall be cleared to the degree of SECRET. This clearance shall be obtained through the Office of Managing Risk and Public Safety in accordance with 442 DM 8.

(c) For proposed contracts where guard services are assigned to safeguard Department activities in possession of classified information (see FAR 4.401), review and approval shall be obtained from the Office of Managing Risk and Public Safety in accordance with 442 DM 8.

Subpart 1404.7—Contractor Records Retention

1404.702 Applicability.

In addition to the clauses listed at FAR 4.702, the policies and procedures at FAR 4.7 shall also apply to records generated under contracts containing the clause at 1452.215–70, Examination of Records by the Department of the Interior.

Subpart 1404.8—Contract Files

1404.802 Contract files.

In addition to the requirements in FAR 4.802, files shall also be maintained in accordance with the provisions of 380 DM 3.

1404.804 Closeout of contract files.

1404.804–70 Release of claims.

(a) The CO shall insert the clause at 1452.204–70, Release of Claims, in all construction, architect and engineering, and cost-reimbursement contracts that exceed the SAT. The Release of Claims

clause may be inserted in other types of contracts when the CO determines that the release is necessary to protect the interests of the Government.

(b) Form DI-137, Release of Claims, shall be used to obtain a release of claims.

1404.805 Disposal of contract files.

Disposition of files shall be accomplished in accordance with 384 DM.

Subpart 1404.70—Deposit of Contract Publications

1404.7001 General.

The DOI Departmental Library is responsible for maintaining a complete collection of Departmental publications. As used in this Subpart, the term "Departmental publication" means any publication or report produced under a DOI contract or Interagency agreement.

1404.7002 Policy.

The CO shall direct the contractor, in the technical instructions, to acknowledge Federal sponsorship in the final report or publication by placing the following statement on the title page:

"This publication was funded by U.S. Department of the Interior, (Name of Bureau/Office), Washington, DC, under contract number _____."

1404.7003 Exceptions.

The following types of publications are excluded from the requirements of this Subpart:

(a) Internal documents required for administrative or operational purposes that have no public interest, educational, scientific, or research value;

(b) Classified publications and material otherwise marked prohibiting unauthorized disclosure;

(c) Tentative drafts such as preliminary planning reports that will appear later in revised or final form;

(d) Journal and magazine articles; or

(e) Disclosure materials containing any description, specification, data, plan, or drawing of any unpatented invention upon which a patent application is likely to be filed, unless an opinion by the SOL, or his/her duly authorized designee, has been rendered which finds that the interests of the Government will not be prejudiced by disclosure of such materials.

1404.7004 Procedures.

(a) The CO shall direct the contractor, in the technical instructions, to provide two copies of each publication or report produced under a contract to: U.S. Department of the Interior,

Departmental Library, 1849 C Street, NW., MS-2258, Main Interior Bldg., Washington, DC 20240.

(b) A transmittal letter shall accompany the copies and identify the sender and the publication(s). The bibliographic information required by 481 DM 1.3B(4) shall be also included with the submission of all translations.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 1405—PUBLICIZING CONTRACT ACTIONS

Subpart 1405.2—Synopsis of Proposed Contract Actions

Sec.

1405.202 Exceptions.

1405.207 Preparation and transmittal of synopses.

Subpart 1405.3—Synopsis of Contract Awards

1405.303 Announcement of contract awards.

Subpart 1405.4—Release of Information

1405.403 Requests from members of Congress.

1405.404 Release of long-range acquisition estimates.

1405.404-1 Release procedures.

Subpart 1405.5—Paid Advertisements

1405.502 Authority.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1405.2—Synopsis of Proposed Contract Actions

1405.202 Exceptions.

The AS/PMB is authorized to approve the written determination documenting the reasons why a synopsis is not appropriate or reasonable. The CO shall prepare the determination, submit it to the HCA and then to the Director, PAM, for AS/PMB approval.

1405.207 Preparation and transmittal of synopses.

In addition to the synopsis information generally required under FAR 5.207, as a best business practice, it is recommended each synopsis of a proposed contract action under other than full and open competition include the location where the offeror may obtain:

(a) A description of specific qualifications the Government requires of the product or service to meet the Government's minimum needs; and

(b) The factors the Government will use to evaluate the product or service information prospective contractors provide under the proposed contract action.

Subpart 1405.3—Synopsis of Contract Awards

1405.303 Announcement of contract awards.

(a) The CO shall report the following information to the cognizant bureau congressional affairs officer for notification to Congress 24 hours prior to the award of a contract expecting to exceed \$500,000:

(1) Proposed award date;

(2) Contractor name and address;

(3) Geographical location of contract performance;

(4) Description of the contracted work;

(5) Dollar amount of contract; and

(6) Contractor business size and whether the firm is minority-owned or is a disadvantaged business concern.

(b) With the concurrence of the Office of Congressional and Legislative Affairs, the HCA may waive the announcement of sensitive awards.

Subpart 1405.4—Release of Information

1405.403 Requests from Members of Congress.

For purposes of this subpart, the agency head is the HCA with the power of redelegation to the BPC.

1405.404 Release of long-range acquisition estimates.

1405.404-1 Release procedures.

(a) The authority to release acquisition requirements anticipated in the coming year is delegated to the OSDDBU and the HCA with redelegation limited to the BPC. The Government cost estimate shall not be revealed. The expected dollar values shall be advertised as falling within dollar ranges rather than specific dollar amounts.

(b) Classified information shall only be released in accordance with the procedures in 442 DM.

Subpart 1405.5—Paid Advertisements

1405.502 Authority.

(a) The CO shall obtain written authorization of the HCA before placing an advertisement in a newspaper to advertise a contracting opportunity.

(b) Advertisements placed in media other than newspapers do not require advance authorization.

PART 1406—COMPETITION REQUIREMENTS

Subpart 1406.2—Full and Open Competition After Exclusion of Sources

Sec.

1406.202 Establishing or maintaining alternate sources.

Subpart 1406.3—Other Than Full and Open Competition

1406.302 Circumstances permitting other than full and open competition.

1406.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

1406.302-7 Public interest.

1406.303 Justifications.

1406.303-70 Additional requirements.

1406.304 Approval of the justification.

Subpart 1406.5—Competition Advocates

1406.501 Requirement.

1406.502 Duties and responsibilities.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1406.2—Full and Open Competition After Exclusion of Sources**1406.202 Establishing or maintaining alternative sources.**

HCA's are authorized to approve the determinations and findings (D&Fs) to establish or maintain an alternative source or sources for supplies or services.

Subpart 1406.3—Other Than Full and Open Competition**1406.302 Circumstances permitting other than full and open competition.**

1406.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

For contracts that will be awarded using this authority, the notices required by FAR 5.201 shall have been published and any bids, proposals, quotations, or capability statements must have been considered.

1406.302-7 Public interest.

The CO shall prepare the D&F and complete the justification to support use of public interest authority for other than full and open competition and submit it through the HCA to the Director, PAM, for further action.

1406.303 Justifications.**1406.303-70 Additional requirements.**

(a) If other than full and open competition is recommended by the office initiating an acquisition requirement, the recommendation shall:

- (1) Be in writing;
- (2) Accompany the requisition;
- (3) Contain the information required by FAR 6.303-2; and

(4) Request the CO to conduct a market survey by issuing a synopsis of the proposed contract action (see 1405.207). The initiating office shall evaluate and document all responses to the notice. The CO shall prepare the D&F that only one source can meet the

Government's needs based on the evaluation results. The evaluation results shall be included in the justification as required by FAR 6.303-2(a)(8) if it is determined that only one source can meet the Government's needs.

(b) The procedure in paragraph (a) of this section is not required for proposed contract actions to be awarded under the authority in FAR 6.302-2 when the CO determines that preparation and approval of the justification would unreasonably delay the acquisition. Under these circumstances, a justification may be prepared and approved after award in accordance with FAR 6.303-1(d).

1406.304 Approval of the justification.

A class justification shall be approved in accordance with bureau procedures. Copies of approved class justifications shall be promptly transmitted to PAM.

Subpart 1406.5—Competition Advocates**1406.501 Requirement.**

(a) The competition advocate for DOI is located within PAM's staff. Applicable correspondence should be addressed to PAM, Attention: Competition Advocate.

(b) Competition Advocates for each bureau and office shall be as designated by the CAO-AS/PMB.

1406.502 Duties and responsibilities.

PAM is responsible for preparing and submitting the annual report required by FAR 6.502(b)(2). Bureau Competition Advocates shall furnish certain information, as may be required, to assist PAM in preparing the report.

PART 1407—ACQUISITION PLANNING**Subpart 1407.1—Acquisition Plans**

1407.102 Policy.

Subpart 1407.3—Contractor Versus Government Performance

1407.301 Policy.

1407.307 Appeals.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1407.1—Acquisition Plans**1407.102 Policy.**

DOI has implemented its acquisition planning system in 404 DM. This system meets the criteria prescribed in FAR Subpart 7.1, 375 DM, OCIO Program Management, and 376 DM, Automated Data Processing. Each of these addresses strategic planning for OCIO and planning for acquisition of federal information processing resources.

Subpart 1407.3—Contractor Versus Government Performance**1407.301 Policy.**

404 DM, Procurement Planning, addresses the requirements of OMB Circular A-76.

1407.307 Appeals.

Department appeal procedures required by OMB Circular A-76 are codified in 43 CFR Part 4, Subpart M.

PART 1408—REQUIRED SOURCES OF SUPPLIES AND SERVICES**Subpart 1408.1—Excess Personal Property**

Sec.

1408.102 Policy.

Subpart 1408.8—Acquisition of Printing and Related Supplies

1408.802 Policy.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1408.1—Excess Personal Property**1408.102 Policy.**

Inquiries on available excess or surplus personal property should be directed to the PMO or the designee in each Bureau or Office.

Subpart 1408.8—Acquisition of Printing and Related Supplies**1408.802 Policy.**

(a) *Duplicating* is the mass reproduction of materials beyond the capabilities of typical office copiers. Volumes are of sufficient mass quantities up to 5,000 single-page and 25,000 production units in the aggregate of multiple pages. Such duplicating units shall require Departmental approval to be processed through the Department of the Interior Publishing Council (DOIPC).

(b) *Copying* is distinguished from "duplicating" in that such work is administrative in nature, produced on office copying equipment and produced as necessary, in limited quantities. Volumes typically range from 1 to 500 single-pages to 2,500 production units in the aggregate of multiple pages. This volume standard is referred to as the "500/2500" rule. Reproduction work exceeding the "500/2500" rule is duplicating, and requires a waiver from the nearest servicing GPO office. Employees should consult with their bureau printing officer or the DOIPC representative to secure such a waiver.

(c) The DOIPC has been designated as the Department's liaison with the Joint Committee on Printing and GPO. Requirements for printing and related supplies shall be coordinated with the

DOIPC or the designated bureau publications liaison officer in accordance with 314 DM 1.

PART 1409—CONTRACTOR QUALIFICATIONS

Subpart 1409.2—Qualifications Requirements

- Sec.
1409.202 Policy.
1409.206 Acquisitions subject to qualifications requirements.
1409.206–1 General.

Subpart 1409.4—Debarment, Suspension and Ineligibility

- 1409.403 Definitions.
1409.404 Excluded Parties List System (EPLS).
1409.405 Effect of listing.
1409.405–1 Continuation of current contracts.
1409.406 Debarment.
1409.406–1 General.
1409.406–3 Procedures.
1409.407 Suspension.
1409.407–1 General.
1409.407–3 Procedures.

Subpart 1409.5—Organizational and Consultant Conflicts of Interest

- 1409.503 Waiver.
1409.506 Procedures.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1409.2—Qualifications Requirements

1409.202 Policy.

(a) The HCA is the official responsible for establishing the qualification requirement in FAR 9.202(a)(1). This authority is not redelegable.

(b) The HCA is the approval official referenced in FAR 9.202(e).

1409.206 Acquisitions subject to qualification requirements.

1409.206–1 General.

The HCA is the approval official referenced in FAR 9.206–1(b).

Subpart 1409.4—Debarment, Suspension, and Ineligibility

1409.403 Definitions.

As used in this subpart:

Case Representative refers to the individual who prepares and forwards the action referral memorandum to the Debarring and Suspending Official and provides additional assistance in the course of action resolution. Debarment and Suspension actions may be referred to the Debarring and Suspending Official for consideration from different sources, as appropriate. The HCA, or designee, may refer matters. The Office of Inspector General (OIG) may also refer actions.

Conviction, for the purposes of this subpart, means:

(a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of *nolo contendere*; or,

(b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

Debarring Official refers to the Director, PAM. The Debarring Official is the official authorized to impose debarment or suspension. The Debarring Official also may settle a debarment or suspension action at any time if it is in the best interest of the Government.

Suspending Official refers to the Director, PAM.

1409.404 Excluded Parties List System (EPLS).

(a) PAM is responsible for accomplishing the actions required in FAR 9.404(c).

(b) COs should access the EPLS online at <http://www.epls.gov>.

1409.405 Effect of listing.

When a CO finds that a compelling reason exists to conduct business with a contractor listed on the EPLS, the HCA shall submit the determination and findings to the Director, PAM, for approval.

1409.405–1 Continuation of current contracts.

The HCA, without authority to redelegate, is authorized to take the actions listed in FAR 9.405–1.

1409.406 Debarment.

1409.406–1 General.

The Director, PAM, is authorized to make the statement regarding debarment by another agency's debarring official under the conditions in FAR 9.406–1(c).

1409.406–3 Procedures.

(a) *Investigation and referral.* Whenever a cause for debarment, as listed in FAR 9.406–2, becomes known to a DOI employee, the matter shall be referred by the case representative to the Debarring Official, in consultation, as appropriate, with the HCA involved, the SOL, and OIG. The case representative will review the matter and, as warranted, prepare and submit to the Debarring Official for consideration an Action Referral Memorandum (ARM) with supporting documentation.

(b) *Notice of Proposed Debarment.* Based upon review of the ARM, as

appropriate, the Debarring Official shall initiate proposed debarment by taking the actions listed in FAR 9.406–3(c) and advising the contractor of DOI's process for contesting the action.

(c) *Decision-making process.*

(1) For debarment actions based upon a conviction, civil judgment, or in which there is no genuine dispute over material facts, consistent with FAR 9.406–3(d)(1), the Debarring Official shall make a decision on the basis of the information in the administrative record, including any contractor submissions. Where the proceeding includes an oral presentation of matters in opposition (PMIO) to the Debarring Official, the PMIO will be conducted in an informal business meeting format and tape recorded for the administrative record.

(2) For actions listed under FAR 9.406–3(b)(2), upon concluding from a contractor's information in response to the action notice that facts material to the existence of cause for debarment are genuinely in dispute, the Debarring Official may refer the disputed material facts to another official for fact-finding. The hearing shall be conducted in accordance with Debarment Program fact-finding procedures.

(i) The fact-finding proceeding will be transcribed. The fact-finding official will file the original copy of the transcript with the case record. The reporter's fees and other direct costs associated with the hearing shall be borne by the bureau or office initiating the debarment action, except in the case of actions initiated by the OIG. For actions initiated by the OIG, the costs will be borne by the bureau(s) and/or office(s) out of which the matter arose. A transcript of the proceedings shall be made available to the contractor as provided under FAR 9.406–3(b)(2)(ii).

(ii) Subject to the provisions of 43 CFR Part 1, the contractor, and any specifically named affiliate, may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings shall be conducted expeditiously and in such a manner that each party will have a full opportunity to present all information considered pertinent to the proposed debarment. A transcript of the proceedings shall be made available to the contractor under the condition in FAR 9.406–3(b)(2)(ii).

(iii) The fact-finding official will prepare findings of fact, certify the entire hearing record and provide said findings and record to the Debarring Official. The fact-finding official shall not make any recommendations unless the Debarring Official has expressly requested such recommendations in

writing. Following receipt of the findings of fact, the Debarring Official shall complete debarment proceedings and issue a written debarment decision.

(d) *Administrative Agreements.* Matters may be resolved through administrative agreement at any stage of proceedings of a debarment action where a contractor agrees to appropriate terms. The specific effect of administrative agreements that incorporate terms regarding eligibility for DOI contracting will vary with the terms of the agreements. In general, such agreements resolve debarment concerns and thereby terminate any imposed or pending award ineligibility. In the event of an agreement, PAM will notify COs of the agreement and its terms.

(e) *Administrative Appeal.* Administrative review of the Debarring Official's decision under FAR 9.406-3(e) may be sought as follows:

(1) The contractor may within thirty (30) days of receipt of the decision, request the Debarring Official to reconsider the decision for clear material errors of fact or law which would change the outcome of the matter.

(2) The Debarring Official may exercise his/her discretion and stay the debarment pending reconsideration review. The Debarring Official will notify the contractor in writing of the decision on reconsideration.

(3) A review request under this section must be in writing, clearly state the specific findings believed to be in error and include the reasons or legal bases for the position.

1409.407 Suspension.

1409.407-1 General.

The Director, PAM, is authorized to make the determination in FAR 9.407-1(d).

1409.407-3 Procedures.

(a) *Investigation and referral.* Whenever a cause for suspension, as listed in FAR 9.407-2, becomes known to a DOI employee, the matter shall be referred by the case representative to the Suspending Official, in consultation, as appropriate, with the HCA involved, the SOL, and the OIG. The case representative will review the matter and, if warranted, prepare and submit to the Debarring Official for consideration an Action Referral Memorandum (ARM) with supporting documentation.

(b) *Notice of Suspension.* After review of the ARM, if appropriate, the Debarring Official shall initiate a suspension by taking the actions listed in FAR 9.407-3(c), and advising the

contractor of the Department's process for contesting the action.

(c) *Decision making process.*

(1) For suspension actions based upon an indictment or equivalent charging document, or where there is no genuine dispute over material facts, consistent with FAR 9.407-3(d), or in which additional proceedings to determine disputed material facts have been denied on the basis of DOJ advice, the Suspending Official shall make a decision on the basis of the information in the administrative record, including any submission by the contractor. Where the proceeding includes an oral PMIO to the Suspending Official, the PMIO will be conducted in an informal business meeting format and tape recorded for the administrative record.

(2) For actions listed under FAR 9.407-3(b)(2), when the Debarring Official concludes from information in a contractor's response to the proposed action notice that facts material to the existence of a cause for debarment are genuinely in dispute, the Suspending Official may refer the disputed material facts to another official for hearing and findings of fact.

(i) The hearing shall be conducted in accordance with Suspension Program fact-finding procedures.

(ii) The fact-finding proceeding will be transcribed. The reporter's fees and other direct costs associated with the hearing shall be borne by the bureau or office initiating the suspension referral, except in the case of actions initiated by the OIG. For actions initiated by the OIG, costs will be borne by Bureaus and/or offices out of which the matter arose. A transcript of the proceedings shall be made available to the contractor under the condition in FAR 9.407-3(b)(2)(ii).

(iii) Subject to the provisions of 43 CFR Part 1, the contractor, and any specifically named affiliates, may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings shall be conducted expeditiously and in such a manner that each party will have a full opportunity to present all information considered pertinent to the suspension.

(iv) The fact-finding official will prepare findings of fact, certify the entire hearing record and provide said findings and record to the Suspending Official. The fact-finding official shall not make any recommendations unless the Suspending Official has expressly requested such recommendations in writing. Following receipt of the findings of fact, the Suspending Official shall complete suspension proceedings and issue a written decision. Matters

may be resolved through an administrative agreement at any stage of the proceedings.

(d) *Administrative Agreements.* Matters may be resolved through an administrative agreement at any stage of proceedings in resolution of a suspension action where a contractor agrees to appropriate terms. The specific effect of administrative agreements that incorporate terms regarding eligibility for DOI contracting will vary with the terms of the agreements. In general, such agreements resolve suspension concerns and thereby terminate award ineligibility. An administrative agreement resolving a suspension action may by its terms be an interim agreement. In the event of an agreement, PAM will notify COs of the agreement and its terms.

(e) *Administrative Appeal.* Administrative review of the Suspending Official's decision under FAR 9.407-3(d) may be sought as follows:

(1) The contractor may within thirty (30) days of receipt of the decision, ask the Suspending Official to reconsider the decision for clear material errors of fact or law which would change the outcome of the matter.

(2) The Suspending Official may in the exercise of discretion stay the debarment pending reconsideration review. The Suspending Official will notify the contractor in writing of the decision on reconsideration.

(3) A review request under this section must be submitted in writing; clearly state the specific findings believed to be in error, and include the reasons or legal bases for the position.

Subpart 1409.5—Organizational and Consultant Conflicts of Interest

1409.503 Waiver.

(a) The Director, PAM, is authorized to waive any general rule or procedure in FAR Subpart 9.5, when such action is in the Government's interest.

(b) Request for waivers shall be made by the HCA, through the appropriate SOL, to the Director, PAM. Each request shall include:

(1) An analysis of the facts involving the potential or actual conflict, including benefits and detriments to the Government and prospective contractor(s);

(2) A discussion of the factors which preclude avoiding, neutralizing or mitigating the conflict; and

(3) Identification of the provision(s) in FAR Subpart 9.5 to be waived.

1409.506 Procedures.

If the CO determines that contractor performance of the contemplated work

is likely to create an organizational conflict of interest, then the contracting officer shall refer the documentation of the potential conflict and proposed resolution prepared in accordance with 7.105(b)(18) to the HCA for approval. Referrals to the HCA shall be initiated by the CO and reviewed by the SOL.

PARTS 1410–1412—[RESERVED]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1413—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 1413.2—Micro-Purchase

Sec.

1413.201 General.

1413.202–70 Policy.

Subpart 1413.3—Simplified Acquisition Methods

1413.305 Imprest Fund.

1413.305–2 Agency responsibilities.

1413.305–4 Procedures.

1413.306 Standard Form 44, Purchase order—invoice—voucher.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1413.2—Micro-Purchase

1413.201 General.

The procedures set forth in the Federal Supply Schedule for Government-wide Commercial Credit Card Services, Treasury Financial Manual, TFM 4–4500, and “U.S. Department of Interior Handbook for Utilization of Government Wide Commercial Credit Card” issued by PAM contain guidance on using Government-wide purchase card services.

1413.202–70 Policy.

(a) The purchase card shall be used in preference to other methods of procurement for purchases up to \$3,000. Other small purchase methods (BPAs, imprest funds, third-party drafts, SF–44 forms, and purchase orders) may be used in lieu of the Government purchase card when it is more cost-effective or practicable.

(b) The purchase card shall be issued primarily to personnel outside of procurement offices to purchase products and services up to the micro-purchase threshold (\$2,000 for construction).

(c) The purchase card may be used in procurement offices for purchases up to the simplified acquisition threshold (\$50,000 if not interim FACNET certified) not to exceed individual warrant limitations.

(d) Each contracting activity shall develop more specific procedures for use of purchase cards.

Subpart 1413.3—Simplified Acquisition Methods

1413.305 Imprest fund.

1413.305–2 Agency responsibilities.

Policy governing the use and administration of imprest funds within the Department are contained in 330 DM, in addition to the policies and regulations outlined in FAR 13.305–1. HCAs shall establish written procedures for designation, by name, of personnel authorized to approve requisitions and make purchases using imprest funds. The procedures shall include a periodic review of imprest fund transactions by acquisition personnel.

1413.305–4 Procedures.

The individual authorized to make purchases using imprest funds shall be responsible for compliance with the procedures and documentation requirements of FAR 13.305–4.

1413.306 Standard Form 44, Purchase order-invoice-voucher.

HCAs are responsible for establishing bureau procedures to control the use of the SF 44 and accounting for all purchases made using the form. Bureau procedures shall include instructions covering:

(a) Maintenance of a list of designated individuals authorized to make purchases using the form;

(b) Controls for issuing the form to authorized individuals; and

(c) Review of purchase transactions using the form to assure compliance with authorized procedures.

PART 1414—SEALED BIDDING

Sec.

Subpart 1414.2—Solicitation of Bids

1414.201 Preparation of invitations for bids.

1414.201–70 Alternate bids.

Subpart 1414.4—Opening of Bids and Award of Contract

1414.404 Rejection of bids.

1414.404–1 Cancellation of invitations after opening.

1414.407 Mistakes in bids.

1414.407–3 Other mistakes disclosed before award.

1414.407–4 Mistakes after award.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1414.2—Solicitation of Bids

1414.201 Preparation of invitation for bids.

1414.201–70 Alternate bids.

(a) Solicitations for supplies or services (other than construction) shall specify whether alternate bids are permitted, provide instructions for submitting alternate bids and clearly indicate how alternate bids will be evaluated.

(b) The clause set forth in 1452.236–71 may be used in non-construction contracts where additive and deductive alternate bids will be permitted.

Subpart 1414.4—Opening of Bids and Award of Contract

1414.404 Rejection of bids.

1414.404–1 Cancellation of invitations after opening.

The CCO is authorized to make the written determination to cancel the IFB before award but after bid opening.

1414.407 Mistakes in bids.

1414.407–3 Other mistakes disclosed before award.

(a) The HCA is authorized to make the administrative determinations under FAR 14.407–3, except as set forth in paragraph (b) of this section. This authority is not redelegable.

(b) The CCO has the authority outlined in FAR 14.407–3(c) to make the written determination permitting a bidder to withdraw a bid, after review by the SOL.

(c) The CO shall submit a report on suspected or alleged mistakes in bids together with the supporting data to the BPC, who will forward it to the HCA. The CO may also include a report on bids where evidence of the intended bid is clear and convincing but the bidder has not requested permission to correct the bid. Incomplete reports may result in a delay in obtaining a determination.

(d) The BPC is responsible for maintaining records of administrative determinations.

1414.407–4 Mistakes after award.

The CO is authorized to make the administrative determinations outlined in 14.407–4 after receiving concurrence from the SOL.

PART 1415—CONTRACTING BY NEGOTIATION

Subpart 1415.2—Solicitation and Receipt of Proposals and Information

Sec.

1415.201 Exchanges with industry before receipt of proposals.

1415.207 Handling proposals and information.

- 1415.207–70 Department of the Interior proposal and information handling procedures.
- 1415.207–71 Confidentiality of proposal evaluation.
- 1415.209 Solicitation provisions and contract clauses.
- 1415.209–70 Examination of records by the Department of the Interior.

Subpart 1415.3—Source Selection

- 1415.303 Responsibilities.
- 1415.305 Proposal evaluation.

Subpart 1415.4—Contract Pricing

- 1415.404 Proposal analysis.
- 1415.404–2 Information to support proposal analysis.
- 1415.404–4 Profit.
- 1415.406 Documentation.
- 1415.406–70 Department of the Interior price negotiation memorandum (PNM).

Subpart 1415.6—Unsolicited Proposals

- 1415.606 Agency procedures.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1415.2—Solicitation and Receipt of Proposals and Information

1415.201 Exchanges with industry before receipt of proposals.

(a) Use of a presolicitation conference shall be approved at one level above the CO.

(b) A CO may issue a solicitation for information or planning purposes without a written justification and without obtaining a higher level of approval.

1415.207 Handling proposals and information.

1415.207–70 Department of the Interior proposal and information handling procedures.

(a) *General.* This section establishes procedures that must be used in addition to those prescribed in FAR 15.207, for the use and disclosure of trade secret information and confidential commercial and financial information contained in solicited proposals.

(b) *Marking of solicited proposals.* A solicited proposal may contain trade secrets or confidential commercial or financial information which the offeror, or its subcontractors, prefers not to be disclosed to the public or used by the Government for any purpose other than evaluation of the proposal. To notify the Government of trade secrets and confidential commercial or financial information contained in a proposal, offerors must mark the cover page of the proposal and each affected page of the proposal with the legends specified in the solicitation provision at 1452.215–71, Use and Disclosure of Proposal Information—Department of the

Interior. COs and other government personnel evaluating a proposal shall not refuse to consider the proposal because it contains information identified as trade secret information or confidential commercial or financial information.

(c) *Failure to mark.* The Government assumes no liability for the disclosure or use of information contained in a proposal if not marked in accordance with 1452.215–71. If a request under the Freedom of Information Act is made for information in a proposal not marked in accordance with 1452.215–71, the offeror concerned shall be notified promptly of the request and given an opportunity to provide its position to the Government. However, failure of an offeror to mark information contained in a proposal as trade secret information or confidential commercial and financial information will be treated by the Government as evidence that the information is not exempt from disclosure under the Freedom of Information Act, absent a showing that the failure to mark was due to unusual or extenuating circumstances, such as a showing that the offeror had intended to mark, but that markings were omitted from the offeror's proposal due to clerical error.

(d) *Solicitation provision.* The provision at 1452.215–71, Use and Disclosure of Proposal Information—Department of the Interior, shall be inserted in all requests for proposals and requests for quotations.

1415.207–71 Confidentiality of proposal evaluation.

(a) The safeguarding of evaluation data and information, including proposals, is essential in order to preserve the integrity of the proposal evaluation process. During the selection process, no member or advisor of any committee appointed to evaluate proposals shall discuss or disclose any information on the number, identity or content of proposals received to any other party (including supervisors) without the written approval of the CO. 18 U.S.C. 1905 prohibits the unauthorized disclosure of business, confidential or trade secret information unless authorized by law.

(b) At the initial meeting of the committee, the CO shall brief all members and advisors on the sensitivity of the evaluation process and the prohibition against unauthorized disclosure of information. At this meeting each member and advisor shall sign a Confidentiality Certificate. During the proposal evaluation process, all proposals, evaluation notes, scoring sheets, and other materials shall be

locked in file cabinets or drawers when not in use by committee members and advisors.

(c) The CO shall be the single point of contact regarding communications received from outside parties relating to the acquisition and the evaluation and selection process. Any committee member or advisor who receives a communication from any outside party shall, without discussion, immediately refer the party to the CO. The CO will then determine what further action shall be taken, if any, in responding to the communication. Requests for information made pursuant to the Freedom of Information Act shall be referred to the CO for reply. Proposal evaluation committee members and advisors shall not contact any offeror whose proposal is under evaluation. All communications with offerors shall be handled by the CO.

(d) Bureaus and offices may only release proposals outside the Government for evaluation or advice in accordance with the following requirements:

(1) Decisions to release proposals outside the Government for evaluation or advice shall be approved in writing by the HCA;

(2) Outside evaluators and advisors shall sign a Conflict of Interest Certificate and a Confidentiality Certificate in a format approved by the HCA;

(3) Any authorized restrictive legends placed on the proposal by the prospective contractor or subcontractor, or by the Government shall be applied to any reproduction or abstracted information made by the outside evaluator or advisor;

(4) Upon completing the evaluation, all copies of the proposal, as well as any abstracts thereof, shall be returned to the Government office which initially furnished them for evaluation; and

(5) All determinations to release the proposal outside the Government shall take into consideration requirements for avoiding individual conflicts of interest (see 1403.101) and organizational conflicts of interest (see 1409.5 and FAR Subpart 9.5), and the competitive relationship, if any, between the prospective contractor or subcontractor and the prospective outside evaluator.

(e) If outside individuals will be voting members of the evaluation committee or otherwise participate in other than an advisory capacity, then the committee must be constituted as a Federal Advisory Committee in accordance with the Federal Advisory Committee Act (PL 92–463) and 308 DM 2. Since the Secretary must appoint such committees in consultation with

the Office of Management and Budget, there should be very few occasions when use of outside individuals as voting members is justified.

(f) Outside evaluators will usually serve as advisors to the proposal evaluation committee and as such, are consultants. Consultants may be appointed as special employees in accordance with 5 U.S.C. 3109 or contracted for in accordance with 1437.1.

(g) Additional restrictions on the disclosure of acquisition evaluation information are listed in FAR Subpart 5.4.

1415.209 Solicitation provisions and contract clauses.

1414.209–70 Examination of records by the Department of the Interior.

The CO shall insert the clause at 1452.215–70, Examination of Records by the Department of the Interior, in all contracts requiring the clause at FAR 52.215–2 Audit and Records, Negotiation, as prescribed in FAR 15.209(b).

Subpart 1415.3—Source Selection

1415.303 Responsibilities.

(a) The HCA shall determine when a formal source selection process will be used and shall establish implementing procedures.

(b) The formal source selection procedures shall include designating the CO as the individual responsible for the proper control and appropriate release of proprietary and source selection information after source selection.

1415.305 Proposal evaluation.

The CCO is authorized to make the determination to reject all proposals.

Subpart 1415.4—Contract Pricing

1415.404 Proposal analysis.

1415.404–2 Information to support proposal analysis.

The CO shall initiate an audit by sending a completed form DI–1902, Request for Audit, to the Assistant Inspector General for Auditing, OIG (see 1453.215–70).

(a) The CO shall allow at least 30 working days in assigning a realistic deadline for receipt of the audit report. In exceptional circumstances 20 working days may be allowed but the circumstances shall be documented in the contract file.

(b) Upon receipt of a DI–1902, the OIG will conduct the audit or arrange for its conduct by the cognizant audit agency in accordance with 360 DM 3.7.

(c) Upon receipt of the audit report, the CO and the price analyst (if assigned), shall discuss any questions regarding the report's contents with the cognizant auditor. If a question cannot be resolved or agreement cannot be reached on a recommendation in the report, the CO shall prepare a written statement for the contract file documenting the decision on the matter. A copy of the statement shall be promptly forwarded to the Assistant Inspector General for Auditing for information.

1415.404–4 Profit.

(a) DOI's policy is to use a structured approach for determining the profit or fee prenegotiation objective in acquisition actions that require cost analysis based on the profit analysis factors in FAR 15.905, as implemented and supplemented in this section.

(b) In addition to the factors listed in FAR 15.404–4(d), one additional factor, "Other Costs," will be used in evaluating and determining a weighted profit or fee. For further guidance also refer to the Armed Services Pricing Manual (ASPM No. 1). The "Other Costs" factor shall include the contribution of all other direct costs including travel, direct support and hiring of consultants for contract performance.

(c) Form DI–1920, Structured Approach for Profit/Fee Objective—Department of the Interior shall be used to calculate the profit or fee objective.

1415.406 Documentation.

1415.406–70 Department of the Interior price negotiation memorandum (PNM).

(a) *Policy.* In addition to the information required in FAR 15.406–3, the PNM prepared by the CO shall include the information in paragraph (c) of this section to the extent such information is applicable to the negotiation.

(b) *Applicability.* (1) The CO shall prepare a PNM documenting the negotiation of the initial contract award and any subsequent modifications affecting price, cost or fee, including revisions to the prices of contracts awarded through sealed bidding procedures. A PNM is not required for unilateral modifications such as exercising fixed price options or issuing change orders. The memorandum is required for concluding changes and settlements of claims and for issuing orders under Blanket Ordering Agreements, task orders and delivery orders that involve the negotiation of prices, estimated quantities or amounts.

(2) For simplified acquisitions conducted pursuant to FAR Part 13, the documentation requirements of

1413.106 and FAR 13.106 shall be followed.

(c) *Procedures.* When the CO prepares the memorandum prescribed in FAR 15.406–3, the following additional information shall be included to the extent it applies to the contract action. Information already contained in the contract file or in a previous PNM shall be referenced by location:

(1) A discussion of the reason(s) why sealed bidding is not appropriate as required by FAR 6.401 (or cross-reference the file location of the existing explanation);

(2) A memorandum identifying the type of contract used and why it was selected as required by FAR 16.103(d). The file location of any required determination and findings authorizing use of this type of contract (see Part 1416);

(3) A history of the contract action including: Whether the action was synopsisized or the basis for exemption under FAR 5.202, and file location of the synopsis; consideration given to the use of set-asides and file location of DI–1886 (see Subpart 1419.2); solicitation issuance date, closing date for receipt of proposals and extensions; (iv) sources solicited (reference file location); late proposal or proposal modification information required by FAR 15.208; and the file location of "Justification for Other Than Full and Open Competition," if applicable.

(4) Evaluation of proposal(s), including: Evaluation factors used and weights (FAR 15.304); results of initial proposal evaluation (FAR 15.305); determination of competitive range (FAR 15.306); results of written or oral discussions conducted (FAR 15.306); discussion of final proposal revisions received (FAR 15.307) and results of final proposal evaluation; and basis for source selection. For formal source selection procedures (see 1415.303), information on the source selection plan, and the source selection decision including supporting documentation required by FAR 15.308.

(5) If cost or pricing data were not required, the cost or price analysis performed in accordance with FAR 15.404–1.

(6) If cost or pricing data were required, the cost analysis (FAR 15.404–1(c)) performed; and cost realism analysis (FAR 15.404–1(d)) and technical analysis (FAR 15.404–1(e)) performed, as applicable to the procurement.

(7) If an audit report was required (FAR 15.404–2), COs shall specifically describe actions taken in response to significant audit findings, including the monetary value and decisions made

with regard to any of the audit's questioned costs; i.e., COs shall identify the value of the questioned costs, indicate whether they will allow or disallow them, and provide an explanation for their decisions. For purposes of this section, "significant audit finding" and "questioned cost" are defined as those findings and/or costs cited or questioned in an external audit because of their relationship to unallowable costs claimed, a failure to comply with regulations or the terms of the contract, mathematical errors, and/or the duplication of costs. Questions and/or disagreements between the CO, price analyst (if assigned) and cognizant auditor as to an audit report's interpretation or recommendations regarding "significant audit finding" and/or "questioned costs" shall be clarified or resolved and appropriately documented. If a disagreement cannot be resolved or agreement cannot be reached, the CO shall prepare a written statement in the PNM that discusses the issue(s) in question and supports a final decision on the matter.

(8) The basis for determining profit or fee as prescribed in FAR Subpart 15.404-4 and form DI-1920 (or file location).

(d) *Approval.* The PNM shall be signed and dated by the contract specialist or contract negotiator who conducted the negotiation and approved by the CO.

(e) *Distribution.* Whenever field pricing support has been obtained, copies of related PNM's shall be forwarded to the Assistant Inspector General for Auditing, OIG, not later than 15 days after the execution of the resulting contract, modification or close-out action.

Subpart 1415.6—Unsolicited Proposals

1415.606 Agency procedures.

The contact point for the receipt and coordination of unsolicited proposals is the contracting office, which will acknowledge and review the proposal contents and determine the proper activity within the bureau/office to evaluate and process the proposal. The policy or contracting office shall acknowledge unsolicited proposals and forward each one to the processing activity in an expeditious manner. Each bureau/office shall establish procedures for receipt, reproduction and disposition of unsolicited proposals consistent with the requirements of FAR 15.6.

PART 1416—TYPES OF CONTRACTS

Subpart 1416.2—Fixed-Price Contracts

Sec.

1416.203 Fixed-price contracts with economic price adjustment.

1416.203-4 Contract clauses.

Subpart 1416.4—Incentive Contracts

1416.405 Contract clauses.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1416.2—Fixed-Price Contracts

1416.203 Fixed-price contracts with economic price adjustment.

1416.203-4 Contract clauses.

An economic price adjustment clause based on actual cost of labor or material may be used after approval by the BPC, without the power of redelegation.

Subpart 1416.4—Incentive Contracts

1416.405 Contract clauses.

The BPC, without the power of redelegation, is authorized to approve an award fee clause to use in a solicitation when a cost-plus-award-fee contract is contemplated.

PART 1417—SPECIAL CONTRACTING METHODS

Subpart 1417.2—Options

Sec.

1417.203 Solicitations.

1417.206 Evaluation.

Subpart 1417.4—Leader Company Contracting

1417.402 Limitations.

Subpart 1417.5—Interagency Acquisitions Under the Economy Act

1417.502 General.

Subpart 1417.6—Management and Operating Contracts

1417.602 Policy.

1417.605 Award, renewal and extension.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1417.2—Options

1417.203 Solicitations.

Option quantities in excess of the 50 percent limit may, in unusual circumstances, be approved by the CCO.

1417.206 Evaluation.

The determination in FAR 17.206(b) shall be approved by the CCO prior to soliciting offers.

Subpart 1417.4—Leader Company Contracting

1417.402 Limitations.

Use of leader company contracting for a product, subject to the limitations in

FAR 17.402, shall require advance discussion with the Director, PAM, prior to approval by the HCA. This authority may not be redelegated. Documentation shall include the circumstances requiring such action.

Subpart 1417.5—Interagency Acquisitions Under the Economy Act

1417.502 General.

(a) The HCA, with authority to redelegate to the BPC, is authorized to make the determination prescribed in FAR 17.503 in accordance with the requirements in FAR 17.502. The CO shall prepare the determination, and for actions exceeding \$100,000, obtain legal review from the SOL before submitting it to the HCA for signature. Class determinations may be utilized where appropriate.

(b) Bureaus and offices shall develop procedures governing the use of interagency acquisitions under the Economy Act that are consistent with the FAR and this subpart 1417.5, and which adequately protect the Department's interests.

Subpart 1417.6—Management and Operating Contracts

1417.602 Policy.

(a) The AS/PMB is authorized to approve the CO's determination to enter into, extend or renew any management and operating contract.

(b) The CO shall prepared requests for authorization to enter into, extend or renew any management and operating contract shall be prepared by the CO and submitted by the HCA through the Director, PAM for approval by the AS/PMB. The request shall be submitted prior to solicitation for the requirement and shall:

(1) Reference the statutory authority for the requirement;

(2) Discuss the relationship between the requirement and the limitations in FAR 17.603;

(3) Include a copy of the proposed contract schedule and evaluation factors for; and

(4) If a noncompetitive procurement is proposed, include a copy of the Justification for Other than Full and Open Competition.

(c) The HCA shall be responsible for conducting the reviews required by FAR 17.602(c) and taking required actions within the time limit prescribed.

(d) The CO shall request authorization under paragraph (a) of this section for solicitation of offers for cost comparison purposes under OMB Circular A-76 (see FAR 7.3) for:

(1) Operation, maintenance, or support of a Government-owned or

controlled special production or testing facility; or

(2) Any other commercial or industrial service activity which, if performed by a contractor, would result in a management and operating contract as defined under FAR Subpart 17.6.

1417.605 Award, renewal and extension.

The CO shall review each management and operating contract prior to any extension or exercise of a renewal option. Any extension or renewal of a management and operating contract shall first be authorized as required in 1417.602.

PART 1418—[RESERVED]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1419—SMALL BUSINESS PROGRAMS

Subpart 1419.2—Policies

Sec.

1419.201 General policy.

1419.202 Specific policies.

1419.202-70 Acquisition screening and BUDS recommendations.

Subpart 1419.5—Set-Asides for Small Business

1419.503 Setting aside a class of acquisitions for small business.

1419.503-70 Class set-aside for construction acquisitions.

1419.505 Rejecting Small Business Administration recommendations.

1419.506 Withdrawing or modifying small business set-asides.

Subpart 1419.6—Certificates of Competency and Determinations of Responsibility

1419.602 Procedures.

1419.602-1 Referral.

Subpart 1419.7—The Small Business Subcontracting Program

1419.705 Responsibilities of the contracting officer under the subcontracting assistance program.

1419.705-2 Determining the need for a subcontracting plan.

1419.705-3 Preparing the solicitation.

1419.705-6 Postaward responsibilities of the contracting officer.

Subpart 1419.8—Contracting with the Small Business Administration (the 8(A) program)

1419.803 Selecting acquisitions for the 8(a) program.

1419.810 SBA Appeals.

Subpart 1419.9—Contracting Opportunities for Women-Owned Small Businesses

1419.901 Policy.

Subpart 1419.10—Small Business Competitiveness Demonstration Program

1419.1003 Purpose.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1419.2—Policies

1419.201 General policy.

HCAAs, without the power of redelegation, shall be responsible for the establishment of annual goals. The purpose of these goals is to increase participation of small business and small disadvantaged businesses in contract and subcontract opportunities. Goals for contract awards to minority business enterprises and women-owned businesses shall also be developed.

(a) All program goals must comply with the criteria established by OSDBU and shall reflect improvement in participation of small businesses and small disadvantaged businesses. The goal setting process shall be conducted as follows:

(1) Proposed goals are to be submitted by contracting activities to OSDBU by August 15th for the next fiscal year. To the greatest extent possible, the goals shall be based on advance acquisition plans (see Subpart 1407.1), budget justifications, and past performance.

(2) OSDBU shall be responsible for consolidating bureau and office goals, performing trend analysis, and submitting proposed Departmental goals to SBA, and the Minority Business Development Agency (MBDA), Department of Commerce.

(3) Bureau and office goals shall be negotiated and finalized with the OSDBU based on current plans and budget projections. OSDBU shall negotiate final Departmental goals with SBA, and MBDA.

(4) Since goals are expressed as a percentage of planned acquisition dollars, final budget approvals may change specific dollar goals.

(b) HCAAs may request revision of goals from OSDBU when final budget approvals result in a change of plus or minus 15% in planned acquisition dollars or in instances when a disproportionate change in the mix of products or services is required. The goal setting process with the Bureau/ Offices shall be completed by December 31st of each year.

(c) In accordance with 111 DM 8, OSDBU is responsible for performing all functions and duties prescribed in FAR 19.201(d) and for:

(1) Developing and maintaining policies, procedures, regulations, and guidelines for the effective administration of the Department's small business and small disadvantaged business programs; and,

(2) Providing functional direction and policy guidance to personnel in the implementation of the programs under paragraph (c)(1) of this section.

(d) HCAAs without authority to redelegate shall:

(1) Appoint a full-time BUDS (*e.g.*, procurement analyst or other non-operational contract person), for each contracting office where:

(i) Annual contract obligations regularly exceed \$20 million or represent a substantial part of the bureau's total contracting program; and,

(ii) The number, type, and size of contract transactions provide sufficient opportunities for small business and small disadvantaged business participation.

(2) Appoint a part-time BUDS (*e.g.*, procurement analyst or other non-operational contract person), for each contracting office where the nature of the contracting program requires such action to ensure accomplishment of annual program goals;

(e) Each BUDS shall perform the duties listed at FAR 19.201(d)(5)(6), and (10), 405 DM 1, and in the BUDS Standard Operating Procedures Handbook (405 DM 2).

1419.202 Specific policies.

1419.202-70 Acquisition screening and BUDS recommendations.

(a) For open market acquisitions estimated to exceed the SAT, the DI Form 1886, "Acquisition Screening and Review Form," shall be completed by the CO and signed as indicated in Block 20 of the form. The completed form shall be placed in the solicitation/ contract file prior to requesting quotations, publication of a FedBizOpps solicitation notice, or publication of a notice of intent to award a sole source contract.

(b) For open market acquisitions estimated to be greater than the micro-purchase threshold and less than the SAT that are not reserved for small business or proceeding under the 8(a) program, the DI Form 1886 shall be completed as specified in paragraph (a) of this section.

(c) Open market acquisitions, including charge card transactions, estimated to be less than the micro-purchase threshold are not routinely screened, but may be upon request by the purchaser.

(d) For Federal Supply Schedule competitions estimated to exceed the SAT and for which the source list contains less than three small businesses, the DI Form 1886 shall be completed as specified in paragraph (a) of this section.

(e) Federal Supply Schedule buys below the SAT are not routinely screened, but may be upon request by the CO.

(f) If the proposed method of acquisition is non-competitive, the Justification for Other than Full and Open Competition shall be attached to the DI Form 1886.

(g) Advance acquisition plans developed pursuant to FAR Part 7 shall be attached to the DI Form 1886.

(h) The CO shall document the rationale for not accepting a BUDS recommendation on DI Form 1886, under "Notes." (See FAR 19.202.) Disagreements between the CO and the BUDS concerning the decision to use a set aside or the 8(a) program shall be resolved by the BPC. The BPC shall annotate the resolution, with signature, in the "Notes" section of the form. The BPC may consult with the OSDBU to obtain assistance in resolving the disagreement.

Subpart 1419.5—Set-Asides for Small Business

1419.503 Setting aside a class of acquisitions.

1419.503-70 Class set-aside for construction acquisitions.

(a) Acquisitions for construction (as defined in FAR 2.101) estimated to cost \$2 million or less shall be set-aside on a class basis for exclusive participation by small business concerns. This class set-aside does not apply when:

(1) The acquisition is procured using simplified acquisition procedures;

(2) Use of a set-aside is precluded by the Small Business Competitiveness Demonstration Program (SBCDP) (See FAR 19.10);

(3) A non-competitive acquisition has been approved under the procedures of FAR 6.3;

(4) Work is to be performed outside the U.S.; or

(5) The BPC determines that adequate competition is not likely to be obtained if the acquisition is restricted to small business concerns, applying the requirements of FAR 19.202-2.

(b) The use of such set-asides is contingent upon current policy in effect under application of the SBCDP (See FAR 19.10).

1419.505 Rejecting Small Business Administration recommendations.

(a) A written justification in support of the CO's decision to reject the set-aside recommendation shall be approved by the HCA. It shall then be forwarded for sequential review through the Director, OSDBU and the Director, PAM, for action by the AS/PMB.

(b) As prescribed in FAR 19.505, the AS/PMB is authorized to reply to the Administrator of SBA on any SBA

appeal of a contracting officer's set-aside recommendation.

1419.506 Withdrawing or modifying small business set-asides.

The HCA is authorized, without the power of redelegation, to resolve disagreements between the CO and the BUDS concerning withdrawals or modifications of individual or class set-asides as prescribed in FAR 19.506. OSDBU shall be provided timely notification of such disagreements and the recommendation of the BUDS in order to provide assistance in resolving the disagreement.

Subpart 1419.6—Certificates of Competency and Determinations of Responsibility

1419.602 Procedures.

1419.602-1 Referral.

The CO shall obtain approval from the CCO for all determinations documenting a responsive small business' lack of responsibility prior to submission to the appropriate SBA office. A copy of the determination shall be sent to OSDBU.

Subpart 1419.7—The Small Business Subcontracting Program

1419.705 Responsibilities of the contracting officer under the subcontracting assistance program.

1419.705-2 Determining the need for a subcontracting plan.

The CO's determination that no subcontract possibilities exist for a proposed contractual action shall be reviewed by the BUDS prior to the approval by a level above the CO, and a copy shall be forwarded to OSDBU within 5 working days of execution, but in no case later than the date of contract award. The BUDS may contact OSDBU and consider any comments or recommendations offered.

1419.705-3 Preparing the solicitation.

In solicitations containing subcontract plan requirements, COs should consider evaluating offered subcontract plans and the offerors' past subcontracting compliance and accomplishments in the evaluation and selection of proposals. This would be particularly appropriate for acquisitions known to offer significant subcontracting opportunities for small, small disadvantaged, and women-owned businesses or which include work previously performed by a small business. When used, this factor must be evaluated in such a way that the relative ranking or scoring of small business offerors is not adversely affected by the lack of a subcontract plan.

1419.705-6 Postaward responsibilities of the contracting officer.

In addition to the actions specified in FAR 19.705-6, the CO shall also be responsible for the following:

(a) Forwarding a copy of each approved subcontracting plan to OSDBU within 10 working days after approval of the plan.

(b) Ensuring that the contractor forwards the original copy of the Standard Form 295, Summary Contracting Report, to the Department of the Interior, Director, OSDBU, 18th & C Streets, NW., Washington, DC 20240, Rm. 2747.

(c) Forwarding a copy of the Standard Form 294, Subcontracting Report for Individual Contracts, received from individual contractors, within 10 working days, to OSDBU.

(d) Conducting on-site business and economic development program management reviews (see 405 DM 1) of a prime contractor's small and disadvantaged business subcontracting program. Reviews shall be conducted as required based on problems perceived such as insufficient progress in meeting subcontracting goals. The result of the review shall be documented in writing using the format shown at 1453.303-70. At the discretion of the CO, the BUDS may conduct the reviews. In addition to required bureau/office internal distribution, a copy of the review report shall be submitted to OSDBU within 60 calendar days after completion of the review.

Subpart 1419.8—Contracting with the Small Business Administration (The 8(a) Program)

1419.803 Selecting acquisitions for the 8(a) Program.

The CO shall first screen the acquisition for suitability for award to SBA under the Section 8(a) program, before taking action under FAR 19.501, 19.502 or 1419.503-70. After selecting acquisitions suitable for the 8(a) program, the contracting office shall provide SBA appropriate advance acquisition planning information for all acquisitions found to be suitable for the 8(a) program (See also 1407.1).

1419.810 SBA appeals.

AS/PMB, without the power of redelegation, is authorized to issue the decision on an SBA appeal of a CO's Section 8(a) decision.

Subpart 1419.9—Contracting Opportunities for Women-Owned Small Businesses

1419.901 Policy.

In support of the Department's policy to facilitate, preserve, and strengthen women's business enterprises:

(a) Annual goals for contract awards to women-owned businesses shall be established as prescribed in 1419.201(b); and

(b) Small women-owned businesses shall be considered for subcontracting opportunities under FAR 19.702, and subcontract awards shall be reported as prescribed in FAR 19.704.

(c) OSDBU, in accordance with 111 DM 8, is assigned the responsibility for carrying out the Department's women-owned business enterprise program.

Subpart 1419.10—Small Business Competitiveness Demonstration Program

1419.1003 Purpose.

OSDBU is responsible for establishing the 10 targeted industry categories and monitoring DOI's participation.

PARTS 1420–1421—[RESERVED]

PART 1422—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1422.1—Basic Labor Policies

Sec.

1422.101 Labor relations.

1422.101–1 General.

1422.101–3 Reporting labor disputes.

1422.101–4 Removal of items from contractors' facilities affected by work stoppages.

1422.103 Overtime.

1422.103–4 Approvals.

Subpart 1422.3—Contract Work Hours and Safety Standards Act

1422.302 Liquidated damages and overtime pay.

Subpart 1422.4—Labor Standards for Contracts Involving Construction

1422.404 Davis-Bacon Act wage determinations.

1422.404–6 Modifications of wage determinations.

1422.406–8 Investigations.

1422.406–9 Withholding from or suspension of contract payments.

1422.406–13 Semiannual enforcement reports.

Subpart 1422.6—Walsh-Healey Public Contracts Act

1422.604 Exemptions.

1422.604–2 Regulatory exemptions.

Subpart 1422.8—Equal Employment Opportunity

1422.803 Responsibilities.

1422.804 Affirmative action programs.

1422.804–2 Construction.

1422.805 Procedures.

1422.807 Exemptions.

Subpart 1422.10—Service Contract Act of 1965, As Amended

1422.1003 Applicability.

1422.1003–4 Administrative limitations, variations, tolerances and exemptions.

Subpart 1422.13—Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

1422.1305 Waivers.

Subpart 1422.14—Employment of Workers with Disabilities

1422.1403 Waivers.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1422.1—Basic Labor Policies

1422.101 Labor relations.

1422.101–1 General.

The HCA may designate programs or requirements for which notice of labor disputes is necessary.

1422.101–3 Reporting labor disputes.

Labor disputes that may interfere with contract performance shall be reported to the SOL and the HCA.

1422.101–4 Removal of items from contractors' facilities affected by work stoppages.

Prior to initiating any action for removal of items from contractors' facilities, the CO shall obtain advice from SOL.

1422.103 Overtime.

1422.103–4 Approvals.

The CO shall obtain approval for the use of overtime from the CCO after consultation with the cognizant program office.

Subpart 1422.3—Contract Work Hours and Safety Standards Act

1422.302 Liquidated damages and overtime pay.

(a) HCAs are authorized to take the action in FAR 22.302(c)

(b) Funds withheld or collected for liquidated damages shall be disposed of in accordance with procedures under 1422.406–9.

Subpart 1422.4—Labor Standards for Contracts Involving Construction

1422.404 Davis-Bacon Act wage determinations.

1422.404–6 Modifications of wage determinations.

The HCA is authorized to request an extension for awards not made within 90 days after bid opening.

1422.406–8 Investigations.

(a) Labor standards investigations required by FAR 22.406–8 shall be the responsibility of the CO.

(b) The CO's report of violations shall be submitted to the HCA, who is authorized to take the actions prescribed in FAR 22.406–8(d).

(c) The HCA shall forward all referrals through the OIG to the Attorney General.

1422.406–9 Withholding from or suspension of contract payments.

HCAs shall establish procedures for collection and disposition of funds withheld under FAR 22.406–9, including liquidated damages.

1422.406–13 Semiannual enforcement reports.

PAM is responsible for submitting the report required by FAR 22.406–13 to DOL. In accordance with DOL memoranda, PAM requires bureaus to submit the required reports by April 15 and October 15 for the reporting periods of October 1 through March 31 and April 1 through September 30, respectively.

Subpart 1422.6—Walsh-Healey Public Contracts Act

1422.604 Exemptions.

1422.604–2 Regulatory exemptions.

The AS/PMB is authorized to request the Secretary of Labor to exempt contracts from the Walsh-Healey Public Contracts Act under FAR 22.604–2(b). A written finding justifying the exemption shall be prepared by the CO and submitted by the HCA to the Director, PAM for further action.

Subpart 1422.8—Equal Employment Opportunity

1422.803 Responsibilities.

The CO shall forward matters involving the applicability of EO 11246 to the HCA for resolution. This authority is granted to the HCA without the power of redelegation.

1422.804 Affirmative action programs.

1422.804–2 Construction.

Bureau contracting offices are responsible for maintaining (including updates and revisions) lists of geographic areas subject to affirmative action requirements.

1422.805 Procedures.

Copies of the poster "Equal Employment Opportunity is the Law" (National Stock No. 7690–00–926–8988) may be ordered from the GSA supply depot.

1422.807 Exemptions.

(a) The Director, PAM shall make the determination that a contract is essential to the national security and that the award of the contract without complying with one of the requirements of FAR 22.8 is necessary to national security.

(b) Requests for exemptions shall be submitted in writing by the CO, through the HCA, to the Director, PAM.

Subpart 1422.10—Service Contract Act of 1965, as Amended**1422.1003 Applicability.****1422.1003-4 Administrative limitations, variations, tolerances and exemptions.**

The CO shall submit requests for determination regarding application of the Service Contract Act and exemptions directly to DOL, Administrator of the Wage and Hour Division.

Subpart 1422.13—Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans**1422.1305 Waivers.**

(a) The Director, PAM is authorized to:

(1) Waive any or all terms of the clause at FAR 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, under the conditions prescribed in FAR 22.1305(a), and

(2) Waive any requirement in FAR Subpart 22.13 as prescribed in FAR 22.1305(b).

(b) Requests for waivers, under paragraph (a) of this section, shall be made in writing by the CO through the HCA to the Director, PAM for further action.

Subpart 1422.14—Employment of Workers with Disabilities**1422.1403 Waivers.**

The Director, PAM is authorized to waive any or all of the terms of the clause at FAR 52.222-36, Affirmative Action for Workers with Disabilities, under the conditions prescribed in FAR 22.1403(a), and waive any requirement in FAR Subpart 22.14 as prescribed in FAR 22.1403(b). Requests for waivers shall be made in writing by the CO through the HCA to the Director, PAM.

PART 1423—[RESERVED]**PART 1424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION****Subpart 1424.1—Protection of Individual Privacy**

Sec.

- 1424.102 General.
- 1424.103 Procedures.
- 1424.104 Contract clauses.

Subpart 1424.2—Freedom of Information Act.

1424.203 Policy.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1424.1—Protection of Individual Privacy**1424.102 General.**

Procedures for implementing the Privacy Act of 1974 and Departmental regulations under 43 CFR Part 2, Subpart D, are contained in 383 DM.

1424.103 Procedures.

When required by FAR 24.103(b)(2), the CO shall provide the contractor with a copy of the Department's Privacy Act regulations codified in 43 CFR Part 2, Subpart D.

1424.104 Contract clauses.

The clause at FAR 52.224-1, Privacy Act Notification, as prescribed in FAR 24.104(a), shall be supplemented in accordance with 1452.224-1.

Subpart 1424.2—Freedom of Information Act**1424.203 Policy.**

(a) The Department's implementation of the Freedom of Information Act is codified in regulations under 43 CFR Part 2, Subparts A and B.

(b) It is the policy of the Department to alert prospective contractors which place restrictions on the disclosure and use of proposal data that certain data may be subject to disclosure under a Freedom of Information Act request. (See 1415.207 and 1452.215-71.)

PART 1425—FOREIGN ACQUISITION

Sec.

- 1425.003 Definitions.

Subpart 1425.1—Buy American Act—Supplies

- 1425.103 Exceptions.
- 1425.105 Determining reasonableness of cost.

Subpart 1425.2—Buy American Act—Construction Materials

- 1425.202 Exceptions.
- 1425.206 Noncompliance.

Subpart 1425.7—Prohibited Sources

1425.701 Restriction on acquisition of supplies or services from prohibited sources.

Subpart 1425.10—Additional Foreign Acquisition Regulations

1425.1001 Waiver of right to examination of records.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

1425.003 Definitions.

Impracticable, as used in this subpart, includes reasons other than cost, and availability.

Manufacture, as used in this subpart, means completion of an end product in the form required to meet specifications. It includes only direct incorporation of components into the end products to alter the original material and establish the identity/character of the end product, and excludes other supplies, materials, and requirements such as testing, manuals, related equipment, etc.

Subpart 1425.1—Buy American Act—Supplies**1425.103 Exceptions.**

(a) The AS/PMB is authorized to make the determination that a foreign end item will be acquired for Government use because preference for a U.S. item would be inconsistent with the public interest. Such determinations shall be prepared by the CO and submitted by the HCA to the Director, PAM for further action.

(b) The Director, PAM is authorized to make the determination that an article, material or supply not included in the list under FAR 25.104 is not mined, produced, or manufactured in the U.S. in sufficient and reasonably available commercial quantities of satisfactory quality. Determinations shall be prepared by the CO and submitted by the BPC for approval.

(c) Contracting activities which have information justifying the removal of an item from the list under FAR 25.104 shall submit such information to the Director, PAM for further disposition.

1425.105 Determining reasonableness of cost.

(a) In unusual circumstances, the Director, PAM may authorize the use of evaluation differentials other than those prescribed in FAR 25.105 for a particular acquisition.

(b) Requests for use of other evaluation differentials shall be submitted by the HCA to the Director, PAM for further action.

Subpart 1425.2—Buy American Act—Construction Materials**1425.202 Exceptions.**

(a)(1) The CO may determine the reasonableness of cost as determined by the formula in 1425.203–70.

(2) The Director, PAM has the authority to make the determination that use of U.S. construction material would be impracticable. Failure of the Director, PAM to issue a determination within 30 days after receipt of a request will be deemed approval for use of the cited foreign material.

(3) For items not on the list at FAR 25.108(d), the CCO may make the non-availability determination if the items cost less than the SAT. The HCA may make the non-availability determination when the cost of the items exceeds the SAT.

(b) [Reserved]

1425.206 Noncompliance.

The CO will report, in writing, any use of non-excepted, foreign construction materials by contractors, subcontractors and suppliers through the HCA to the Director, PAM for debarment action in accordance with Subpart 1409.4.

Subpart 1425.7—Prohibited Sources**1425.701 Restriction on acquisition of supplies or services from prohibited sources.**

The AS/PMB is authorized to request permission from the Office of Foreign Assets Control (OFAC) for DOI use of supplies and services from the sources described in FAR 25.701. Requests shall be prepared by the CO and submitted through the HCA to the Director, PAM.

Subpart 1425.10—Additional Foreign Acquisition Regulations**1425.1001 Waiver of right to examination of records.**

The Director, PAM is authorized to make the determinations prescribed in FAR 25.1001(b). Determinations shall be prepared by the CO and submitted through the HCA to the Director, PAM.

PART 1426—OTHER SOCIOECONOMIC PROGRAMS**Subpart 1426.70—Indian Preference**

Sec.

- 1426.7000 Scope of subpart.
- 1426.7001 Definitions.
- 1426.7002 Statutory requirements.
- 1426.7003 Applicability and contract clause.
- 1426.7004 Compliance enforcement.
- 1426.7005 Tribal preference requirements.

Subpart 1426.71—Minority Business Reports

- 1426.7100 Scope of subpart.
- 1426.7101 Definitions.
- 1426.7102 Minority Business Development Agency (MBDA–91) Plan and Reports.
- 1426.7102–1 Statutory basis.
- 1426.7102–2 Requirements.
- 1426.7103 The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (Superfund Minority Contractors Utilization Report).
- 1426.7103–1 Statutory basis.
- 1426.7103–2 Requirements.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1426.70—Indian Preference**1426.7000 Scope of subpart.**

This subpart prescribes policies and procedures for implementation of Section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, 88 Stat. 2205, 25 U.S.C. 450e(b)).

1426.7001 Definitions.

For purposes of this subpart the following definitions shall apply:

Indian means a person who is a member of an Indian Tribe. If the contractor has reason to doubt that a person seeking employment preference is an Indian, the contractor shall grant the preference but shall require the individual within thirty (30) days to provide evidence from the Tribe concerned that the person is a member of the Tribe.

Indian organization means that governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451).

Indian-owned economic enterprise means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership shall constitute not less than 51 percent of the enterprise.

Indian reservation includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act, (85 Stat. 688; 43 U.S.C. 1601 *et seq.*).

Indian Tribe means an Indian Tribe, band, nation, or other recognized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601), which is recognized as eligible

for the special programs and services provided by the United States to Indians because of their status as Indians.

On or near an Indian reservation means on a reservation or the distance within that area surrounding an Indian reservation(s) that a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

1426.7002 Statutory requirements.

Section 7(b) of the Indian Self-Determination and Education Assistance Act requires that any contract or subcontract entered into pursuant to that Act, the Act of April 16, 1934 (48 Stat. 596; 25 U.S.C. 452), as amended (the Johnson-O'Malley Act), or any other Act authorizing contracts with Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible:

(a) Preferences and opportunities for training and employment in connection with the administration of such contracts shall be given to Indians, and

(b) Preference in the award of subcontracts in connection with the administration of such contracts shall be given to Indian organizations and to Indian-owned economic enterprises as defined in Section 3 of the Indian Financing Act of 1974 (Sec. 3, Pub. L. 93–262; 88 Stat. 77; 25 U.S.C. 1452).

1426.7003 Applicability and contract clause.

(a) The CO shall insert the clause at 1452.226–70, Indian Preference—Department of the Interior, in solicitations issued and contracts awarded by:

(1) The Bureau of Indian Affairs;

(2) A contracting activity other than the Bureau of Indian Affairs when the contract is entered into pursuant to an act specifically authorizing contracts with Indian organizations; and,

(3) A contracting activity other than the Bureau of Indian Affairs where the work to be performed is specifically for the benefit of Indians and is in addition to any incidental benefits which might otherwise accrue to the general public.

(b) The CO shall insert the clause at 1452.226–71, Indian Preference Program—Department of the Interior, in all solicitations issued and contracts awarded by a contracting activity which may exceed \$50,000, which contain the clause required by paragraph (a) of this section and where it is determined by the CO, prior to solicitation, that the work under the contract will be performed in whole or in part on or near an Indian reservation(s). The Indian Preference Program clause may also be included in solicitations issued and

contracts awarded by a contracting activity which may not exceed \$50,000, but which contain the clause required by paragraph (a) of this section and which, in the opinion of the CO, offer substantial opportunities for Indian employment, training or subcontracting.

1426.7004 Compliance enforcement.

(a) The CO is responsible for conducting periodic reviews of the contractor to ensure compliance with the requirements of the clauses prescribed in 1426.7003. These reviews may be conducted with the assistance of the Indian Tribe(s) concerned.

(b) Complaints of noncompliance with the requirements of the clauses prescribed under 1426.7003 received in writing by the contracting activity shall be promptly investigated by the CO. A written disposition of the complaint shall be prepared by the CO.

1426.7005 Tribal preference requirements.

(a) Where the work under a contract is to be performed on an Indian reservation, the CO may supplement the clause at 1452.226-71, Indian Preference Program—Department of the Interior, by adding specific Indian preference requirements of the Tribe on whose reservation the work is to be performed. The supplemental requirements shall be jointly developed for the contract by the CO and the Tribe. Supplemental preference requirements must represent a further implementation of the requirements of Section 7(b) of Public Law 93-638 and must be approved by the SOL for legal sufficiency before being added to a solicitation and resultant contract. Any supplemental preference requirements to be added to the clause at 1452.226-71 shall be included in the solicitation and clearly identified in order to ensure uniform understanding of the additional requirements by all prospective bidders or offerors.

(b) Nothing in this section shall be interpreted to preclude Tribes from independently developing and enforcing their own tribal preference requirements. Such independently developed tribal preference requirements shall not, except as provided in paragraph (a) of this section, become a requirement in contracts covered under this subpart 1426.70 and must not hinder the Government's right to award contracts and to administer their provisions.

Subpart 1426.71—Minority Business Reports

1426.7100 Scope of subpart.

This subpart sets forth reporting requirements established by Executive

Order 12432 entitled "Minority Business Enterprise Development" and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as "Superfund."

1426.7101 Definitions.

For purposes of this subpart the following definitions shall apply:

Contract means a contract or subcontract awarded pursuant to the FAR, as well as federal financial assistance, including a subcontract, cooperative agreement, grant, subagreement or subgrant.

Minority business enterprise means a business which is at least 51% owned by one or more minority individuals, or in the case of any publicly owned business, at least 51% of the voting stock is owned by one or more minority individuals. The daily business operations are likewise managed by the minority owner.

Minority individual means a U.S. citizen who has been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of this group without regard to their individual qualities. Such groups include, but are not limited to: 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.

(a) *Native Americans* are persons having origins in any of the original peoples of North America or the Hawaiian Islands; in particular, American Indians, Eskimos, Aleuts and Native Hawaiians.

(b) *Asian-Pacific Americans*—persons having origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, or the Federated States of Micronesia.

1426.7102 Minority Business Development Agency (MBDA-91) Plan and Reports.

1426.7102-1 Statutory basis.

Executive Order 12432, dated July 14, 1983, established the requirement for the Department of Commerce (i.e., MBDA) to collect information on acquisition and financial assistance awards to minority businesses, as well as credit assistance to such firms.

1426.7102-2 Requirements.

(a) *MBDA-91 Plan.* The BPC is required to submit the Plan on form MBDA-91 to the OSDBU by no later than November 15 of each year. Section 1 of the form, "Procurement Program Activities," will be completed by OSDBU. Sections 2 through 5 must be completed by bureaus and offices.

(b) *MBDA-91 Reports.* The BPC must submit reports to the OSDBU within 30 days following the end of a fiscal quarter. Reports are cumulative from October 1 of the reporting fiscal year, and monetary figures should be rounded to whole dollars in each section of the report.

(c) "Negative report" means when the Bureau had no reportable activity during the quarter. Submit such a report using the MBDA-91 report form.

1426.7103 The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (Superfund Minority Contractors Utilization Report).

1426.7103-1 Statutory basis.

Paragraph 105 of CERCLA requires the President of the United States to consider the availability of qualified minority business enterprises in awarding contracts under the Act and report annually to Congress on the extent of such awards, including the efforts made to encourage the participation of such firms in programs carried out under the act. The Environmental Protection Agency has delegated responsibility for preparing the report, which includes contracts for Superfund hazardous waste clean-up awarded by other agencies.

1426.7103-2 Requirements.

The contracting offices shall report designated projects funded with EPA monies, involving the actual award of contracts, subcontracts, financial assistance instruments, subagreements, etc. by DOI. Do not include Departmental projects covered by Superfund and funded solely with Departmental appropriations. The BPC must submit one of the following reports inclusive of all projects, as applicable, to the OSDBU by no later than November 8 of each year:

(a) EPA Forms 6005-3 and 6005-3A for applicable Superfund contract awards, including partial awards to minority businesses.

(b) EPA Form 6005-3A only, for applicable Superfund contract awards when no awards were made to minority firms, to report the efforts made to promote minority business participation in the designated projects.

(c) "Negative Report" when the reporting Bureau did not award contracts using Superfund monies.

Subchapter E—General Contracting Requirements

PART 1427—PATENTS, DATA, AND COPYRIGHTS

Subpart 1427.2—Patents and Copyrights

Sec.

1427.201 Patent and copyright infringement liability.

1427.201-2 Contract clauses.

1427.202 Royalties.

1427.202-3 Adjustment of royalties.

Subpart 1427.3—Patent Rights Under Government Contracts

1427.303 Contract clauses.

1427.304 Procedures.

1427.304-1 General.

1427.304-4 Appeals.

1427.306 Licensing background patent rights to third parties.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1427.2—Patents and Copyrights

1427.201 Patent and copyright infringement liability.

1427.201-2 Contract clauses.

Approval to exempt specific United States patents from the patent indemnity clause shall be obtained from the CCO with legal review and concurrence.

1427.202 Royalties.

1427.202-3 Adjustment of royalties.

The CO shall report to the Assistant Solicitor for Acquisitions and Intellectual Property the results of any action taken in compliance with FAR 27.202-3.

Subpart 1427.3—Patent Rights Under Government Contracts.

1427.303 Contract clauses.

(a) The HCA is authorized to make the determination to sublicense foreign governments or international organizations, as prescribed in FAR 27.303(b)(3).

(b) If one of the exceptions in FAR 27.303(e)(1) is used, then insert clause 1452.227-70, Appeals of Use of Exceptions. The exception in FAR 27.303(e)(1)(ii) to use alternative provisions restricting or eliminating a contractor's right to retain title to any subject invention shall be made by the HCA, after consultation with the Assistant Solicitor for Acquisitions and Intellectual Property.

(c) Within 30 days after contract award the CO shall forward copies of

determinations to use exceptions under FAR 27.303(e)(1) shall be forwarded to the Assistant Solicitor for Acquisitions and Intellectual Property for submission to the Secretary of Commerce and, if required, to the Chief Counsel for Advocacy of the Small Business Administration. The determinations shall include all supporting documentation.

1427.304 Procedures.

1427.304-1 General.

(a)(1) *Exceptions.* The Associate Solicitor for the General Law Division shall issue a decision on the appeal of a small business concern or nonprofit organization of the use of exceptions under FAR 27.303(e)(1).

(2) If the Associate Solicitor for the General Law Division determines that the appeal notice raises a genuine dispute over the material facts, a fact-finding hearing shall be conducted by OHA. The hearing shall be conducted at a location convenient to the parties concerned as determined by the Director, OHA, and on a date and time stated. The contractor may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings shall be conducted expeditiously and in such a manner that each party will have a full opportunity to present all information considered pertinent to the determination. A transcribed record of the proceedings shall be made and shall be made available at cost to the contractor upon request, unless the requirement for the transcribed record is waived by mutual agreement of the contractor and OHA.

(3) OHA shall prepare written findings of fact and transmit them to the Associate Solicitor for the General Law Division.

(4) OHA may hear oral arguments after fact-finding provided that the contractor, its counsel or other duly authorized representative, is present in order to have the opportunity to make arguments and rebuttal. The Associate Solicitor for the General Law Division shall issue a decision.

(b) *Greater rights determinations.* Determinations on requests for greater rights in subject inventions by contractors shall be made by the HCA after consultation with the Assistant Solicitor for Acquisitions and Intellectual Property. Appeals of such determinations shall be made to the CBCA.

(c) *Exercise of march-in-rights.* After notification to the contractor of information warranting the exercise of march-in rights, the CO shall prepare a

written notice to the contractor after consultation with the Assistant Solicitor for Acquisitions and Intellectual Property. The notice shall be prepared and signed by the Associate Solicitor for the General Law Division. Within the time constraints, if the Associate Solicitor for the General Law Division determines any information submitted by the contractor (assignee or exclusive licensee) after notice of march-in is received raises a genuine dispute over material facts, a fact-finding hearing shall be conducted by OHA. The Associate Solicitor for the General Law Division shall issue a final determination, after consideration of any further written or oral arguments from the parties. An unfavorable determination to a contractor (assignee or exclusive licensee) shall be subject to appeal.

(d) *Licenses and assignments under contracts with nonprofit organizations.* COs may approve contractor requests for assignment of rights or exclusive licenses after obtaining the advice of the Assistant Solicitor for Acquisitions and Intellectual Property. Solicitations containing FAR clause 52.227-11 shall state that contractors should forward such requests to the CO.

1427.304-4 Appeals.

(a) The CO is authorized to make any of the determinations listed after consultation with the Assistant Solicitor for Acquisitions and Intellectual Property.

(b) Determinations made under paragraph (a) of this section shall be considered final decisions under the Contract Disputes Act and may be appealed to the CBCA in accordance with the procedures in DIAR Subpart 1433.2.

1427.306 Licensing background patent rights to third parties.

Any proposed determination to be made to require third party licensing shall be submitted by the HCA through the Assistant Solicitor for Acquisitions and Intellectual Property for signature of the AS/PMB. The contractor may request a public hearing on the record prior to the above determination. In such cases, the proposed determination and the contractor's request for a hearing shall be referred to OHA. OHA shall conduct public hearings as set forth in 1427.304-1(a)(4) and shall forward its findings and recommendations to the AS/PMB for a final determination. The final determination shall inform the contractor of the right to judicial review within sixty (60) days of the AS/PMB determination.

PART 1428—BONDS AND INSURANCE**Subpart 1428.3—Insurance**

Sec.

1428.301 Policy.

1428.306 Insurance under fixed-price contracts.

1428.306–70 Insurance for aircraft services contracts.

1428.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

1428.311–1 Contract clause.

1428.311–2 Agency solicitation provisions and contract clauses.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.**Subpart 1428.3—Insurance****1428.301 Policy.**

It is the policy of DOI to insure its own risks only when such action is in the best interest of the Government. Circumstances where contractors are required to carry insurance are listed under FAR 28.301 and 28.306. In these circumstances, the CO shall insert the clause at 1452.228–70, Liability Insurance—Department of the Interior, in solicitations and contracts.

1428.306 Insurance under fixed-price contracts.**1428.306–70 Insurance for aircraft services contracts.**

(a) Policy. The CO shall insert minimum insurance requirements in aircraft services contracts in order to protect the Government and its contractors.

(b) Applicability. The clauses prescribed in section 1428.311–2 are applicable to all fixed-price contracts involving use of aircraft with either a contractor-furnished or a Government-furnished pilot except for one-time charters when Government exposure is minimal and time limitations are present.

1428.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.**1428.311–1 Contract clause.**

The CO shall modify the clause at FAR 52.228–7, Insurance—Liability to Third Persons, in accordance with 1452.228–7, and insert in solicitations and contracts as prescribed in FAR 28.311–1.

1428.311–2 Agency solicitation provisions and contract clauses.

The following DOI clauses shall be used as prescribed:

(a) The CO shall insert the clause at 1452.228–71, Aircraft and General Public Liability Insurance—Department

of the Interior, in solicitations and contracts when a fixed-price contract for operation of aircraft is anticipated and where the Government is using a contractor-furnished pilot.

(b) The CO shall insert the clause at 1452.228–72, Liability for Loss or Damage—Department of the Interior, in solicitations and contracts when a fixed-price contract for use of aircraft is anticipated and where the Government does not have a property interest and is using a Government-furnished pilot.

(c) The CO shall insert the clause at 1452.228–73, Liability for Loss or Damage (Property Interest)—Department of the Interior, in solicitations and contracts when a fixed-price contract for use of aircraft is anticipated and where the Government has a property interest in the aircraft and is using a Government-furnished pilot (*e.g.*, a lease with purchase option).

PART 1429—TAXES**Subpart 1429.3—State and Local Taxes**

Sec.

1429.303 Application of State and local taxes to Government contractors and subcontractors.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.**Subpart 1429.3—State and Local Taxes****1429.303 Application of State and local taxes to Government contractors and subcontractors.**

Contractors to be treated as agents of the Government for the purposes set forth in FAR 29.303(a) shall require the written review and approval of the AS/PMB. The HCA shall submit requests for approval through SOL, to the Director, PAM, for further action.

PART 1430—COST ACCOUNTING STANDARDS ADMINISTRATION**Subpart 1430.2—CAS Program Requirements**

Sec.

1430.201 Contract requirements.

1430.201–5 Waiver.

1430.202 Disclosure requirements.

1430.202–2 Impracticality of submission.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.**Subpart 1430.2—CAS Program Requirements****1430.201 Contract requirements.****1430.201–5 Waiver.**

The CO shall prepare requests to waive contractor compliance with CAS prescribed in FAR 30.201–5 and 48 CFR 9903.201–5(e) (FAR Appendix). The CO shall submit the request for waiver to

the Director, PAM, without the power of redelegation, for a determination. PAM must report any waivers granted on a fiscal year basis to the CASB in accordance with FAR 30.201–5(e).

1430.202 Disclosure requirements.**1430.202–2 Impracticality of submission.**

The CO shall prepare any request to award a contract without the required contractor submission of the Form No. CASB–DS–1, Disclosure Statement, and submit it through the HCA, to the Director, PAM, and to the Secretary for approval. The Secretary, without the power of redelegation, must file a report to CASB within 30 days in accordance with 48 CFR 9903.202–2 (FAR Appendix).

PART 1431—CONTRACT COST PRINCIPLES AND PROCEDURES**Subpart 1431.1—Applicability**

Sec.

1431.101 Objectives.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.**Subpart 1431.1—Applicability****1431.101 Objectives.**

Individual deviations concerning cost principles and procedures shall require the approval of the cognizant Assistant Secretary, with further redelegation authorized. Redelegation is limited to the BPC.

PART 1432—CONTRACT FINANCING**Subpart 1432.1—Non-Commercial Item Purchase Financing**

Sec.

1432.102 Description of contract financing methods.

Subpart 1432.3—Loan Guarantees for Defense Production

1432.304 Procedures.

1432.304–2 Certificate of eligibility.

Subpart 1432.4—Advance Payments for Non-Commercial Items

1432.402 General.

1432.407 Interest.

Subpart 1432.5—Progress Payments Based on Costs

1432.501 General.

1432.501–2 Unusual progress payments.

1432.502–2 Contract finance office clearance.

Subpart 1432.6—Contract Debts

1432.602 Responsibilities.

1432.610 Compromising debts.

Subpart 1432.9—Prompt Payment

1432.903 Responsibilities.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1432.1—Non-Commercial Item Purchase Financing**1432.102 Description of contract financing methods.**

Use of progress payments based on a percentage or stage of completion are authorized for construction contracts. Progress payments for other than construction, alteration, and repair contracts require the CO to write a determination that:

(a) Payments based on costs would be impracticable; and

(b) Adequate measures exist for determining quality standards and the percentage of work accomplished.

Subpart 1432.3—Loan Guarantees for Defense Production**1432.304 Procedures.****1432.304-2 Certificate of eligibility.**

Guaranteed loan applications shall be authorized and transmitted to the Federal Reserve Board by the AS/PMB, in accordance with FAR 32.304-2(h).

Subpart 1432.4—Advance Payments for Non-Commercial Items**1432.402 General.**

The HCA is authorized to approve determinations and findings, as well as contract terms, for advance payments. The CO shall submit a recommendation for approval or disapproval of the contractor's request to the HCA through the head of the bureau finance office.

1432.407 Interest.

The HCA may authorize advance payments without interest pursuant to FAR 32.407.

Subpart 1432.5—Progress Payments Based on Costs**1432.501 General.****1432.501-2 Unusual progress payments.**

The CO shall obtain the advance approval of the HCA, or designee, before providing a progress payment rate higher than the customary rates as defined in FAR 32.501-1. Advance approval to provide progress payment rates higher than the customary rates shall not be delegated lower than the CCO.

1432.502-2 Contract finance office clearance.

The CO shall obtain approval of the bureau finance office prior to taking actions listed in FAR 32.502-2.

Subpart 1432.6—Contract Debts**1432.602 Responsibilities.**

344 DM contains policy, standards, and guidelines for collection of debts within DOI. Each bureau and office is responsible for developing an internal debt collection system and prescribing internal procedures for collection of debts, including debts covered under FAR Subpart 32.6.

1432.610 Compromising debts.

The CO may recommend compromise of contractor actions pursuant to FAR 32.610, but shall consult 344 DM and SOL for further action.

Subpart 1432.9—Prompt Payment**1432.903 Responsibilities.**

The CO may modify the timing of payment specified in paragraph (a)(1)(i) and (ii) of the clause FAR 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, and/or paragraph (a)(1)(i) and (ii) of the clause at FAR 52.232-27, Prompt Payment for Construction Contracts, as appropriate, to provide for a period shorter than 30 days (but not less than 7 days) for making contract financing payments based on geographical site location, workload, contractor ability to submit a proper request for payment, or other factors. When considering a modification to these FAR standard(s), the CO should alert the finance and program officials involved in the payment process to ensure that such shorter contract payment terms to be specified in the solicitation and resulting contract will be met. A CO determination justifying a shorter payment period must be documented in writing, and incorporated into the solicitation/contract file.

PART 1433—PROTESTS, DISPUTES, AND APPEALS**Subpart 1433.1—Protests**

Sec.

- 1433.102 General.
- 1433.103 Protests to the agency.
- 1433.104 Protests to GAO.
- 1433.106 Solicitation provisions and contract clauses.

Subpart 1433.2—Disputes and Appeals

- 1433.203 Applicability.
- 1433.209 Suspected fraudulent claims.
- 1433.211 Contracting officer's decision.
- 1433.213 Obligation to continue performance.
- 1433.214 Alternative dispute resolution (ADR).
- 1433.215 Contract clauses.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1433.1—Protests**1433.102 General.**

For protests filed with GAO, the SOL shall be responsible for handling all bid protest matters. Any communications to GAO shall be coordinated with the regional and/or field solicitor and the Assistant Solicitor, Acquisitions and Intellectual Property.

1433.103 Protests to the agency.

For protests filed with the agency, the CO shall coordinate with the regional and/or field solicitor and the Assistant Solicitor, Acquisitions and Intellectual Property, prior to making the protest decision and before suspending or terminating a contract award as a result of the protest. When a protest is denied by the CO, the decision issued shall advise the protester that the decision may be appealed to the GAO. All protest decisions must also contain a notice that appeals to GAO must include a copy of the CO's protest decision.

1433.104 Protests to GAO.

(a) *General procedure.* (1) A protester shall furnish a copy of its complete protest simultaneously to the CO and the Assistant Solicitor, Acquisitions and Intellectual Property. Upon being telephonically advised by the GAO of the receipt of a protest, the SOL shall inform the appropriate contracting activity which shall immediately notify the CO. For protests concerning Federal Information Processing (FIP) acquisitions, the SOL shall also inform the Director, Office of Information Resources Management (PIR), who, in turn, shall notify the appropriate bureau Information Resources Management contact and GSA official. The CO shall prepare the protest report as required by FAR 33.104(a)(3).

(2) The SOL will furnish promptly GAO's written notice of the protest to the cognizant contracting activity which, in turn, shall promptly transmit copies to the CO. The CO shall begin notification as prescribed in FAR 33.104(a)(2). The notification letters shall contain a specified period of time for submission of comments and include instructions that any comments submitted to the GAO should also be submitted simultaneously to the CO and the Assistant Solicitor, Acquisitions and Intellectual Property. Copies of the CO's notification letters shall be sent concurrently to the Assistant Solicitor, Acquisitions and Intellectual Property.

(3)(i) The contracting activity shall have no more than 15 working days from the date of telephonic notification by the SOL to deliver the protest report to the Assistant Solicitor, Acquisitions

and Intellectual Property. For reports involving use of the 10 working day express option, the SOL shall establish the report delivery date after consultation with the contracting activity.

(ii) If required, the SOL shall make the request for an extension in the report due date.

(iii) In addition to the requirements of FAR 33.104(a)(3), the report shall be appropriately titled and dated; shall cite the GAO file number; and shall be signed by the CO. Reports shall be prepared with the assistance of the local attorney-advisor of the SOL. A statement shall be included giving an estimate of the length of time an award may be delayed without significant expense or difficulty in performance. If appropriate, the report shall contain a statement regarding any urgency for the acquisition and the extent to which a delay in award may result in significant performance difficulties or additional expense to the Government. The contracting activity shall submit the CO's report to the Assistant Solicitor, Acquisitions and Intellectual Property, who will then submit it to GAO and provide a copy to each interested party who responded to the notification pursuant to FAR 33.104(a)(2).

(b) *Protests before award.* (1) The finding to award, notwithstanding protest, shall be written by the CO, reviewed by the SOL, and approved by the HCA. A copy of the approved written finding shall be placed in the contract file.

(2) The SOL shall be responsible for notifying GAO of the finding to award notwithstanding protest.

(c) *Protests after award.* (1) The CO shall notify the SOL prior to suspending or terminating the awarded contract.

(2) The written finding to authorize continued contract performance, notwithstanding protest, shall be written by the CO, reviewed by the SOL, and approved by the HCA.

(3) The SOL shall be responsible for notifying GAO of the finding to continue contract performance not withstanding protest.

(d) *Notice to GAO.* The CO shall prepare the report required by FAR 33.104(g), and coordinate it with the Assistant Solicitor, Acquisitions and Intellectual Property, and the Director, PAM, prior to HCA signature (signature level not redelegable). For protests regarding FIP acquisitions, the CO shall also coordinate the report with the Director, PIR. After signature, the report shall be forwarded to the Assistant Solicitor for Acquisitions and Intellectual Property for transmission to GAO.

1433.106 Solicitation provisions and contract clauses.

The provision at FAR 52.233-2, Service of Protest, as prescribed in FAR 33.106, shall be modified in accordance with the instructions in DIAR 1452.233-2.

Subpart 1433.2—Disputes and Appeals

1433.203 Applicability.

(a) The CO shall prepare any determination that application of the Contract Disputes Act to contracts with a foreign or international organization would not be in the public interest and forward it to the HCA for review. The HCA shall be responsible for submitting the determination through the Director, PAM, to the AS/PMB for approval.

(b) The CBCA is authorized by the Contract Disputes Act or by the Secretary to consider and determine an appeal from a decision of a CO on a claim arising under or relating to a contract made by DOI.

1433.209 Suspected fraudulent claims.

The CO shall refer all matters relating to suspected fraudulent claims by a contractor or individual to the OIG for further action or investigation.

1433.211 Contracting officer's decision.

The CO's decision shall reference the Civilian Board of Contract Appeals, 6th Floor, 1800 M Street, NW., Washington, DC 20036, and its rules of procedure at <http://www.cbca.gsa.gov>.

1433.213 Obligation to continue performance.

If the CO considers financing continued contractor performance to be in the best interest of the Government, the CO shall prepare and forward a determination to the HCA for approval.

1433.214 Alternative dispute resolution (ADR).

DOI strongly encourages the use of ADR in the resolution of disputes in lieu of litigation or adjudication. Efforts shall be made to resolve disputes in an expeditious and financially responsible manner.

1433.215 Contract clauses.

The Disputes clause contained in FAR 52.233-1 shall be used with its Alternate I in all solicitations and contracts.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 1434—[RESERVED]

PART 1435—RESEARCH AND DEVELOPMENT CONTRACTING

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

1435.010 Scientific and technical reports.

If a Research and Development (R&D) contract results involve classified or national security information, the CO shall follow the agency procedures prescribed in DIAR 1404.403 prior to making the results available. Copies of publications and reports are also required to be sent to the DOI Departmental Library, 1849 C Street, NW., MS-2258, Main Interior Building, Washington, DC 20240.

PART 1436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1436.2—Special Aspects of Contracting for Construction

Sec.

1436.209 Construction contracts with architect-engineer firms.

1436.270 Preparation of solicitations and contracts for construction.

1436.270-1 Uniform contract format.

1436.270-2 Part I—The Schedule.

1436.270-3 Part II—Contract clauses.

1436.270-4 Part III—Documents, exhibits and other attachments.

1436.270-5 Part IV—Representations and instructions.

Subpart 1436.5—Contract Clauses

1436.570 Prohibition against use of lead-based paint.

1436.571 Additive and deductive items.

Subpart 1436.6—Architect-Engineer Services

1436.602 Selection of firms for architect-engineer contracts.

1436.602-1 Selection criteria.

1436.602-2 Evaluation boards.

1436.602-3 Evaluation board functions.

1436.602-4 Selection authority.

1436.602-5 Short selection processes for contracts not to exceed the simplified acquisition threshold.

1436.603 Collecting data on and appraising firms' qualifications.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1436.2—Special Aspects of Contracting for Construction

1436.209 Construction contracts with architect-engineer firms.

Approval to award a contract for construction to a firm or its subsidiaries that designed the project shall be made by the HCA only after discussion with Director, PAM, and with legal

concurrency. The request for approval prepared by the CO shall include the reason(s) why award to the design firm is required; an analysis of the facts involving potential or actual organizational conflicts of interest, including benefits and detriments to the Government and the prospective contractor; and the measures which are to be taken to avoid, neutralize or mitigate conflicts of interest. A copy of the documentation shall be forwarded to PAM at the time of consultation.

1436.270 Preparation of solicitations and contracts for construction.

1436.270-1 Uniform contract format.

(a) COs shall prepare solicitations and contracts for construction using the uniform contract format outlined in Table 1436-1.

(b) If any section of the uniform contract format does not apply, the CO should so mark that section in the solicitation. Upon award, the CO shall not physically include Part IV in the resulting contract, but shall retain it in the contract file.

TABLE 1436-1—UNIFORM CONTRACT FORMAT

| Section | Title |
|--|--|
| Part I—The Schedule | |
| A | Solicitation/contract form. |
| B | Bid schedule. |
| C | Specifications/Drawings. |
| D | Packaging and marking. |
| E | Inspection and acceptance. |
| F | Deliveries or performance. |
| G | Contract administration data. |
| H | Special contract requirements. |
| Part IV—Representations and Instructions | |
| K | Representations, certifications, and other statements of offerors. |
| L | Instructions, conditions, and notices to offerors. |
| M | Evaluation factors for award. |

1436.270-2 Part I—The Schedule.

The CO shall prepare the Schedule as follows:

(a) *Section A, Solicitation/contract form.* Use SF 1442, Solicitation, Offer, and Award (Construction, Alteration or Repair), as prescribed in FAR 36.701(a).

(b) *Section B, Bid schedule.* Bid schedule.

(c) *Section C, Specifications/Drawings.* Include specifications and drawings (See FAR Part 11) or reference other location in the uniform contract format (e.g. Section J, attachment ____).

(d) *Section D, Packaging and Marking.* Not applicable.

(e) *Section E, Inspection and acceptance.* Include inspection, acceptance, quality assurance, and reliability requirements (See FAR Part 46).

(f) *Section F, Deliveries or performance.* Include Suspension of Work, Liquidated Damages, Commencement, Prosecution, and Completion of Work, Variation in Quantity clauses (See FAR Part 12).

(g) *Section G, Contract administration data.* Include Contracting Officer's Representative/Technical Representative identification, and any required administration information (e.g., accounting and appropriation data).

(h) *Section H, Special contract requirements.* Include any special contract requirements which are not included in other sections of the uniform contract format.

1436.270-3 Part II—Contract clauses.

For Section I, Contract clause, include any clauses required by law or by the FAR (including Subpart 36.5), the DIAR (including Subpart 1436.5), and any additional bureau-wide or local clauses expected to be included in any resulting contract which are not included in other sections of the uniform contract format.

1436.270-4 Part III—Documents, exhibits and other attachments.

For Section J, List of documents, exhibits, and other attachments, include wage determinations (See FAR 22.404), SF-24—Bid Bond (See FAR 28.101), and other attachments by listing the title, date and number for each document.

1436.270-5 Part IV—Representations and instructions.

The CO shall prepare the representations and instructions as follows:

(a) *Section K, Representations, certifications, and other statements of offerors.* Include provisions requiring representations, certifications, or submission of other information by an offeror.

(b) *Section L, Instructions, conditions, and notices to offerors.* Include other provisions or instructions to offerors which are not included in other sections of the uniform contract (e.g., FAR 52.214-19 if using sealed bidding).

(c) *Section M, Evaluation factors for award.* Identify all factors that will be considered in awarding the contract (See, for example, FAR 14.201-8 for sealed bidding; FAR 15.304 for competitive proposals).

Subpart 1436.5—Contract Clauses

1436.570 Prohibition against use of lead-based paint.

(a) *Definitions.* As used in this section, "residential structure:" means any house, apartment, or structure intended for human habitation including any institutional structure where persons reside such as an orphanage, boarding school dormitory, day care center, or extended care facility.

(b) The CO shall insert the clause at 1452.236-70, Prohibition Against Use of Lead-Based Paint, in solicitations and contracts when construction of residential structures or rehabilitation (including dismantling, demolition, or removal) of residential structures is contemplated.

1436.571 Additive and deductive items.

If it appears that funds available for a construction project may be insufficient for all the desired features, the CO may provide in the solicitation for a base bid item covering the work as specified and for one or more additive or deductive bid items which add or omit specified features of the work in a stated order of priority. Such solicitations shall include a provision substantially as set forth in 1452.236-71, and the low bidder and the bid items to be awarded shall be determined as provided in the provision.

Subpart 1436.6—Architect-Engineer Services

1436.602 Selection of firms for architect-engineer contracts.

1436.602-1 Selection criteria.

(a) The CO may include specific evaluation criteria to be used in the evaluation of potential contractors, in accordance with the requirements of FAR 36.602-1.

(b) HCAs are authorized to approve the use of design competition.

1436.602-2 Evaluation boards.

HCAs shall establish procedures for providing permanent or ad hoc architect-engineer evaluation boards. Bureau procedures shall provide for the appointment of private practitioners of architecture, engineering, or related professions when such action is determined by the HCA to be essential to meet the Government's minimum needs.

1436.602-3 Evaluation board functions.

The selection report shall be prepared for HCA approval, in accordance with bureau/office procedures.

1436.602-4 Selection authority.

The HCA is authorized to serve as the designated selection authority.

1436.602-5 Short selection processes for contracts not to exceed the simplified acquisition threshold.

At each occurrence, CO approval shall be obtained prior to the utilization of either of the short selection processes used for architect-engineer contracts not expected to exceed the simplified acquisition threshold.

1436.603 Collecting data on and appraising firms' qualifications.

HCA's who require architect-engineer services shall use their established procedures to collect data on and appraising firms' qualifications.

PART 1437—SERVICE CONTRACTING**Subpart 1437.1—Service Contracts—General**

Sec.

1437.102 Policy.

1437.103 Contracting officer responsibility.

1437.170 Special service contract requirements.

Subpart 1437.70—Appraisal Services—(Real Property)

1437.7000 Scope of subpart.

1437.7001 Contractor qualification requirements.

1437.7002 Appraisal standards.

Subpart 1437.71—Information Collection Services

1437.7100 Scope of subpart.

1437.7101 General.

1437.7102 Clauses.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1437.1—Service Contracts—General

1437.102 Policy.

The HCA is responsible for establishing internal review and approval procedures for service contracts in accordance with OFPP Policy Letter 93-1, Management Oversight of Service Contracting. Special attention shall be directed to avoidance of contracting for inherently governmental functions, as well as contract administration in the area of incurred cost monitoring to complement work progress monitoring.

1437.103 Contracting officer responsibility.

(a) While recognizing that program officials are responsible for accurately describing the need to be filled or the problem to be solved through the service contract, COs shall:

(1) Award and administer contracts in a manner that will provide the customer

with quality services on time and within budget;

(2) Ensure that requirements are clearly defined and appropriate performance standards are included in the contract;

(3) Utilize the checklist in paragraph (b) of this section, or bureau substitute, to ensure compliance with general policies and the specific guidance in OFPP Policy Letters 92-1, Inherently Governmental Functions, 91-2, Service Contracting, and 89-1, Conflicts of Interest Policies Applicable to Consultants;

(4) Work in close collaboration with the beneficiaries of the services being purchased to ensure that contractor performance meets contract requirements and performance standards;

(b) Following is a checklist to aid analysis and review of requirements for service contracts.

(1) *General.*

(i) Is the statement of work complete, with a clear-cut division of responsibility between the contracting parties?

(ii) Is it stated in terms the market can satisfy?

(iii) Does the statement of work encompass all commercially available services that can meet the actual functional need (eliminates any nonessential preferences that may thwart full and open competition)?

(iv) Is the statement of work performance-based to the maximum extent possible (i.e., is the acquisition structured around the purpose of the work to be performed, as opposed to either the manner by which the work is to be performed or a broad and imprecise statement of work? Does the statement of work follow OFPP Pamphlet IV, A Guide to Writing and Administering Performance Statements of Work for Service Contracts (Supplement 2 to OMB Circular A-76)?, as described in OFPP Pamphlet IV?)

(2) *Inherently Governmental Functions.* If the response to the first question below is affirmative, the contract requirement is for an inherently Governmental function that Government officials must perform. If the response to the second question below is affirmative, the contract may be for an inherently governmental function.

(i) Is the requirement for a function that is listed in Appendix A of OFPP Policy Letter 92-1?

(ii) If the function is not listed in Appendix A, do any of the factors in the totality of the circumstances analysis discussed in section 7(b) of the Policy Letter 92-1 indicate that the function may be inherently governmental?

(iii) Are Government employees currently performing the task to be contracted out? If so, has OMB Circular A-76 been consulted?

(3) *Cost Effectiveness.* If the response to any of the following questions is negative, the agency may not have a valid requirement or not be obtaining the requirement in the most cost effective manner.

(i) Is the statement of work written so that it supports the need for a specific service?

(ii) Is the statement of work written so that it permits adequate evaluation of contractor versus in-house cost and performance?

(iii) Are the choices of contract type, quality assurance plan, competition strategy, or other related acquisition strategies and procedures in the acquisition plan appropriate to ensure good contractor performance to meet the user's needs?

(iv) If a cost reimbursement contract is contemplated, is the acquisition plan adequate to ensure that the contractor will have the incentive to control costs under the contract?

(v) Is the acquisition plan adequate to address the cost effectiveness of using contractor support (either long-term or short-term) versus in-house performance?

(vi) Is the cost estimate, or other supporting cost information, adequate to enable the contracting office to effectively determine whether costs are reasonable?

(vii) Is the statement of work adequate to describe the requirement in terms of what is to be performed as opposed to how the work is to be accomplished?

(viii) Is the acquisition plan adequate to ensure that there is proper consideration given to quality and best value?

(4) *Control.* If the response to any of the following questions is negative, there may be a control problem.

(i) Are there sufficient resources to evaluate contractor performance when the statement of work requires the contractor to provide advice, analysis and evaluation, opinions, alternatives, or recommendations that could significantly influence agency policy development or decision-making?

(ii) Does the quality assurance plan provide for adequate monitoring of contractor performance?

(iii) Is the statement of work written so that it specifies a contract deliverable or requires progress reporting on contractor performance?

(iv) Is agency expertise adequate to independently evaluate the contractor's approach, methodology, results,

options, conclusions or recommendations?

(v) Is the requirement for a function or service absent from the list in Appendix B of OFPP Policy Letter 92-1? If it is similar to a function or service on that list, greater management scrutiny may be required.

(5) *Conflicts of Interest.* If the response to any of the following questions is affirmative, there may be a conflict of interest.

(i) Can the potential offeror perform under the contract in such a way as to devise solutions or make recommendations that would influence the award of future contracts to that contractor?

(ii) If the requirement is for support services (such as system engineering or technical direction), were any of the potential offerors involved in developing the system design specifications or in the production of the system?

(iii) Has a potential offeror participated in earlier work involving the same program or activity that is the subject of the present contract wherein the offeror had access to source selection or propriety information not available to other offerors competing for the contract?

(iv) Will the contractor be evaluating a competitor's work?

(v) Does the contract allow the contractor to accept its own products or activities on behalf of the Government?

(vi) Will the work under this contract put the contractor in a position to influence government decision-making, e.g., developing regulations that will affect the contractor's current or future business?

(vii) Will the work under this contract effect the interests of the contractor's other clients?

(viii) Are any of the potential offerors, or their personnel who will perform the contract, former agency officials who—while employed by the agency—personally and substantially participated in the development of the requirement for, or the procurement of, these services within the past two years?

(6) *Competition.* If the response to any of the following questions is negative, completion may be unnecessarily limited.

(i) Is the statement of work defined so as to avoid overly restrictive specifications or performance standards?

(ii) Is the contract formulated in such a way as to avoid creating a continuous and dependent arrangement with the same contractor?

(iii) Is the use of an indefinite quantity or term contract arrangement

appropriate to obtain the required services?

(iv) Will the requirement be obtained through the use of full and open competition?

1437.170 Special service contract requirements.

The following types of services shall be acquired as specified in the following Departmental regulations:

(a) Aircraft-related services and maintenance shall be acquired as prescribed in 353 DM;

(b) Audiovisual services, including motion pictures, slide shows and videotape recordings, shall be acquired as prescribed in 471 DM 1;

(c) Information-technology services shall be acquired as prescribed in 376 DM 4;

(d) Guard services for safeguarding classified information shall be acquired as prescribed in 442 DM 8;

(e) Printing services shall be acquired as prescribed in 314 DM 1;

(f) Contracts which require collection of identical information from ten or more members of the public shall be cleared as prescribed in 381 DM 12.

Subpart 1437.70—Appraisal Services (Real Property)

1437.7000 Scope of subpart.

This subpart prescribes policies and procedures for acquiring real property appraisal services.

1437.7001 Contractor qualification requirements.

(a) Prior to award of a contract for real property appraisal services when the services are required in support of court actions, the CO shall coordinate with the appropriate Solicitor's office and obtain written concurrence from the Assistant U.S. Attorney assigned to represent the Government in the matter that the source to be selected possesses the necessary qualifications for adequate contract performance. This requirement shall be treated as a special standard of responsibility (*See* FAR 9.104-2).

(b) The CO shall include the requirements of paragraph (a) of this section in all solicitations for real property appraisal services which may be subject to future court action.

1437.7002 Appraisal standards.

(a) All real property appraisals for condemnation purposes shall be consistent with requirements of the Interagency Land Acquisition Conference publication "Uniform Appraisal Standards for Federal Land Acquisitions" published by the Government Printing Office and available at <http://www.gpoaccess.gov>.

(b) The standards in paragraph (a) of this section shall be made a part of all solicitations and resulting contracts for real property appraisal services procured for condemnation purposes.

Subpart 1437.71—Information Collection Services

1437.7100 Scope of subpart.

This subpart prescribes policies and procedures for acquiring information collection services which are subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

1437.7101 General.

The Paperwork Reduction Act of 1980 requires that no federal agency shall conduct or sponsor the collection of information, upon identical items, from ten or more public respondents unless prior approval is obtained from OMB.

1437.7102 Clauses.

The CO shall insert the clause at 1452.237-70, Information Collection—Department of the Interior, in all solicitations and contracts which are subject to the Paperwork Reduction Act of 1980.

PARTS 1438–1441—[RESERVED]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1442—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 1442.2—Contract Administration Services

Sec.

1442.202 Assignment of contract administration.

Subpart 1442.6—Corporate Administrative Contracting Officer

1442.602 Assignment and location.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1442.2—Contract Administration Services

1442.202 Assignment of contract administration.

(a) The decision to withhold normal individual contract administration functions is delegated to one level above the CO.

(b) The delegation of authority to issue orders under provisioning procedures in existing contracts and under basic ordering agreements for items and services identified in the schedule must be approved at one level above the CO.

Subpart 1442.6—Corporate Administrative Contracting Officer

1442.602 Assignment and location.

The BPC has the authority to approve the appointment of a Corporate Administrative Contracting Officer.

PART 1443—CONTRACT MODIFICATIONS

Subpart 1443.2—Change Orders

Sec.
1443.205 Contract clauses.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1443.2—Change Orders

1443.205 Contract clauses.

BPCs may establish procedures, when appropriate, for authorizing the CO to vary the 30-day period for submission of requests for adjustment in the clauses prescribed by FAR 43.205.

PART 1444—[RESERVED]

PART 1445—GOVERNMENT PROPERTY

Subpart 1445.3—Authorizing the Use and Rental of Government Property

Sec.
1445.302 Contracts with foreign governments or international organizations.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1445.3—Authorizing the Use and Rental of Government Property

1445.302 Contracts with foreign governments or international organizations.

The HCA, after coordinating with the cognizant PMO, shall establish procedures to recover use costs when foreign governments or international organizations request use of Government production and research property.

PART 1446—QUALITY ASSURANCE

Subpart 1446.1—General

Sec.
1446.170 Government-Industry Data Exchange Program (GIDEP).

Subpart 1446.4—Government Contract Quality Assurance

1446.401 General.

Subpart 1446.5—Acceptance

1446.501 General.

Subpart 1446.6—Material Inspection and Receiving Reports

1446.670 Inspection, receiving and acceptance reports.

1446.671 Inspection, receiving and acceptance certification.

Subpart 1446.7—Warranties

1446.704 Authority for use of warranties.
1446.708 Warranties of data.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1446.1—General

1446.170 Government-Industry Data Exchange Program (GIDEP).

(a) COs shall encourage contractors and subcontractors to participate in the GIDEP, a cooperative program managed and funded by the U.S. Government to exchange engineering, failure experience, metrology, product information, and reliability-maintainability data on products, components (including construction materials), manufacturing processes, environmental issues associated with those manufacturing processes, recycling and waste prevention.

(b) The GIDEP is managed for the U.S. Government by the Department of the Navy. GIDEP participants are not subject to any fees or assessments other than the costs associated with dissemination of information by other than electronic means.

(c) An application to participate in the GIDEP may be obtained at <http://www.gidep.org>. COs shall include information on GIDEP in solicitation documents and during discussions at preaward and postaward conferences.

Subpart 1446.4—Government Contract Quality Assurance

1446.401 General.

Inspection of supplies or services shall be documented as prescribed in DIAR Subpart 1446.6.

Subpart 1446.5—Acceptance

1446.501 General.

Acceptance of supplies or services shall be documented as prescribed in DIAR Subpart 1446.6.

Subpart 1446.6—Material Inspection and Receiving Reports

1446.670 Inspection, receiving and acceptance reports.

(a) Except for simplified acquisitions (See FAR 46.404) and unless otherwise prescribed by bureau procedures, the documentation in DIAR 1446.671 shall be inserted on each commercial shipping document or packing list, whether by manual or electronic means, for supplies or services and shall be signed by the authorized Government representative as required in FAR 46.401(f) and Subpart 46.5.

(b) The documentation required in paragraph (a) of this section shall be

made at the place or places specified in the contract for performance of Government quality assurance (See FAR 46.401(b)) as prescribed in FAR 46.402 or FAR 46.403, as appropriate and for acceptance in accordance with FAR 46.503.

(c) If the CO elects to use a contractor's certificate of conformance (See FAR 46.315) under the conditions prescribed in FAR 46.504, the certificate may be used as the basis of Government acceptance.

§ 1446.671 Inspection, receiving and acceptance certification.

As prescribed in DIAR 1446.670, the following documentation shall be completed via manual or electronic means for each delivery of supplies or services in accordance with Bureau procedures:

INSPECTION, RECEIVING AND ACCEPTANCE CERTIFICATION

The listed items or services have been: ___ inspected, ___ received, and ___ accepted and they conform to the contract except as noted below or on attached documents.

____ Signature and typed name of authorized Government representative.

Date ____

Subpart 1446.7—Warranties

1446.704 Authority for use of warranties.

The CCO is authorized to make the written determination to use a warranty in an acquisition.

1446.708 Warranties of data.

Warranties of data shall only be used after consultation with the SOL.

PART 1447—[RESERVED]

PART 1448—VALUE ENGINEERING

Subpart 1448.1—Policies and Procedures

Sec.
1448.102 Policies.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1448.1—Policies and Procedures

1448.102 Policies.

The HCA shall establish procedures for processing and evaluating VECP's as prescribed in FAR Subpart 48.1 and 369 DM, Value Engineering.

PART 1449—TERMINATION OF CONTRACTS

Subpart 1449.1—General Principles

Sec.
1449.106 Fraud or other criminal conduct.

1449.107 Audit of prime contract settlement proposals and subcontract settlements.
1449.111 Review of proposed settlements.

Subpart 1449.4—Termination for Default

1449.402 Termination of fixed-price contracts for default.
1449.402-3 Procedure for default.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1449.1—General Principles

1449.106 Fraud or other criminal conduct.

When fraud or other criminal conduct is suspected, the CO will submit a report documenting the incident to the BPC for transmittal to the OIG. Informational copies will be forwarded to the HCA and the Director, PAM.

1449.107 Audit of prime contract settlement proposals and subcontract settlements.

Requests for audits pursuant to FAR 49.107 shall be sent to the Assistant Inspector General for Auditing, in accordance with the procedures in 360 DM 2.3.

1449.111 Review of proposed settlements.

All proposed settlement agreements shall be reviewed by the SOL and approved at one level above the CO. Settlement agreements of \$250,000 or more shall be approved by the BPC.

Subpart 1449.4—Termination for Default

1449.402 Termination of fixed-price contracts for default.

1449.402-3 Procedure for default.

In addition to the requirements of FAR 49.402-3(g), the notice of termination shall contain instructions regarding the disposition of any Government property in the possession of the contractor, and, in the case of construction contracts, materials, appliances, and structures that may be on the construction site. The notice shall also contain a statement concerning the liability of the contractor or its surety for any liquidated damages (See FAR 49.402-7).

PART 1450—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

Subpart 1450.1—Extraordinary Contractual Actions

Sec.p;

§ 1450.101 General.
§ 1450.101-2 Policy.
§ 1450.101-3 Records.
§ 1450.102 Delegation of and limitations on exercise of authority.
§ 1450.102-1 Delegation of authority.

§ 1450.103 Contract adjustments.
§ 1450.103-6 Disposition.
§ 1450.104 Residual powers.
§ 1450.104-2 General.
§ 1450.104-3 Special procedures for unusually hazardous or nuclear risks.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1450.1—Extraordinary Contractual Actions

1450.101 General.

1450.101-2 Policy.

Requests for extraordinary contractual actions shall be submitted by the HCA to the Director, PAM, for further action.

1450.101-3 Records.

The records of actions taken under FAR Part 50 shall be maintained by the Director, PAM.

1450.102 Delegation of and limitations on exercise of authority.

1450.102-1 Delegation of authority.

The AS/PMB shall approve all actions under FAR Part 50, except for actions in excess of \$55,000, actions which increase the contract price without consideration, and indemnification actions, which shall be approved by the Secretary.

1450.103 Contract adjustments.

1450.103-6 Disposition.

The CO shall submit the Memorandum of Decision including the contractor's request, contractor information in support of the request required by FAR 50.103-4, the results of the CO's investigation required by FAR 50.103-5, and the information required by FAR 50.103-6 to the SOL for review. If the SOL concurs with the Memorandum of Decision, the Memorandum of Decision will be submitted through the HCA to the Director, PAM, for further action.

1450.104 Residual powers.

1450.104-2 General.

Proposals for the exercise of residual powers shall be processed using the procedures referred to in FAR 50.104-2.

1450.104-3 Special procedures for unusually hazardous or nuclear risks.

The CO shall submit the proposed Memorandum of Decision including the contractor's request for indemnification and the information required from the CO, to the SOL for review and approval. If the SOL approves the proposed Memorandum of Decision, it shall be submitted through the HCA, to the Director, PAM, for approval or disapproval by the Secretary.

PART 1451—USES OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 1451.1—Contractor Use of Government Supply Sources

Sec.

1451.102 Authorization to use Government supply sources.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

Subpart 1451.1—Contractor Use of Government Supply Sources

1451.102 Authorization to use Government supply sources.

If the CO decides to authorize a contractor to use Government supply sources under the conditions prescribed in FAR 51.102, a written request for a FEDSTRIP activity address code (See FPMR 101-26.203) shall be made through the acquisition office FEDSTRIP point of contact.

PART 1452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

1452.000 Scope of part.

Subpart 1452.2—Text of Provisions and Clauses

1452.200 Scope of subpart.

1452.203-70 Restrictions on Endorsements.

1452.204-70 Release of Claims.

1452.215-70 Examination of Records by the Department of the Interior.

1452.215-71 Use and Disclosure of Proposal Information—Department of the Interior.

1452.224-1 Privacy Act Notification.

1452.226-70 Indian Preference.

1452.226-71 Indian Preference Program.

1452.227-70 Appeals of Use or Exceptions.

1452.228-7 Insurance—Liability to Third Persons.

1452.228-70 Liability Insurance.

1452.228-71 Aircraft and General Public Liability Insurance.

1452.228-72 Liability for Loss or Damage—Department of the Interior.

1452.228-73 Liability for Loss or Damage (Property Interest).

1452.233-2 Service of Protest.

1452.236-70 Prohibition Against Use of Lead-based Paint.

1452.236-71 Additive or Deductive Items.

1452.237-70 Information Collection.

1452.237-71 Utilization of Woody Biomass.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

1452.000 Scope of part.

This part prescribes Department of the Interior provisions and clauses for use in acquisition.

Subpart 1452.2—Text of Provisions and Clauses**1452.200 Scope of subpart.**

This subpart sets forth the texts of all DIAR provisions and clauses. Consistent with the numbering scheme prescribed in FAR 52.101 and the approach used in FAR Subpart 52.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the DIAR in which provisions and clause requirements are addressed.

1452.203–70 Restrictions on Endorsements.

As prescribed in 1403.570–3, insert the following clause:

RESTRICTION ON ENDORSEMENTS—DEPARTMENT OF THE INTERIOR (JUL 1996)

The Contractor shall not refer to contracts awarded by the Department of the Interior in commercial advertising, as defined in FAR 31.205–1, in a manner which states or implies that the product or service provided is approved or endorsed by the Government, or is considered by the Government to be superior to other products or services. This restriction is intended to avoid the appearance of preference by the Government toward any product or service. The Contractor may request the Contracting Officer to make a determination as to the propriety of promotional material.

(End of clause)

1452.204–70 Release of Claims.

As prescribed in 1404.804–70, insert the following clause:

RELEASE OF CLAIMS—DEPARTMENT OF THE INTERIOR (JUL 1996)

After completion of work and prior to final payment, the Contractor shall furnish the Contracting Officer with a release of claims against the United States relating to this contract. The Release of Claims form (DI–137) shall be used for this purpose. The form provides for exception of specified claims from operation of the release.

(End of clause)

1452.215–70 Examination of Records by the Department of the Interior.

As prescribed in 1415.209–70, insert the following clause:

EXAMINATION OF RECORDS BY THE DEPARTMENT OF THE INTERIOR (APR 1984)

For purposes of the Examination of Records by the Comptroller General clause of this contract (FAR 52.215–1), the Secretary of the Interior, the Inspector General, and their duly authorized representative(s) from the Department of the Interior shall have the same access and examination rights as the Comptroller General of the United States.

(End of clause)

1452.215–71 Use and Disclosure of Proposal Information—Department of the Interior.

As prescribed in 1415.207–70, insert the following provision:

USE AND DISCLOSURE OF PROPOSAL INFORMATION—DEPARTMENT OF THE INTERIOR (APR 1984)

(a) Definitions. For the purposes of this provision and the Freedom of Information Act (5 U.S.C. 552), the following terms shall have the meaning set forth below:

(1) “Trade Secret” means an unpatented, secret, commercially valuable plan, appliance, formula, or process, which is used for making, preparing, compounding, treating or processing articles or materials which are trade commodities.

(2) “Confidential commercial or financial information” means any business information (other than trade secrets) which is exempt from the mandatory disclosure requirement of the Freedom of Information Act, 5 U.S.C. 552. Exemptions from mandatory disclosure which may be applicable to business information contained in proposals include exemption (4), which covers “commercial and financial information obtained from a person and privileged or confidential,” and exemption (9), which covers “geological and geophysical information, including maps, concerning wells.”

(b) If the offeror, or its subcontractor(s), believes that the proposal contains trade secrets or confidential commercial or financial information exempt from disclosure under the Freedom of Information Act, (5 U.S.C. 552), the cover page of each copy of the proposal shall be marked with the following legend:

“The information specifically identified on pages _____ of this proposal constitutes trade secrets or confidential commercial and financial information which the offeror believes to be exempt from disclosure under the Freedom of Information Act. The offeror requests that this information not be disclosed to the public, except as may be required by law. The offeror also requests that this information not be used in whole or part by the government for any purpose other than to evaluate the proposal, except that if a contract is awarded to the offeror as a result of or in connection with the submission of the proposal, the Government shall have the right to use the information to the extent provided in the contract.”

(c) The offeror shall also specifically identify trade secret information and confidential commercial and financial information on the pages of the proposal on which it appears and shall mark each such page with the following legend:

“This page contains trade secrets or confidential commercial and financial information which the offeror believes to be exempt from disclosure under the Freedom of Information Act and which is subject to the legend contained on the cover page of this proposal.”

(d) Information in a proposal identified by an offeror as trade secret information or confidential commercial and financial information shall be used by the Government only for the purpose of evaluating the

proposal, except that (i) if a contract is awarded to the offeror as a result of or in connection with submission of the proposal, the Government shall have the right to use the information as provided in the contract, and (ii) if the same information is obtained from another source without restriction it may be used without restriction.

(e) If a request under the Freedom of Information Act seeks access to information in a proposal identified as trade secret information or confidential commercial and financial information, full consideration will be given to the offeror’s view that the information constitutes trade secrets or confidential commercial or financial information. The offeror will also be promptly notified of the request and given an opportunity to provide additional evidence and argument in support of its position, unless administratively unfeasible to do so. If it is determined that information claimed by the offeror to be trade secret information or confidential commercial or financial information is not exempt from disclosure under the Freedom of Information Act, the offeror will be notified of this determination prior to disclosure of the information.

(f) The Government assumes no liability for the disclosure or use of information contained in a proposal if not marked in accordance with paragraphs (b) and (c) of this provision. If a request under the Freedom of Information Act is made for information in a proposal not marked in accordance with paragraphs (b) and (c) of this provision, the offeror concerned shall be promptly notified of the request and given an opportunity to provide its position to the Government. However, failure of an offeror to mark information contained in a proposal as trade secret information or confidential commercial or financial information will be treated by the Government as evidence that the information is not exempt from disclosure under the Freedom of Information Act, absent a showing that the failure to mark was due to unusual or extenuating circumstances, such as a showing that the offeror had intended to mark, but that markings were omitted from the offeror’s proposal due to clerical error.

(End of provision)

1452.224–1 Privacy Act Notification.

(a) As prescribed in 1424.104, the clause at FAR 52.224–1, Privacy Act Notification, shall be modified before insertion into solicitations and contracts by—

(1) Changing the title of the clause to read “PRIVACY ACT NOTIFICATION (JUL 1996) (DEVIATION)”;

(2) Adding the following sentence to the end of the clause:

“Applicable Department of the Interior regulations concerning the Privacy Act are set forth in 43 CFR 2, Subpart D. The CFR is available for public inspection at the Departmental Library, Main Interior Bldg., 1849 C St. NW, Washington DC, at each of the regional offices of bureaus of the Department and at many public libraries.”

(b) As prescribed in FAR 52.103(a) and 52.107(f), the clause at FAR 52.252-6, Authorized Deviation in Clauses, shall be inserted into solicitations and contracts containing the clause in paragraph (a) of this section.

1452.226-70 Indian Preference.

As prescribed in 1426.7003(a), insert the following clause in solicitations issued and contracts awarded by the Bureau of Indian Affairs except those pursuant to Title I and to Indian Tribes and Indian Organizations under Title II of Public Law 93-638 (25 U.S.C. 450 *et seq.* and 25 U.S.C. 455 *et seq.*, respectively); a contracting activity other than the Bureau of Indian Affairs when the contract is entered into pursuant to an act specifically authorizing contracts with Indian organizations, and a contracting activity other than the Bureau of Indian Affairs when the work to be performed is specifically for the benefit of Indians and is in addition to any incidental benefits which might otherwise accrue to the general public.

INDIAN PREFERENCE— DEPARTMENT OF THE INTERIOR (APR 1984)

(a) The Contractor agrees to give preferences to Indians who can perform the work required regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation for training and employment opportunities under this contract and, to the extent feasible consistent with the efficient performance of this contract, training and employment preferences and opportunities shall be provided to Indians regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation who are not fully qualified to perform under this contract. The Contractor also agrees to give preference to Indian organizations and Indian-owned economic enterprises in the awarding of any subcontracts consistent with the efficient performance of this contract. The Contractor shall maintain such records as are necessary to indicate compliance with this paragraph.

(b) In connection with the Indian employment preference requirements of this clause, the Contractor shall also provide opportunities for training incident to such employment. Such training shall include on-the-job, classroom, or apprenticeship training which is designed to increase the vocational effectiveness of an Indian employee.

(c) If the Contractor is unable to fill its training and employment needs after giving full consideration to Indians as required by this clause, those needs may be satisfied by selection of persons other than Indians in accordance with the clause of this contract entitled "Equal Opportunity."

(d) If no Indian organizations or Indian-owned economic enterprises are available for awarding of subcontracts in connection with the work performed under this contract, the Contractor agrees to comply with the provisions of this contract involving

utilization of small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, or labor surplus area concerns.

(e) As used in this clause:

(1) "Indian" means a person who is a member of an Indian Tribe. If the Contractor has reason to doubt that a person seeking employment preference is an Indian, the contractor shall grant the preference but shall require the individual within thirty (30) days to provide evidence from the Tribe concerned that the person is a member of that Tribe.

(2) "Indian organization" means the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451); and

(3) "Indian-owned economic enterprise" means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership shall constitute not less than 51 percent of the enterprise.

(4) "Indian Tribe" means an Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 668; 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(f) The Contractor agrees to include the provisions of the clause including this paragraph (f) in each subcontract awarded under this contract.

(g) In the event of noncompliance with this clause, the Contractor's right to proceed may be terminated in whole or in part by the Contracting Officer and the work completed in a manner determined by the Contracting Officer to be in the best interests of the Government.

(End of clause)

1452.226-71 Indian Preference Program.

As prescribed in 1426.7003(b), insert the following clause in all solicitations and contracts awarded by the contracting activity that may exceed \$50,000, contain the clause at 1452.226-70, and where it is determined by the Contracting Officer, prior to solicitation, that the work under the contract will be performed in whole or in part on or near an Indian reservation(s). The clause may also be included in solicitations issued and contracts awarded by a contracting activity not exceeding \$50,000 that contain the clause at 1452.226-70 and which, in the opinion of the Contracting Officer, offer substantial opportunities for Indian employment, training, and subcontracting.

INDIAN PREFERENCE PROGRAM— DEPARTMENT OF THE INTERIOR (APR 1984)

(a) In addition to the requirements of the clause of this contract entitled "Indian Preference—Department of the Interior," the

Contractor agrees to establish and conduct an Indian preference program which will expand the opportunities for Indian organizations and Indian-owned economic enterprises to receive a preference in the awarding of subcontracts and which will expand opportunities for Indians to receive preference for training and employment in connection with the work to be performed under this contract. In this connection, the Contractor shall —

(1) Designate a liaison officer who will:

(i) Maintain liaison with the Government and Tribe(s) on Indian preference matters;

(ii) Supervise compliance with the provisions of this clause; and

(iii) Administer the Contractor's Indian preference program.

(2) Advise its recruitment sources in writing and include a statement in all advertisements for employment that Indian applicants will be given preference in employment and training incident to such employment.

(3) Not less than twenty (20) calendar days prior to commencement of work under this contract, post a written notice in the Tribal office of any reservations on which or near where the work under this contract is to be performed, which sets forth the Contractor's employment needs and related training opportunities. The notice shall include the approximate number and types of employees needed, the approximate dates of employment; the experience or special skills required for employment, if any; training opportunities available; and all other pertinent information necessary to advise prospective employees of any other employment requirements. The Contractor shall also request the Tribe(s) on or near whose reservation(s) the work is to be performed to provide assistance to the Contractor in filling its employment needs and training opportunities. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to contact in regard to the posting of notices and requests for Tribal assistance.

(4) Establish and conduct a subcontracting program which gives preference to Indian organizations and Indian-owned economic enterprises as subcontractors and suppliers under this contract. Consistent with the efficient performance of this contract, the Contractor shall give public notice of existing subcontracting opportunities by soliciting bids or proposals only from Indian organizations or Indian-owned economic enterprises. The Contractor shall request assistance and information on Indian firms qualified as suppliers or subcontractors from the Tribe(s) on or near whose reservation(s) the work under the contract is to be performed. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to be contacted in regard to the request for assistance and information. Public notices and solicitations for existing subcontracting opportunities shall provide an equitable opportunity for Indian firms to submit bids or proposals by including—

(i) A clear description of the supplies or services required including quantities,

specifications, and delivery schedules which facilitate the participation of Indian firms;

(ii) A statement indicating the preference will be given to Indian organizations and Indian-owned economic enterprises in accordance with Section 7(b) of Public Law 93-638; (88 Stat. 2205; 25 U.S.C. 450e(b));

(iii) Definitions for the terms "Indian organization" and "Indian-owned economic enterprise" as prescribed under the "Indian Preference—Department of the Interior" clause of this contract;

(iv) A representation to be completed by the bidder or offeror that it is an Indian organization or Indian-owned economic enterprise; and

(v) A closing date for receipt of bids or proposals which provides sufficient time for preparation and submission of a bid or proposal. If after soliciting bids from Indian organizations and Indian-owned economic enterprises, no responsible bid is received, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference—Department of the Interior" clause of this contract. If one or more responsible bids are received, award shall be made to the low responsible bidder if the bid price is determined to be reasonable. If the low responsive bid is determined to be unreasonable as to price, the Contractor shall attempt to negotiate a reasonable price and award a subcontract. If a reasonable price cannot be agreed upon, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference—Department of the Interior" clause of the contract.

(5) Maintain written records under this contract which indicate:

(i) The names and addresses of all Indians seeking employment for each employment position available under this contract;

(ii) The number and types of positions filled by Indians and non-Indians, and the name, address and position of each Indian employed under this contract;

(iii) For those positions where there are both Indian and non-Indian applicants, and a non-Indian is selected for employment, the reason(s) why the Indian applicant was not selected;

(iv) Actions taken to give preference to Indian organizations and Indian-owned economic enterprises for subcontracting opportunities which exist under this contract;

(v) Reasons why preference was not given to Indian firms as subcontractors or suppliers for each requirement where it was determined by the Contractor that such preference would not be consistent with the efficient performance of the contract, and

(vi) The names and addresses of all Indian organizations and Indian-owned economic enterprises contacted, and receiving subcontract awards under this contract.

(6) The Contractor shall submit to the Contracting Officer for approval a semiannual report which summarizes the Contractor's Indian preference program and indicates the number and types of available positions filled and dollar amounts of all subcontracts awarded to Indian organizations and Indian-owned economic enterprises and all other firms.

(7) Records maintained pursuant to this clause will be kept available for review by the Government until expiration of one (1)

year after final payment under this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulation.

(b) For purpose of this clause, the following definitions of terms shall apply:

(1) The terms "Indian," "Indian Tribe," "Indian Organization, and "Indian-owned economic enterprise" are defined in the clause of this contract entitled "Indian Preference."

(2) "Indian reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations on Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act, (85 Stat. 688; 43 U.S.C. 1601 *et seq.*).

(3) "On or near an Indian Reservation" means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

(c) Nothing in the requirements of this clause shall be interpreted to preclude Indian Tribes from independently developing and enforcing their own Indian preference requirements. Such requirements must not hinder the Government's right to award contracts and to administer their provisions.

(d) The Contractor agrees to include the provisions of this clause including this paragraph (d) in each subcontract awarded under this contract and to notify the Contracting Officer of such subcontracts.

(e) In the event of noncompliance with this clause, the Contractor's right to proceed may be terminated in whole or in part by the Contracting Officer and the work completed in a manner determined by the Contracting Officer to be in the best interest of the Government.

(End of clause)

1452.227-70 Appeals of Use or Exceptions.

As prescribed in 1427.303(d)(1), insert the following clause:

APPEALS OF USE OF EXCEPTIONS (JUL 1996)

If the Contractor appeals the Contracting Officer determination to use one of the exceptions described in FAR 27.303(d)(1), such appeal shall be made by written notice specifically identifying the basis for the appeal within 30 working days from the receipt of the determination. Such appeal shall be mailed to the Associate Solicitor for General Law, U.S. Department of the Interior, Washington, DC 20240, who is designated as the appeals official.

(End of clause)

1452.228-7 Insurance—Liability to Third Persons.

(a) As prescribed in 1428.311-2, the clause at FAR 52.228-7, Insurance—Liability to Third Persons, shall be modified before insertion into solicitations and contracts by:

(1) changing the title of the clause to read: "INSURANCE—LIABILITY TO

THIRD PERSONS (APR 1984) (DEVIATIONS)"; and

(2) changing the first sentence in subparagraph (c)(2) of the clause to read:

"For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise but subject to the 'Limitation of Cost' or 'Limitation of Funds' clause of this contract."

(b) As prescribed in FAR 52.103(a) and 52.107(f), the clause at FAR 52.252-6, Authorized Deviations in Clauses, shall be inserted into solicitations and contracts containing the clause in paragraph (a) of this section.

1452.228-70 Liability Insurance.

As prescribed in 1428.301, insert the following clause:

LIABILITY INSURANCE— DEPARTMENT OF THE INTERIOR (JUL 1996)

(a) The Contractor shall procure and maintain during the term of this contract and any extension thereof liability insurance in form satisfactory to the Contracting Officer by an insurance company which is acceptable to the Contracting Officer. The named insured parties under the policy shall be the Contractor and the United States of America. The amounts of the insurance shall be not less than as follows:

\$ ___ each person*
\$ ___ each occurrence*
\$ ___ property damage*

(b) Each policy shall have a certificate evidencing the insurance coverage. The insurance company shall provide an endorsement to notify the Contracting Officer 30 days prior to the effective date of cancellation or termination of the policy or certificate; or modification of the policy or certificate which may adversely affect the interest of the Government in such insurance. The certificate shall identify the contract number, the name and address of the Contracting Officer, as well as the insured, the policy number and a brief description of contract services to be performed. The contractor shall furnish the Contracting Officer with a copy of an acceptable insurance certificate prior to beginning the work.

*These amounts to be set by the Contracting Officer.

(End of clause)

1452.228-71 Aircraft and General Public Liability Insurance.

As prescribed in 1428.306-70(c)(1), insert the following clause:

AIRCRAFT AND GENERAL PUBLIC LIABILITY INSURANCE DEPARTMENT OF THE INTERIOR (MAR 1989)

(a) The Contractor, at the Contractor's expense, agrees to maintain, during the continuance of this contract, aircraft liability and general public liability insurance with limits of liability for:

(1) Bodily injury to or death of aircraft passengers of not less than \$75,000 for any one passenger and a limit for each occurrence in any one aircraft of at least an amount equal to the sum produced by multiplying \$75,000 by 75 percent of the total number of passenger seats installed in the aircraft;

(2) Bodily injury to or death of persons (excluding passengers) of not less than \$75,000 for any one person in any one occurrence and \$300,000 for occurrence; and

(3) Property damage of not less than \$100,000 for each occurrence; or

(4) a single limit of liability for each occurrence equal to or greater than the combined required minimums set forth in paragraphs (a)(1) through (3) of this clause.

(b) The Contractor also agrees to maintain worker's compensation and other legally required insurance with respect to the Contractor's own employees and agents.

(End of clause)

1452.228-72 Liability for Loss or Damage—Department of the Interior.

As prescribed in 1428.306-70(c)(2), insert the following clause:

LIABILITY FOR LOSS OR DAMAGE—DEPARTMENT OF THE INTERIOR (APR 1984)

(a) The Contractor shall indemnify and hold the Government harmless from any and all loss or damage to the aircraft furnished under this contract except as provided in paragraph (d) of this clause. For the purpose of fulfilling its obligation under this clause, the Contractor shall procure and maintain during the term of this contract, and any extensions thereof, full insurance acceptable to the Contracting Officer. The Contractor's insurance coverage shall apply to pilots furnished by the Government who operate the aircraft. The contractor may request a list of Government pilots by name and qualification who are potential pilots.

(b) Prior to the commencement of work hereunder, the Contractor shall furnish to the Contracting Officer a copy of the insurance policy or policies or a certificate of insurance issued by the underwriter(s) showing that the coverage required by this clause has been obtained.

(c) Each policy or certificate evidencing the insurance shall contain an endorsement which provides that the insurance company will notify the Contracting Officer 30 days prior to the effective date of any cancellation or termination of any policy or certificate or any modification of a policy or certificate which adversely affects the interests of the Government in such insurance. The notice shall be sent by registered mail and shall identify this contract, the name and address of the contracting office, the policy, and the insured.

(d) If the aircraft is damaged or destroyed while in the custody and control of the Government, the Government will reimburse the Contractor for the deductible stipulated in the insurance coverage (if any) as follows:

(1) In-Motion Accidents—Up to 5 percent of the current insured value of the aircraft stated in the policy, or \$10,000, whichever is less.

(2) Not In-Motion Accidents—Up to \$250 per accident. Such reimbursement shall not

be made, however, for loss or damage to the aircraft resulting from:

(i) Normal wear and tear,

(ii) Negligence or fault in maintenance of the aircraft by the Contractor, or

(iii) A defect in construction of the aircraft or a component thereof.

(e) If damage to the aircraft is established to be the fault of the Government, rental payments to the Contractor during the repair period will be made as set forth elsewhere in this contract. The Government may, at its option, make necessary repairs or return the aircraft to the Contractor for repair. In the event the aircraft is lost, destroyed, or damaged so extensively as to be beyond repair, no rental payment will be made to the Contractor thereafter.

(f) Any failure to agree as to the responsibility of the Government or the Contractor under this clause shall, after a final finding and determination by the Contracting Officer, be considered a dispute within the meaning of the "Disputes" clause of this contract.

(End of clause)

1452.228-73 Liability for Loss or Damage (Property Interest).

As prescribed in 1428.311-2(c), insert the following clause:

LIABILITY FOR LOSS OR DAMAGE (PROPERTY INTEREST)—DEPARTMENT OF THE INTERIOR (APR 1984)

(a) The Government assumes all risk and liability for damage to or loss of the aircraft for the term of this contract, while the aircraft is in the Government's possession, except for:

(1) Normal wear and tear to the aircraft, or

(2) Loss which occurs as a result of negligence or fault in maintenance of the aircraft by the Contractor, or

(3) Loss resulting from a latent defect in the construction of the aircraft or a component thereof.

(b) In the event of damage to the aircraft, the Government may, at its option, make the necessary repairs with its own facilities, or by contract, or pay the Contractor the reasonable cost of repair of the aircraft. If damage to the aircraft is established to be the fault of the Government, rental payments to the Contractor during the repair period will be made as set forth elsewhere in this contract.

(c) In the event the aircraft is lost, destroyed, or damaged so extensively as to be beyond repair, no rental payment will be made to the Contractor thereafter, but the Government will pay to the Contractor a sum equal to the fair market value of the aircraft just prior to such loss, destruction, or extensive damage, less the salvage value of the aircraft.

(d) The Contractor certifies that the contract price does not include any cost attributable to insurance or to any reserve fund it has established to protect its interests in or use of the aircraft, regardless of whether or not the insurance coverage applies for the period during which the Government has possession of the aircraft. If, in the event of loss or damage to the aircraft, the Contractor receives compensation for such loss or damage, in any form, from any source, the

amount of such compensation shall be credited to the Government in determining the amount of the Government's liability under this clause; except that this shall not apply to proceeds of insurance received solely as an advance of insurance pending determination of Government liability, or for an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss or damage, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and such rights shall be immediately assigned to the Government. Except as the Contracting Officer may permit in writing, the Contractor shall neither release nor discharge any third party from liability for such loss or damage nor otherwise compromise or adversely affect the Government's subrogation or other rights hereunder. The Contractor shall cooperate with the Government in any suit or action undertaken by the Government against any such third party.

(f) Any failure to agree as to the responsibility of the Government or the Contractor under this clause shall, after a final finding and determination by the Contracting Officer, be considered a dispute within the meaning of the "Disputes" clause of this contract.

(End of clause)

1452.233-2 Service of Protest.

As prescribed in 1433.106, the provision at FAR 52.233-2, Service of Protest, shall be modified before insertion into solicitations and contracts by changing the title of the provision to read: "SERVICE OF PROTEST DEPARTMENT OF THE INTERIOR (JUL 1996) (DEVIATION)"; and adding the following sentence to the end of the provision:

"(c) A copy of the protest served on the Contracting Officer shall be simultaneously furnished by the protester to the Department of the Interior Assistant Solicitor, Acquisitions and Intellectual Property, 1849 C Street, NW., Room 6511, Washington, DC 20240."

1452.236-70 Prohibition Against Use of Lead-based Paint.

As prescribed in 1436.570(b), insert the following clause:

PROHIBITION AGAINST USE OF LEAD-BASED PAINT—DEPARTMENT OF THE INTERIOR (JUL 1996)

Paint containing more than .06 percent by weight of lead in paint, or the equivalent measure of lead in the dried film of paint already applied, shall not be used in the construction or rehabilitation of residential structures under this contract or any resulting subcontracts.

(End of clause)

1452.236-71 Additive or Deductive Items.

As prescribed in 1436.571, insert the following provision:

**ADDITIVE OR DEDUCTIVE ITEMS—
DEPARTMENT OF THE INTERIOR
(JUL 1996)**

So that the Government may obtain the most desirable features of work within the limit of its funds available at time of bid evaluation, award may be made to the bidder having the lowest total of the base bid and a combination of additive and deductive items. All bids shall be evaluated on the basis of the same additive and deductive bid items using the order of priority of the items listed in the schedule.

(End of provision)

1452.237–70 Information Collection.

As prescribed in 1437.7102, insert the following clause:

**INFORMATION COLLECTION—
DEPARTMENT OF THE INTERIOR
(JUL 1996)**

If performance of this contract requires the contractor to collect information on identical items from ten or more public respondents, no action shall be taken or funds expended in the solicitation or collection of such information until the contractor has received from the Contracting Officer written notification that approval has been obtained from the Office of Management and Budget

(OMB) pursuant to the Paperwork Reduction Act of 1980. The Contractor agrees to provide all information requested by the Contracting Officer which is necessary to obtain approval from OMB.

(End of clause)

1452.237–71 Utilization of Woody Biomass.

As prescribed in § 1437.7202, insert the following clause:

**UTILIZATION OF WOODY BIOMASS
(MAY 2005)**

(a) The contractor may remove and utilize woody biomass, if:

(1) Project work is progressing as scheduled; and

(2) Removal is completed before contract expiration.

(b) To execute this option, the contractor must submit a written request to the Government.

(c) Following receipt of the written request, and if appropriate, the Government and the contractor will negotiate and execute a separate timber/vegetative sales contract. Payment under the timber/vegetative sales contract must be at a price equal to or greater than the appraised value of the woody biomass. The contractor must make any appropriate payment specified in the related

timber/vegetative sales contract before removal may be authorized.

(d) If required by law, regulation or Bureau policy, the Government will prepare a timber/vegetative sales notice and/or prospectus, including volume estimates, appraised value and any appropriate special provisions.

(e) The contractor must treat any woody biomass not removed in accordance with the specifications in the service contract.

(f) The sales contract and service contract are severable; default or termination under either contract does not remove the contractor from payment or performance obligations under the other contract.

(g) Definitions:

Timber/vegetative sales contract and/or notice means the agency-specific authorized contract instrument for the sale, barter, exchange, billing or other compensation for the payment, removal, and/or transportation of woody biomass material.

Woody biomass means the trees and woody plants, including limbs, tops, needles, leaves, and other woody parts, grown in a forest, woodland, or rangeland environment, that are the by-products of management, restoration and/or hazardous fuel reduction treatment.

[FR Doc. 2010–7967 Filed 4–14–10; 8:45 am]

BILLING CODE P