DEFENSE LOGISTICS ACQUISITION DIRECTIVE

I. The Defense Logistics Acquisition Directive (DLAD) implements the Federal Acquisition Regulation (FAR), Defense FAR Supplement (DFARS), and other DoD publications. It establishes procedures and delegations of authority governing the acquisition of supplies and services by the Defense Logistics Agency under Chapter 137, Title 10, of the United States Code or other statutory authority.

II. Internal operating guidance to implement this directive may be issued by Heads of Contracting Activities and the Defense Reutilization and Marketing Service (DRMS) to the extent indicated in DLAD 1.301.

III. SIGNIFICANT UPDATES. Updates are indicated in bold italics.

The archived, baseline version of the DLAD documents changes made in revision 5, issued May 11, 2000. Significant changes made since issuance of revision 5 or earlier changes not captured in revision 5 are documented as follows:

A. The following Numbered FARS Deviations and DLA PROCLTRs are incorporated into this directive:

1. FARS DEV 00-01 – Class Deviation from Federal Acquisition Regulation (FAR) 31.205-35 Relocation Costs dated January 13, 2000.

2. FARS DEV 00-02 – Class Deviation from FAR 42.15, Contractor Performance Information for Procurements under Bunkers, Into-Plane and Bulk Fuels Programs dated February 14, 2000.

3. FARS DEV 00-03 – Request for Deviations to Certain FAR Clauses for the Pilot Strategic Supplier Alliance Catalog Contract w/ Honeywell, Inc. dated April 5, 2000.

4. FARS DEV 00-04 – Class Deviation from FAR 12.504, 22.1003-4, and 52.212-5, Applicability of the Service Contract Act to Subcontracts for the Acquisition of Certain Commercial Services dated October 4, 2000.

5. FARS DEV 00-05 – Class Deviation from DFARS 208.7305, Use of Government-Owned Precious Metals, for Federal Stock Class (FSC) 6145 dated November 13, 2000.

6. PROCLTR 00-01 – Multiyear Contracting - 17.105-1 and 17.171 dated April 4, 2000.

7. PROCLTR 00-02 – Defense Priorities & Allocations System (DPAS) 11.6 dated June 7, 2000.

8. PROCLTR 01-01 – Foreign Military Sales Support 13.402(90)(2) and 25.7302-(90) dated January 8, 2001.

9. PROCLTR 01-02 – Delegation of Authority to Waive Berry Amendment for Non-Availability 25.7002 dated February 13, 2001.

10. PROCLTR 01-03 - Evaluation of Alternate Offers (DLAD 17.7501(b)(4)) [A1]***dated March 15 2001.***

11. PROCLTR 01-04 - Changes Clause for Commercial Items Acquisitions (DLAD 12.3Ol(f)(90) and (91); 12,302(b)(3)(91); 52.212-9000, Changes-Military Readiness) dated March 19, 2001.

12. PROCLTR 01-05 - Alternative Dispute Resolution (ADR) and Contracting Officers' Final Decisions (DLAD Section 33.211) dated April 12, 2001.

13. PROCLTR 01-06 - Delegation of Authority to Waive Berry Amendment for Non-Availability (DLAD 25.7002-2) dated Apr 26 2001.

14. PROCLTR 01-07 - Alternative Dispute Resolution Included in Post Award Orientations (DLAD 42.501) dated May 10 2001

15. PROCLTR 01-08 - Suspected Violations Concerning Forced or Indentured Child Labor, (DLAD 22.1503(e)) dated may 30 2001.

16. PROCLTR 01-09 – Alternate Disputes Resolution (ADR): Solicitation Provision (DLAD) section 33.214 and 52.233-9001)

17. PROCLTR 01-10[A2] ***- Conditions for Evaluation and Acceptance of Offers for Part Numbered Items (DLAD 52.217-9002)***

18. PROCLTR 01-11 - DLA Bundling Coverage (DLAD Sections 7.107; 8.404; 10.001; 15.304; 15.305; 19.202-1; 90.1101) dated Aug 7 2001

19. PROCLTR 01-12 - European Union (EU) Restrictions Involving Non-Manufactured Wood Packaging (NMWP) and Pallets (DLAD 47.305-1(90)) dated Aug 7, 2001

20. PROCLTR 01-13 – Determining Commerciality (DLAD 12.102) dated Aug 9, 2001

21. PROCLTR 01-14 – Conducting Market Research (DLAD 10.001, 12.208, 12.301, 12.302, 15.408) dated Aug 9, 2001.

22. PROCLTR 01-15 – Revision to DLAD 47.305-1(c)(90)[A3] ***regarding European Union (EU) Restrictions Involving Non-Manufactured Wood packaging (NMWP) and Pallets dated Sep 25, 2001.***

23. PROCLTR 01-16 - Update to Defense Logistics Acquisition Directive (DLAD) 52.213-9004, Offeror Representations, Certifications, and Fill-In Information – Electronic Commerce Foreign Military Sales Support dated Sep 27, 2001.

24. PROCLTR 01-17 - Revision to DLAD 25.7002, Restriction on Food, Clothing, Fabrics,& Specialty metals dated Nov 8, 2001.

25. PROCLTR 01-18 - Revision to Defense Logistics Acquisition Directive, DLAD) Subpart 3.8,Limitation on the Payment of Funds to Influence Federal Transactions dated 11/26/01.

26. PROCLTR 01-19 Use of Approved Sources (DLAD 11.301, 11.302-90 [A4]) dated Dec 5 2001.

27. PROCLTR 01-20 Management of Critical Safety Items (CSIs) (DLAD 1 1.302-91, 11.304-90, 12.301(f), 17.7501(b)(3)(i)[A5], 46.390(a)[A6], 52.21 1-9005[A7],52.211-9006, 52.21 1-9007) dated Dec 5, 2001.

28. PROCLTR 02-01[f8], Clause Rationalization - Year 200 (Y2K) Compliance (DLAD 39.106(a)(92); 52.239-9000 dated Jan 22, 2002

29. PROCLTR 02-02, Implementation of FAR EPA Clauses (DLAD 15.204(b), 16.203-3 and 4, and 52.216-9000 thru 9002 dated Jan 02, 2002. (See pen & ink changes after posting)

30. PROCLTR 02-03[A9], Bar Coding Requirements for Direct Vendor Delivery (DVD) Shipments (Applicable to DSCC, DSCP and DSCR only) DLAD 11.290, & 52.211-9008 dated Jan 31, 2002.

31. FARS DEV 2002-01 – Class Deviation from DLAD 1.690-3(c), Requirement for J-3313 Clearance Approval Authority for letter Contract Definitization s Exceeding $500,000 dated February 04, 2002.

32[f10]. IAW action officer Anne Burleighs instructions on 2/21/2002 the DLAD editor removed the following coverage from the DLAD. Coverage at DLAD 12.301(f)(94) and (95) has been removed. This guidance authorized use of the clause at FAR 52.203-3, Gratuities, and the provision at DFARS 252.209-7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, when using FAR Part 12, Acquisition of Commercial Items. This clause and provision are now authorized in Part 12 contracts in accordance with DFARS 252.212-7001(a) and 212.301(f)(v), respectively. (DFARS News 2001-03, Change Notice 20011101, DFARS Case 95-D712)

33. IAW pen & ink changes made after posting of PROCLTR 2002-02 by action officer Jerry Gilbart the following changes have been made to the on-line DLAD. Subpart 16.203(90), 16.203-3(90) thru (96), and 16.203-4(90) added new coverage.

34. PROCLTR 02-04, Clause Rationalization — Year 2000 (Y2K) Compliance (DLAD 12.301(f); 39.106(a)(92); 52.239-9000) dated Feb 25, 2002. This PROCLTR supercedes PROCLTR 02-01. See prefatory comment #28 for background on 02-01.

35. FARS DEV 2002-02, Class Deviation to Federal Acquisition Regulation (FAR) 51.101(a), Use of Government Sources by Contractors , dated March 04, 2002. This FARS DEV includes entirely new coverage at subpart 51, and updated coverage and numbering at subpart 90.

36. FARS DEV 2002-03, Class Deviation from FAR 12.204, Solicitation/Contract from DLAD 12.204, dated March 26, 2002.

37. PROCLTR 2002-05, Interim Guidance for Implementation of Section 811 of the Fiscal year 2002 DoD Authorization Act, Regarding Purchases from Federal Prison Industries (FPI), dated April 01, 2002.

38. PROCLTR 2002-06, Guidance for Processing Offers of Government Surplus Material, (DLAD) 11.301, 11.302(b), 11.304-91, 12.301(f), 46.402(h), 52.211-9000, 52.211-9003, 52.211-9009, 52.213-9004, & Appendix L, dated April 03, 2002 had DLAD editor historical comments of clarification for DLAD 11.302. New DLAD changes from PROCLTR 02-06 for subpart 11.302 remove the previous traceability. To maintain trackability see this comment[A11].

39. PROCLTR 2002-07, Offers of surplus Material for Critical Safety items (CSIs) and Revisions to the DLAD Guidance Issued by PROCLTRS 01-19 and 01-20, dated April 03, 2002. For archival purposes the coverage for subpart 11.302-90 for this PROCLTR has been included in this prefatory comment. (Archive[A12]: see prefatory comment #26 & 27 above)

40. PROCLTR 2002-08, Revision to DLAD 17.1, Multi-Year Contracting and 90.1101 Contents of written acquisition plans, dated April 29 2002.

41. PROCLTR 2002-09, Implementation of Section 811 of the Fiscal Year 2002 DoD Authorization Act, Regarding Purchases from Federal Prison Industries (Defense Logistics Acquisition Directive (DLAD) 8.602; 10.001; 19.502-1; 52.208-9001; 52.219-9001[A13], dated Jun 20 2002.

42. PROCLTR 2002-10, Clause Rationalization — Year 2000 (Y2K) Compliance (DLAD 52.239-9000) dated Jun 24, 2002. (Archival text of this clause[A14][A15])

43. PROCLTR 2002-11, Business System Modernization (BSM) Transportation Clauses 52.247-9006 thru 52.247-9010, dated Aug 5 2002.

44. PROCLTR 02-12, Provision at Defense Logistics Acquisition Directive (DLAD) 52.217-9002,Conditions for Evaluation and Acceptance of Part Numbered Items – Application to Automated Procurements and Other Clarifications (DLAD 17.7501 and 52.217-9002) dated Jul 26 2002.

45. PROCLTR 02-13, Revised Defense Logistics Acquisition Directive (DLAD) Guidance on Management of Critical Safety Items (CSIs) (DLAD 11.302-90, 11.302-91[A16], 11.304-90[A17], 52.211-9006[A18], 52.211-9007[A19]) dated Jul 26 2002.

46. PROCLTR 02-14, Cascading/Combined Set-Aside Logic in Business Systems Modernization (BSM) (DLAD 19.508; 19.590; 52.219-9005 through -9012) dated July 31 2002.

46. FARS DEV 02-04 Class Deviation from Defense Federal Acquisition Regulation Supplement (DFARS) 213.307, Forms dated July 29, 2002.

47. FARS DEV 02-05 Class Deviation from Defense Federal Acquisition Regulation Supplement (DFARS) 219.201(d), Small Business Specialist Review of Acquisitions Exceeding $10,000 (Defense Logistics Acquisition Directive (DLAD) 19.201(d)) dated July 31, 2002.

48. PROCLTR 02-15, Business System Modernization Solicitation and Response Web (SRweb) and Offer Evalation Web (OEweb) Provisions, DLAD 13.106-1(90), 52.213-9005 and 52.213-9006, dated Aug. 14 2002.

49. DLAD editor made a pen & ink change to DLAD clause 52.213-9005(i[A20]) to accommodate a change to SRweb software. To see previous version see comment.

50. PROCLTR 02-16, Update to DLAD 52.213-9004, Offeror Representation, Certifications, and Fill-in Information – Electronic Commerce dated November 20 2002. This provision/clause was first added to the DLAD by PROCLTR 1997-33. See prefatory comment #23 above for additional updates. To see archival text view PROCLTR 01-16.

51. FAR DEVS 02-07, Permanent Class Deviation from FAR 5.303 and DFARS 205.303 (DLAD 5.303(a)(91)) dated December 23 2002.

52. FARS DEV 02-08, Permanent Class Deviation from DFARS 204.202 (DLAD 4.202(1)(ii)(A)) dated December 23 2002.

53. PROCLTR 02-17, Revision to DLAD 47.305-1(c)(90) Regarding European Union (EU) Restrictions Involving Non-Manufactured Wood Packaging (NMWP) and Pallets, dated December 25, 2002. For archived text for subpart 47.305-1(c)(90) view prefatory comment # 22 above.

54. FARS DEV 03-01, Class Deviation from DLAD 1.690-3(c), Requirement for J-3313 Clearance Approval Authority for Letter Contract Definitization Exceeding $500,000 dated Jan 14, 2003.

55. PROCLTR 03-01, Revised DLAD guidance on the Acquisition Review & Approval Process (DLAD 7.102[A21], 7.104-90[A22], 7.104-91, 90.1103, & 90.15) dated Jan 27, 2003.

56. PROCLTR 03-02, Requirements for use of the Small Business Coordination Record (DD Form 2579) (DLAD 19.201(d)(10)(91)), dated Feb 10, 2003.

57. PROCLTR 03-03, Bar Coding Requirements for Direct Vendor Delivery (DVD) Shipments (DLAD 11.290[A23]), dated Feb 26 2003.

58. PROCLTR 03-04, Restrictions on Food, Clothing, Fabrics, Speciality Metals, and Hand or Numbering Tools (Berry Amendment), (DLAD 25.7002), dated Feb 28 2003.

59. PROCLTR 03-05, Homeland Security Act Temporary Emergency Procurement Authority, (DLAD 13.003 and 13.201), dated Feb 28. 2003.

60. PROCLTR 03-06, Revised DLAD Guidance on the Acquisition Review & Approval process (DLAD 7.102-90, 7.104-90, 7.104-91, 90.1103, & 90.1501) [A24]

61. PROCLTR 03-07, DLAD 4105.1, section 11.402, Guidance on Factors to Consider in Establishing Delivery or Performance Schedules for Planned Direct Vendor Delivery (DVD) for Hardware Items, dated April 28, 2003.

62. PROCLTR 03-08, Use of Government Commercial Purchase Card, DLAD 4105.1, Section 13.270 dated May 06 2003.

63. PROCLTR 03-09, Defense Logistics Acquisition Directive (DLAD) Guidance on the Acquisition Review and Approval Process for Service Acquisitions (Sections 8.404-70, 37.102, 37.590, 37.590-1, 37.590-2, 37.590-3, 37.590-4, and 37.601) dated may 12, 2003.

64. PROCLTR 03-10, Foreign Acquisition, DLAD 4105.1, Part 25 [A25]*dated May 27, 2003.*

65. PROCLTR 03-11, Guidance on Estimating Fair Market Price (PMP), DLAD 4105.1, section 19.807[A26], dated June 13, 2003.

66. Minor administrative changes were made to DLAD for the following parts: 2, 8, 15, 16, and 30 thru 33. For details about the changes contact DLAD editor at charles.howerton@dla.mil *or see attached files below.*

67. ***PROCLTRS 03-12***, ***Documentation of Source Selection Tradeoff Determination, DLAD 4105.1, section 15.308, dated July &, 2003.***

68. ***PROCLTR 03-13***, ***Agency Business Rules, Strategic Supplier Alliances (SSA), DLAD 4105.1, Part 90 dated July 7, 2003.***

69. ***PROCLTR 03-14***, ***Foreign Acquisition, DLAD 4105.1, Part 52, clause/provision 52.213-9004*** [A27]***dated July 15, 2003.***

70. ***PROCLTR 03-15***, ***Revised DLAD 4105.1, Subpart 90.1 and section 90.101***[A28], ***Guidance on the Sale, Loan, or Gift of Property dated Jul 21, 2003.***

71. ***PROCLTR 03-16***, ***The Importance of Accurate Contract Reporting within the Defense Logistics Agency (DLA) Contract Reporting System (DCARS) dated July 30, 2003.***

72. ***PROCLTR 03-17***, ***Revised DLAD 4105.1, Guidance on Voluntary Refunds, subpart 42.71***[A29] ***dated Aug 13, 2003.***

73. ***PROCLTR 03-18***, ***Defense Logistics Acquisition Directive (DLAD) 4105.1, Domestic Non-Availability Determinations, Subpart 90.17***[A30] ***and 25.7002***[A31] ***dated Oct. 23 2003***

74. ***PROCLTR 03-19***, ***Revised DLAD Guidance, Subpart 7.1, Acquisition Plans (7.104-91(a))***[A32][A33] ***dated Oct 27 2003.***

75. ***PROCLTR 03-21***, ***Berry Amendment/Buy American Act Market Research Requirements, subparts 10.001, 10.002, 25.103, 25.104, and 25.7002-2(90), dated Dec 8, 2003.***

B. Organizational Changes[A34].

1. Changes were made throughout the DLAD to reflect the reorganization of Headquarters in accordance with General Order No. 4-02 dated July 14, 2002 viewable at our ***intranet site*** ***https://today.dla.mil/dss/dss-p/GeneralOrders/04-02.pdf***. Concurrent with these changes, the Executive Director, Procurement, DLA, was retitled ***from*** Executive Director, Logistics Policy and Acquisition Management (J-33) ***to Acquisition, Technical and Supply Directorate (J-33)***.

2. Changes made throughout the DLAD to reflect the redesignations of item 1. above and other organizational changes are summarized in the table below:

J-33 Organizational Update Summary

From:		To:	
J-334	Technical Services Division	J-334	***Technical & Quality Policy Division***
J-335	Acquisition Program Division	***J-3312***	***Supplier Operations Branch***
J-336	Contract Policy Division	***J-3311***	***Acquisition Policy Branch***
J-337	Procurement Integrity & Pricing Division	***J-3313***	Procurement Integrity & Pricing ***Branch***
J-338	Supplier Assesment & Capabilities Division	J-339	***Industrial Capabilities Division***
J-339	Research & Development Enterprise Division		
Maintained by J-3311 webmaster / DLAD editor			

C. Other Changes.

1. References to the Truth In Negotiations Act, (TINA[f35]) were changed from $500,000 to $550,000.
2. The Regulations website was changed from www.procregs.hq.dla.mil to www.dla.mil/j-3/j-336/default.htm .
3. The coverage at 45.302•1 is changed to conform to the December 8, 2000, Delegation of Head of Agency Authority to the Executive Director, Acquisition, Technical, and Supply Directorate
4. ***Contract quality requirements references to the obsolete ANSI/ASQC Q9002 standard have been replaced with the ISO 9001:2000 standard. See subpart 46.202-4-90 and the clause at 52.246-9001.***
5. ***References to the former DLA activity DCMD and DCMA were removed IAW http://www.dla.mil/j-3/j-336/logisticspolicy/DCMA%20ltr.pdf and HQC commandant was changed to Staff Director, HQC Operation.***
6. ***Reference to DLAD 16.306***[f36] ***has been removed because of changes to the FAR.***
7. ***Changed the title of DESC' Chief of Contracting office to Center Senior Procurement Official, CSPO***[f37]***.***
8. ***IAW*** [f38]***instructions from Action Officer the DLAD editor corrected 11.103(e)(100).***
9. On 9/28/01 DLAD editor added section ***52.213-9004(d) 14***, IAW PROCLTR 01-16.
10. A[f39] new (iv) was added to 15.403-4(b)(90) inasmuch as the contracting officer coordination is needed to assure timely initiation and performance of pricing assistance.
11. A[f40] requirement was added to 15.404-2(d) for provision to the local cost and price office of a copy of the selected TINA waivers are to be furnished to J-3313.
12. The penultimate sentence at DLAD subpart 1.690-6(a) was removed to eliminate confusion concerning review requirements.
13. Revised DLAD 2.101 to reflect the new title of DSCR's Chief of the Contracting Office, i.e., ***Director, Supplier Operations*** [A41]
14. The need for the change was identified by DSCC to the CWG (see Mary Perry 12/17/02 email). The CWG agreed with the change. J-3311 action officer for Part 13 had no objection to the change continent upon certain assumptions (see A.O. F. Pane email dated 2/3/02). The CWG verified the assumptions and implemented the change to DLAD subpart 52.213-9006(a)(1) [A42]deleting the word ***"automated"***.

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BY THE ORDER OF THE DIRECTOR

DSS:Staff Director, HQC Operations

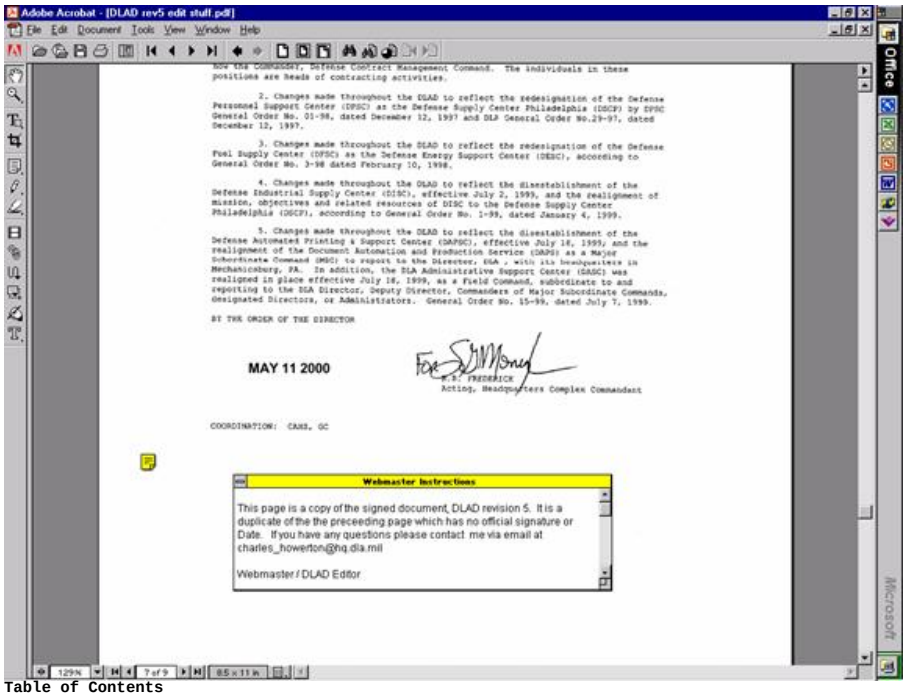
COORDINATION:

GC:_____ CAH:_____ ***J-33***:_____

DCMA-O:_____ ***J-33***:_____

DCMA-AA:_____

This DLAD revision supersedes DLAD 4105.1, 1994 Edition, Revision 4, January 1, 1998.



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SUBPART 1.1 • PURPOSE, AUTHORITY, ISSUANCE

1.101 Purpose.

The Defense Logistics Acquisition Directive (DLAD) 4105.1 is issued by the Executive Director, *Acquisition, Technical, and Supply Directorate* , by authority of the Director, Defense Logistics Agency (DLA). It implements and supplements the Federal Acquisition Regulation (FAR), the Defense FAR Supplement (DFARS) and other Department of Defense publications and, pursuant to FAR 1.304, establishes DLA procedures relating to the acquisition of supplies and services under the authority of Chapter 137, Title 10 of the United States Code, or other statutory authority. This DLAD is not a stand•alone document and must be read in conjunction with the FAR and DFARS.

1.104 Applicability.

(a) This directive is applicable to the contracting function at all DLA activities.

1.105 Issuance.

1.105•1 Publication and code arrangement

This directive is available on the Internet directly from the J-3311 site at: http://www.dla.mil/j-3/j-336/default.htm and may be downloaded in full text or by Part number. From the effective date of DLAD Revision 5, the Directive will be continually updated on this site as changes occur. Therefore, the most current version is found at the above website. This directive is also transmitted through the Distributed Minicomputer Systems (DMINS) E•Mail by ***J-3311*** to DLA field activities that request it in that manner. It is also available through DLAPS on the DLA HQ Local Area Network (LAN). It is available on•line with full data base capability from private sources. DLA field activities desiring this directive in the latter mode should contact their local installation supporting library/publications personnel for subscription requests. The DLAD can also be downloaded via the Internet at: http://deskbook.osd.mil/deskbook.html

1.105•2 Arrangement of regulations.

(c) References and citations.

(2) The Defense Logistics Acquisition Directive 4105.1 shall be referred to as the DLAD.

SUBPART 1.2 • ADMINISTRATION

1.201•90 Maintenance of the DLAD.

1.201•91 Amendment of Regulations.

Recommendations for amending the FAR or the DFARS shall be submitted to HQ DLA, ATTN: ***J-3311***. Submittals shall be in the form of a memorandum (without signature block) to the Director, DAR Council and be formatted in accordance with the DAR case guidance provided at 90.7. Recommendations for amending the DLAD shall be submitted in the form of a letter signed by the chief of the contracting office and be in the format of I. Problem; II. Recommendation; and III. Discussion.

1.201•92 DLAD changes.

Numbered DLAD changes are issued periodically by the Executive Director, ***Acquisition, Technical, and Supply Directorate*** , to revise and update the DLAD.

1.201•93 Dissemination and effective date of the regulation (including appendices, revisions, supplements, and manuals).

(a) Chiefs of contracting offices shall ensure that the FAR, DFARS, and DLAD including revisions, are available to all interested individuals.

(b) Compliance with the DLAD, including any revision to the DLAD, shall be permissive on the date of the revision and shall be mandatory 30 days after issuance, unless otherwise provided in the revision.

SUBPART 1.3 • AGENCY ACQUISITION REGULATIONS

1.301 Policy.

1.301•90 Contracting office guidance.

(a) Procedural guidance relative to the FAR, DFARS, and/or DLAD may be issued by heads of contracting activities consistent with FAR 1.304 and DFARS 201.304. This authority is delegable to the chief of the contracting office without power of redelegation. In addition, the Executive Director, ***Acquisition, Technical, and Supply Directorate*** , has delegated this authority to the Commander, Defense Reutilization and Marketing Service (DRMS). Requests for approval of any regulatory document meeting the criteria prescribed in DFARS 201.304(1) and (3) shall be submitted to ***J-3311*** for submission by the Executive Director, ***Acquisition, Technical, and Supply Directorate*** , to the DAR Council Director for approval by the Director, Defense Procurement. The format, general plan, and numbering system of procedural guidance shall be the same as FAR, DFARS, and DLAD.

(b) Defense Supply Centers and DRMS shall furnish HQ DLA, ATTN: ***J-3311***, one copy of each procedural instruction for review after publication. Contracting offices need not separately request approval under DFARS 201.304(1) and will, based on the copy of the procedures provided, be advised by letter if the procedure is disapproved.

1.301•91 Contracting office clauses.

(a) Clauses and provisions that are developed as a result of negotiations or which fulfill a specific and unique requirement of the acquisition, that do not constitute a deviation from FAR, DFARS, or DLAD, and that do not require the approval of the Director, Defense Procurement shall be submitted upon incorporation in a contract to the local contract policy office, or, where no such office exists, to the chief of the contracting office, for review. A copy shall also be forwarded concurrently to HQ DLA, ATTN: ***J-3311***.

(b) Proposed new repetitive use or "substantially the same as" local clauses shall be reviewed by the local contract policy office or, where no such office exists, by the chief of the contracting office prior to use. Reviews should determine essentiality, ensure that the clauses do not contain material differences from those already authorized for use, and ensure that the new circumstances for use of the clauses are appropriate. These are clauses which are not deviations and which otherwise do not require Director, Defense Procurement approval. A copy shall also be forwarded to HQ DLA, ATTN: ***J-3311***, subsequent to review and issuance by the local contract policy office.

(c) DLAD coverage for a local clause which has been approved as a permanent deviation will include the prescription for the use of the clause, the title of the clause, the date of the clause, and the local FAR system number of the clause. Editorial changes to the local ***clause may be made locally. A copy of the revised clause shall be forwarded to J-3311*** to update the DLAD. Any significant revision to the clause must be treated as a new deviation in accordance with 1.490.

(d) Clauses developed for local use are to be numbered in accordance with DFARS 252.101. Each activity's clauses are to be identified with a nine in the sixth position denoting an Agency or component clause and an alpha symbol in the seventh position. The alpha symbol for each activity is identified as follows:

DSCC • 9C00 ***DSS*** –- 9A00
DSCP • 9P00, 9I00 ***DDC*** • 9W00 ***DESC*** • 9F00
DRMS • 9R00 DNSC • 9N00 DSCR • 9G00

(e) One•time use clauses do not have to be numbered, but must be identified in accordance with FAR 52.103 by title, date, and name of organization that developed them.

(f) DLA clauses codified in the Code of Federal Regulations are to be numbered using the prefix of 54.

1.304 Agency control and compliance procedures.

(4) The plan required by DFARS 201.304(4) is comprised of 1.301•91, 1.403 and 1.404, as well as this section.

(90) The Defense Supply Centers and DRMS are precluded from adopting any new, or continuing to use any old, clause or provision, including any quality assurance provision or other contractual requirements language, that includes any nonstatutory certification without prior review and approval by the Director, Defense Procurement. Any local certification requirement considered to be mandated by statute that is currently in use or proposed for use must be submitted to HQ DLA, attn: ***J-3311***, for forwarding to DDP.

1.390 DLAD.

(a) Contents. This directive contains all Departmental policies, procedures, and instructions relating to acquisition of supplies and services within DLA, except those contained in the FAR, DFARS, DLA manuals, DLA handbooks, or other DLA regulations.

(b) Procurement letters. Numbered procurement letters (PROCLTRs) are issued by the Executive Director, ***Acquisition, Technical, and Supply Directorate*** , to provide information and procedural guidance to DLA contracting personnel, to emphasize existing policy, or to transmit new or changed policy promulgated by OSD or higher authority. PROCLTRs shall expire no later than 1 year from date of issue. ***PROCLTRs can be accessed and downloaded from the Internet via the J-3311 website: http://www.dla.mil/j-3/j-336/logisticspolicy/procltrspage_2.htm , for distribution*** to DLA contracting offices and within Headquarters, DLA. The PROCLTR Distribution List is maintained by ***J-3311.***

(c) Multiple address letters. Unnumbered multiple address letters will be issued for one•time requests for comments or reports, announcements of procurement conferences and other meetings. No implementation beyond the action requested is contemplated.

SUBPART 1.4 • DEVIATIONS FROM THE FAR

1.403 Individual deviations.

(a) Except for individual deviations to the coverage listed in DFARS 201.402(1)(i), deviations from FAR, DFARS, a Department of Defense Directive, or the DLAD which affect only one contract or transaction, may be made only after approval by the Executive Director, ***Acquisition, Technical, and Supply Directorate*** .

(b) Requests for deviations to the coverage listed in DFARS 201.402(1)(i) (A) through (E) shall be submitted to HQ DLA, ATTN: ***J-3311,*** for submission by the Executive Director, ***Acquisition, Technical, and Supply Directorate*** , to the DAR Council Director for approval by the Director, Defense Procurement.

1.404 Class deviations.

(a) Requests for class deviations shall be submitted to HQ DLA, ATTN: ***J-3311***, for submission ***to*** the Executive Director, ***Acquisition, Technical, and Supply Directorate*** , for approval, or to the DAR Council Director for approval by the Director, Defense Procurement.

(b) Title 10 U.S.C. 2404(a) and (b) provide special authority to the Secretary of Defense for deviation from contractual requirements when petroleum market conditions are expected to adversely affect or have already adversely affected DoD's ability to acquire petroleum products. DoDI 4220.8, Petroleum Acquisition Under Title 10, U.S.C., Section 2404 and DLAD 4220.5, Petroleum Acquisition Under Title 10, U.S.C., Section 2404 provide specific procedures for use of this authority.

(90) All class deviations for the FAR, DFARS, and DLAD which are required for longer than three years will be incorporated in the DLAD.

1.490 Submission of requests for deviations.

(a) Requests for authority to deviate from the provisions of the FAR or the DFARS shall be submitted to HQ DLA, ATTN: ***J-3311***. Submittals shall be formatted in accordance with the guidance at 90.702. Requests for authority to deviate from the provisions of the DLAD shall be submitted in the form of a letter signed by the chief of the contracting office and be in the format of I. Problem, II. Recommendation, and III. Discussion. The deviation request shall include a statement that the request has been reviewed and concurred in by local counsel. Pertinent comments by local counsel should be forwarded with the request.

(i) Requests for new deviations which will be needed beyond the normal three year expiration period should be submitted to HQ DLA, ATTN***: J-3311,*** as permanent deviations to be incorporated into the DLAD. The deviation request shall also include appropriate DLAD language.

(ii) Requests for extension of existing deviations should also be requested as permanent DLAD coverage unless superseding regulatory changes are in process.

(b) Requests for class deviations which have a significant cost or administrative impact upon contractors or offerors must be published in the Federal Register. See 1.501•2.

(i) Class deviations for which publication is required should be submitted to ***J-3311*** in sufficient time to allow for a 60 day public comment period, resolution of public comments, review of the resolved comments by the DAR Council and approval by the Director, Defense Procurement.

(ii) If a paperwork reduction or regulatory flexibility analysis is required, additional time should be allowed for these analyses.

(c) For those class deviations which have originated in a DLA field activity and do not have significant cost or administrative impact upon contractors or offerors, the originator will initiate action for renewal or extension, when appropriate, at least 90 days prior to the expiration date.

1.491 Control of deviations.

A register shall be maintained by ***J-3311*** of the deviations granted to the FAR, DFARS, and DLAD. Each deviation shall be recorded in the register and shall be assigned a control number (i.e., FARS DEV (FAR system deviation) YY•##)). The control number shall be included in the document authorizing the deviation and shall be cited in all references to the deviation.

1.492 • Streamlined Solicitation for ***Defense Energy Support Center*** Contracts (DEVIATION)

Defense Energy Support Center (DESC) is authorized to either eliminate or modify various clauses and provisions in buying petroleum, petroleum•related services, and coal. FAR and DFARS clauses/provisions

eliminated or modified and DESC clauses which have been modified are listed at 90.13.

1.493 National Performance Review (NPR) Reinvention Laboratory Deviation Authority.

(a) Contracting activities which have been designated as Reinvention Laboratories may grant individual or class deviations to the FAR, DFARS, or DLAD, where necessary to accomplish reinvention laboratory initiatives. This authority may be delegated by the HCA, without power of redelegation, to the chief of the contracting office. The Executive Director, ***Acquisition, Technical, and Supply Directorate*** has delegated this authority to the Commander of the Defense Reutilization and Marketing Service (DRMS) and the Administrator of the Defense National Stockpile Center (DNSC) without power of redelegation.

(b) This deviation authority does not apply to:

(i) Deviations which have a significant effect beyond internal operating procedures or; those which have a significant cost or administrative impact on contractors or offerors (see FAR 1.501).

(ii) Individual deviations at DFARS 201.402(1)(i) which require Director, Defense Procurement approval.

(iii) Requirements imposed by statute or that implement regulations or directives of other agencies.

(c) Reporting Requirement. A report covering all deviations exercised as a result of the Reinvention Laboratories initiative shall be forwarded to ***J-3311*** 15 days after the end of each calendar quarter. Reports shall contain a brief description of any deviation exercised as a result of this authority including the FAR, DFARS, or DLAD citation, the action or class to which the deviation applies, and the goal which the deviation supports. The Executive Director ***Acquisition, Technical, and Supply Directorate*** , will consolidate and submit to the Director, Defense Procurement a quarterly report with a brief description of all deviations exercised in the last quarter.

SUBPART 1.5 • AGENCY AND PUBLIC PARTICIPATION

1.501 Solicitation of agency and public views.

1.501•2 Opportunity for public comments.

(b)(2) Contracting office comments on proposed rules published for public comment in the Federal Register shall be submitted to HQ DLA, ATTN: ***J-3311. J-3311*** will take appropriate action on such comments. Actions may include consideration in DAR Council Committee, submission to the DLA DAR Council Policy Member for resolution at the DAR Council, or consolidation of comments and submission directly to the FAR Secretariat or the DAR Council case manager.

(90) ***J-3311*** will be the focal point for any Federal Register notices of proposed rules submitted by contracting offices requiring the public comment process. The appropriate contracting office will be responsible for the analysis of public comments and the preparation of a final rule. The final rule will be submitted to ***J-3311*** for review and submission through the DAR Council to the Director, Defense Procurement.

1.590 Changes in contracting processes, techniques, or methods.

(a) General. Whenever a contracting office contemplates a significant change in a contracting process, technique, or method which may have a substantial impact on industry and/or the Government, the activity shall promptly notify HQ DLA, ATTN: ***J-3311***, of the contemplated change and the reasons for the change. This notification is necessary for HQ DLA to respond to any reactions from industry, the Congress, or the using Military Departments. In addition, HQ DLA has information which may not be available at the field level and can evaluate the significance of the proposed action to the Agency as a whole. Accordingly, it is essential that HQ DLA know what is contemplated before a significant change is publicized.

(b) Examples of significant changes. Examples of contemplated changes which are significant and which require notification to HQ DLA are (but not limited to) a change in••

(1) A longstanding inspection requirement or procedure;

(2) The method of providing and/or accounting for Government•provided property;

(3) A type of contract which constitutes a significant departure from the acquisition technique previously utilized;

(4) Solicitation techniques and the elements used in evaluation of offers;

(5) The region/area from which acquisition of an item has been previously accomplished;

(6) The location of a contracting office; or

(7) Item specification which prompts a major change in manufacturing and/or processing techniques.

(c) Data to support request. To determine the impact of a contemplated change in contracting method, requests for approval of a proposed change in a contracting method should contain the following information:

(1) A description of the present and proposed contracting methods;

(2) A statement of the difficulties encountered in the use of the present method and/or the improvements foreseen as the result of a change;

(3) A statement as to the degree of impact of the change expected on industry and/or the Government; and

(4) A statement as to the net benefits accruing to the Government as a result of the change.

SUBPART 1.6 • CONTRACTING AUTHORITY AND RESPONSIBILITIES

1.601 General.

Authority conferred upon the Heads of contracting activities, Commanders of contracting offices or the chief of the contracting office under any paragraph of DLAD may be delegated with power of redelegation to other officials, except when specifically limited by law or the provisions of the pertinent DLAD paragraph. The chief of the contracting office will maintain a list of all delegations and promptly notify HQ, DLA, ATTN: ***J-3311***, of any changes.

1.601-90 Center Senior Procurement Official

(a) In order to minimize the risk attendant to the integration of the contracting function into multifunctional teams at the Inventory Control Points (ICPs), each Head of Contracting Activity (HCA) shall establish within the activity a position of Center Senior Procurement Official (CSPO). The CSPO shall be a strong, functionally independent procurement official. The position shall be a critical acquisition position at the civilian GM-15 or military 0-6 level, and shall be filled by an individual who is certified at level III in the contracting career path under the Defense Acquisition Workforce Improvement Act

(DAWIA). The CSPO shall be the “Chief of the Contracting Office” as defined in subpart 2.1.

(b) Responsibilities. The CSPO shall maintain oversight of the activity’s procurement function and ensure the fundamental integrity of the activity’s procurement system for and on behalf of the HCA. To accomplish this, the CSPO shall:

(1) Have responsibility for the contract policy, pricing, and clearance and oversight functions.

(2) Serve as the Defense Supply Center’s clearance authority (see 1.690-3(a)).

(3) Ensure that a review and approval channel consisting of DAWIA certified or certifiable GS-1102s or GS-1101s in the contracting career path, matrixed if necessary, is in place to provide review and approval of contracting actions specified by regulation. This review and approval channel shall also assist in the resolution of complex contracting issues that are elevated by contracting officers.

(4) Select, appoint, and terminate the appointment of contracting officers when such authority has been delegated to the chief of the contracting office in accordance with 1.603-1.

(5) Manage the activity’s Contracting Officer Warrant Program (see 1.603-1(91)). The objective of this program is to ensure that only those officials who fully meet appropriate selection criteria are appointed and retained as contracting officers when an organizational need occurs.

(6) Manage the activity’s Contracting Officer Review Program (see 1.603-91).

(7) Ensure, on behalf of the HCA, that contracting officer annual performance evaluations are performed, reviewed or approved within their own career channels. The requirement that annual performance evaluations be performed, reviewed or approved by contracting career path 1101 or 1102 personnel is set forth in Under Secretary of Defense for Acquisition and Technology’s letter dated June 2, 1993, subject: Functional Independence of Contracting Officers (popularly called “the Deutch memo”), forwarded to field activities by AQPLB letter, dated July 14, 1993, same subject.

(8) Ensure that contracting personnel, including those in developmental programs, obtain the mandatory training, education, and experience required by DoD 5000.52M to become certified at the appropriate levels.

(9) Assure that Defense Acquisition University (DAU) course quotas are requested in sufficient numbers to meet training requirements and that these quotas are used or returned in time for the Army Training Requirements and Resources System (ATRRS) to reallocate the spaces.

(10) Together with the HCA and the Center’s Civilian Personnel Office, designate critical acquisition positions within the activity.

(11) Ensure waiver requests are processed through the HCA to the Agency’s Acquisition Career Program Board (ACPB) in accordance with CAH letter dated November 10, 1994, subject: Waiver of Requirement to be a Member of the Defense Acquisition Corps. This letter states that “only persons who are members of the acquisition corps may serve in critical acquisition positions unless a waiver is obtained.” The letter also provides the general criteria for a waiver request, i.e., “significant potential for advancement to levels of greater responsibility and authority -- based on demonstrated analytical and decision-making capabilities, job performance, and qualifying experience.”

(12) Be the program manager for the activity’s program of development for first line supervisors of multi-functional teams. The policy for this program is specified in AQP/MMS letter dated July 14, 1994, subject: Supervisory Development Programs in Commodity Business Units, Commodity Management Groups, and Like Organizations. Paragraph 5.d. of this letter establishes the requirement that “an employee residing at a senior contracting career level should be designated as program manager” for the Center’s program for the development of first line supervisors of multi-functional organizations. This does not preclude the participation of personnel from other disciplines in this program.

(13) Develop a Contract Quality Management Plan that describes how integrity is preserved within the contracting function (see 1.601-91).

1.601-91 Contract Quality Management Plan.

(a) Each HCA shall be responsible for a Contract Quality Management Plan (CQMP). The purpose of the plan is to assure that each HCA has in place an effective management control plan for assuring contracting system controls and integrity and for continuous improvement of contract quality in all phases of the procurement process. The CSPO (see 1.601-90) shall develop the plan for and on behalf of the HCA.

(b) The CQMP shall address the following elements:

(1) A description of the procedures in place assuring that the CSPO has been assigned responsibility for the contract policy, pricing, and clearance and oversight functions (see 1.601-90(b)(1)).

(2) A description of how continuous contract quality improvement will be achieved utilizing the eight contract clearance standards at 1.690-4.

(3) A description of the contracting review and approval channel within the activity. This review and approval channel shall consist of DAWIA certified or certifiable GS-1102s or 1101s in the contracting career path.

(4) A description of the activity’s Contracting Officer Warrant Program (see 1.603-1(91)).

(5) A description of the activity’s Contracting Officer Review Program (see 1.603-91).

(6) A description of how the activity complies with the requirement in the Under Secretary of Defense for Acquisition and Technology’s memorandum of July 14, 1993, subject: Functional Independence of Contracting Officers, that requires contracting officer annual performance evaluations be performed, reviewed or approved by contracting career path 1101's or 1102's. The requirements of this memorandum may be satisfied at the appraising supervisor level, the reviewing supervisor level, or the approving official level.

(7) A description of how the CSPO ensures that activity contracting personnel, including those in a developmental program, attend mandatory DAWIA training courses and that they obtain the required education and experience.

(8) A description of how the activity’s DAWIA certification process is managed.

(9) A description of how the activity’s critical acquisition positions are determined and the procedures for processing a waiver request.

(10) A description of how the activity’s program for developing a pool of talent for filling multi-functional supervisory vacancies is managed (see AQP/MMS letter dated July 14, 1994, subject: Supervisory Development Programs in Commodity Business Units, Commodity Management Groups, and Like Organizations).

(c) The CQMP and substantial revisions thereto shall be submitted by the HCA for approval by the Executive Director, ***Acquisition, Technical, and Supply Directorate*** . The plan shall be kept current.

1.602 Contracting officers.

1.602-1 Authority.

(a) Each appointing authority shall prepare and maintain a current listing of all of the activity’s contracting officers and the limits of their authority. This list shall also include the name and location

of any contracting officer assigned to an activity but physically located at other than the central activity. The listing shall be in the sample format at (b) below. A copy of this listing will be provided to HQ DLA, ATTN: ***J-3313***[A46], annually at the beginning of each fiscal year.

(b) Sample format for listing of contracting officers:

NAME	GRADE	DATE OF CURRENT WARRANT	DOLLAR LEVEL	CANDIDATE SELECTION (Yes or No)	MEETS CRITERIA	INTERIM APPOINTMENT (Yes or No)

(c) Contracting officer warrants lists shall be reviewed by J-3313. The review will include the following considerations: a contracting office's needs for the number and dollar values of warrants relative to the office's size and mission; whether warrants should be limited or unlimited; whether warrants are rescinded when appropriate; whether contracting officers meet the FAR/DFARS/DLAD selection criteria; the number and duration of waivers to selection criteria; and whether a periodic review of contracting officers warrants by the contracting office has been accomplished.

1.602•2 Responsibilities.

(90) Contracting officers shall be bound in all their actions to exercise reasonable care, skill, and judgment.

1.602•3 Ratification of unauthorized commitments.

(b) Policy.

(3) Heads of contracting activities may delegate their ratification authority (FAR 1.602•3(b)(2)) for unauthorized commitments valued at or below the simplified acquisition threshold at FAR 13.101 to the Chief of the Contracting Office. The authority to ratify unauthorized commitments in excess of the simplified acquisition threshold may not be delegated. The Executive Director ***Acquisition, Technical, and Supply Directorate*** , has delegated the authority to ratify unauthorized commitments valued at or below the simplified acquisition threshold at FAR 2.101 to the Commander of the activities listed in (A) through (***D***) below, and to the ***Director, DAPS, the Staff Director, HQC Operations DSS, and the*** Administrator, DNSC, ***(respectively)*** without power of redelegation:

(A) Defense Distribution Center (DDC).

(B) Defense Reutilization and Marketing Service (DRMS).

(C) Television • Audio Support Activity (T•ASA).

(D) ***DLA Support Services(DSS).***

(E) ***Document Automation and Production Service (DAPS)***
(F) Defense National Stockpile Center (DNSC)

(4) Proposed ratification of unauthorized commitments valued in excess of the simplified acquisition threshold at FAR 2.101 from those activities in (A) through (f) above shall be forwarded by letter signed by the Commander, ***Director, Staff Director HQC Operations,*** or the Administrator, to HQ DLA, ATTN: ***J-3311***. Such referrals shall clearly document: (A) that the authority of FAR 1.602•3 exists and that ratification is within the limitations of FAR 1.602•3(c); (B) the circumstances surrounding the unauthorized commitment; and (C), as appropriate, a description of the corrective action taken to preclude such unauthorized commitments in the future.

1.602-90 Nonappropriated funds.

Appropriated fund contracting officers may act in an advisory capacity on nonappropriated fund contractual instruments. Appropriated fund contracting officers, however, shall not perform the duties of a contracting officer on any contractual instrument obligating only nonappropriated funds except when required by AR 215-4, Nonappropriated Fund Contracting. Contracting officers shall be separately warranted for contracting with nonappropriated funds.

1.603 Selection, appointment, and termination of appointment.

1.603•1 General.

The authority in FAR 1.603•1 for selection, appointment, and termination of appointment of contracting officers has been delegated by the Director, DLA to the DLA Heads of Contracting Activities (HCAs). For the activities not designated as contracting activities (see DLAD 2.101), the Executive Director, ***Acquisition, Technical, and Supply Directorate*** , as HCA, has delegated this authority, to the Commander of those activities and to the ***Directors, DAPS, and DSS, and the Administrator, DNSC. This authority is delegable, without power of redelegation to the chief of the contracting office.***

(90) Definitions.

"Appointing Authority" means any person delegated the authority to appoint contracting officers in accordance with 1.603•1 above.

"Warrant Limitations" are limitations, in addition to the DLAD, laws, Executive Orders, and other applicable regulations, which are imposed on the authority of contracting officers either by delegation or actions of the appointment authority. These limitations may include, but are not limited to, dollar obligation ceilings, interim appointment period, requirements for prior reviews by higher authority, or other approval requirements.

(91) The DLA Contracting Officer Warrant Program.

(a) As prescribed in FAR 1.603•1, DLA has established the DLA Contracting Officer Warrant Program for the selection, appointment, and termination of contracting officer warrants.

(b) The objective of this program is to ensure that only those officials who fully meet appropriate selection criteria are appointed and retained as contracting officers when an organizational need occurs.

1.603•2 Selection.

(90) Selection criteria for contracting officer appointments are listed in DFARS 201.603•2. Education and training requirements for warrants above this threshold are also set forth in DoD 5000.52M, Acquisition Career Development Program (November 1995); see especially Appendix M. There are no specific education or training requirements for contracting officers, other than those pertaining to the candidate's series and grade level, for warrants for simplified acquisitions above the micropurchase threshold but under the simplified acquisition threshold.

(a) Experience requirements and selection procedures:

(1) Candidates for simplified acquisition contracting officer warrants above $2,500 shall have two years of recent experience in Government or commercial contracting, including 6 months experience applicable to the dollar threshold or nature of procurement actions for which the warrant will be issued.

(2) For Contracting Officer Warrants above the simplified acquisition threshold, candidates shall meet the following additional experience requirements:

(i) Warrants for up to a maximum of $500,000: Three years of recent, progressively complex and responsible contracting and/or staff experience in Government or commercial contracting.

(ii) Warrants which exceed $500,000: Four years of recent, progressively complex and responsible contracting and/or staff experience in Government or commercial contracting.

(3) Field buyers and Defense Subsistence Office Personnel placing calls against Blanket Purchase Agreements for fresh fruits and vegetables may be exempt from the above requirements. Appointing authorities may establish specialized selection criteria as appropriate for these two categories of warranted personnel.

(4) At the request of the supervisor, the candidate will prepare a Contracting Officer Warrant Program Selection Statement using the following format:

SAMPLE CONTRACTING OFFICER WARRANT PROGRAM SELECTION STATEMENT.

This format should be used by each contracting officer candidate when applying for a contracting officer's warrant:

1. NAME
2. TITLE, SERIES, GRADE
3. OFFICE
4. RELEVANT EXPERIENCE (Begin with current position and go back for a minimum of two years. Include up to four relevant positions.) Information on each position should include:

   A. NAME OF EMPLOYER
   B. DATES EMPLOYED
   C. TITLE OF POSITION
   D. KIND OF BUSINESS/ORGANIZATION
   E. DESCRIPTION OF WORK (Include quantity, complexity, type, and average dollar amount of documents obligated, if applicable.)

5. OTHER RELEVANT SPECIAL QUALIFICATIONS, CERTIFICATIONS, OR SKILLS
6. RELEVANT HONORS, AWARDS OR FELLOWSHIPS RECEIVED
7. EDUCATION:

   A. HIGHEST LEVEL COMPLETED
      DIPLOMA RECEIVED: ( )YES ( )NO
   B. NAME OF COLLEGE/UNIVERSITY
      (1) DATES ATTENDED
      (2) NUMBER OF CREDITS COMPLETED (Indicate whether credits are semester or quarter hours.)
      (3) TYPE AND YEAR OF DEGREE
      (4) CHIEF UNDERGRADUATE COLLEGE SUBJECTS
      (5) MAJOR FIELD OF STUDY AT HIGHEST LEVEL OF COLLEGE WORK

8. CONTRACTING RELATED TRAINING (See 1.603•2 for training requirements):

NAME OF COURSE ATTENDED	NAME OF SCHOOL	DATE

(5) The supervisor will review this statement to determine the candidate's ability to perform the functions required to meet the organizational need.

1.603•3 Appointment.

(a) Request for Appointment.

(***1***) The supervisor will complete a Request for Appointment of a Contracting Officer (such as the sample below), justifying the validity of the organizational need and verifying the contracting officer candidate's compliance with selection criteria. The supervisor will sign the request and submit it through appropriate organizational channels to the appointing authority.

SAMPLE REQUEST FOR APPOINTMENT OF A CONTRACTING OFFICER.

The following findings and determinations are made pursuant to applicable law and regulation.

1. There is a clear and convincing need to appoint a contracting officer with the ability to perform at the _____ (dollar threshold) warrant level for the following reasons: (Include discussion of quantity, complexity, type, and average dollar amount of documents to be obligated).

2. Request the following contracting officer candidate be appointed a warrant with the above dollar limitation: (Name, Title, Series and Grade).

3. The contracting officer candidate will occupy the following organizational level: (Office/Branch/Division).

4. The candidate's Contracting Officer Warrant Program Selection Statement stating the candidate's background is enclosed. For the limits set forth above: (Check as applicable.)

_____ The candidate meets the selection criteria.
_____ This candidate does not meet the minimum criteria in (experience, education and/or training), namely; (Indicate deficiency)_____
_____ An interim appointment for the period of _____is requested because_____
(Include rationale/justification needed to issue warrant despite failure to meet qualification criteria.) These experience and/or training needs will be identified in the candidate's individual development plan and must be completed by_____.

5. In addition to the limitations imposed by the Defense Logistics Acquisition Directive, the DoD FAR Supplement, the FAR, laws, Executive Orders, and other applicable regulations, the following additional warrant limitations are imposed:

Dollar threshold:_____
Other limitations:_____

6. The candidate's current conflict of interest disclosure statement, OGE Form 450, “Executive Branch Confidential Financial Disclosure Report”, as required by DLAD 5500.1, Standards of Conduct, is on file with the appropriate standards of conduct counselor. The above findings and determinations are made pursuant to applicable law and regulations:

SUPERVISOR:
.....
(Signature of Supervisor of the Candidate/Date)
(Typed Name, Title, Office)

APPROVED: .....
(Appointing Authority/Date)
(Typed Name, Title, Office)

(***2***) The appointing authority will review candidate applications and appoint Contracting Officers. If additional information is required by the appointing authority, the document will be returned with a request for further explanation or supporting data. The appointing authority shall determine the validity of the need, whether the candidate meets applicable selection criteria, and what warrant limitations should be applied. In the event that the appointing authority determines that there is not an organizational need for a contracting officer, the candidate will be notified of this decision.

(***3***) The appointing authority may have the candidate appear before a Contracting Officer Review Board as described in 1.603•92(b).

(***4***) The completed Request for Appointment of a Contracting Officer is subject to the Privacy Act of 1976 and shall be maintained in a secure location deemed appropriate by the appointing authority.

(***5***) Personnel shall not ordinarily be appointed as contracting officers if they do not meet the applicable selection criteria (see DFARS 201.603•2). If a candidate does not meet the selection criteria, an interim appointment may be granted. The appointing authority shall consider experience and past performance when making an interim appointment. Interim appointments shall normally be limited to dollar obligations at or below the simplified acquisition threshold in FAR Part 13. The appointing authority will require that all training or experience requirements will be met within 18 months. Failure to successfully fulfill the training requirements within that timeframe will result in loss of the warrant or issuance of another interim warrant, whichever is deemed necessary. If no appointment is granted, the candidate will be provided with a written explanation of the reasons.

(***6***) Appointments will be documented and copies filed as prescribed at FAR 1.603•3. Each SF 1402, Certificate of Appointment, shall be serially numbered by each DLA appointing authority. The SF 1402 will contain any warrant limitations, including limitations on the period of appointment. The original Certificate of Appointment shall be provided to the appointed contracting officer and retained at the contracting officer's duty station.

(***7***) Changes, either increasing or decreasing the warrant limitations of a contracting officer, shall be made solely at the discretion of the appointing authority. When an appointing authority determines to make such changes, a new Certificate of Appointment shall be issued based upon an updated selection statement and request for appointment.

(b) Pursuant to DFARS 201.603-3(b), Heads of Contracting Activities, or their authorized designees, acting in their capacity as purchase card authorizing officials as delineated in DLAI 4105.3, may authorize cardholders to use the purchase card in accordance with the criteria at DFARS 213.301. Cardholder appointment letters shall reflect the appropriate single purchase limit threshold.

1.603•90 Ordering Officers.

Contracting Officers, by virtue of their warrant, are authorized to designate qualified individuals as ordering officers. Such designations must be in writing. Limitations on the authority of the ordering officer shall be stated in the contract or in the letter of appointment. Ordering officers may place orders under contracts such as indefinite delivery contracts or Federal Supply Schedules and calls under blanket purchase agreements. Contracting officers shall assure that ordering officers are familiar with DoD contract reporting requirements and shall comply with the DoD contract reporting requirements for such actions.

1.603•91 Micro•purchase contracting authority.

(a) Individuals authorized to make micro•purchases shall be so designated, in writing, and, except for individuals authorized to only make such purchases with the government commercial purchase card, are required to complete the Defense Small Purchase Course.

(b) Issuance of a government•wide commercial purchase card constitutes authority to make micro•purchases (see FAR 1.603•3(b)). This procurement authority is issued under the procedures of the DLA Credit Card Instruction, DLAI 4105.3 and is not subject to the limitation on delegation of authority for selection, appointment, or termination at 1.603•1 or the contracting officer review program at 1.603•92.

1.603•92 Contracting Officer Review Program.

(a) Each appointing authority will establish a Contracting Officer Warrant Review Program consisting of the following:

(1) An annual assessment of the organizational need for Contracting Officer appointments.

(2) Appointment of a Contracting Officer Review Board to accomplish the following:

(i) Review and approve initial Contracting Officer appointment procedures.

(ii) Once every three years conduct reviews of each Contracting Officer appointment as described below:

(A) An evaluation of the contracting officer's work products to include a cumulative assessment of the results of preaward and postaward reviews of contract actions by the activity contract review personnel.

(B) An examination of the contracting officer's Individual Development Plan to include completion of mandatory training courses for the level of warrant held, on•the•job training, and required college degree or 24 semester hours of business related study, unless exempted based upon criteria set forth in DFARS 201.603•2(2).

(C) A review of the contracting officer's professional competency which may include an appearance before the Contracting Officer Review Board to demonstrate that the contracting officer possesses the required knowledge of contracting officer authority and responsibility, the role of a contracting officer, activity/agency contracting procedures, decision making skills, and ethics.

(iii) Place written documentation of the results of the triannual review in the contracting officer's appointment file.

(b) The Contracting Officer Review Board will be composed of PLFA contracting personnel who have held contracting officer warrants from the following offices (or equivalent): Director or Deputy Director of

Contracting, Plans, Policy and Systems Office, Business Review Office, and a senior contracting officer from a contracting team. Board results will be recorded and placed in the appointment file.

1.603•93 Selection, appointment, evaluation, and termination of appointment of contracting officers' representatives, and contracting officers' technical representatives.

(a) Designation and training. The selection, appointment, evaluation, and termination of appointment of contracting officers' representatives (CORs) and contracting officers' technical representatives (COTRs) shall be made by the contracting officer. Such appointments shall take into consideration the ability, training, and experience of COR/COTR designees and shall assure that designees are appropriately qualified to act as authorized representatives of the contracting officer. All CORs/COTRs should complete ***a*** computer based training course or equivalent prior to being issued a letter of appointment (see DLAD 90.602•3). The COR/COTR designations shall be in writing and shall define the scope and limitations of the authorized representative's authority. Appointment shall be made by letter substantially in the form set forth in (d) below. Unless the appointment of a COR/COTR contains other provisions for automatic termination, the appointment shall be effective, unless sooner revoked, until the COR/COTR is reassigned or the individual's employment is terminated. Revocation of a COR/COTR appointment may be effected at any time by the appointment authority, or higher authority, or any successor to either. Revocation shall be made by letter substantially as shown in (e) below.

(b) Authority. CORs/COTRs are responsible to the contracting officer for those actions delegated by the contracting officer as specifically addressed in the letter of appointment. Compliance with DoD Directive 5500.7, Standards of Conduct, as implemented by DLAD 5500.1, Standards of Conduct, shall be maintained. Specific guidance for CORs/COTRs is provided in Subpart 90.6. Guidance concerning contracting officer's representatives for provisioning is addressed at 17.7690.

(c) Evaluation and Documentation. Supplementing the normal monitoring of the COR/COTR by the contracting officer, the contracting officer shall maintain an activity file on each COR/COTR as a part of the contract file. The purpose of this file is to record and maintain the results of reviews conducted annually by the contracting officer of the COR's/COTR's contract related activities. The contracting officer shall annually evaluate and document the performance of the COR/COTR and provide a copy of this evaluation to the COR's/COTR's organizational head. If the contract performance period is less than 1 year, this evaluation shall be conducted prior to contract closeout. The contents of the activity file shall include, but are not limited to:

(1) A copy of the COR's/COTR's letter of appointment.

(2) Examples of indepth reviews of the COR's/COTR's performance with appropriate identification of the work performed, as well as the formal COR/ COTR evaluation required by 1.603•93(c).

(3) Documentation by the contracting officer of the date, substance, and extent of the reviews conducted.

(d) Sample letter of appointment.

SUBJECT: Appointment as (Contracting Officer's Representative) (Contracting Officer's Technical Representative) for Contract Number _____.

TO: (Address to individual, indicating rank or grade, branch, division, activity, and location.)

1. Under the authority vested in me by my warrant dated _____, and pursuant to paragraph 1.603•93 of the Defense Logistics Acquisition Directive (DLAD 4105.1), you are hereby designated (contracting officer's representative)/(contracting officer's technical representative) with authority conferred by the contracting officer.

2. Areas of responsibility of the COR/COTR during contract performance may include (but are not all•inclusive) as follows:

a. Monitor the contractor's performance to assure compliance with technical requirements of the contract.

b. Review and approve progress and financial reports, and other items required for approval. Notify the contracting officer if reports or other items submitted are to be rejected.

c. Notify the contracting officer if performance is not proceeding satisfactorily or if problems are anticipated.

d. Advise the contractor to submit requests for changes in writing to the contracting officer, indicating the effect the change will have on the contract terms and conditions.

e. Assure that changes in work under a contract are not implemented before written authorization or a contract modification is issued by the contracting officer.

f. Keep the contracting officer informed of communication with the contractor in order to prevent possible misunderstandings or situations that could become a basis for future claims against the Government.

3. The scope of your authority is subject to the following limitations. You are not authorized to:

a. Alter the contract in any way, either directly or by implication.

b. Issue instructions to the contractor to stop or start work.

c. Order or accept goods or services not expressly required by the contract.

d. Render a decision under the Disputes clause.

e. Authorize delivery or disposition of Government property not authorized by the contract.

f. Discuss acquisition plans or provide any advance information that might give one contractor an advantage over another contractor in forthcoming procurements.

g. (Specify any other limitations on the COR's/COTR's authority.)

4. This letter of appointment shall be in full force and effect until revoked by me or my successor in the same manner as it is hereby granted, or upon your transfer from the (branch, division, activity, and location).

_____ _____
DATE /S/CONTRACTING OFFICER

(e) Sample letter for terminating appointment.

SUBJECT: Termination of Appointment as (Contracting Officer's Representative) (Contracting Officer's Technical Representative) for Contract Number _____.

TO: (Address to individual, indicating rank or grade, branch, division, activity, and location.)

Your appointment as (Contracting Officer's Representative)/(Contracting Officer's Technical Representative) contained in letter of appointment dated _____ is hereby terminated effective _____.

_____ _____
DATE /S/CONTRACTING OFFICER

1.690 Contract clearance and oversight process.

1.690•1 General.

(a) Scope and applicability. The requirements of this section apply to the Defense Supply Centers and contracting offices listed in DFARS 202.1 and 2.101 of this directive.

1.690•2 Policy.

(a) The Executive Director, ***Acquisition, Technical, and Supply Directorate*** , establishes and maintains the contracting clearance and oversight process as a system of internal controls and as a basis for certification of the procurement system required by Executive Order ***12931[A47]***.

(b) Heads of contracting activities are to provide an effective management system that assures the procurement system provides goods and services with reasonable prices, timely delivery, and required quality and that it meets the statutory, regulatory, and program needs of the Agency. A contract clearance and oversight process shall be instituted which provides oversight to monitor all phases of the procurement system. The clearance and oversight process is to ensure an effective program for monitoring, evaluating, documenting, and improving the quality of the procurement system's performance. Clearance procedures are to provide for contracting supervisory review of negotiated procurements as well as independent reviews. Contracts are to be reviewed at a level appropriate to their complexity, risk, priority, and dollar value. The clearance and oversight process will embrace five key concepts: strengthening PCO ownership of the procurement process, placing accountability and responsibility at the appropriate level, enhancing professional development, streamlining the review and approval process, and focusing on process improvements.

(c) The Contract Clearance and Oversight Office (formerly the Contract Review Office) at the Defense Supply Centers (see 2.101), organized in conformance with DLAM 5810.1, is the focal point for contracting oversight. Review criteria are established by the chief of the contracting office. The establishment and/or subsequent revision of review criteria will be coordinated with the Executive Director, ***Acquisition, Technical, and Supply Directorate*** , prior to incorporation in local regulations. At all other DLA activities, the chief of the contracting office will be the focal point for oversight. For those activities with no review office, a contract review board process will be employed to review selected acquisitions.

(d) Contracting officers shall review every proposed contract (FAR 2.101) and supporting file before signing the contract and before forwarding the file for review by higher authority, if required. Documentation shall be in sufficient detail to permit reconstruction of all significant actions by a reviewer without referral to the individuals who effected the acquisition. The contracting officer is responsible for the quality of the contracting arrangement.

1.690•3 Establishment of clearance approval authority.

(a) Clearance authority at the Defense Supply Centers is established in the chief of the contracting office (see 2.101).

(b) The Executive Director, ***Acquisition, Technical, and Supply Directorate*** (and/or the Assistant Executive Director, ***Acquisition, Technical, and Supply Directorate*** (Policy and Oversight) or designee)) reserves the right to review and approve any action at any critical stage when called for. Selected acquisitions will be briefed by the contracting officer to the Executive Director, ***Acquisition, Technical, and Supply Directorate*** and the Assistant Executive Director, ***Acquisition, Technical, and Supply Directorate*** (Policy and Oversight) at HQ DLA, as directed. Documentation reviews will be prepared in accordance with 1.690•7.

(c) All proposed solicitations and contracts to be executed under the authority of FAR 6.302•3, (for ***DSCP***, ***C&P, Medical and Subsistence***, only those actions in excess of $10,000,000) and all letter contract definitizations exceeding $500,000 for the Defense Supply Centers (for other contracting offices, see Table 1•1 and 1.690•6(g)), are subject to HQ DLA review and approval pursuant to 1.690•7.

1.690•4 Contract clearance standards.

In accordance with 1.690•2 the following standards will be employed in the operation of a clearance and oversight process:

(a) Oversight is to focus on improvement in all phases of the contracting process.

(b) Reviews will be random, based on risk, complexity, experience and quality considerations.

(c) Procedures are to be in place to identify the need for review at any critical stage of an acquisition, including using solicitation, prenegotiation, preaward, and postaward reviews.

(d) The oversight process is to identify problems early in the acquisition cycle.

(e) Oversight is to be increased/decreased based upon proficiency, quality, and business considerations.

(f) Line elements are to participate in developing initiatives/plans to assure contracting quality, accountability, and the integrity of the procurement system. The chief of the contracting office will determine the level of oversight required based on the soundness of the initiatives/plans, and shall monitor the contracting process through an established review process.

(g) The clearance and oversight process requires a feedback system which provides timely information to all organizational levels. Feedback should address strengths, weaknesses, and significant findings, and provide techniques to ensure overall process improvement and accountability. Management is to determine the adequacy of initiatives taken to resolve quality issues identified through the feedback system.

(h) All contracting officers shall have their procurements reviewed periodically under a system of process improvement and to enhance accountability.

1.690•5 Types of actions requiring contract clearance.

(a) The chief of the contracting office at each Defense Supply Center (see 2.101) shall establish criteria for the review and approval of the following actions pursuant to 1.690•2:

(1) Other than fixed price;

(***2***) Other than full and open competition;

(***3***) Authorizing award of unpriced actions, and/or subsequent definitizations (see 1.690•3(c));

(***4***) Advisory and assistance services;

(***5***) Major programs;

(***6***) Sole bids/offers;

(***7***) ADP goods and services;

(***8***) Awards to other than the low price;

(***9***) High dollar acquisitions;

(***10***) Simplified acquisitions;

(***11***) Solicitations;

(***12***) Negotiated actions;

(***13***) Options not priced/evaluated at time of award;

(***14***) Modifications;

(***15***) Unilateral price determinations.

(b) For activities where the Executive Director, ***Acquisition, Technical, and Supply Directorate*** exercises the function of head of the contracting activity, see table 1•1 and 1.690•6.

1.690•6 Contracts/actions requiring HQ DLA clearance.

(a[f48]) General. For those activities (Table 1•1) for which the Executive Director, ***Acquisition, Technical, and Supply Directorate*** is the head of the contracting activity (HCA), the actions listed below require the review and approval of the Executive Director, ***Acquisition, Technical, and Supply Directorate*** /Assistant Executive Director, Policy and Oversight, or other DLA official so delegated. Any action submitted, including those under 1.690•3(b) and (c), shall be accompanied by two copies of DLA Form 677, Request for Review and Approval of Contract/Solicitation Action, signed by the chief of the contracting office. For review purposes, the dollar amount of a contract action shall be either the proposed high objective, maximum estimated, or actual amount of obligation, and shall include the amount of any option whether or not evaluated or exercised at time of award. Actions listed below will be selected pursuant to 1.690•3(b) and (c), and 1.690•7(a).

(b) Presolicitation. Review and approval prior to issuance (see 1.690•7(c)).

(***1***) Two step sealed bidding;

(***2***) Contractor versus Government performance (OMB Circular No. A•76, FAR 7.3);

(***3***) Acquisitions issued under authority of FAR 6.302•3, industrial mobilization; or engineering, developmental or research capability.

(c) Prenegotiation/sole bid. Review and approval prior to discussions. (See 1.690•7(d))

(1) All actions other than firm fixed•price or fixed•price with economic price adjustment.

(2) All actions resulting from an invitation for bids when award is proposed to a sole responsive, responsible bidder, and the total dollar amount exceeds that listed in Table 1•1 for the activity concerned.

(3) All actions, including priced orders issued under basic ordering agreements, resulting in receipt of a sole offer in response to a request for proposals in excess of the amount set forth in Table 1•1 for the activity concerned.

(4) All actions (excluding those covering the set•aside portion of a small business or labor surplus area set•aside) resulting in receipt of more than one offer in response to a request for proposal in excess of the amount set forth in Table 1•1 for the activity concerned.

(5) Each exercise of an option, when the option was not evaluated at time of award of the basic contract, in excess of the amount set forth in Table 1•1 for the activity concerned.

(6) Definitization of letter contracts or other undefinitized contractual actions approved in accordance with subparagraph (g) below.

(d) Preaward. During each fiscal year, each activity listed under Table 1•1 shall notify HQ DLA, ***J-3313*** of the first three construction contracts (FAR 36.102) which exceed the amount in Table 1•1 Construction Threshold which require preaward review and approval in accordance with the procedures at 1.690•7(a) and (g).

(e) Postaward. All DLA contracts are eligible for a postaward review by HQ DLA in accordance with the procedures at 1.690•7(g). The Chief, Procurement Integrity & Pricing Branch (J-3313), may identify and request files subject to postaward review.

(f) Exclusions. Excluded from review are:

(1) Orders placed against requirements contracts of other DoD activities and other Federal agencies, orders placed against GSA schedule contracts, contracts with the National Industries for the Blind and the National Industries for the Severely Handicapped.

(2) Contracts negotiated with the Small Business Administration (SBA) pursuant to section 8(a) of the Small Business Act.

(3) Orders issued under indefinite delivery contracts or DLA multiple award schedules, where the basic contract was reviewed by HQ DLA, or where the basic contract was awarded under sealed bid procedures and the award was based on adequate price competition.

(4) Repurchases against any contract terminated for default.

(g) Letter contracts/other undefinitized contractual actions. Approval is required prior to award of a letter contract or other undefinitized contractual instrument when the resulting definitive contract is expected to exceed $500,000, or the applicable criteria in Table 1•1 for the activity concerned, whichever is less. After review by the local clearance authority, the letter requesting approval shall be submitted to HQ DLA, ATTN***: J-3313***. A copy of any modification issued for an action previously approved in accordance with this subparagraph shall be forwarded to HQ DLA, ATTN: ***J-3313***, when the modification affects the:

(1) Unit price or total price ceiling for the definitized action;

(2) Limit of the Government's liability;

(3) Definitization date; or

(4) Progress or provisional payments, as initially proposed. See 16.603•90 regarding procedural requirements for approval to award a letter contract or unpriced basic ordering agreement (BOA) order, respectively.

1.690•7 Notification, review and approval procedures.

(a) Notification. Written notification of the actions which are within three days of being forwarded for review pursuant to 1.690•3(b) and (c), and 1.690•6 should be provided to ***J-3313*** by facsimile transmission. The notification should identify the solicitation or contract number, type of contract, item or service, estimated value, number of offers received, the requirement for and/or exception from the requirement for certified cost or pricing data and the date the review package is to be transmitted to ***J-3313***. ***J-3313*** will advise by telephone within one workday which of the identified actions are to be forwarded to ***J-3313*** for review. Prospective suppliers/contractors shall not be advised that potential awards are to be or have been forwarded to HQ DLA for contract clearance and oversight. Those actions not selected for review need not be forwarded, nor is the PNM required to be submitted unless called for on a postaward basis pursuant to 1.690•6(e).

(b) Local review. A local review is required (clearance and oversight office/review board pursuant to 1.690•2(c)) prior to submitting any contract action to HQ DLA for review and approval. A copy of the review results and the contracting officer's disposition of issues shall be a part of the file package sent to ***J-3313***.

(c) Presolicitation. Actions requiring HQ DLA presolicitation review and approval under 1.690•3(c) and 1.690•6 shall be submitted to ***J-3313*** solicitation release date. Documentation shall include, as a minimum, copies of the solicitation and all amendments, the source selection plan, evaluation factors, evaluation standards, and acquisition plan. Files are to be forwarded using DLA Form 677.

(d) Prenegotiation, sole bid/offer and options.

(1) Review and approval of sole bids and options under 1.690•6 requires submission of DLA Form 677 and duplicate originals of documentation supporting the contracting officer's determination pursuant to 14.408•2 or 17.207 to ***J-3313***.

(2) Review and approval of prenegotiation briefing memoranda (PBM) under 1.690•3(c) and 1.690•6 requires submission of DLA Forms 677, the documents (duplicate originals) to be sent to ***J-3313***.

(i) Copy of the complete solicitation and all amendments. These may be mailed in advance of the actual request for review, and should be identified to the review package to follow.

(ii) Copy of any cost/price element reports, including all field pricing support reports (FAR ***15.404-2(b)***) and supplements.

(iii) If cost or pricing data are submitted and cost/price realism or cost analysis is performed, a comparative schedule, by cost element, showing:

(A) The proposed costs and profit;

(B) Audit recommended costs;

(C) Administrative Contracting Officer (ACO) pricing report recommended position;

(D) Activity cost/price element position;

(E) Weighted guidelines profit analysis calculations with cost of money calculations and form, if applicable;

(F) The contracting officer's established objectives;

(G) Reference notes to the PBM and/or pricing report sections which support elements of cost and profit/fee for each objective.

(iv) If offers are received from two or more offerors and award is to be effected as a result of receipt of adequate price competition the PBM shall contain:

(A) The contracting officer's determination and supporting information as to why acceptance of the initial offer is in the best interest of the Government, considering the potential for price reduction, or other considerations, if discussions were conducted,
or;

(B) If discussions are to be conducted, the contracting officer's rationale for establishing the competitive range, the offered prices, and the expected benefits and objectives to be achieved at the conclusion of discussions.

(v) If the offered price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public, provide:

(A) The offeror's documentation (request for exemption from submission of cost or pricing data, copies of catalog pages, price lists or posted prices, etc.) supporting exemption.

(B) A statement in the PBM regarding the contracting officer's verification of the data, and rationale for granting the exemption.

(C) The contracting officer's price analysis documentation supporting price reasonableness, including any field pricing reports, as cited in subparagraph (d)(2)(ii) above.

(vi) Other documentation as may be necessary and called for by ***J-3313*** to complete the review.

(e) Previous reviews. If an action was previously reviewed by ***J-3313*** pursuant to 1.690•3 or 1.690•6(b) or other HQ DLA element such as that required by 7.104•90, Acquisition Planning Executive Council (APEC), the PBM shall document compliance with any review comments or conditions issued as part of the previous review.

(f) Significant changes.

(1) Significant changes to the Government objectives submitted in accordance with 1.690•6(c)(4) (receipt of more than one offer) will not ***require further approval by HQ DLA. However,*** significant changes to all other approved objectives will require price negotiation memorandum (PNM) preaward approval by HQ DLA. Significant changes are defined as those which exceed the maximum price objective reviewed by HQ DLA by 10 percent or $50,000, whichever is less, or those which meet the provisions of FAR 15.606(b)(4) and (c)(changed requirements). A significant change also includes the situation where competition was initially received, but a sole offer ultimately resulted. For all other actions subject to HQ DLA approval in accordance with 1.690•6(c) a copy of the PNM and all addenda shall be submitted to J-3313 within 30 calendar days after completion of discussions. The contracting officer's compliance with previous headquarters conditions shall accompany or be documented in the PNM.

(2) Contract actions meeting the approved PBM objectives do not require further HQ DLA review or approval prior to award, unless otherwise directed on a specific action, or as required by subparagraph (f)(1) above.

(g) Preaward and postaward review. Unless otherwise directed, a complete contract file (including item/service specification or description) shall be submitted for those subject to review and approval in accordance with 1.690•6(d) and (e). Files shall be forwarded using DLA Form 677. Files shall be tabbed, assembled, and listed in accordance with DLA Form 678, Contract File Content List. A HQ DLA retain file shall be forwarded to include copies of all documentation contained at tabs: 3, 4, 5, 14, 20, 21, 22, 23, 24, 25, 29, 39, and 43 of the DLA Form 678, Contract Contents File Checklist.

1.690•8 Waiver of HQ DLA Review

(a) If extraordinary circumstances require immediate award of any contract action under this subpart, the chief of the contracting office may request a waiver of HQ DLA review and approval subsequent to selection under 1.690•7(a). DLA Form 1694, Request for Waiver of Preaward Contract Review and Approval, shall be transmitted to J-3313. Granting a waiver does not constitute approval of the action or any deviations from applicable laws and regulations.

TABLE 1•1

Contract Review Thresholds

Amounts set forth below are the thresholds for the Contracting officies listed under the applicable subparagraphs of DLAD 1.690•6.

Contracting Offices:	DSS•O	***DDC***	DRMS	DNSC	***DAPS***	***AFIS/T-ASA***
Sole Bid:	$100,000	$200,000	$100,000	$100,000	$100,000	***$1,000,000***
Sole Offer:	$2,000,000	$200,000	$500,000	$500,000	$100,000	***$1,000,000***
All Other Negotiated:	$3,000,000	$200,000	$5,000,000	$1,000,000	$100,000	***$1,000,000***
Options:	$3,000,000	$200,000	$5,000,000	$1,000,000	$100,000	***$1,000,000***
Construction:	$300,000	$300,000	$300,000	$300,000	$100,000	***$1,000,000***

1.691 Legal review.

(a) Legal advice and assistance of assigned legal counsel shall be obtained: in the preparation of clauses other than standard clauses which are to be contained in solicitations; prior to taking action to resolve any instance of defective cost or pricing data or false claim reported by the General Accounting Office (GAO), Department of Defense, Inspector General (DoD IG), or Defense Contract Audit Agency (DCAA); and on any questionable legal areas in the preparation and/or execution of contractual documents.

(b) Defense Supply Centers shall issue instructions on the legal review of solicitations and contractual documents issued by their activities.

(c) Contracting offices not designated as a contracting activity listed at 2.101 shall ensure that legal review is accomplished on all solicitations and contractual documents in excess of $100,000.

1.692 Confirmation of quantity and technical requirements.

(a) Prior to solicitation of repetitively single/sole source purchases in excess of $100,000, the contracting officer shall consider requesting review of all technical data by the responsible Specification Preparing Activity/Engineering Support Activity. Such a review should be requested if the contracting officer believes it is necessary in order to assure that the data is current, potential sources are identified, and lengthy, complex, or expensive testing requirements are eliminated to the extent practicable (i.e., qualified products list (QPL), First Article requirements). The contracting officer shall also ensure that consideration has been given to other actions that may encourage competition, i.e., Government furnished tooling, alternate contract type, provisions for economical production quantities.

(b) Immediately prior to the award of any supply contract (other than an indefinite delivery contract) in excess of $500,000 or for mobilization requirements, the contracting officer shall confirm that the quantities are still required and that the technical requirements are still current. "Immediately prior to award" means that point in time when all required approvals have been obtained and the contract is ready for release to the contractor. Confirmation of quantity and technical requirements for Military Interdepartmental Purchase Requests (MIPRs) shall be obtained verbally from the MIPR Liaison/Coordinator or item manager levels of the requiring departments. Appropriate documentation shall be included in the contract file. Contracting offices are encouraged to establish similar procedures for significant awards below $500,000 as may be appropriate for their types of contract actions.

SUBPART 1.7 • DETERMINATIONS AND FINDINGS

1.703 Class determinations and findings.

(b) Class determinations and findings (CDF) may not be extended beyond their effective periods. When a CDF is required for an additional period, a new CDF shall be executed. New requests shall set forth a summary of the acquisitions completed under the earlier CDF, as well as acquisitions contemplated under the new request.

(c) Heads of contracting activities shall periodically review effective CDFs to assure that they are still needed.

SUBPART 1.9 • ADMINISTRATION OF DLAD

1.900 Administration and explanation.

The administration and explanation of the DLAD is the responsibility of the Executive Director, ***Acquisition, Technical, and Supply Directorate*** .

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PART 2

DEFINITIONS OF WORDS AND TERMS

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SUBPART 2.1 • DEFINITIONS

2.101 Definitions.

"Commercial item" – See 12.102(90) regarding determinations of commerciality.

"Contracting Activity." The Executive Director, ***Acquisition, Technical, and Supply Directorate*** shall exercise the functions, not otherwise delegated, of head of the contracting activity for any DLA contracting office not designated as a "contracting activity" pursuant to DFARS 202.1. Actions required by the FAR, DFARS, this directive, or other directives involving the functions of the head of the contracting activity not otherwise delegated shall be referred to HQ DLA, ATTN: ***J-3311***.

"Contracting Offices not designated as a Contracting Activity".

Defense Distribution Center (DDC).
Defense Reutilization and Marketing Service (DRMS).
DLA Support Services(***DSS***)
Document Automation and Production Service (***DAPS***).
Television•Audio Support Activity (T•ASA).
Defense National Stockpile Center (DNSC).

"Chief of the Contracting Office" ***(CCO) as used in this directive,*** means for the:

Defense Supply Center Columbus (DSCC): Director, Procurement Group;
Defense Supply Center Richmond (DSCR): ***Director, Supplier Operations***[A49]***;***
Defense Supply Center Philadelphia (DSCP):
Director, Office of Procurement Management
Defense Energy Support Center (DESC): ***C***[f50]***enter Senior Procurement Official (CSPO)***
DRMS, T•ASA, ***DDC:*** Director, Contracting;
DNSC: Director, Stockpile Contracts Division;
DSS: Staff Director, HQC Operations
DAPS: Chief of Contracting

The "Center Senior Procurement Official ("CSPO")(See 1.601-90) is the "CCO" for the contracting activities identified in DFARS 202.1 (i.e., the DSCs/ICPs within DLA.

"Defense Supply Center" (DSC) as used in this directive means DSCC, ***DESC***, DSCR, and ***DSCP*** unless otherwise stated in individual paragraphs.

"Inventory Control Point" (ICP) as used in this directive means DSCC, DESC, DSCR, and DSCP, unless otherwise stated in individual paragraphs.

"Senior Procurement Executive" means the ***Deputy Director, Logistics Operations*** .

"Solicitations" includes "request for quotations" or "request for proposals" (see FAR Parts 13 and 15).

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PART 3

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SUBPART 3.1 • SAFEGUARDS

3.104 Procurement integrity.

3.104•3 Definition.

(a) The DLA Designated Agency Ethics Official is the General Counsel. The chief counsels of each DLA primary level field activity (PLFA) are designated as Deputy Designated Agency Ethics Officials.

3.104-4 Statutory and related prohibitions, restrictions, and requirements.

(a) Prohibition on disclosing procurement information (subsection 27(a) of the Act). Any person who is given authorized or unauthorized access to contractor bid or proposal information or source selection information is authorized to disclose such proprietary or source selection information regarding any DLA contracting offices' procurement of property or services to the following persons:

(90) The contracting officer, the bid opening officer, the procurement agent, the contracting officer's supervisor and contracting office executive, management, policy, contract review, pricing, technical, legal counsel, small business advisory, associated administrative and clerical personnel, DCMD pricing personnel, preaward survey team members, preaward survey monitor, Defense Contract Audit Agency (DCAA) auditors, and respective engineering support activity personnel.

(91) The Director, DLA/***Vice*** Director, DLA/***Director, Defense Contract Management Agency,*** DLA/***Director Logistics Operations, J-3, DLA***; their Executive Directors and their supporting employees.

(92) The Source Selection Authority, and the Source Selection Evaluation Board, Technical Evaluation Panel, and Source Selection Advisory Council members.

3.104•5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) The Executive Director, ***Acquisition, Technical, and Supply Directorate*** , Commanders of DLA contracting offices (see 2.101), and chiefs of contracting offices (see 2.101) have the authority to authorize persons, or classes of persons to receive contractor bid or proposal information or source selection information when necessary to the conduct of the procurement. The following persons are authorized access to contractor bid or proposal information or source selection information regarding any DLA contracting offices' procurement of property or services:

(90) The contracting officer, the bid opening officer, the procurement agent, the contracting officer's supervisor and contracting office executive, management, policy, contract review, pricing, technical, legal counsel, small business advisory, associated administrative and clerical personnel, DCMD pricing personnel, preaward survey team members, preaward survey monitor, Defense Contract Audit Agency (DCAA) auditors, and respective engineering support activity personnel.

(91) The Director, DLA/***Vice*** Director, DLA/***Director, Defense Contract Management Agency***,/***Director, Logistics Operations , J-3***, ***DLA***; their Executive Directors, and their supporting staff employees.

(92) The Source Selection Authority, and the Source Selection Evaluation Board, Technical Evaluation Panel, and Source Selection Advisory Council members.

(93) Any person or class of persons not listed in (90)•(92) above who is authorized access to automated systems contract files, contract file information, or procurement information.

3.104•6 Disqualification.

(b) Disqualification notice. The designee of the HCA for those contracting offices for which the Executive Director, ***Acquisition, Technical, and Supply Directorate*** , serves as HCA (see 2.101) is:

(1) The Commanders of DRMS, ***DDC***, T•ASA, DCMDs, and DCM***D***I.
(2) The Administrator, DNSC.
(3) The Director, DAPS.
(4) DSS: Staff Director, HQC Operations.

(c)(2) Resumption of participation in a procurement. The designee of the HCA for those contracting offices for which the Executive Director, ***Acquisition, Technical, and Supply Directorate*** , serves as HCA is the same as listed in (b) above.

3.104-7 Ethics advisory opinions regarding prohibitions on a former official’s acceptance of compensation from a contractor.

(a) Requests for ethics advisory opinions shall be submitted to the General Counsel, or the appropriate Deputy Designated Agency Ethics Official, as defined in DoD 5500.7-R, Joint Ethics Regulation.

3.104•10 Violations or possible violations.

(a)(1) When the contracting officer concludes there is no impact, with the concurrence of the chief of the contracting office and local counsel, the contracting officer may proceed with award.

(b) Local counsel shall recommend the action to be taken.

(d)(2) If the contracting officer concludes that profit on the contract or modification involved should be recaptured in accordance with the clause at FAR 52.203•10, Price or Fee Adjustment for Illegal or Improper Activity, or that the contract should be voided or rescinded in accordance with FAR 3.104•10(d)(2)(ii) and 3.705, he or she shall prepare a report documenting the facts giving rise to the conclusion that a violation of the Act has occurred. That report shall be prepared in consultation with local counsel and include the contracting officer's recommendation for the action to be taken. When profit recapture is recommended, the contracting officer will recommend an amount to be recaptured. When recision or voiding of the contract(s) is recommended, the contracting officer will estimate the value of the tangible benefits received and retained under the contract(s) in question. The report shall be forwarded to the General Counsel, for action.

(f) Notification shall be submitted directly to the Director, DLA by letter signed by the Commander (Administrator, DNSC or the ***Director, DAPS***) of the contracting office.

(g) The designee of the HCA for DNSC, DAPS and ***DSS***, for which the Executive Director, ***Acquisition, Technical, and Supply Directorate*** , serves as HCA are the Administrator, DNSC, the ***Director***, ***DAPS and the DSS: Staff Director, HQC Operations.***

SUBPART 3.3 • REPORTS OF SUSPECTED ANTITRUST VIOLATIONS

3.301 General.

(b) Whenever the contracting officer finds evidence of suspected antitrust violations, he/she shall forward to local counsel, a report of information available to establish possible violation of the antitrust

laws.

(b)(90) Exchange of information regarding questionable contractor business practices. Information revealed by postaward reviews, audits, or similar sources on price overcharges and other questionable business practices may be of concern to other DoD activities that conduct business with the firm involved. Sound business practices dictate that this information be made available to DoD activities upon request. Also, such information, including the name and address of the firm involved, a brief description of the questionable business practice, and the manner in which it was revealed, shall be forwarded in writing to the chief of the contracting office and cognizant DCMDs.

SUBPART 3.5 • OTHER IMPROPER BUSINESS PRACTICES

3.590 Prohibition against the solicitation of "free issues."

The solicitation of supplies or services from individuals or firms at no cost ("free issues") may lead to a perception on the part of these individuals or firms that either: there is a benefit to accrue to them in the future if they satisfy the request at no cost; or that they are under an obligation to satisfy the request at no cost as a condition of receiving future Government business. These perceptions must be avoided. As a result, the solicitation of supplies or services from individuals or firms at no cost is prohibited. However, when an individual or a firm voluntarily offers to provide supplies or services at no cost, the Government may accept such offers without compensating the supplier therefor. A contract is not established in such cases as there is no consideration for the supplies or services received. In cases where the Government requires an obligation from the supplier (e.g., a warranty for the supplies or services), a no cost offer should never be accepted.

SUBPART 3.7 • VOIDING AND RESCINDING CONTRACTS

3.704 Policy.

(a) For purposes of this subpart, the Head of the agency designee is the Special Assistant for Contracting Integrity (SACI), General Counsel.

3.705 Procedures.

(a) Reporting. The facts concerning a final conviction for any violation of 18 U.S.C. 201•224 shall be reported by the contracting officer to the General Counsel, HQ DLA, within 20 days after the contracting officer learns of the final conviction. The report shall be signed by the contracting officer and submitted by the Commander of the reporting primary level field activity (PLFA). The report shall:

(1) Identify and include a copy of the contracts(s) involved;

(2) Include a copy of the judgment order evidencing or confirming a final conviction as defined in FAR 3.702;

(3) List in detail the tangible benefits received and retained by the reporting PLFA in connection with the performance of the contract(s) which relate to the final conviction;

(4) Provide the contracting officer's estimate of the fair value of benefits received and retained and include an explanation of how that estimate was calculated;

(5) Include a recommendation concerning the amount to be recovered and the property to be returned as a result of action under this subpart; and

(6) Indicate whether a report recommending debarment of the parties involved has been forwarded to the General Counsel. The contracting officer's report shall be coordinated with local counsel prior to submission to the General Counsel. After review, the General Counsel, will refer the contracting officer's report to the SACI for action. The SACI shall promptly notify the Civil Division of the Department of Justice when action is contemplated under Subpart 3.7 of the FAR.

SUBPART 3.8 • LIMITATION ON THE PAYMENT OF FUNDS TO
INFLUENCE FEDERAL TRANSACTIONS

3.804 Policy.

(***b***[f51]) ***Reporting. Upon receipt of contractor disclosures, forward copies of the OMB standard form LLL, Disclosure of Lobbying Activities, to J-3311.***

3.806 Processing Suspected Violations.

Suspected violations of the requirements of the Act shall be referred to the local office of counsel.

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SUBPART 4.2 • CONTRACT DISTRIBUTION

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4.202(1)(ii)(A) (FARS DEV 02-08, PERMANENT)

The Defense Distribution Depots do not need to be provided written copies of contracts that are awarded in SAMMS and require destination acceptance.

SUBPART 4.6 • CONTRACT REPORTING

4.603 Solicitation provision.

(a) Contractor Identification Number. The contracting activity will be required to provide the contractor's nine position DUNS number.

4.670 Defense Contract Action Data System (DCADS)

4.670•3 Contracting office responsibilities.

(a) For DD Form 350, Individual Contracting Action Report, contracting offices••

(2)(iv) For DLA, the input of records shall be accomplished within 3 workdays of the action date. Error corrections will be made within 3 workdays from the date the record appears on the error file. Closeout for the reporting period will be the tenth workday following the last day of the month, except September may be extended for not more than 10 days.

(2)(v) For all actions involving the current report year and the year prior to that, the reporting activity shall prepare the appropriate input and/or correcting documents for processing into the DLA Contract Action Reporting System (DCARS). The reporting activity is responsible for submission of all reportable contracting actions. Contact ***J-3312*** for instructions for entering records not reported before the fiscal year closeout date.

(3)(i) ***J-3312*** will process corrections or cancellations only for those records that predate the most recent full reporting fiscal year. However, corrections will not be made to records more than 5 fiscal years old. The reporting activity shall prepare the document using the current fiscal year form and forward to HQ DLA for processing. The reporting activity shall include a memorandum which explains why the original action required correction or cancellation.

(5)(i) DLA contracting offices with DCARS capability may use an electronic equivalent to comply with the DFARS requirement for contract file record.

(b) For DD Form 1057, Monthly Contracting Summary of Actions $25,000 or Less, contracting offices••

(2)(i) Closeout for the reporting period will be the tenth workday following the last day of the month, except September may be extended for not more than 10 days.

(3)(i) For DLA, any prior month DD Form 1057 report that requires correction or adjustment will be submitted using a Correct Code 2 Report. Current month DD Form 1057 reports that require correction or adjustment will be corrected before month•end closeout.

4.670•6 Types of DD Forms 350.

(b)(4)(i) A DD Form 350 template record shall be entered into the DLA Contract Action Reporting System (DCARS) for all other indefinite delivery contracts (IDCs) or agreements awarded by DLA contracting offices. These records shall indicate the total estimated dollar value as a subelement to Item B8. These actions are not reported to DoD but support DLA management.

(c)(3) Local procedures which combine two or more actions into a single award or modification may require multiple reports. Any reportable portion with a dollar value of $25,000 or less shall be reported on the DD Form 1057. These procedures will permit accurate reporting of set•asides and other actions which would either not be reported or reported with an incorrect dollar value if reported as a single action. Examples include but are not limited to the following:

(i) One part of the action was unrestricted while the other part involved one or more socioeconomic programs such as set•asides; or

(ii) A part of the action was under multiyear contract procedures (see FAR 17.1) and the remainder was not.

(c)(4) If multiple reports are required, the unrestricted or multiyear portion should be reported as the initial or definitive contract and the other portion as a modification. The second portion is a modification of the contract for reporting purposes, but may be assigned a modification number of P00000 to indicate this was reported as a modification for reporting purposes. Alternatively, an alpha character may be used in the last four positions of the modification number block to indicate a modification for the purpose of contract reporting, e.g., P0000A, P0000B, etc.

SUBPART 4.70 • UNIFORM PROCUREMENT INSTRUMENT IDENTIFICATION NUMBERS

4.7003 Basic PII number.

(90) The letter Y in the ninth position of the basic procurement instrument identification number is reserved to identify imprest fund orders posted to the Standard Automated Materiel Management System (SAMMS) or other DLA automated system.

SUBPART 4.71 • UNIFORM CONTRACT LINE ITEM NUMBERING SYSTEM

4.7103•1 Criteria for establishing.

(d)(90) The cost of a deliverable, a non•deliverable, or a financial adjustment for which the contractor is entitled to payment, but did not appear on the purchase request, or was not known prior to receipt of the bids/offers, may be identified as an additive contract line item number (CLIN) in accordance with DFARS 204.7103•1(d) and DLAM 4715.1, Manual of Operating Procedures for the Contracting Subsystem, Appendix E. Additive CLINs create a system record for such charges at activities using the SAMMS.

4.7103-2(a)(90) To facilitate contract funds accounting, the following contract line items shall be used to establish pricing for contractor provision of surge and sustainment (S&S) elements, if needed, as described in 17.9304(e):

CLIN 6000 Definition of S&S requirements
CLIN 6001 S&S capability assessment
CLIN 6002 S&S investments
CLIN 6003 S&S testing
CLIN 6004 Maintenance of S&S capability

4.7104-2(a)(2)(90) SUBCLINS may be used for the CLINs established under 4.7103-2(a)(90), as necessary. To facilitate contract funds accounting, the following subclins shall be used for CLIN 6003 under 4.7103-2(a)(90) when these subelements are required and pricing needs to be established for them:

CLIN 6003 S&S Testing

CLIN 6003AA S&S Test Plan

CLIN 6003AB Performance of S&S Test

CLIN 6003AC S&S Test Report

SUBPART 4.73-- CENTRAL CONTRACTOR REGISTRATION

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4.7303(b)(2)(d) Provide the Commercial and Government Entity Code on contractual documents transmitted to the payment office. (See DFARS 253.213-70(e), Block 9.)

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SUBPART 5.2 • SYNOPSES OF PROPOSED CONTRACT ACTIONS

5.202 Exceptions.

(a)(2) The requirements of FAR 5.202(a)(2) are satisfied upon execution of the justification (see FAR 6.302•2(c)(1)) or upon receipt by contracting personnel of the information described in 6.303•2(b). (The use of the exception to synopsizing contained in FAR 5.202(a)(2) does not necessarily, in and of itself, preclude the use of full and open competition.)

5.203 Publicizing and response time.

(h) The cognizant DLA contracting office, if it elects to take advantage of the authority at FAR 5.203(h), is responsible for identifying the general category or categories of items and publishing the forecast. If using a combined synopsis/solicitation for acquisitions subject to the North American Free Trade Agreement (NAFTA) or the Trade Agreements Act (TAA), a minimum response time of 10 days is required.

5.207 Preparation and transmittal of synopses.

(e)(4) As required in FAR 5.207(e)(4), when FAR Part 12 is not used, Numbered Note 26 shall be cited in the synopsis notice. This note states that Part 12 is not being used because the Government has not identified any commercial items that can meet the requirement. The note advises prospective suppliers that they have 15 days to identify, and indicate their interest in providing, a commercial item that can meet the requirement. When Numbered Note 26 is used, the solicitation should indicate that offers of any item other than the exact approved item cited in the procurement item description (PID) will require an

evaluation for technical acceptability. The solicitation should also describe the circumstances when an evaluation will and will not be conducted and when the instant acquisition will and will not be delayed. The provision at DLAD 52.217-9002, when applicable, is available for this purpose; or local provisions can be developed that are consistent with the guidance at DLAD 17.7501(b)(4).

SUBPART 5.3 • SYNOPSES OF CONTRACT AWARDS

5.303 Announcement of contract awards.

(a) Public announcement.

(90) Information on all proposed contract actions (see DFARS 205.303(a)(i)) of $5 million or more shall be submitted on DLA Form 1693, Contract Announcement, to the ***Staff Director, Corporate Communications***, by facsimile ((703) 767•***6187*** or DSN 427•***6187***) at least 2 full working days prior to the date of award. All required approvals and funding must be obtained prior to submission. Changes, such as changes in the availability of funds, shall be forwarded to the ***Congressional and*** Public Affairs Office to take appropriate action. Excluded from this requirement are mandatory orders placed with Federal Prison Industries, Inc. (FPI), the National Industries for the Blind (NIB), and the NISH, ***serving people with a range of other disabilities***. The value of contract actions subject to announcement should not include the amount of any Government furnished property. Except for ***DESC***, each announcement must indicate the concurrence of the chief of the contracting office.

(91[A54]) {Deviation 2002-07 (PERMANENT)} In order for DESC to take advantage pf commercial practices and competition in the natural gas and electricity industries, DESC will provide the notification required in paragraph (a)(90), above, no later than 4:00 p.m. on the day the contract is awarded.

SUBPART 5.4 • RELEASE OF INFORMATION

5.401 General.

(b) See 7.304(c)(91) for treatment of requests for information relevant to commercial activities cost studies.

5.404 Release of long•range acquisition estimates.

5.404•1 Release procedures.

(a) Application. The authority at FAR 5.404•1(a) is delegated to Heads of contracting activities or their designees.

SUBPART 5.5 • PAID ADVERTISEMENTS

5.502 Authority.

(a)(i) For those contracting offices for which the Executive Director, ***Acquisition, Technical, and Supply Directorate*** serves as Head of the Contracting Activity (see 2.101), approval authority for newspaper advertisements and for publicizing contracting information is redelegated to the activity commanders, and the ***Director***, Document Automation and Production Service, ***the DSS: Staff Director, HQC Operations, and the Administrator,*** Defense National Stockpile Center. This authority is not further delegable.

PART 6

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6.502 Duties and responsibilities.

6.003 Definitions.

"Procuring activity," as used in this Part and in FAR Part 6 and DFARS Part 206, means the contracting activities defined in DFARS 202.101 and the following:

Defense Distribution Center.
Defense Reutilization and Marketing Service.
Defense National Stockpile Center.
Television•Audio Support Activity.
Document Automation and Production Service.
DLA Administrative Support Center

SUBPART 6.1 • FULL AND OPEN COMPETITION

6.101 Policy.

(a) An acquisition provides for full and open competition if:

(90) The solicitation contains or references a complete, unrestrictive technical data package.

(91) Such data can be used for a determination of responsiveness/technical acceptability.

(92) The solicitation and the circumstances of the solicitation contain no limiting restrictions other than those required by law or regulation; and

(93) The Government has taken all reasonable steps to promote full and open competition:

(i) Ensured that specifications are not unduly restrictive in that they reflect the Government's needs, and are, to the maximum degree possible, functional in nature.

(ii) Performed market surveys and/or market research, as appropriate.

(iii) Complied with FAR Subpart 5.2.

(iv) Otherwise taken all reasonable steps to inform potential suppliers of its requirement.

The number of offers expected or received against the solicitation is not relevant to the determination that an acquisition does or does not provide for full and open competition. For example, if all the above conditions are met, an acquisition for an item on a Qualified Products List is full and open competition regardless of the number of products qualified (see FAR 9.2).

SUBPART 6.2 • FULL AND OPEN COMPETITION AFTER EXCLUSION OF SOURCES

6.202 Establishing or maintaining alternative sources.

(b)(1) Authority to sign determinations and findings (D&Fs) required by FAR 6.202(b)(1) has been delegated to the Executive Director, ***Acquisition, Technical, and Supply Directorate*** . Proposed D&Fs shall be forwarded to ***J-33*** for signature by the Executive Director, **Acquisition, Technical, and Supply Directorate**. Requests to sign proposed D&Fs shall be forwarded by a letter of transmittal signed by the Commander of the requesting component or the Administrator, DNSC, the ***Director***, ***DAPS, or the DSS: Staff Director, HQC Operations***. The letter of transmittal shall include:

(i) The proposed D&F in the format specified in DFARS 206.202(b)(ii) and supporting documentation in accordance with DFARS 206.202(b)(i).

(ii) The acquisition plan (see FAR Subpart 7.1).

6.203 Set•asides for small business.

(b)(90) Notwithstanding the criteria for full and open competition in 6.101, when an acquisition (or portion thereof) is set•aside for small businesses in accordance with FAR Subpart 19.5, and complete, unrestrictive technical data is not available, no justification for other than full and open competition is required.

SUBPART 6.3 • OTHER THAN FULL AND OPEN COMPETITION

6.302•2 Unusual and compelling urgency.

(b)(90) Justifications and Approvals (J&A) for Issue Priority Group I (IPG I) requirements (i.e. Priority Designators 01, 02 and 03) citing Not Mission Capable Supply indicators (MILSTRIP position 62•64) of 999, N** or E** and/or Office of the Secretary of Defense/Joint Chiefs of Staff projects codes (MILSTRIP position 57•58) beginning with "9" shall cite ***both***[A55] the priority and these additional indicators of urgency as the basis for limiting competition. No additional information is required to show harm to the Government. Contracting Officers shall accept the assignment of these indicators (which are assigned by the Commanding Officer of the requisitioning unit or his designated representative) as the certification of urgency and harm to the Government by technical or requirements' personnel required by FAR Subpart 6.303•2. The requirements certification, in such cases, resides with the customer. Such certifications do not have to be on the J&A.

(b)(91) Requirements citing a priority designator 01, 02 or 03 with no other indicator of urgency may also cite the priority alone as the basis for urgency. If the circumstances of such procurements seem questionable (for example, the item being procured seems routine in nature or items are repeatedly requisitioned with high priority designators), it may be appropriate to obtain additional information from the customer to further explain the urgency. Although DLAD 4410.1, Uniform Material Movement and Issue Priority System, states that priorities will not be challenged in DSC processing, the request for additional information to support the J&A does not constitute a challenge to the priority assigned. If misapplication of priority is suspected, these instances should be reported in accordance with DLAD 4410.1.

(c) Limitations.

(2) Whenever competition is limited pursuant to this authority, the historically lowest priced source(s) shall be solicited. An award may be made to other than the lowest priced offeror provided the premium paid is reasonable and consistent with the extent to which delivery is required to be expedited. Quoted prices and delivery terms for each source solicited shall be fully documented, along with rationale which clearly supports source selection. (See 13.106(c)(1).)

6.302•3 Industrial mobilization; or engineering, developmental, or research capability; or expert services.

(9***0***) Contracts awarded under the authority of 10 U.S.C. 2304(c)(3), (see FAR 6.302•3(a)(2)(i) shall include a surge option clause (see DFARS 217.2008•70(b)) or some other type of surge readiness provision.

6.302•7 Public interest.

(c) Limitations.

(1)(i) Requests for making determinations and findings (D&Fs) under authority of 10 U.S.C. 2304(c)(7), as implemented by FAR 6.302•7, shall be forwarded to ***J-33*** by a letter of transmittal signed by the Commander of the component for submission, through the USD(A&T), to the Secretary of Defense.

(3) Every request to exercise the authority of FAR 6.302•7(a) shall be accompanied by a justification (see FAR 6.303) supporting the D&F.

6.303 Justifications.

6.303•1 Requirements.

(b) DLA contracting offices shall establish approval levels for the certifications required by FAR 6.303•1(b).

(d) The agency point of contact with the Office of the United States Trade Representative is ***J-3311***.

6.303•2 Content.

(a)(11) The justification shall include, when applicable, a description of (i) the action being taken to obtain a data package adequate to establish competitive acquisition of the item and (ii) market research efforts to eliminate impediments to subsequent acquisitions.

(a)(90***) Justifications requiring approval by the Senior Procurement Executive, DLA, should be prepared using the following format which may be adapted and supplemented to suit the needs of the particular acquisition, provided each justification 1) includes the specified topic headings, 2) cites the associated statutory requirement of 10 U.S.C. 2304(f)(3)(A)-(F), and 3) sets forth the facts and rationale in a logical sequence. Under each heading, use as many paragraphs as needed to explain the justification. Avoid jargon and overly technical or esoteric language. Numbering of sections and paragraphs is recommended for ease of reference.***

Title: "Justification for Other than Full and Open Competition for [item/service to be purchased] under authority of 10 U.S.C. 2304 [specific exception number]."

1. Summary/Introduction: State in a few sentences 1) the field activity/agency, 2) what is being bought, 3) the estimated value and contract duration, and 4) the statutory authority cited for other than full and open competition. (This introductory section should be concise, as these points will be developed in detail later in the document.)

2. Description of Agency's Need (10 U.S.C. 2304(f)(3)(A)): Include a summary of the origin of the procurement, a description of the supplies/services needed, the specific need or use for the item/service, and any other general information needed to understand the context of the procurement. If this is a lengthy section, additional topic headings may be appropriate, such as "Background," "Current Procurement Efforts," etc.

3. Authority for Other than Full and Open Competition (10 U.S.C. 2304(f)(3)(B)): Cite the authority and provide the rationale. If a particular company's unique qualifications are critical, discuss those here. This section should include all facts supporting the use of other than full and open competition. This section should also address why the full quantity to be contracted for needs to be purchased without using competitive procedures.

4. Price/Cost Considerations (10 U.S.C. 2304(f)(3)(C)): Discuss relevant pricing issues, including the basis for determining that the anticipated price/cost will be fair and reasonable. Also include here, or elsewhere as appropriate, length of contract, quantity, and other contract particulars bearing on the price/cost.

5. Market Research/Efforts to Obtain Competition (10 U.S.C. 2304(f)(3)(D)&(E): Discuss market research, synopsis, and other efforts made to publicize the requirement and generate competition. Also include a listing of sources that expressed, in writing, an interest in the procurement. (Market Research may be addressed separately, if appropriate.)

6. Actions Being Taken to Overcome Barriers to Competition (10 U.S.C. 2304(f)(3)(F)): Describe, for example, any efforts to identify and evaluate less restrictive methods of expressing the requirement. Include, when applicable, a description of the action being taken to obtain a data package adequate to acquire the item competitively in future acquisitions.

I hereby certify that the information contained in this justification is accurate and complete to the best of my knowledge and belief.

_____ _____

Date ***Contracting Officer***

Over $50 million:

Other signatures as appropriate:

_____

Chief Counsel

_____

Other

I have reviewed and hereby recommend that this Justification be approved:

DLA Competition Advocate _____

Signature and Date

_____

DLA office of Counsel ***Signature and Date***

Approval:

DLA Senior Procurement Executive _____

Signature and Date

(a)(91) Justifications and approvals (J&A's) for awards made under broad agency announcements that support industrial mobilization.

(1) J&A's for noncompetitive awards made in support of industrial mobilization must properly address the compelling reasons for limiting awards to a particular source or sources and the unique capabilities of the targeted source(s) to support the industrial base. FAR 6.302•3(a)(2) requires that the contracting officer demonstrate that other than full and open competition is necessary in order to "keep vital facilities or suppliers in business or make them available" in case of a national emergency or to achieve industrial mobilization. Generally, the J&A must contain sufficient information about the item or service and the supporting industrial sector to demonstrate clearly that the contracting officer's determination to include a particular source or sources in, and exclude others from, the supply base for that item or service is appropriate.

(2) The contracting officer shall address the following considerations in the J&A:

(a) the relationship between the agency's program objectives and the acquisition strategy employed;

(b) the nature of the item or service (e.g., complexity, criticality, unique features) and the supporting industrial sector (e.g., industry capacity, are sources domestic or foreign, small or large, planned producers, dependent on government business);

(***c***) the current supply environment (e.g., if the item is currently stocked in inventory, discuss why the agency cannot continue to buy this item in quantity and stock it; further, discuss why the agency must employ a different supply method, such as quick response or direct vendor delivery, in order to maintain defense readiness); and

(***d***) the unique capabilities of a particular source (or sources) to meet agency mobilization requirements, such as 24 hour delivery, surge capability, or dual•use technology.

(3) The J&A shall also include the following information:

(a) a description of how the specific item or service was selected.

(b) how the volume of requirements to be awarded was determined appropriate;

(c) volume and proposed disposition of any remaining requirements for the designated item or service;

(***d***) future plans for implementing successful strategies using full and open competition.

(4) The contracting officer shall consult with his/her Office of Counsel in the preparation of J&A's in support of industrial mobilization.

(b)(90) In addition to the examples provided in FAR 6.303•2(b), requirements personnel shall certify that:

(i) The purchase request covers only that quantity needed to satisfy an unusual and compelling urgency; and

(ii) For stocked items, the items are out of stock or existing stock is insufficient to satisfy the requirement, and, if possible, an explanation of why existing stocks are insufficient or the item is out of stock; for non•stocked items, a statement to that effect.

6.304 Approval of the justification.

(a)(4)(A)(1) The authority to approve justifications for other than full and open competition for a proposed contract over $10 million but not exceeding $50 million is delegated to any officer or employee at each procuring activity who ••

(i) if a member of the Armed Forces, is a general or flag officer, or

(ii) if a civilian, is serving in a position in Grade GS-16 or above (or in a comparable or higher position under any other schedule of civilian officers or employees).

(a)(4)(A)(1)(90) Justifications requiring approval by the Senior Procurement Executive (including class justifications based on estimated total value of the class) shall be forwarded to ***J-33*** by a letter of transmittal signed by the Commander of the activity requesting approval (***Director*** for ***DAPS,*** Administrator for DNSC, ***DSS:Staff Director, HQC Operations***. The letter of transmittal shall be forwarded sufficiently early as to allow for headquarters review and approvals prior to the commencement of negotiations. The letter of transmittal shall include:

(i) The proposed justification (see FAR 6.303).

(ii) The acquisition plan (see FAR Subpart 7.1).

(iii) Any other pertinent supporting facts or information bearing on a decision to approve the justification.

(a)(4)(A)(1)(91) The DLA competition advocate shall review and recommend approval/disapproval of justifications exceeding $50 million.

SUBPART 6.5 • COMPETITION ADVOCATES

6.502 Duties and responsibilities.

Additional duties and responsibilities are contained in DoDI 5000.2, Defense Acquisition Management Policies and Procedures, and DLAD 4105.17, Competition Advocate Program.

(b)(3) When a supporting staff exists, performs market research efforts to identify and/or develop existing and potentially new sources of supply (i.e., sources research and sources development efforts) (i) on a continuing, programmatic basis, for selected items such as those that are newly managed, have high payback potential, or have unfinished efforts related to a prior acquisition, and (ii) when requested by the contracting officer in connection with a specific acquisition.

PART 7

ACQUISITION PLANNING

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SUBPART 7.1 • ACQUISITION PLANS

7.102[A58] Policy.

(90) Written acquisition plans are required for all acquisitions expected to exceed the simplified acquisition threshold. This does not apply to orders against contracts when the acquisition plan is adequate to cover all anticipated orders. Acquisition plans shall be prepared, ***as applicable****, in accordance with FAR 7.105, DFARS 207.105, DLAD 90.1101, and 90.1102, and be approved at a level above the buyer as established by the Chief of the Contracting Office* ***except that acquisition plans will be reviewed and approved by the Chief of the Contracting Office prior to solicitation for all actions that are not long term with a value equal to or greater than $2 million and for all long term actions with a cumulative value equal to or greater than $10 million. Approval prior to solicitation can be waived per local guidance for urgent requirements****. The format at DLAD 90.1102 may be modified to suit the needs of the contracting office. A standard DLA-wide form is not prescribed in order to permit use of local forms or formats.* ***However, as a minimum, the subject areas identified in the Advance Acquisition Planning Template (see 90.1103) shall be considered and addressed in the acquisition plan when applicable.***

(91) Market surveys (see FAR 7.102) and market research (see FAR and DLAD Part 10) shall be performed consistent with any local operating procedures.

(92) *The acquisition plan shall accompany the justification for other than full and open competition (****see FAR 6.301, 6.304, and*** *DLAD 6.304) when it is forwarded to the Activity Competition Advocate. The Activity Competition Advocate shall also be provided a copy of the acquisition plan for acquisitions where there* ***is no history*** *of receipt of more than one offer and price competition is not expected to be received on the acquisition.*

(93) *The plan shall identify* ***anticipated*** *costs,* ***performance*** *metrics, and the points of contact for monitoring contract performance.*

(94) A Business Case Analysis (BCA) will be developed in accordance with the guidelines set forth in J-38's draft One Book procedures entitled, "Initiative Management Process." Approval thresholds for acquisition-related BCAs are addressed in DLAD 7.104-90 and Subpart 90.15.

7.103 Agency•head responsibilities.

(a) Requirements for contract actions, which must be awarded by the end of the fiscal year, must be submitted to the contracting office by 31 July of that fiscal year. Solicitations for requirements received after 31 July shall not be issued unless approved by the chief of the contracting office.

A contract action log shall be maintained by the contracting office for all purchases of contracted advisory and assistance services, periodicals, pamphlets, and audiovisual products. Existing logs may be used for this purpose, provided some means is devised to readily identify these types of contract actions that are highly vulnerable to waste.

(d) Written acquisition plans required by 7.102(91) may be effected on a system basis (see FAR 7.102) using a comprehensive plan for a specified period of time (i.e., quarterly, semi•annually or annually).

7.104 General procedures.

(b)(90) The Defense Production Act ***(DPA)*** and the Defense ***Planning*** Guidance ***(DPG)*** require DoD to maintain an adequate production base to promote national security. In this regard, industrial preparedness ***actions are taken*** to ensure that the industrial base is adequate to offset war reserves ***shortfalls*** and provide combat support in emergencies. When an item is being considered as an item of supply from a new source, an industrial ***capabilities assessment*** for the item should be accomplished or updated. This ***assessment is especially important*** when the item will be supplied by a single source, as well as when it is ***a critical item with a war reserve shortfall, a critical item that has experienced high demand in previous contingencies, a military unique item, or*** a weapon system item coded essentiality codes 1, and 5, or ***7. For these types of items, adequate capacity is necessary to meet S&S requirements. Assessment of newly sourced items is not required if previous analysis on capacity to do an entire family of items (that newly sourced items belong to) shows the new source already has sufficient equipment, facilities, personnel, and materials to meet S&S requirements for the newly sourced items.***

(b)(91) Measures to ***ensure S&S requirements (i.e., items, quantities, and delivery terms) are defined, S&S capability is developed, and S&S capability can be tested (as required in DLAD 17.9303)) must be undertaken for all new business arrangements (e.g., prime vendor, virtual prime vendor, corporate contracts, etc.) and long-term contracts. These measures are especially crucial when the new support method will eliminate or reduce DLA inventories. Acquisition plans for these new arrangements and LTCs must address S&S requirements, capability, and testing. If surge and/or sustainment requirements are not included in the solicitation (e.g., they do not exist, they are covered under other contractual arrangements, they are covered via sufficient peacetime assets, etc.), state this in the acquisition plan and explain the basis for not including them.***

(c)(90) The contracting officer is responsible for taking timely actions to assure that the procurement cycle for forecasted requirements is adequate so it is not necessary to place an award or order on an undefinitized basis.

7.104•90[A59] ***Integrated Acquisition Review Board (I-ARB)***

(a) The I-ARB will review all proposed performance based logistics (PBL) acquisitions (see 90.1501, Appendix A for definitions), proposed service acquisitions, and supporting BCAs, if appropriate, in accordance with the thresholds below. Additionally, all bundled requirements (see DLAD 7.107) resulting in a proposed acquisition of more than $1 million must be approved by the I-ARB.

Performance Based Logistics (PBL) Acquisitions

$ Threshold (1)	Other Criteria	Review/Coordinate	Acquisition & BCA Approval Level
> $5M - $20M		Field Activity Level	Chief of the Contracting Office
> $20 - $50M		Field Activity Level	Head of Contracting Activity or designee (2)
> $50M		HQ DLA/J-3312	I-ARB
All	DLA/Military Service Partnerships	HQ DLA/J-3312	I-ARB

Acquisition of Services

$ Threshold (1)	Other Criteria	Review/Coordinate	Acquisition & BCA Approval Level
> $100K - $5M		Field Activity Level (includes DSS)	No lower than one level above contracting officer
> $5M - $20M		Field Activity Level (includes DSS)	Chief of the Contracting Office
> $20M - $50M	DESC, DSCP, DSCC, DSCR	Field Activity Level	Head of Contracting Activity or designee (2)
> $20M - $50M	All Other Activities	HQ DLA/J-3312	Streamlined I-ARB (3)
> $50M		HQ DLA/J-3312	I-ARB or streamlined I-ARB
> $0.5B - $2B		HQ DLA/J-3312	Component Acquisition Executive or designee (4)
> $2B		HQ DLA/J-3312	USD (AT&L) (4)

Note (1) Total planned dollar value of base period and option periods.
Note (2) Delegable to a level above the Chief of the Contracting Office.
Note (3) As specified by the SPE
Note (4) OSD guidance per USD memorandum, 31 May 2002, "Acquisition of Services"

(b) I-ARB membership normally includes the executives/representatives identified below. The DLA Senior Procurement Executive (SPE) may determine additional members on a case-by-case basis. I-ARB decisions are considered corporate decisions. Representatives are expected to be empowered by their organizations during the I-ARB sessions. Acquisition reviews shall focus on key principles to include taking an enterprise-wide approach; assessment of established metrics and expected outcomes; and that acquisitions are established through business arrangements that are in the best interest of DLA and DoD. See DLAD 90.1501 for detailed guidance on PBL acquisitions.

Chair - SPE (Deputy Director, Logistics Operations[A60]
Members - J-81 (Deputy Comptroller, Budget and Program Integration Operations)*
J-6 (Deputy Director, Information Operations)*
J-34 (Executive Director, Readiness and Customer Support)
J-37 (Executive Director, Distribution and Reutilization Policy)*
J-38 (Executive Director, Business Management)*
ICPs (Deputy Commanders or designated representatives)
DDC (Deputy Commander or designated representative)
Advisors - DG (Office of General Counsel)
DB (Small & Disadvantaged Business Utilization Office)
*** Program Budget Resource Group Co-Chairs***

(c) Unless otherwise determined by the SPE, a streamlined review board, consisting of designated I-ARB members, will convene to approve services acquisitions.

(d) *Waiver of I-ARB review and approval requirements may be requested by the Chief of the Contracting Office, under exceptional circumstances. The request for waiver,* ***including an Advance Acquisition Planning Template,*** *shall be submitted to the DLA Supplier Operations Branch (J-3312) and must include rationale and justification for the waiver. Waivers are granted by the SPE on a case-by-case basis.*

(e) *When an I-ARB review is required, the Chief of the Contracting Office must submit both hard and electronic copies of the following documents to J-3312 for evaluation: Acquisition plans (see 90.1101) reviewed and coordinated by appropriate field functional elements; source selection plan; incentive plan; justification and approval, as applicable; the solicitation; and an abbreviated (rough order of magnitude (ROM)) business case analysis, if appropriate.* ***An Advance Acquisition Planning Template is not required for proposed acquisitions submitted for I-ARB review (i.e., PBL and Services Acquisitions).*** *Upon receipt of the documentation previously listed, J-3312 will schedule an I-ARB meeting. Additionally, the contracting activity must present the I-ARB with a formal briefing. Additional requirements for specified milestone reviews for PBL acquisitions are addressed in 90.1501.*

(f) The I-ARB retains the authority to review any special interest or high-risk acquisition.

(g) The I-ARB will advise the contracting activity if the proposed acquisition has unconditional approval, conditional approval, or disapproval. Unconditional and conditional approval authorizes the contracting activity to proceed with the acquisition. An interim decision will be provided at the conclusion of the formal briefing. Final I-ARB decisions will be transmitted by letter to the commander of the contracting activity.

7.104-91[A61] ***Advance Acquisition Planning Template.***

(a) An Advance Acquisition Planning Template (formerly the Advance Notice of Initiative for Potential APEC Review) (see 90.1103) should be completed for all proposed acquisitions, including orders placed under Federal Supply Schedules, requiring review/approval at DLA HQ that meet the criteria and the dollar thresholds identified below. Templates must be electronically submitted to J-3312 for review and approval once the contracting activity has sufficient information to complete the template. Excluded from this requirement are those acquisitions identified in paragraph 7.104-90. Once J-3312 reviews the template, the contracting activity will be advised whether they have authority to proceed with the acquisition. All templates submitted to DLA HQ for review must be coordinated with the contracting activity's Director of Small Business and Office of Counsel and be approved by the Chief of the Contracting Office. (Orders under proposed acquisitions for which the maximum anticipated value was

included in a previously submitted template with a single all inclusive acquisition plan need not be submitted for approval separately.)

Contracting Activity	*An advance acquisition planning template (see DLAD 7.104-90) is not required for acquisitions that meet the criteria for the Integrated Acquisition Review Board (IARB).*
	An advance acquisition planning template is required when:
ALL	• *Any bundled acquisition* < $1 million; or* *Regardless of estimated acquisition value of the resulting contract, any of the following:* • *The program or proposed acquisition is identified by HQ DLA as high interest.* • *There is known OSD, Congressional, or White House interest or a high potential to attract such interest.* • *The acquisition involves strategies or processes that are expected to significantly impact the traditional supplier base or established customer practices. This includes efforts that may cause reductions in the industrial supplier base; significantly influence a market segment, supply chain, or commodity group; initiate a test or pilot program; or cause a significant increase/decrease in the DLA business volume.* • *Requesting a waiver to the IARB.* • *The acquisition does not require an IARB and one of the conditions specific to a contracting activity (see below) is applicable*
DSCC DSCR DSCP	• *Total estimated acquisition value* > $50 million*
DESC	• *Proposed natural gas acquisitions with value* > $100 million*
DDC, DRMS, DNSC, DAPS, DSS, TASA	• *Total estimated acquisition value* > $5 million*
** includes base and all option periods.*	

(b) J-3312 will advise the contracting activity within 15 calendar days after receipt of the Advance Acquisition Planning Template if the proposed acquisition is approved or disapproved, or whether an I-ARB is required. Once the proposed acquisition is approved, no significant changes shall be made without prior J-3312 approval.

7.105 Contents of written acquisition plans. See 90.1101.

7.107[f62] ***Additional requirements for acquisitions involving bundling.***

(a) "Necessary and justified" (with regard to bundling) is a two-part determination, made with the aid of market research. It means not only that the consolidation is considered essential from a management perspective, but also that the benefits accruing from consolidating requirements, as compared to contracting on a non-consolidated basis, would be measurably substantial (as defined in FAR 7.107(b)). Note that the definition of "measurably substantial" contains a requirement for quantification of benefits.

(c)(90) If quantification of the benefits of a bundled acquisition does not equal quantification levels set forth in FAR, you will ordinarily have to abandon the consolidation. However, in exceptional situations it may still be possible to proceed with the contracting action. You must seek the approval, via determination and findings, of the Under Secretary of Defense for Acquisition, Technology and Logistics (USD(AT&L)), that bundling is necessary and justified. In that case, even though the quantified benefits do not reach the specified dollar equivalents, they must be shown to be critical to the agency's mission success. The acquisition strategy described in the request to USD(AT&L) must provide for maximum practicable participation by small business concerns. Reduction of administrative or personnel costs alone cannot be used as justification for bundling in support of the request to USD(AT&L).

(91) For an acquisition requiring USD(AT&L)'s permission to proceed with the bundled requirement, submit your request for approval of the determination and finding to J-3312; it will be routed through J-33, J-3, DLA-DB, and the Director, DLA, who will sign out the request to OSD. There are no timeframes in the statute or FAR for use of this procedure, but it is essential that you submit your justification at the earliest possible date. Therefore, you should forward the request within 30 days of your determining that the proposed acquisition will not generate savings in accordance with established levels, as set forth in FAR (that is, within 30 days of your performing a bundling analysis). Under no circumstances may you issue a bundled solicitation until you have received the determination and finding, granting the permission, from USD(AT&L).

(e) In establishing the procurement strategy for any bundled requirement, whether or not of a dollar value constituting substantial bundling, the contracting officer may want to address the following considerations as part of the market research required to be conducted in accordance with FAR 10.001(a)and (c) and 10.002(e): benefits; impediments to small business prime contracting participation; actions to maximize small business subcontracting participation; and affirmative determination that the benefits justify bundling. However, in cases not involving substantial bundling, FAR does not require that the documentation of the research results be so extensive as it would be for instances of substantial bundling. See 10.001.

(90)(i) If a bundling analysis has already been performed on a contract action, it is not necessary to perform a new bundling analysis before exercising an option.

(ii) For new acquisitions, procurement history should be analyzed from the three immediately preceding years to determine whether there have previously been separate, smaller contracts for these requirements that were or could have been performed by small businesses.

(iii) For a long-term contract with an "add/delete" clause, you must perform a bundling analysis before you add individual/groups of items via clause exercise, if the change modifies the contract and constitutes a new consolidation. On the other hand, if the add/delete clause is merely a mechanism by which items, always intended to be part of the acquisition and included in the initial analysis, are "phased in" (for pricing and other purposes), then the additions do not constitute a new consolidation, and a new bundling analysis is not required.

(91) Remember that the SBA can appeal to the head of a contracting agency certain decisions made by the agency that SBA believes will adversely affect small businesses. One such appealable decision pertains to any bundling of contract requirements the SBA considers to be unnecessary or insufficiently justified. Whenever a proposed consolidation of requirements, at least some of which were formerly filled by small businesses, is likely to render the resultant contract unsuitable for award to a small business concern, the SBA may challenge that solicitation. (See the definition of bundling at FAR 2.101 for aspects of a procurement that might make small business participation unlikely.) Given the seriousness of these consequences, you must be able to show that any such proposed consolidation is "necessary and justified" (as defined in (a), above), and that benefits that are anticipated to accrue to the Government will be "measurably substantial," as explained in FAR 7.107(b). You cannot rely solely on reduction of administrative or personnel costs as a justification for bundling, unless these savings are expected to be substantial. If you cannot determine that a consolidation of requirements is necessary and justified, and that its benefits will be measurably substantial (including situations where you cannot quantify such benefits), you must not proceed with the bundling without approval by USD(AT&L).

(92) In cases where there is disagreement between the SBA and the contracting officer over a bundled or substantially bundled requirement, the PCR or SBA Area Office may initiate an appeal to the head of the contracting activity. Levels of appeal and associated timeframes are provided in FAR 19.402(c)(2) and 19.505.

SUBPART 7.2 –PLANNING FOR THE PURCHASE OF SUPPLIES IN ECONOMIC QUANTITIES

7.202 Policy.

(b) For solicitations for IDCs and other long-term contracts covering voluminous items for which response by the offeror to the clause at FAR 52.207-4 is not practicable, see 7.203(90).

7.203 Solicitation provision.

(90) The FAR provision shall be tailored, or a locally developed clause used, to obtain volume discounts, market basket discounts and/or separate prices at the offeror's price break quantities, across the range of potential order quantities, under IDC and other long-term contracts where response to the standard FAR provision is impracticable.

SUBPART 7.3 • CONTRACTOR VERSUS GOVERNMENT PERFORMANCE

7.304 Procedures.

(c)(1) Where the Executive Director, ***Acquisition, Technical, and Supply Directorate*** is the HCA (see 2.101), solicitations in which a comparison will be made between contractor and Government performance in accordance with OMB Circular A•76 shall be forwarded to HQ DLA, ATTN: ***J-3311*** for review and approval prior to release (see 1.690•6(b)(3)).

(90) Procedures for SBA requested 8(a) commitments.

When, due to application of the confidentiality requirements of FAR 7.304(d), it is not possible to obtain an in•house cost estimate independent of the Government's sealed in•house offer for use in determining an estimated current fair market price (FMP), the contracting officer may determine the FMP based on cost or price analysis in accordance with the provisions in FAR 19.805 and 19.806, as appropriate. When agreement is reached with the SBA or its subcontractor on the terms and conditions of the proposed contract, the Government's sealed in•house estimate shall be opened and the cost comparison completed in accordance with FAR 7.306(b). When agreement between SBA or its subcontractor as to the terms and conditions of the proposed contract is not reached and the SBA withdraws its certification, the Government's sealed in•house estimate shall not be opened. A competitive solicitation shall subsequently be issued, either on a set•aside or non•set•aside basis in accordance with FAR 7.306. The 8(a) firm(s) for which the SBA commitment was originally required shall be provided an opportunity to offer on the competitively issued solicitation. The procedures of FAR 7.306(a) or (b), as appropriate, apply to the balance of the cost comparison process.

(91) With respect to requests for information related to commercial activities cost studies, the contracting officer (or other ***authorized individual***) must consider the guidelines contained in DLAR 5400.14, DLA Freedom of Information Act Program, paragraph VIII.E., and promptly determine if such information should be withheld or released. Requests shall not be required to be submitted under the Freedom of Information Act (FOIA) in order to be considered. If the information is to be withheld, the requestor shall be notified immediately of the decision to withhold the information and of the right to submit a written request for the information under FOIA, if the request was not submitted under FOIA initially. Requests for information may be an indication that the solicitation contains defects or ambiguities, or that the CA solicitation process would be improved by dissemination of the information to all prospective offerors. Therefore, as a part of the disposition of each request, the contracting officer shall consider the need to issue an amendment to the solicitation.

7.306 Evaluation.

(a) Sealed bidding.

(3) The contract file must be forwarded to HQ DLA, ATTN: ***J-3313***, for review and approval, and the PLFA must be advised by ***J-3313*** that the file is approved before the PLFA commander signs the decision summary form (DLA Form 1764, Cost Comparison Analysis In•House versus Contract Performance, or DLA Form 1764a, Cost Comparison Analysis Expansions, New Requirements, and Conversion to In•House). The contracting officer shall not sign the decision summary form until ***J-3313*** approval of the contract file has been received or until ***J-3313*** comments, that are a condition of approval, have been properly addressed.

PART 8

REQUIRED SOURCES OF SUPPLIES AND SERVICES

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SUBPART 8.4 • FEDERAL SUPPLY SCHEDULES

8.404 [f64]***Using schedules.***

(a) General. If a federal supply schedule (FSS) has been established for an individual item of supply or service, rather than for consolidated requirements, bundling would only be a consideration if a single FSS order aggregated smaller, previously purchased quantities into a large, single lot beyond the reach of small contractors. Under ordinary circumstances (that is, when quantities purchased are such that small businesses could fulfill the requirement), it is unnecessary to perform a bundling analysis prior to placing an order against such a schedule. On the other hand, if a FSS provides a variety of services or items, or can be "customized" to provide a new mix of items or services that were or could have been previously acquired from a number of small sources (or if significantly larger quantities are, in fact, being acquired), there is a risk that bundling could occur. Bundling analysis must be performed prior to placing this kind of mixed or unusually large order against such a schedule. See sections 7.107, 10.001, 15.304, 15.305, and 19.202-1.

8.404-70[A65] ***Additional ordering procedures for services.***

(c)(l) The requirement from Section 803 of the FT 2002 National Defense Authorization Act (P.L. 107-107) to provide for notice to "as many (schedule) contractors as practicable" can be fulfilled by using the General Services Administration's c-Buy web site at www.gsaAdvantage.gov. R-Buy is an electronic RFQ system that automatically notifies vendors of solicitations from agencies for goods and services.

SUBPART 8.6 • ACQUISITION FROM FEDERAL PRISON INDUSTRIES, INC.

8.600•90 Definitions.

"Current market price (CMP)," as used in this subpart, means the actual current price for purchase of the item in the competitive market place in the quantities normally bought and sold and at customary terms and conditions. If actual sales prices are unavailable or nonexistent, the CMP means a price which is estimated in a similar manner as prescribed in FAR 19.807(b) and (c) (but see restriction on price comparisons in FAR 15.***404-1(b)(90)(2)(ii)).***

"Unrestricted," as used in this subpart, refers to the portion of the acquisition not purchased from FPI, whether or not a set•aside has been made. ***(See Part 19).***

8.602 Policy.

(a)[A66] ***The contracting officer must use the results of market research (see 10.001(a)(2)(93)) to determine the comparability of the FPI product, considering all three areas of price, quality, and time of delivery. In other than automated acquisitions, the contracting officer shall document in writing the basis for the comparability determination, to include the significance of each factor under the circumstances of the acquisition. The comparability determination must be retained in the contract file. The contracting officer is strongly encouraged to consult with counsel on acquisitions stemming from such comparability determinations.***

(i)(90) Use the provision at 52.208-9001, Acquisition of Federal Prison Industries Items, for acquisitions valued below the simplified acquisition threshold that involve items *listed* ***on*** *the* ***FPI*** *Schedule* ***when the solicitation will also serve as a market research tool. FPI will receive an order if its items are found comparable to items from private sources.***

(91) If, despite the comparability of the FPI product, the contracting officer nevertheless concludes that purchase of the item from a private-sector source is in the best interests of the Government (e.g., for readiness or industrial-base reasons), a clearance may be pursued from FPI in accordance with FAR 8.605.

(ii)(90) Competitive buys are subject to set-aside requirements, except that FPI will be solicited and permitted to compete, and could still receive the award, in acquisitions of these items that are otherwise set aside for small business participation. Small business concerns must be notified of this possibility when set-asides are used under these circumstances. See 19.502-1(b)(90).

(a)***(90)*** In no event shall a unit price higher than the highest award price, adjusted for any significant ***differences between the buys***, be considered to be the current market price. ***Exclude a high price if resulting from*** a distressed bid, or bidder's mistake, or if the award price was inflated because of ***additional*** requirements.

(a)(9***1)*** In addition to assuring that the award price to FPI does not exceed the current market price, the contracting officer shall:

(i) Request FPI to furnish its cost estimate (FPI Form 73, Unit Cost Estimate) with supporting documentation (material quotes, etc) for all first time buys and whenever current actual market prices are unavailable or when there is basis for concern regarding an FPI quote;

(ii) Consider requesting FPI to furnish its cost history (FPI Form 9, Production Order and Cost Sheet) for the most recently completed contract(s) for the item (if none, for the most comparable item), along with identification of any apparent errors;

(iii) Obtain an independent cost/price analysis of purchases estimated to exceed $200,000 and other actions as deemed appropriate (***but*** see 15.***404***-1(***a***)(90)(1)(ii) and 15.***404***-1(***a***)(90)(2)). Coordinate price or cost/price analyses (FAR/DFARS/DLAD 15.***404-1(b) and (c))***•3) performed on other large purchases with the cost and price analysis element;

(iv) Establish prenegotiation objectives as appropriate considering whether the objective is based on pricing data or on cost data plus a weighted guideline profit analysis (see DFARS 215.***404***-72 for non profit organizations);

(v) Negotiate with FPI to assure price reasonableness (see FAR 15.***405(d)(90)***, and that the price does not exceed the current market price. Elevate negotiation to higher levels of management as necessary;

(vi) Document the price reasonableness determination in the contract file; and

(vii) Refer instances of unreasonable price which cannot be corrected to a higher authority in accordance with FAR/DLAD 15.***405(d)(90)***. Include a price survey of other potential suppliers and a recommendation concerning whether a clearance request to purchase the item competitively is warranted and needed (FAR 8.605 and 8.606).

(a)(9***2***) When the price comparison involves Government•furnished material or property (GFM or GFP), differences in transportation costs for the GFM or GFP shall be considered. Also consider differences in Government transportation costs of end items to the same destination points and any variations in the percentages of GFM usage and/or operating and maintenance costs of GFP.

8.604 Ordering procedures.

(b)(90) Contracts and orders to FPI shall be on an f.o.b. origin basis unless otherwise specified.

(c)(90) Ceiling priced awards.

(i) The clause at 52.208•9000, Price Adjustment on Federal Prison Industries, Inc. (FPI) Contract/Order, may be utilized only if (i) the contract/order will be issued to FPI at a fair and reasonable price that does not exceed the estimated current market price; (ii) the contracting officer completes action specified in 8.602(a)(91)(vii); and (iii) the chief of the contracting office determines in writing that ordering the urgently needed Schedule item cannot be further delayed and approves such award.

(ii) After issuing a contract/order containing the clause at 52.208•9000, the contracting officer shall brief the chief of the contracting office or designee of efforts to reach an agreement as to the current market price reduction applicable thereto. Agreements reached shall be confirmed by a revision to the contract/order stating the applicable price and removing the clause at 52.208•9000.

(iii) Efforts to obtain agreement may continue up to the time of inspection and acceptance of the first delivery. If agreement has not been reached by that time, the case shall be submitted by the chief of the contracting office (not delegable, except that the Executive Director for Procurement at DSCR may further delegate this authority to the Deputy Executive Director for Procurement and the Chief, Base Support Division without power of redelegation) to HQ DLA, ATTN: ***J-3313*** as unresolvable and shall contain a detailed explanation of the factors used in determining the current market price and/or reasonable price which were not acceptable to the FPI.

8.604•90 Pricing policies for awards to Federal Prison Industries, Inc. (FPI).

(a)(1) Prices in awards to FPI for the partial or total quantity of an acquisition shall not exceed current market prices.

(2) On acquisitions involving multiple awards to both commercial contractors and to FPI of a mandatory item, the current market price will be a price considered by the contracting officer to reflect current market levels, but in no event a unit price higher than the highest award price made on the unrestricted portion adjusted for applicable cost factors, unless it is determined that the price was the result of a distressed bid, bidder's mistake, or inflated because of Department of Defense requirements. In awards involving multiple destinations, each destination, for purposes of determining the price to be paid FPI, shall be considered a separate award. The term "unrestricted" as used in this part refers to the portion of the acquisition not purchased from FPI, whether or not a small business set•aside has been made.

(3) When a contract action involves allotment to FPI of the entire quantity of the required item and current market quotations are not available, prior contract prices (adjusted to reflect changes in market prices of components since the last contract and differences in any other cost factors, e.g., labor, operating supplies, employee fringe benefits) shall be used as the basis for determining the current market price.

(4) Awards to FPI shall be on a free on board (f.o.b.) origin basis unless otherwise specified.

(5) Prices for FPI contracts shall be rounded off to the nearest mil.

(b) The cost of transportation of Government furnished property to both FPI and to commercial contractors shall be excluded. Differences in Government transportation costs of end items to the same destination point under FPI award and under awards to commercial contractors shall be included. Also, variation in the cost of Government furnished property, based on stated percentages of usage of Government•furnished property allowances, shall be included.

(c) Firm delivery orders shall be given to FPI promptly upon determination of the quantity to be awarded FPI. The following procedures are to be utilized in determining prices to be included on these delivery orders:

(1) When a concurrent commercial contract is being made, the price quoted by FPI shall be cited on the delivery order and the clause at 52.208•9000 shall be included in the order. In the event the current market price determined by the contracting officer under the "unrestricted" acquisition is lower than the quoted FPI price, adjustment shall be made to the lower price; provided, however, that in the time elapsed between the delivery order to FPI and the opening date on the "unrestricted" portion, there has been no significant change in market conditions. Should there have been a significant change in market conditions, the current market price for an FPI order will be determined under the provisions of subparagraph (a)(3), above.

(2) When the circumstances described in subparagraph (a)(3) above exist, immediate action shall be taken to determine the current market price. Should that price be lower than the quoted price, prompt contact shall be made by the most expeditious means with the FPI and the circumstances and factors used in the determination explained. Should an agreement not be reached as to the current market price within 5 consecutive days from the date of contact, the order shall be promptly issued on the basis of the current market price determined by the contracting officer, and the clause set forth at 52.208•9000, Price Adjustment on Federal Prison Industries, Inc. (FPI) Delivery Orders, shall be included on the FPI delivery order.

(3) After issuance of a delivery order containing the clause at 52.208•9000, every effort will be made by the contracting officer to reach an agreement as to the current market price applicable to the order. Agreements reached shall be confirmed by a revision to the delivery order stating the price applicable to the order, and rescission of the clause at 52.208•9000.

(4) Efforts to obtain agreement, to include exchange of data on which the current market price was based, may continue up to the time of inspection and acceptance of the first delivery. If agreement ***is*** not reached by that time, the case shall be submitted to HQ DLA, ATTN***: J-3313***, as unresolvable, and shall contain a detailed explanation of the factors determining the current market price which was not acceptable to the FPI.

8.605 Clearances.

(a)(2) Waiver procedures and a waiver form can be found at internet address: http://www.unicor.gov/customer/waiverform.htm. The mail address for waiver requests is:

UNICOR Customer Service Center
P.O. Box 13640
Lexington, KY 40583-3640

(a)(90) To expedite the determination of FPI's capability and capacity to produce an item, a cooperative interface should be established between FPI's staff and Center technical staff.

(91) See 7.104 for guidance on industrial preparedness planning in connection with requirements that are being considered as an item of supply for FPI.

(c)(90) Use of the alternative dispute resolution process established by FPI should be considered whenever a clearance is denied. Waiver appeal request forms, at internet address: www.unicor.gov/unicor/appeal.html, may be addressed as follows, with an information copy provided the local SADBU:

Jan I. Hynson Ombudsman
Federal Prison Industries
320 First Street NW
Washington, D.C. 20534

The Ombudsman may also be contacted at telephone: (202)305-3515; FAX: (202)305-7340; or email: jhynson@central.unicor.gov.

SUBPART 8.7 • ACQUISITION FROM ***NONPROFIT AGENCIES EMPLOYING PEOPLE WHO ARE*** BLIND ***OR*** SEVERELY ***DISABLED***

8.702 General.

(90) ***It is*** DLA policy ***not only*** to cooperate fully with the Committee for Purchase from People Who Are Blind or Severely Disabled (the Committee), its Central Nonprofit Agencies (CNAs) (***namely***, the National Industries for the Blind (NIB) and ***NISH - formerly***, the National Industries for the Severely Handicapped), ***and the individual nonprofit agencies (previously known as workshops and/or work centers) in accordance with statutory mandates, but also to provide the maximum practicable opportunity by which these Javits-Wagner-O'Day Act (JWOD) entities may become full partners in DLA's reengineered business processes at either the prime or subcontract level.***

(91) Contractor participation in a program of support for JWOD entities shall be the focus of an evaluation factor to be included in solicitations or other announcements for contracting arrangements which use source selection procedures. The contracting officer shall use an evaluation factor encouraging the maximum practicable use of JWOD entities as subcontractors (i.e., beyond statutorily mandated use of these entities by prime contractors; see FAR 8.001(c)). This factor shall apply to all source selections where the resultant contract is expected to exceed $500,000, unless omission is approved by the chief of the contracting office. (Inclusion of this coverage in solicitations below $500,000, though optional, is encouraged in all appropriate circumstances.) Proposals that demonstrate a strong commitment to affording JWOD entities a real opportunity to participate in the Government contracting arena, including prime vendor and virtual prime vendor arrangements, shall be rated more favorably than those that demonstrate little or no such commitment. See 15.304(c)(91).

(i) The contracting officer should consult with the local office of counsel prior to making this evaluation factor more important than other socioeconomic factors, to ensure that it does not displace any other factors required by statute or overall DoD policy.

(92) In making decisions whether to exercise options on contracts, the contracting officer shall evaluate whether a firm has or has not performed in accordance with its commitment to use of JWOD entities. Field elements of the Defense Contract Management Agency shall be used to assist in assessing a contractor's compliance with these requirements.

(93) See 15.304(c)(91) for the prescription for use of solicitation provisions 52.215-9004, Javits-Wagner-O'Day Act Entity Proposal, and 52.215-9005, Javits-Wagner-O'Day Act Entity Support Evaluation.

(94) For applicable contract actions, the contracting officer shall provide incentives for prime contractors to subcontract with JWOD entities, even when they are not statutorily obligated to do so. These include:

(i) evaluation of current or proposed participation in this program of support for JWOD as an independent factor (separate from any overall past performance evaluation factor) in source selection;

(ii) use of JWOD entities under previous contracts as part of the overall past performance evaluation factor in source selection;

(iii) evaluation of present performance regarding subcontracting with JWOD entities in determining placement of orders under multiple-award contracts; and/or

(iv) consideration of contractor present and past performance with reference to JWOD entities in the exercise of options for the follow-on years of long-term contracts.

(95) In order for determinations to be made regarding the efficacy and viability of this coverage, each contracting activity shall, ten days after the end of each fiscal quarter, submit a report to J-3311 indicating the percent change in the extent of non-mandatory prime contractor support (i.e., percent of total subcontracting dollars) for JWOD entities.

SUBPART 8.8 • ACQUISITION OF PRINTING AND RELATED SUPPLIES

8.802 Policy.

(a) Policy and procedures for the acquisition or production of printing are contained in DLA***I*** 5330.1, ***Publications, Forms, Printing, Duplicating, Micropublishing, Office Copying, and Automated Information Management Programs.***

SUBPART 8.70 • COORDINATED ACQUISITION

8.7002 Assignment authority.

(a)(4) Exclusions to Defense Logistics Agency or General Services Administration Assignments by Agreement. All proposed agreements in accordance with DFARS 208.7002(a)(4) to permit a Military Service to acquire Military Service•managed items for which the estimated obligation of a one•time authorization will exceed $100,000, or when the annual obligations are expected to exceed $100,000 for a continuing authorization, shall be submitted for review and approval by HQ DLA, ATTN***: J-3311,*** prior to consummation of the agreement. Continuing authorizations will not be granted for periods exceeding 12 months, notwithstanding the amount of estimated annual obligations. Requests shall be submitted by letter in sufficient detail to support the proposed agreement and shall be signed at a level no lower than the Chief of the Contracting Office.

8.7002•2 Requiring department responsibilities.

(a) Requisitions for metalworking machinery in FSG 34 should be submitted to DSCR•JHCA to determine availability of comparable idle assets and initiation of a purchase request. Local procurement is prohibited unless a local procurement authorization request has been submitted to and approved by DSCR•JHCA.

8.7004 Procedures.

8.7004•2 Acceptance by acquiring department.

(a) Upon receipt, MIPRs and other requests for non•DLA managed items should be routed directly to individuals responsible for procurement, as determined appropriate locally, for processing. Simultaneously, such requests will be routed for review by staff elements with corollary interest (operational, functional or policy•type offices having oversight responsibility for technical/quality issues), as necessary. The contracting officer or designated acceptance official shall request that reviewing elements furnish comments within 10 days. ***This must be done within 20 days of receipt of the MIPR, in order to meet the 30 day acceptance time-frame***. The acceptance official will act as the team leader to obtain any necessary advice and counsel from local experts in order to accomplish the acquisition mission ***successfully***.

(90) Each procurement, whether covering a Military Service•managed or DLA•managed item, will take its priority position based on the factors surrounding the particular procurement and not on the type of item or origin of the purchase request.

8.7004•3 Use of advance MIPRs.

(f) ***Actions in accordance with*** DFARS 208.7004•3 may be taken by a DSC upon receipt of an Advance MIPR (or similar type purchase request), provided the purchase request contains a statement reading essentially as follows: "A firm requirement exists for the item(s) contained in this MIPR; purchase of the items will be supported by the commitment of funds which are expected to be made available (within the next *** days)/ (prior to the end of this fiscal year)." Any other written advice from the requiring activity that the requirement is firm and that there is a reasonable expectation that funds will be made available for obligation purposes against the specific advance MIPR, may be accepted in lieu of a statement embodied in the MIPR. This advice will be used as the basis to proceed with the purchase action up to the point of award.

(1) Invitation for Bids (IFBs) or Request for Proposals (RFPs) issued on the basis of unfunded Advance MIPRs shall clearly state that no awards will be made until such time as funds become available for obligation purposes. (See FAR 32.703•2.)

(2) In instances such as those authorized herein, the requiring activity will be notified of the scheduled award date of the IFB or RFP and that, if funds are not made available by that date, the solicitation may be canceled. The scheduled award date may be extended at the discretion of the contracting office.

(3) If a requiring activity indicates that funds will not be forthcoming, the solicitation shall be canceled. All offerors shall be notified immediately of such cancellation (see FAR 14.404•3). If the solicitation is canceled prior to the solicitation opening or closing date, unopened offers shall be returned to offerors.

SUBPART 8.72 • INDUSTRIAL PREPAREDNESS PRODUCTION PLANNING

8.7201 Definitions.

"Industrial mobilization" means the process of marshaling the industrial sector to provide goods and services, including construction, required to support military operations and the needs of the civil sector during domestic or national security emergencies. It includes the mobilization of materials, labor, capital, facilities, and contributory items and services. Industrial mobilization may include a short surge of production or repair capability, longer term expansion of production or repair capacity, or both. Mobilization activities may result in some disruption to the national economy.

"Production Planning Schedule (PPS)" means an agreement by an industrial firm to provide production capacity data, to maintain existing capacity data for a negotiated period of time, and to accept contracts for planned items upon the request of the Government. The agreements may either be a nonbinding memorandum of understanding or a binding contract/clause.

8.7202 General.

(a)(90) The DSCs shall make plans and take actions necessary to establish and maintain a responsive industrial base required to support peacetime, surge, or wartime contingency.

8.7203 Authority.

(b)(90) In the event of a national emergency or regional contingency, and if selective production acceleration/expansion of the current planned producer base is required, the Executive Director, ***Acquisition, Technical, and Supply Directorate*** shall notify the DSCs regarding availability and use of appropriate emergency contracting authorities. This includes expediting contracting actions through use of existing valid clauses or the standby letter contracts contained in the Industrial Preparedness (IP) planning packages.

8.7204 Procedures.

8.7204•90 Industrial preparedness (IP) planning packages.

DSCs shall develop and maintain IP planning packages (IP plans and standby letter contracts) for planned items in order to respond quickly to a national emergency or contingency. IP planning staffs shall ensure that appropriate contracting personnel are familiar with the objectives of the Industrial Base Program and IP planning, and are aware of the existence and utility of the IP planning packages. These packages will contain as much additional information as is necessary to allow issuance of contractual documents, and tracking of production by personnel operating from Alternate Headquarters sites.

8.7204•91 Industrial preparedness (IP) plans.

IP plans shall be established and maintained for all planned items. DSCs shall ensure that plans include current data regarding item requirements, planned producers, production schedules, and production planning schedule (PPS) agreements. IP plans shall be updated or revised at least once every 2 years, or more frequently as changes warrant. Where IP plans are developed for similar items, consideration will be given to consolidating the requirements and production data for all the items scheduled with each planned producer into one IP plan. In the event a DSC desires to include classified data, HQ DLA, ATTN: ***J-339***, shall be advised of the necessity for such data prior to its inclusion in the plan or IP package.

8.7204•92 Production Planning Schedule (PPS) agreements.

PPS agreements are used by the Government to obtain contractor commitment to: (1) update PPS data for prime and critical subcontractors, (2) provide access to records, manufacturing process data, plants, and facilities in order to verify data, (3) maintain existing production capacity for a negotiated period of time, and (4) expeditiously initiate production of the planned item in accordance with the production

planning agreement if called upon in a national emergency or regional contingency.

8.7204•93 Alternate files maintenance.

Copies of each IP package shall be furnished to the DART and DOVER emergency file repositories by 15 October of each year. Appropriate mailing addresses can be found in the Field Activity Basic Emergency Plan (FABEP). DSCs should ensure these files are kept current.

8.7204•94 Implementing IP plans.

The exercise or issuance of a contractual instrument (option clause or standby letter contract) to implement IP plans in support of an emergency, will be, to the degree necessary, to support the emergency. The standby letter contract, maintained in the IP packages, will be used as appropriate, to expand the planned producer base to meet emergency demands. Attachments, such as specifications, should be readily available to be mailed with the contract. The format of a sample standby letter contract follows:

CONTRACT NO. _____

Sir/Madam:

This letter contract, upon acceptance by your firm, will constitute a contract on the terms and conditions stated herein and signifies the intention of the Defense Logistics Agency to enter into a firm fixed•price contract with you for the delivery of the supplies and performance of the services listed on the Production Planning Schedule (PPS) agreement, which was executed on _____ in furtherance of the Industrial Base Program.

Schedule of Supplies or Services.

The supplies and services to be furnished and the time and place of delivery are as follows:

Contract for _____.

Specification Number _____.

Appropriation and other Administrative Data.

The supplies and services to be obtained under this letter contract are chargeable to the following allotments, the available balances of which are sufficient to cover the cost of _____ same.

F.O.B. _____.

Execution, Commencement of Work, and Priority Rating.

The Contractor's acceptance of this order will be indicated by signing three copies and returning the signed copies to the contracting officer not later than _____. Upon acceptance by both parties, the Contractor shall proceed with performance of the work described herein, including acquisition of necessary materials. An appropriate priority rating, in accordance with the Defense Priorities and Allocations System (DPAS) regulation, and DoDI 4400.1, Priorities and Allocations • Delegation of DO and DX Priorities and Allocations, Authorities, Rescheduling of Deliveries and Continuance of Related Manuals, will be assigned to this letter contract (FAR ***Subpart 11.6*** and DFARS Subpart ***211.6***).

Priority Rating

DO or DX _____ (appropriate program code symbol). Certified for national defense use under the Regulation.

Definitization. ***The clause at DFARS 252.217-7027, Contract Definitization (FEB 1996), is incorporated by reference, with the following inserts:***

(1) In paragraph (a), first sentence following "A" _____(insert specific type of contract action).

(2) In paragraph (a), third sentence following "a"_____(insert type of proposal; e.g., fixed-price or cost-fee).

(3) In paragraph (b), following "follows" (insert target date for definitization of the contract action and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of the make-or-buy and subcontracting plans and cost or pricing data):

_____

_____

_____

_____

(4) In paragraph(d), following "negotiated" _____(insert "cost/price ceiling" or "firm-fixed price")

(5) In paragraph (d), following "exceed" _____ (insert the not-to-exceed amount)

(End of clause)

Limitation of Government Liability. ***The clause at FAR 52.216-24 Limitation of Government Liability (APR 1984), is incorporated by reference, with the following inserts:***

(1) In paragraph (a), following "exceeding" _____(insert dollar amount)

(2) In paragraph (b), following "is"_____(insert dollar amount).

(End of clause)

Unless otherwise provided herein, no progress payment to the contractor will be made under this contract.

The enclosed forms, with the exception of enclosure(s) _____ and clause(s) _____, are hereby incorporated into this letter contract, which is entered into pursuant to 10 U.S.C. 2304(c)(3) and any required justification that has been prepared.

Sincerely,

_____
CONTRACTING OFFICER

Accepted (date)_____

Contractor _____ _____
(Name & Official Title) Signature

PART 9

CONTRACTOR QUALIFICATIONS

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SUBPART 9.1 • RESPONSIBLE PROSPECTIVE CONTRACTORS

9.104•1 General standards.

(c)(90) Assuring that contracts are awarded to responsible prospective contractors necessitates the maintenance of contractor performance history and development of criteria for its use. Occasional quality deficiencies in contractor performance may be unavoidable, but if the defects are of a critical or repetitive nature and the contractor is not amenable to taking corrective action, such circumstances, may constitute support for finding a prospective contractor nonresponsible for award of contracts. Results, both positive and negative, from the System for the Analysis of Laboratory Testing (SALT) program, and other applicable quality history records, such as those from the Quality Evaluation Program (QEP) and from the Customer Depot Complaint System (CDCS), should be included in the contracting officer's determination and documentation of contractor responsibility. Contractor quality performance records will not be limited to product quality deficiencies, but also will include discrepancies due to inadequate packaging, improper or missing documentation, overages, shortages, misdirected or damaged shipments, and similar discrepancies. Individual and summary records of actions taken will be maintained for review by management. If there are overriding reasons for awarding a contract to a supplier who has an unsatisfactory quality history, the contract file will be documented accordingly, and a Quality Assurance Letter of Instruction (QALI) shall be submitted to the activity responsible for Government acquisition quality assurance at source or destination.

(c)(91) Contracting offices will maintain appropriate documentation to facilitate assessment of contractor's recent delivery performance. Contracting personnel should utilize performance data on both currently active and recently closed awards (if available) in responsibility determinations and when considering contractors for placement on the DLA Contractor Alert List (CAL). Absent identifiable positive corrective action, poor past performance indicates poor future performance. Documentation of contractor•caused delinquencies should serve as sufficient evidence to substantiate a nonresponsibility determination. (For

procedural consequences of that determination with regard to small businesses, see, generally, FAR 19.6 and DFARS 219.6.) A supplier's repeated refusal to perform purchase orders issued in accordance with small purchase procedures may also be used as a basis for not awarding future contracts. Since inaccuracies in delivery data may occur, performance histories should be reviewed and furnished to the contractor before serious actions are taken. Overall delivery performance data shall be based on ship dates not receipt dates, due to problems in obtaining timely receipt data.

(g)(90) Standards for drugs. The Food and Drug Administration (FDA) has cognizance of all quality aspects of certain medical items (predominantly drugs) in accordance with the DoD•FDA Interagency Agreement on Drugs, dated 17 December 1975. At the request of ***DSCP***, FDA will review the capability of a supplier to produce drugs and biologics of an appropriate quality whenever acquisition by ***DSCP*** of such an item is pending. It is within the discretion of the contracting officer to rely upon FDA conclusions regarding the capability of such offerors to meet required quality standards. A determination by FDA of unsatisfactory quality based on regulatory action shall necessitate a mandatory rejection of the offer by the contracting officer.

(90) The "Defense Logistics Agency Contractor Alert List" (CAL) is a monthly listing of suppliers who may require special evaluation before a determination of responsibility can be made. The list is provided to contracting offices by the Defense Contract Management District East (DCMDE) based on input from all Defense Contract Management Districts (DCMDs) and other contracting offices. Suppliers are added to the list when they are recommended for a preaward survey (PAS) by a contract administration office (CAO) for a particular reason. Contracting officers shall consider the DLA CAL as they would other similar data related to contractor performance. Appearance on the list (or any other indication of questionable prior performance, as set forth in 9.106•1(a)(90)(1) through (9)) does not mean a supplier is nonresponsible, but it puts the contracting officer on notice to consider carefully and deliberately the need for additional steps in making a responsibility determination in individual cases. (Any questions pertaining specifically to the Alert data should be directed to the PAS monitor at the CAO that has cognizance over the contractor involved, rather than to the contracting officer.)

9.105 Procedures.

9.105•2 Determinations and documentation.

(b) Support documentation. If a preaward survey is not obtained on a proposed award exceeding $100,000, the contracting officer shall include in the contract file a memorandum explaining the basis for the determination of responsibility, addressing each of the applicable standards in FAR 9.104. When the contracting officer makes a determination regarding the prospective contractor's responsibility that is contrary to that recommended in the preaward survey report, the reason for not following the preaward survey report recommendation shall be included in the contract file. In each instance where the preaward survey report recommendation is not followed, the case must be reviewed and concurred in by the chief of the contracting office and at DSCP by the Commodity Business Unit Chiefs.

The contracting officer shall provide written notice to the surveying activity that performed the preaward survey of the reason for not following the preaward survey recommendation.

9.106•1 Conditions for preaward surveys.

(a)(90) Although a formal PAS is not normally requested for acquisitions valued at $100,000 or less, there are circumstances which justify conducting a PAS (formal or informal), regardless of the dollar value of the acquisition under consideration. (An informal PAS is one in which the contracting officer's request for information is able to be fulfilled by a phone call to the CAO component, and may not necessitate contacting the firm or individual in question. A formal PAS, on the other hand, requires, at a minimum, the CAO PAS monitor to conduct a telephone survey, and may require one or more site visits to the prospective contractor's location. A formal PAS always incorporates an informal survey.) Because the survey is the primary means by which the responsibility of some contractors can be determined, its performance is strongly recommended on a prospective contractor (manufacturer or nonmanufacturer) that:

(1) Has been listed on the GSA List of Parties Excluded from Federal Procurement Programs within the past 3 years (or other locally determined time period);

(2) Is (to the extent determinable from local records) a first•time Government contractor, or has had a performance break from Government business of 3 or more years' duration (or other locally determined time period);

(3) Is undergoing or has undergone reorganization under bankruptcy laws within the past 3 years (or other locally•determined time period);

(4) Has been terminated within the past 3 years (or other locally determined time period) for default;

(5) Has negative quality records (PQDRs, RODs, etc.) in the Quality Evaluation Program (QEP), is on the Contractor Alert List (CAL), has a poor ***Product Verification Record (PVR) as indicated by ICP PVR***, or is otherwise known to the contracting officer to have a poor or marginal performance history;

(6) Has, within the past year (or other locally•determined time period), received a negative PAS for any item within the same Federal Supply Class (FSC), or for the same type of service, as the item or service being purchased;

(7) Has failed to liquidate indebtedness to DLA (the extent of the indebtedness that would normally dictate a PAS shall be determined locally);

(8) Is a transferee in interest of a former Government contractor; or

(9) Is the subject of information that is not sufficient on which to base a responsibility determination, or is a current contractor about whom the historical capability data, in terms of productive capacity, quality assurance, financial ability, etc., is unavailable to the contracting officer or is inconclusive.

(a)(91) When an offer received from a prospective contractor described in (a)(90)(1) through (9) above is proposed for award, and the contracting officer decides that actual performance of the PAS is in the best interests of the Government, the contracting officer shall request the survey, and provide the rationale for that request in the "Remarks" section of the SF 1403, Pre•award Survey of Prospective Contractor (General). When a PAS is requested with respect to an offeror described in (a)(90)(1) above, the contracting officer shall identify integrity as a factor about which information is needed and shall ask that the PAS team specifically identify the corrective actions undertaken by the prospective contractor to address the problems that resulted in the contractor's being listed on the GSA List of Parties Excluded from Federal Procurement Programs.

(a)(92) Final determination of the appropriateness of conducting a PAS always rests with the contracting officer. For that reason, this section does not mandate survey performance. Nevertheless, use of the survey is strongly encouraged for those prospective contractors described in (a)(90)(1) through (9) above. If a contracting officer decides not to request a PAS under any of these circumstances, the contracting officer shall document the contract file with the basis for that decision (see 9.105•2).

9.106•2 Requests for preaward surveys.

(90) Generally, a preaward survey shall be requested only when award is contemplated to a firm from which a bid or proposal has been received. However, a preaward survey may be requested of the facilities or firms supplying perishable food items before receipt of a bid or proposal when the time between opening/closing and award would not be sufficient for a survey following receipt of an offer. Concurrent requests for preaward surveys may be made in emergency situations and/or when multiple awards are contemplated. The need to request concurrent preaward surveys will depend upon the circumstances of the individual acquisition. Contracting officers shall obtain the agreement of the appropriate CAO preaward survey monitor prior to the submission of such requests. Although FAR 9.106•2(d) specifies a norm of 7 working days for conducting preaward surveys, except for FDA determinations, contracting offices should provide for the maximum allowable time, particularly if a negative finding is anticipated or a secondary survey will be required. When the contracting office needs a response in less than 7 working days, the surveying activity should be provided with the reason for the expedited survey. Surveying activities should notify contracting officers of survey results by telephone or electronically transmitted message on the day the survey is mailed.

(a) Additional factors would include the need for special facilities (e.g., tools, machines, test facilities) required to produce the item. Failure to liquidate indebtedness indicates a lack of responsibility. Therefore, if it is proposed to contract with firms indebted to DLA, and the proposed contract would otherwise require a preaward survey, an annotation should be made in the "Remarks" section of the SF 1403.

(a)(ii) Evaluation of a contractor as a planned producer will not affect the outcome of the PAS for other than industrial preparedness purposes. Any prospective contractor receiving a negative PAS for production or quality assurance capability with regard to an existing/potential Industrial Preparedness Planning List (IPPL) item should neither be solicited nor enrolled as a planned producer.

(e) Contracting officers shall restrict their requests for preaward survey information to that which is not already available to the contracting office. The contracting officer must determine the scope of the preaward survey to be performed. (Preaward survey requests on sole source suppliers will be limited to partial surveys.) The only factors to be investigated (e.g., production backlog, finances, and quality history) are those which actually affect or indicate the contractor's ability to perform under the contract and for which the contracting officer does not have sufficient knowledge to make a responsibility determination.

(i) When limited information is required, it can often be obtained through telephonic contact with the PAS monitor at the cognizant contract administration office (CAO), precluding the administrative effort associated with a formal PAS request.

(ii) For items assigned to the U.S. Department of Agriculture, the U.S. Department of Commerce, and/or the U.S. Army Veterinary Corps for source inspection, the quality assurance personnel representing the contracting officer, and other military agencies, as deemed necessary, will be requested to participate in the PAS, and their comments will be included in the quality assurance portion of the report.

9.106•3 Interagency preaward surveys.

(b) The list shall be retained with the contract file.

9.106•90 DLA preaward survey monitors.

(a) Each DSC will designate an organizational element to serve as the focal point for preaward surveys and to be the principal point of contact with PAS monitors at surveying activities. The focal point will review PAS requests for completeness and accuracy before forwarding these requests to surveying activities. Upon receipt of completed preaward surveys, the focal point will review the reports and shall consult with available technicians in particular areas, such as Cost and Price Analysts, when there are doubts as to the validity of the information in the survey report. If the PAS contains information questioning a company's quality control, then the survey report shall be reviewed with the DSC Quality Assurance personnel.

(b) A register of all PAS requests and responses, both formal and informal, shall be maintained in a current status by the PAS monitor at each DSC. As a minimum, this register shall include:

(1) PAS or FDA number (to provide an audit trail).

(2) Date of Preaward Survey request. Note: If the request is made by phone and a written report is requested, the SF 1403 must follow by mail on the same day as the telephone request.

(3) Date completed report to be returned (Block 10). (This is the date by which the surveying activity is to mail the completed report.)

(4) Extended date when extension is granted.

(5) Date telephonic or electronically transmitted report is received by DSC.

(6) Date Preaward Survey report is received by DSC.

(7) Prospective contractor's name and location.

(8) Surveying activity's location.

(9) Solicitation number (RFP/IFB/PR Number).

(10) Buyer or contracting officer name.

(11) Dollar amount of proposed award.

(12) Brief identification of item to be acquired.

(13) Recommended action, whether "A," "P," or "N" (Affirmative, Partial, or Negative).

(14) Remarks. Indicate whether recommendation was overturned, and add any other pertinent comments. (See 9.105•2(b).)

(15) Date of award, if any.

9.106•91 Capability surveys for workshops for the blind and other severely handicapped.

(a) The contracting office, upon request from the Committee for Purchase from People who are Blind or Severely Disabled, shall request a capability survey to determine the capability of the workshop(s) to produce specific items being considered for addition to the Procurement List.

(b) The contracting office, when requesting a capability survey, shall make the request on Standard Form (SF) 1403, Preaward Survey of Prospective Contractor (General). The contracting office should emphasize factors concerned primarily with production capabilities. When a capability survey is being requested, the form shall clearly indicate the request is for a "Capability Survey" only.

(c) The contracting office shall forward requests for capability surveys to the appropriate office, in accordance with DFARS 209.106•2. The contracting office shall furnish a copy of the completed survey to the Executive Director, Committee for Purchase from People who are Blind or Severely Disabled.

(d) Capability surveys will be executed by the cognizant contract administration office in accordance with DLAM 8300.1, Defense Contract Management Agency Industrial Support Manual, Section 1•102(i).

SUBPART 9.2 • QUALIFICATIONS REQUIREMENTS

9.202 Policy.

(a)(1) The chief of the contracting office shall provide to HQ DLA, ATTN: ***J-3312*** and ***J-33***, a brief summary of the proposed plan to establish a qualification requirement. Approval by HQ DLA is not required, unless HQ DLA requests a review of the plan. The chief of the contracting office shall approve the establishment of a qualification requirement, subject to the requirements of FAR Subpart 9.2 and after considering any comments of the activity Competition Advocate and the activity Commercial Advocate. When a qualification requirement is proposed for application to an item described by a document that is subject to the Defense Standardization Program, the procedures in DoD 4120.3•M, Appendix B, apply, including the requirement for OASD approval.

SUBPART 9.3 • FIRST ARTICLE TESTING AND APPROVAL

9.306 Solicitation requirements.

(e) Good technical judgment must be applied in determining the total number of first article units to be tested for a given contract. This must be a sufficient quantity to demonstrate clearly that materials used, manufacturing processes employed, workmanship standards utilized, and the method employed for the control of quality are capable of producing an item which meets all the contract requirements.

(f) Whenever a first article requirement is waived for a contractor that previously provided the same or a similar item, the contract shall contain a commensurately shorter delivery schedule than if the requirement had not been waived. FAR prevents that difference in delivery schedule from being used as an evaluation factor for award; any additional performance accelerated under a Delivery Evaluation Factor or similar program may be considered in best-value source selections. The contracting officer should pursue consideration from the contractor, or contract price adjustment for separately priced first article testing requirement, in appropriate circumstances when a first article waiver is granted.

(h) To assist Government and contractor quality assurance personnel during the production phase, contracting officers shall ensure that the contract requires the contractor to hold at least one approved first article unit at the production facility until all production quantities have been produced and accepted. This first article unit can be referred to as a production or manufacturing standard and baseline for examination when defects are reported on delivered material or problems are uncovered during production.

(90) Whenever first article testing is to be performed, identify in the contract the sequence of processes, tests, etc.; the number of units to be tested; the data required; and the conformance criteria for each requirement specified. Collaboration with the Military Services may be necessary to identify these requirements. Refer to applicable paragraphs in the specifications, as appropriate. The contracting officer shall refer first article test reports to the quality element for evaluation and recommendations.

(91) The contracting officer shall document the official contract file, clearly showing the acceptance/rejection criteria used to approve or disapprove the first article. First articles shall be disapproved whenever nonconforming parts and/or material are used in the manufacture of the first article. Nonconformances must be corrected before materials or components for production are purchased by the contractor.

9.307 Government administrative procedures.

(b) Contracting officers shall not grant conditional approval of first articles for DLA contracts without specific approval at a level higher than the contracting officer.

(90) The contracting officer, subject to the recommendation of the ICP quality assurance specialist, shall delegate the authority to accept either first article test results (documentation) or the tested items themselves to the administrative contracting officer (ACO) in consultation with the DCMA quality assurance representative and the staff specialist/engineer, except when Engineering Support Activities retain acceptance authority or the ICP has specific reasons to withhold that authority. Such delegation shall be accomplished as provided in FAR 42.202(c).

SUBPART 9.4 • DEBARMENT, SUSPENSION, AND INELIGIBILITY

9.404 Parties Excluded from Procurement Programs.

(c)(1) The Special Assistant for Contracting Integrity (SACI), General Counsel, HQ DLA, shall furnish to the General Services Administration all additions, deletions, or modifications to the list of Parties Excluded from Federal Procurement and Nonprocurement Programs resulting from DLA action.

(c)(4) Departmental records. The records required by FAR 9.404(c)(4) are maintained for DLA by the SACI.

(c)(90) Each DLA activity shall obtain and have available the most recent edition of the list of Parties Excluded from Federal Procurement and Nonprocurement Programs. Consult the list before completing any contracting action identified in FAR 9.405, 9.405•1(b), or 9.405•2.

9.405 Effect of listing.

(a) In order to take one of the contracting actions identified in FAR 9.405, 9.405•1(b), or 9.405•2, the activity commander shall forward a written request, including supporting information and rationale, to the SACI via the local counsel for a determination that there is a compelling reason to make an exception. The proposed contracting action may not be taken until an exception is granted in writing by the SACI.

(90) Contracting actions concerning contractors recommended for debarment or suspension.

(a) From the time a report recommending debarment or suspension is forwarded to the General Counsel, until determination is made whether to initiate debarment or suspension action, the recommending activity and any other affected DLA activity that is aware of the recommendation will coordinate with the General Counsel, before taking any of the following actions with respect to the subject contractor:

(1) Awarding a contract, issuing a purchase order, or entering the contractor's name in an automated purchase system.

(2) Renewing or otherwise extending an existing contract or subcontract.

(3) Consenting to or approving a subcontract to be awarded by or to the contractor.

(4) Authorizing novation of a contract or agreeing to change of name for the contractor.

(b) Upon submission to the General Counsel of a report recommending debarment or suspension, contracting officers, in coordination with local counsel, will consider removing the subject contractor's name from ***all automated purchase systems***. If the removal is accomplished, one contracting officer at each affected activity shall notify the contractor that the contractor has been removed from ***the systems*** and a report recommending the contractor's suspension or debarment has been submitted to HQ DLA. The notice shall include a brief summary of the reasons for the recommendation. Through Counsel at the activity, each affected activity shall notify the General Counsel, by telephone when the contractor is removed from ***automated purchase systems***. For ***simplified acquisition*** purchase procedures, for other than ***automated purchase systems*** see subparagraph (c)(3) below.

(c) Prior to a determination whether to suspend or debar a contractor recommended for debarment or suspension, if the subject contractor submits an offer that is otherwise in line for an award, the cognizant contracting officer will review the fact sheet furnished pursuant to 9.406•3(a)(ii)(90)(A) below and any other supporting data that the contracting officer deems relevant.

(1) After review of the fact sheet and supporting data, if the contracting officer proposes to award the contract to the subject contractor, the contracting officer, through local counsel, shall coordinate with the General Counsel, prior to making the award.

(2) After review of the fact sheet and supporting data, if the contracting officer determines that the contractor is not responsible, the contracting officer shall notify the contractor of the determination in writing, advise the contractor that a recommendation to suspend or debar the contractor has been forwarded to HQ DLA, and provide to the contractor a brief summary of the reasons for the recommendation and for the determination of nonresponsibility. In addition:

(i) If the contractor is a large business, the contracting officer shall proceed with award to the next low responsible offeror that has submitted a responsive bid or technically acceptable proposal.

(ii) If the contractor is a small business concern, the contracting officer shall include with the FAR 19.602•1(a)(2) referral to the Small Business Administration a copy of all elements of the report required by DFARS 209.406•3(a)(ii) and 9.406•3(a)(ii)(90) of this directive that would be releasable directly to the contractor.

(3) If a contractor inquires as to the status of a quote it submitted under simplified acquisition procedures other than ***by automated purchase systems***, advise the contractor that a recommendation to suspend or debar the contractor has been forwarded to HQ DLA whenever the facts supporting the recommendation are the basis for rejecting the contractor's quotation. Provide the contractor a brief summary of the reasons for the recommendation.

(4) The contracting officer, through local Counsel, shall coordinate by telephone with the General Counsel, actions to be taken under subparagraphs (2) and (3) above.

(91) Review of files for potential claims and additional remedies.

(a) When a DLA contracting office learns that a contractor has been suspended, debarred or proposed for debarment, or a report has been submitted pursuant to DFARS 209.406•3(a) recommending debarment or suspension, the activity's records shall be reviewed to determine whether the activity has current or has had past contractual relationships with the contractor or its affiliates and, if so, whether the Government may have any basis pursuant to those relationships for recovery of damages from, or other claims against, the contractor.

(b) If a DLA activity determines that there may be such a basis, information stating the factual basis in as much detail as practical shall be forwarded promptly to the General Counsel.

9.405•1 Continuation of current contracts.

(90) Authorization for novation of a contract or change of name agreement held by a contractor debarred or suspended by any Federal executive agency or proposed for debarment by any DoD component shall be coordinated with the DLA SACI through local counsel, prior to such authorization.

9.406 Debarment.

9.406•3 Procedures.

(a)(i)(90) Reports based on indictments or convictions.

(A) Submit reports recommending suspension based upon an indictment or criminal information to the General Counsel, within 2 weeks of the date of indictment or information and include a copy of the indictment (signed, with docket number and date).

(B) For purposes of recommending debarment based on a conviction, submit the report within 2 weeks of the date of sentencing. Include a copy of the judgment/conviction order.

(a)(ii)(A) The activity contact point shall be an attorney in the Counsel's office of the DLA activity submitting the report.

(a)(ii)(90) In addition to the information required by DFARS 209.406•3(a)(ii), include the following:

(A) A brief fact sheet setting forth the essential reasons for the recommendation to suspend or debar.

(B) The name of the investigative agency, or agencies, if any, that investigated either the facts reflected in the report or other aspects of the contractor's business dealings with the Government.

(C) Available Dun & Bradstreet reports on the subject contractor, including the Dun & Bradstreet Government Activity Report, and the DUNS (Dun & Bradstreet) number of the subject contractor, if available.

(91) When the basis for debarment or suspension is nonperformance, untimely performance, unsatisfactory quality or production performance, noncompliance with contract terms, or any other cause under FAR 9.406•2 (b), include an explanation of previous contract steps taken to protect the Government's interest (e.g., termination for default, determinations of nonresponsibility) or an explanation of why such steps were not taken.

(92) When preparing a report pursuant to DFARS 209.406•3(a), contact the cognizant DCMD(s) to obtain the information required by DFARS 209.406•3(a)(ii)(F). If DCMD records reflect contracts with other DLA contracting offices, notify those other DLA contracting offices of the proposed recommendation and furnish them and the DCMD(s) the information upon which the report will be based. State in the report that this intra•agency coordination has been accomplished, list the DLA activities contacted, and summarize the information exchanged.

(a)(iii) The report required by DFARS 209.406•3(a) shall be signed by the contracting officer and submitted in duplicate by the Commander of the PLFA recommending activity to the General Counsel, HQ DLA. Designate the report "For Official Use Only," unless the contents of the report warrant a security classification.

(a)(iii)(90) When a report recommending debarment or suspension is forwarded to the General Counsel, distribute copies of the fact sheet described in 9.406•3(a)(ii)(90)(A) to contracting personnel at the recommending activity assigned to commodities for which solicitations are likely to result in offers from the contractor identified in the report and to other DLA activities identified pursuant to (ii)(92), above.

(c)(6) The effect includes the possibility that a preaward survey evaluation factor may be applied to offers from the debarred source for the period of time specified in 9.106•1(a)(1) after the debarment is no longer in effect (see 15.605-90).

9.406•90 Procedures for debarments based on poor performance.

(a) Policy. Debarment reflects a business judgment about a contractor's trustworthiness, commitment, and capability to successfully perform Government contracts. The debarment regulations recognize two general bases for debarment •• fraudulent or other seriously improper conduct suggesting that a contractor cannot be trusted to fulfill its contractual obligations and poor performance suggesting an inability to fulfill contractual obligations. Responsibility for managing the DLA Fraud Program has been assigned to the General Counsel. Thus, in those instances where suspected criminal misconduct provides the basis for debarment action, the responsibility for initiating action to ensure that a debarment report is forwarded to HQ DLA for further action lies primarily with local counsel. Conversely, where poor performance is to be relied upon as a basis for debarment in accordance with FAR 9.406•2(b), the responsibility for ensuring that action is taken to initiate debarment proceedings lies primarily with the cognizant contracting officer.

(b) Referral. The contracting officer, together with the other members of the contracting team, must initiate timely, effective action to ensure that the Government's business interests are protected when a contractor's action or inaction threatens successful contract performance. The contracting officer is responsible for ensuring that contracts are awarded only to responsible contractors with a high likelihood of being able to successfully perform in accordance with contract terms and conditions. Contracting officers are also responsible for making effective use of available contract remedies, including action to terminate contracts for default and recover for damages suffered, and pursuing extra•contractual remedies, such as debarment of poor performers, where the Government's business interests are at risk. In accordance with the procedures contained in subparagraph (c) below, the cognizant contracting officer will refer to local counsel those instances of contractor nonperformance that are so serious as to justify consideration of possible debarment action.

(c) Decision•making process.

(1) Before referring a particular contractor to local counsel for possible preparation of a debarment report, the cognizant contracting officer must be able to document the poor performance which will form the basis for a debarment recommendation. The contracting officer must also be able to demonstrate why debarment is the only reasonable alternative available left to the Government. Efforts by the Government to protect its interests by less severe measures (e.g., changing the point of acceptance, suspension of progress payments or placing the contractor on the local contract award checklist) must be clearly identified. While debarment decisions are based on a determination of a contractor's present responsibility, detailed knowledge of that contractor's performance history and record including actions taken by the Government is critical to the debarring official's determination. Referrals to local counsel should include all current information necessary to support the business decision that is to be recommended to the DLA SACI. The contracting officer should be prepared to update the information provided once the debarment process is underway and to participate with local counsel in presenting the case to the DLA SACI.

(2) When referring a contractor to local counsel for consideration of a possible debarment recommendation on the basis of poor performance, the cognizant contracting officer shall provide:

(i) A clear identification of the contractor, including divisions, subsidiaries, and affiliates, and contractor employees, officers, and directors, specifically identifying the contractor personnel who have participated in the Government contracting process.

(ii) A detailed account of the contractor's current active contracts, recent, relevant performance history, and history of performance problems prompting the referral. While this detailed accounting of contracting performance will necessarily focus on contracts awarded by DLA, performance on other Government contracts must also be addressed. In this connection, the assigned contract administration office should be asked to provide information, as well as comments, on the action being considered.

(iii) The reasons identified for the contractor's poor performance and the action taken by the Government to protect its business interests.

(iv) A discussion of whether a debarment action directed toward a specific division, organizational element, or commodity would adequately protect the Government's interests.

(v) A discussion of the period of debarment to be recommended to the DLA SACI, supported by rationale that addresses the likelihood that the contractor will be able to take corrective actions necessary to successfully perform in the future.

9.407 Suspension.

9.407•3 Procedures.

(c)(4) The effect includes the possibility that a preaward survey evaluation factor may be applied to offers from the suspended source for the period of time specified in 9.106•1(a)(90)(1) after the suspension is no longer in effect (see ***15.304(c)(95))***.

PART 10

MARKET RESEARCH

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10.001 Policy.
10.002[A67] Procedures.

10.001 Policy.

(a)(2)(iii) Generally, DLA activities will not delay the instant acquisition to conduct market research when the estimated dollar value is less than the simplified acquisition threshold, ***(SAT)***[f68], unless the contracting officer determines it is cost•effective to do so***, or unless a bundling analysis must be performed pursuant to FAR 10.001(a)(2)(iv). Note that acquisitions valued below the SAT are automatically reserved and set aside exclusively for small business concerns, unless the contracting officer does not have a reasonable expectation that two or more small businesses will submit competitive offers. Therefore, unless there is an exception to the set-aside requirement, or it is withdrawn or dissolved because small businesses failed to offer, bundling analysis shall not be required below the SAT. In case of exception to or withdrawal or dissolution of a set-aside, this market research requirement can generally be satisfied by:***

- ***identifying two or three small businesses that recently provided the item or service; and***
- ***calling them to determine why they failed to respond to the request for quotations.***

If the new acquisition strategy caused them to decline to participate, additional sources should be sought, using such resources as the SADBU office and the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (http://pro-net.sba.gov/). If this subsequent step also fails to yield any small business sources, you must perform a bundling analysis.

(90[f69]***) Buying activities do not have to refer every solicitation over the simplified acquisition threshold for a full technical evaluation. Buying activities should use an incremental approach to market research, depending on what is most appropriate under the circumstances (see 10.001(a)(2)). Alternative, less extensive forms of market research could include, for example, contacting the manufacturer, contacting the technician, contacting some other source, or letting Numbered Note 26 in the synopsis notice serve as the market research (see 5.207(e)(4)).***

(a)(2)(iv) Market research must be performed before you proceed with an acquisition strategy that could lead to a bundled contract. Even if you combine services with supplies in a new strategic sourcing procurement, different from the way either was purchased before, this represents a consolidation within the meaning of the statute sufficient to trigger the market research requirement. The fact that this is a new requirement does not remove it from consideration as a bundling, if aspects or portions of it were previously performed as separate, smaller contracts. Market research must be conducted to determine whether the consolidation is necessary and justified, even for acquisitions that are ultimately found not to be bundlings. (It is not bundling, though – and does not require performance of this type of market research - when the entire requirement has been revised, as, for example, when engineering or safety studies dictate that a different part be substituted for an item previously acquired for that application. Even if only small businesses supplied the previous part, and even if only large businesses produce the new part, it cannot be considered a bundle, regardless of the aggregate size of the new requirement. That is, nobody, including any small business, would previously have performed any portion of the requirement as a separate, smaller contract.)

(a)(2)(90) The Comptroller General has stated that the specific market research techniques listed and factors to be considered (see FAR 10.002(b)(1)) reflect that the purpose of market research is to "generate a meaningful exchange of information between the agency and industry." Market research "appropriate to the circumstances" means the extent of market research that is appropriate, depending on such factors as urgency, estimated dollar value, complexity, and past experience. The FAR does not specify what circumstances agencies must consider. Buying activities should prioritize market research efforts based on anticipated benefits and cost effectiveness. Factors that buying activities may consider include, for example, problems with customer wait time and/or pricing, dollar value, volume, and the likelihood that the item or service is commercial. If market research was recently conducted and the information is still current, buying activities need not conduct additional market research; or can update previously collected market research information. (See 90.1601[f70]***.)***

(91) If an individual technical review is performed, the results will take precedence over the results of a review conducted on a group basis; this is because an individual review is a more thorough analysis, specific to the particular item or service. However, when determining if the Government's requirement can be satisfied by a commercial item, researching an item or service on an individual basis is not always required. Buying activities should use the methods described at 10.001(a)(2)(91)(A)-(C) to determine commerciality on a group basis whenever it is impracticable to conduct individual reviews, such as when adequate resources are not available or when a large number of items or services will be included on a solicitation. Buying activities should conduct commerciality reviews on a group basis whenever possible, to accelerate the pace at which items and services can be identified as commercial. Buying activities must ensure that the results of its market research efforts are entered into the Contracting Technical Data File (see DLAD 10.002(e)(90)). The contracting officer retains the authority to make the final determination of commerciality (see DLAD 12.102(90)(1)(ii)).

(A) Logical Item Groupings. Whenever possible, buying activities should identify logical groupings of items or services that can reasonably be presumed to be "commercial," or "noncommercial," and that can be identified in an automated system. Buying activities can then code those entire groups of items or services in the system, without conducting an individual technical review of each one. When there are items or services that are known to be an exception to the larger group, the buying activity can identify those and code them as a subgroup after coding the larger group; or code them individually on an exception basis as individual acquisitions arise. Examples of groupings of items that could logically be presumed to be commercial are:

(1) Items or services that use Industry Standards (ASTM, SAE, etc.) as the sole procurement document;
(2) Items described by Commercial Item Descriptions (CIDs);
(3) Items with Acquisition Method Suffix Code (AMSC) "Z," which includes commercial, nondevelopmental, and off-the-shelf items (see DFARS Appendix E, Part 2, Breakout Coding), if the contracting activity buys virtually all nondevelopmental items (such as DLA);
(4) Federal Stock Classes (FSCs) that can reasonably be presumed to be commercial in their entirety.

(B) Sampling. Acquiring large populations of items on a single contract makes it impracticable to conduct a technical review of each individual item to determine whether it meets the commercial item definition. As an alternative, buying activities can identify a sample of items that is representative of the requirement and only conduct a technical review of each of the items in the sample. When selecting a sample, buying activities should consider factors including, for example, the current stock position of the items in the sample, what percentage of the total estimated demand and the total estimated contract dollar value is represented by the sample, and the results of the individual technical reviews (e.g., what percentage of the items in the sample were determined to be commercial). Buying activities should generally combine sampling techniques with other market research methods and use sampling to verify other market research. The buying activity must be able to support the sampling technique or approach. The buying activity's rationale should identify the business risks of using the sampling technique and what was done to mitigate those risks.

(C) Computer model. J-3313 and the DLA Office of Operations Research and Resource Analysis (DORRA) have developed an adaptation of the On-Demand Manufacturing (ODM) Neural Network to identify hardware items having a very high or very low probability of being commercial. This adapted computer model can be made available for use as a market research tool and is especially useful for reviewing extremely large populations of items. Interested persons can contact anne_burleigh@hq.dla.mil, J-3311, for further information and for detailed guidance on how to properly apply the model.

(a)(2)(92)[A71] *Private-sector entities contacted during market research pertaining to FPI product comparability must be notified that information they provide will be used by the contracting officer in comparing their products in terms of price, delivery, and quality with items listed on the FPI Schedule. They must be made aware that, depending on the outcome of the comparability determination, FPI could still receive the award.*

(a)(2)(93)[A72] *To gain familiarity and knowledge of the most current capabilities of the domestic marketplace, buying activities shall conduct market research, on an ongoing basis, and to the extent practicable, to identify potential domestic sources for acquisitions to which DFARS 225.7002-2(c) and/or FAR 25.104(a), Nonavailable Articles, apply.*

(a)(3)(iv)(90) The contracting officer, not the offeror or contractor, has the authority to determine what constitutes customary commercial practice for the item or service being acquired. The contracting officer may consider a requirement in an agency solicitation to be consistent with customary commercial practice when market research indicates it is at least sometimes used in the commercial marketplace for items or services that are the same as or similar to the ones being acquired by the agency. A business practice does not have to be used by the majority of trading partners in an industry to be considered customary commercial practice. If even one company in a market has repetitively used a particular practice with a significant number of trading partners in that market, the contracting officer can consider that practice to be a customary commercial practice.

(91) To meet the market research standards affirmed by the Comptroller General (see 10.001(a)(2)(90)), buying activities must ensure that any solicitation requirement that may be inconsistent with commercial practice is specifically discussed at a preproposal conference; highlighted by a notice in the solicitation; or otherwise identified to prospective offerors in a manner that generates a "meaningful exchange of information." The GAO has found that –

(A) When conducting an acquisition under FAR Part 12, buying activities cannot rely on the fact that industry representatives have not objected to a solicitation requirement as an indication that the requirement is consistent with customary commercial practice. Silence from prospective contractors is not an acceptable substitute for the agency's obligation to conduct appropriate market research to confirm customary industry practice concerning a proposed solicitation term.

(B) If a buying activity includes a requirement in a solicitation and subsequently determines it is not consistent with customary commercial practice, the buying activity must either remove the requirement (see FAR 15.206) or execute approval of a waiver pursuant to FAR 12.302(c). The FAR does not prohibit granting a waiver following the issuance of the solicitation.

(92) Contracting officers may use an incremental approach to determining the level of market research that is appropriate for the particular acquisition. When it is not cost effective to conduct an extensive amount of market research to determine what commercial practices are available that could potentially replace Government requirements, contracting officers should include previous solicitation requirements, to ensure that the Government's needs are met. These requirements could include, for example, in-process inspection, special packaging, or Government marking. If offerors challenge a solicitation requirement, the contracting officer must research it more extensively at that time, but still only to the extent appropriate to the circumstances. For more complex buys when it is appropriate to conduct more extensive market research, contracting officers may identify to prospective offerors those solicitation requirements (1) with previously existing blanket waivers or other regulatory authorization; (2) that the contracting officer has identified as consistent with customary commercial practice for the item or service being acquired; and (3) that the contracting officer has identified as inconsistent with customary commercial practice and for which a waiver has been obtained. Contracting officers should then solicit industry input, revise the solicitation as appropriate, and obtain additional waivers when needed. When market research appropriate to the circumstances has not indicated a solicitation or contract requirement is inconsistent with customary commercial practice, the contracting officer may elect, at his or her discretion, to obtain a waiver documenting the need for the requirement, in the event it is later determined to be inconsistent with customary commercial practice. To support their market research, buying activities must maintain documentation appropriate to the size and complexity of the acquisition.

(c)(2) The procuring activity, at least 30 days prior to solicitation issuance for a bundled requirement, must notify each incumbent small business concern that it intends to consolidate the requirement that the incumbent is currently filling with one or more other requirements. This cannot be fulfilled solely via Commerce Business Daily (CBD) or Federal Business Opportunities (FedBizOpps) notice, although such notice should also be provided, to facilitate small business teaming. This must be accomplished by separate notification of each affected small business: that is, of every small contractor who received an award on the last procurement for any portion of the consolidated requirement. This notice requirement also pertains to small businesses who receive award for a portion of the requirement (i.e., a separate, smaller contract) after performance of the bundling analysis, but prior to solicitation of the consolidated requirement. You may use any written medium, including FAX, e-mail, the Internet, or hard copy, to provide notice to individual contractors.

10.002 Procedures.

(a)(90) "Market" as used in the term "market research" may be confined to trade in one product, or be a group of products, and may cover a locality, a region, the United States, or be worldwide.

(91) "Market research" as defined in FAR 2.101 and exemplified in FAR and DLAD 10.002 and in Chapter 12 of the Armed Services Pricing Manual (ASPM), Volume II, includes, but is not limited to, efforts by:

(1) Technical personnel to accomplish research and analysis in connection with developing specifications and purchase descriptions (see FAR 10.002(b)(2));

(2) Technical personnel to determine the availability of commercial products to meet the Government's functional requirements (see FAR Part 10);

(3) Supply personnel to identify techniques/actions to assure or enhance supply availability and the timing and quantities for economic purchases; and

(4) Contracting and competition advocate personnel to research and develop sources (see FAR and DLAD 6.101 and 7.102).

(b)(1) Market research and analysis also involves, but is not limited to, acquiring the information cited in Chapter 12 of the Armed Services Pricing Manual (ASPM), Volume II and the following:

(90) Trends in technology, materials utilization, and industry practice including manufacturing processes, economic order quantities, production lead times, and channels of distribution.

(91) Economic and price trends and conditions, market statistics and indicators, and major policies or seasonal considerations affecting supply, past demand analysis, future demand projections, and outlook for major product categories.

(92) Compatibility with economic production runs, economic buys, industry capacity (including variations in availability of such capacity), and industry interest.

(93) Industry marketing, commercial contracting, contract financing, and pricing practices,

(94) Potential impact of acquisitions on domestic and international markets.

(95) Impediments to effective competition.

(96)[A73] ***Techniques for conducting market research to determine domestic supplier capabilities include the following:***

(i) When conditions permit, publish a "sources sought" synopsis in the FedBizOpps. The time allotted for the synopsis shall be sufficient for potential sources to respond and the contracting officer to conduct follow-up actions. However, it should be no shorter than 10 days.

(ii) Consider Sponsoring a "domestic sourcing" conference, which will bring together customers, suppliers, industry groups/trade associations, and agency personnel to address the issues that are influencing the domestic nonavailability and explore ways to resolve these challenges. Conferences could be held annually, or when needed, depending upon the circumstances. A special effort shall be made to ensure small businesses participate in such conferences.

(b)(2) Additional sources include:

(90) Academic institutions.

(91) Industry and trade associations.

(92) Business and financial periodicals, trade publications, statistical and financial service reports (e.g., Dun & Bradstreet, Thomas Register).

(93) State, county, and local governmental agencies.

(90) General. Market research to develop or enhance competition is normally conducted by buyers and competition advocate personnel, often with assistance from the local market research office, if existent. Such locally established offices should support the entire scope of local market research and analysis needs. Where a local market research office has not been established, assistance for specified market research may be requested from the local or other DLA operations research and economic analysis office responsible for providing such support.

(91) Requirements. To ensure that applicable market conditions are considered in the acquisition decision•making process, market conditions may need to be continually monitored, analyzed and forecasted (using appropriate economic theory, tools and techniques) to determine their potential impact on various elements of the acquisition plan (see FAR 7.105(b)(1)), as well as on mission performance.

(e)(90) Personnel responsible for maintaining the Contracting Technical Data File (CTDF) shall make the appropriate entries in the "COS" (Commercial Off•the•Shelf) field when items are identified as being commercial or noncommercial. ***(See 12.102(a)(90)***). DLA activities shall establish appropriate procedures to ensure that the necessary information is provided to the personnel maintaining the CTDF.

PART 11

DESCRIBING AGENCY NEEDS

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11.002 Policy.

(a)(1)(ii)(90) Agencies are responsible for determining their requirements and the best strategy for meeting those requirements. An agency's requirement is not overly restrictive of competition as long as the agency can show that its decisions are ••

(A) Based on actual experience, engineering analysis, or similar rational bases; and

(B) Rationally related to ensuring its legitimate requirements will be met.

(91) To ensure that the Government's needs are met in the most effective manner, agencies must define their requirements in terms that ••

(A) Take optimum advantage of distribution and support options, methods for assuring reliability, and other capabilities available in the marketplace that the agency determines appropriate for the type of item or service being acquired; and

(B) Exclude those items or services that cannot meet the agency's legitimate requirements.

SUBPART 11.1 • SELECTING AND DEVELOPING REQUIREMENTS DOCUMENTS

11.103 Market acceptance.

(a) Approval authority for requiring offerors to demonstrate market acceptance pursuant to FAR 11.103(a) is delegated to the contracting officer. ***When the contracting officer considers it appropriate to obtain documentation to confirm that the market acceptance criteria have been met, in addition to any documentation that may be specified in the requirements document, the contracting office may use the provision at 52.211-9001, Market Acceptance.***

(90) A market acceptance requirement is a requirement that an item must have performed in a certain way in a specified environment that approximates or reasonably relates to the agency's intended application. The use of market acceptance criteria is consistent with the definition of full and open competition in FAR Part 6 as it relates to agency needs. A market acceptance requirement may be used to establish either ••

(i) A minimum threshold or performance that will be considered a demonstration that the item has been adequately market•tested or field•proven; or

(ii) An evaluation method that awards partial credit for items that meet part of the requirement.

(b)(90) Market research provides the information from which it can be determined whether previously•developed items exist that can meet the agency's needs and what methods are used in that marketplace to assure reliability. Then it must be shown, through a careful analysis of the intended application and the marketplace capabilities available, that the optimum strategy for meeting the Government's needs is to require items that have been field•proven in specified ways.

(b)(91) When an agency requires that an item must have achieved market acceptance, the agency must specify exactly what that means in the context of the particular acquisition. The meaning will vary widely, depending upon what benefit the agency is attempting to gain by using such a strategy.

(b)(92) When an agency's primary goal is to acquire the latest technology, other methods of assuring reliability are more appropriate than market acceptance. Particularly when acquiring items in a rapidly evolving technological field over a long•term contract, an agency will not be able to demonstrate that an item that is currently field•proven would be the best item for meeting the agency's needs several years from now.

(e) The preparing activity will maintain documentation that describes the technical aspects of the item and supports the market acceptance requirement.

(1) Some examples of the type of rationale that could support requiring a market•tested item include:

(90) Minimize design and engineering risk;

(91) Eliminate costly and time•consuming field•testing and debugging of complex items;

(92) Assure an item can be fielded quickly enough to meet an urgent requirement;

(93) Assure an established end item is routinely supported by spare and repair parts;

(94) Preclude untested or experimental units; or

(95) Assure compliance with Federal safety and environmental requirements.

(2) The market acceptance requirement may be whatever can reasonably be demonstrated ••based on past experience, engineering analysis, market research and similar rational bases ••to be an indicator that the item will meet the intended application. Some examples of market acceptance criteria include requirements that an item must ••

(90) Have been announced to the public, indicating the manufacturer's commitment to produce the product;

(91) Be commercially available for delivery within a reasonable time;

(92) Be off•the•shelf, meaning that the products offered do not require substantial modification;

(93) Be in current production, meaning that the item is no longer in the design phase but is started on assembly line production with the expectation that such production will continue;

(94) Be state•of•the•art, meaning that the product is the offeror's latest version of that product;

(95) Have been previously sold to commercial or other customers, sometimes for a specified period of time or with a user base of a specified number;

(96) Have met specified reliability and performance requirements;

(97) Be supported by specified maintenance and logistics arrangements;

(98) Be the successor to a product having a specified history of sales and performance; or

(99) Meet some combinations of the above criteria.

(100)[f81] When the contracting officer considers it appropriate to obtain documentation to confirm that the market acceptance criteria have been met, in addition to any documentation that may be specified in the requirements document, the contracting office may use the provision at 52.211•9001, Market Acceptance.

SUBPART 11.2 • USING AND MAINTAINING REQUIREMENTS DOCUMENTS

11.201 Identification and availability of specifications.

(90) Contracting personnel are not authorized to make any change in the unit of issue on stock buys without approval from either technical or supply personnel in accordance with local procedures.

SUBPART 11.290 [A82]***– Bar Coding (Applicable to DSCC, DSCP and DSCR only)***

a. Except as provided in paragraph (b), insert the clause at 52.211-9008 in solicitations and contracts for material being shipped directly to a customer and shipments through a port or Container Consolidation Point to a customer (i.e., Direct Vendor Delivery). This does not apply to a “stock buy”.

b. Use of the clause is not required for:

1. Subsistence items procured through full-line food distributors (prime vendors), “market ready” type items such as fresh milk, ice cream, and other fresh dairy products, fresh bread and other fresh bakery products, and all fresh fruits and vegetables, shipped within the Continental United States (CONUS) to customers within CONUS.

2. Any item for which ownership remains with the vendor until the item is placed in designated locations at the customer location prior to issuance to the customer. Government control begins upon placement of the item by the vendor into the designated location or issuance from the designated location by vendor personnel (i.e., the vendor is required to stock bins at the customer location and/or issue parts from a vendor controlled parts room).

c. When using MIPR and non-DLA contracts, bar coding requirements should be addressed whenever possible. The lack of bar coding will not automatically preclude the use of such instruments. If a contract issued outside DLA is utilized repeatedly that doesn't have bar coding requirements, the issue should be raised with the contracting agency in an attempt to influence the decision towards the use of bar coding. Such attempts should be fully documented.

SUBPART 11.3 • ***POLICY***

11.301[f83] ***Definitions.***

"Actual manufacturer," "approved source," "critical safety item (CSI)," "design control activity," "prime contractor," and "rebranding" are defined in the clause at 52.211-9005, Conditions for Evaluation and Acceptance of Offers for Critical Safety Items.

"Alternate product" and "exact product" are defined in the provision at 52.217-9002, Conditions for Evaluation and Acceptance of Offers for Part Numbered Items

“Critical application item” (CAI), as used in this subpart, means an item that is essential to weapons performance, operation, the preservation of life, or safety of operating personnel, as determined by the Military Services.

“Surplus material[A84]*,” as used in this subpart, means new, unused material that was purchased and accepted by the U.S. Government and subsequently sold by the Defense Reutilization and Marketing Service (DRMS), by contractors authorized by DRMS, or through another Federal Government surplus program. The terms “surplus” and “Government surplus” are used interchangeably in this subpart.*

11.302 Solicitation provisions and contract clauses.

(b)(90)[A85] *DLA policy is to consider offers of surplus material in accordance with solicitation requirements and to make optimum use of surplus material when acceptance of such offers is in the best interest of the Government. This policy is intended to ensure that offers of surplus material receive consistent, timely and reasonable treatment. It is also intended to clarify DLA procedures and maximize streamlining. In all cases, surplus material accepted by the Government must conform to technical requirements in the solicitation. Proper consideration of surplus offers can significantly reduce material cost and delivery time, which benefits our customers and makes DLA a more attractive source of supply. Surplus material is usually readily available, which can make it particularly valuable for satisfying urgent requirements. The nature of our business situation demands that we prudently use the services of surplus dealers, who provide a warehousing capability that helps meet our unprogrammed demands for material. (Guidance for technical/quality specialists to complement this policy is provided in the DLA Technical Support Policy and Procedures Deskbook, Appendix L. The Deskbook can be accessed electronically at https://today.dla.mil/j-3/j-334/techsuppdeskbook.htm .)*

(b)(91) Business Unit responsibilities and procedures. (Business Units include organizations such as Application Groups, Commodity Business Units, and Product Centers.)

(i) Determine whether an offer of surplus material will be evaluated, in accordance with the criteria below (see 52.211-9003). (This does not apply unless offers of surplus material are being considered; see 11.302(b)(91)(ii).)

(A) Offers of surplus material must be evaluated when the contracting officer determines the offeror is otherwise in line for award, after adding the cost of evaluation ($200 for internal evaluation and, if applicable, an additional $500 for each Engineering Support Activity (ESA) evaluation, plus any additional fees required for special testing and/or inspection).

(B) When an offer is for a quantity less than the solicited quantity, the contracting officer must consider the $500 cost of issuing and administering more than one award (see FAR 52.214-22), unless the item manager advises the remaining quantity can be cancelled. The contracting officer must also consider the anticipated impact on the unit price of the remaining quantity, to determine the total cost to the Government; unless the unit price is not known and not reasonably obtainable by the contracting officer.

(ii) Do not evaluate offers of surplus material when the technical/quality specialist has included a statement in the Technical Guidance Information (TGI) field on the purchase request (PR) trailer advising that offers of surplus material will not be considered for the item being acquired. (See 11.302(b)(92)(iii).) The ESA must provide written notice that offers of surplus material will not be considered for specified items or categories of items, with supporting documentation in sufficient detail to demonstrate that the restriction is necessary to satisfy the needs of the Government.

(iii) Establish internal audit procedures to ensure that offers of surplus material are processed in accordance with the policy in this Subpart 11.3 and in Appendix L.

(A) Ensure that actions related to referrals, evaluations, notification of offerors, and award decisions are made in a consistent, timely and reasonable manner, in order to provide offerors with an opportunity to compete in accordance with the Competition in Contracting Act.

(B) Ensure that the following conditions, in and of themselves, are not treated as an acceptable basis for excluding an offer of surplus material from consideration:

(1) Dollar value of the acquisition;
(2) Age of the offered material;
(3) When the buy is for stock;
(4) When the offer is for less than the solicited quantity;
(5) When material is not in the original package; or
(6) Past or average Engineering Support Activity (ESA) response times, unless substantiated by data specific to evaluations of surplus offers by the cognizant ESA.

(C) For automated offers, ensure that supporting documentation provided by an offeror of surplus material is promptly distributed to the contracting officer for timely consideration.
(D) Ensure that technical acceptability of an offer of surplus material is applied only to the current procurement.

(iv) Ensure that the technical/quality specialist has considered all information provided by the offeror concerning technical acceptability of the offered surplus material. If the offer of surplus material is found to be technically unacceptable, ensure the technical/quality specialist has documented the specific technical reasons why the surplus material is technically unacceptable.

(v) Ensure that when acquiring critical safety items, offerors meet the additional requirements in 52.211-9005 (see 11.302-91).

(b)(92) Contracting officer responsibilities and procedures.

(i) Unless 11.302(b)(92)(iii) applies, insert the clause at 52.211-9000, Government Surplus Material, and the provision at 52.211-9003, Conditions for Evaluation of Offers of Government Surplus Material, as prescribed at 11.304-91(a); except that in automated solicitations these can be replaced by a statement referring offerors of surplus material to a source of information where complete conditions for evaluation are detailed (e.g., "Offerors of Surplus Material – See EBB Sign-On Instructions"). When acquiring critical safety items, also follow 11.302-91.

(ii) When use of a warranty provision is desired and offers of surplus property will be considered, incorporate a warranty clause as prescribed in FAR Subpart 46.7 or DFARS 46.7, to ensure that warranty provisions are applied to all contractors, whether manufacturers or dealers and whether or not surplus material is offered.

(iii) Insert the provision at 52.211-9009, Non-Acceptability of Government Surplus Material, as prescribed at 11.304-91(b), when the TGI field on the purchase request (PR) trailer sheet indicates that offers of surplus material will not be considered for the item being acquired (see 11.302(b)(91)(ii)).

(iv) When it is determined in accordance with 52.211-9003 that an offer of surplus material is in line for award, promptly refer the offer to the technical/quality specialist for a determination of technical acceptability. Do not hold up the technical referral while waiting for another offer or another offeror's supporting documentation. Include in the technical referral the completed 52.211-9000 and all supporting documentation provided by the offeror. While it is preferred that an offeror fill out the clause completely, failure to provide all information is not a basis for automatic rejection of the surplus offer. (For critical safety items, also include a copy of 52.211-9005 and supporting documentation provided by the offeror. See 11.302-91.) Provide all relevant information that will help the technical/quality specialist prioritize the evaluation. Such information includes, but is not limited to, the following: the priority or urgency of the requirement, whether backorders exist, anticipated savings in unit price and/or delivery time if the surplus offer is approved, whether there are other sources, if the surplus offer is the only offer received, etc.

(v) If the technical/quality specialist advises the material is technically acceptable, award can be made to the offeror of surplus material; except that award must not be made to a surplus offeror who is no longer in line for award (e.g., due to costs for special testing or inspection requirements that would have to be included in the contract).

(vi) If the technical/quality specialist has forwarded special inspection or testing requirements, ensure that these are incorporated into the award. Contract requirements must also ensure that the Government has the right to access contractor premises and to select the surplus material to be inspected or tested.

(vii) If an offer of surplus material is determined technically unacceptable, the technical/quality specialist must provide supporting documentation that cites specific reasons why the material is technically unacceptable. Promptly notify the offeror that the offer was rejected (see 11.302(b)(92)(xi)(C)).

(viii) If the data provided by an offeror of surplus material are determined to be inadequate, the technical/quality specialist must provide supporting documentation that cites specific reasons why the data are inadequate. Promptly notify the offeror that the offer of surplus material will not be evaluated (see 11.302(b)(92)(xi)(B)(1)); or, if the contracting officer determines it is in the best interest of the Government, the offeror may be given an opportunity to provide the additional data (11.302(b)(92)(xi)(A)). The request for additional data may be made by the contracting officer or technical/quality specialist, orally or in writing. If the technical/quality specialist is to contact the offeror, the contracting officer's coordination must be obtained.

(ix) If the item being acquired is otherwise procurable and the item manager does not concur in forwarding the surplus offer for ESA review or re-evaluation, the technical/quality specialist must advise the contracting officer and forward the item manager's rationale why the surplus offer will not be forwarded to the ESA. (However, if the time to effect delivery from the offeror next in line for award will exceed the time to evaluate and effect delivery of the surplus material, the item manager must concur in an ESA referral.) Promptly notify the surplus offeror that the offer of surplus material will not be evaluated (11.302(b)(92)(xi)(B)(3)). Award may be made to the offeror next in line for award; however, award must not be made for a quantity that exceeds the immediate need (e.g., the backordered quantities).

(x) If the cognizant ESA does not respond to a DLA Form 339, Request for Engineering Support, within the estimated timeframe established by the technical/quality specialist in accordance with Appendix L, the technical/quality specialist must contact the ESA to determine the status of the evaluation. If the item being acquired is otherwise procurable, and the item manager confirms that the anticipated ESA response date is unacceptable, the technical/quality specialist must advise the contracting officer and forward the item manager's rationale why additional time cannot be allowed for the ESA to evaluate the surplus offer. Promptly notify the surplus offeror that the offer of surplus material will not be evaluated (11.302(b)(92)(xi) (B)(3)). Award may be made to the offeror next in line for award; however, award must not be made for a quantity that exceeds the immediate need (e.g., the backordered quantities).

(xi) When the following conditions apply, promptly notify an offeror of surplus material and provide the information as described below. Notification must be made electronically if possible and not later than upon release of award.

(A) When the contracting officer determines it is in the best interest of the Government to give the offeror an opportunity to submit additional data (11.302(b)(92)(viii)), provide specific data requirements to the offeror, provide a specific timeframe for the response to be submitted (generally 3-5 days), and advise that the offer may not be considered if the timeframe is not met.

(B) When the offer of surplus material will not be evaluated because --

(1) Data provided was inadequate for evaluation, and the offer has been deemed incomplete. Cite specific reasons why the data are inadequate. (See 11.302(b)(92)(viii).

(2) The offeror was given an opportunity to provide additional data to support its offer and failed to respond with adequate and timely information. Provide specific details to the offeror to support the contracting officer's statement(s). (See 11.302(b)(92)(viii).)

(3) The item manager does not concur in forwarding the surplus offer for review or re-evaluation, or to accommodate an extension of the ESA response time. Use the rationale provided by the item manager and provide specific reasons to the offeror why the surplus offer will not be evaluated. (See 11.302(b)(92)(ix) and (x).)

(C) When the offer of surplus material was evaluated and rejected, either locally or by the cognizant ESA, provide the specific technical reasons for the rejection.

(xii) When award is made to an offeror of surplus material, determine whether quality assurance will take place at source or destination.

(A) When the items being acquired have a critical application and award is made to an offeror of surplus material, quality assurance actions must be performed at source without exception (see 46.402(h)).

(B) If inspection will be at source, notify the quality assurance specialist (QAS), who must prepare a Quality Assurance Letter of Instruction (QALI). Advise the QAS what should be included in the QALI. All QALIs must include at a minimum:

(1) A copy of the completed clause at 52.211-9000, with instructions to verify the representations and documentation provided by the offeror. Inspection criteria must be consistent with the basis for determining the surplus material acceptable. (For example, if previous Government ownership was demonstrated by documentation other than a Government contract number, the current contract must not require the surplus material to be identified to a previous Government contract.) Inspection criteria must include special inspection or testing requirements forwarded by the technical/quality specialist, if any. (Criteria may also include dimensional inspection, if appropriate; or destructive testing, depending on the age of the material. Obtain the recommendation of the QAS to determine the need for additional criteria.)

(2) A requirement for the QAR to notify the contracting officer if, at the time of Government source inspection, the QAR is denied access to the contractor's plant or not permitted to select the material to be inspected.

(xiii) Take appropriate action, which may include cancelling the purchase order or terminating the contract for default, and assessing appropriate damages when –

(A) Surplus material tendered for acceptance does not conform to contract requirements; or

(B) The QAR advises that the contractor has refused to provide access to its plant or to permit the QAR to select the surplus material to be inspected at the time of Government source inspection.

[f86](

11.302-90 Use of approved sources.

(a) Roles of contracting officer and technical/quality specialist. The requiring Military Service provides the data to procure the correct item. The technical/quality specialist is responsible for maintaining the accuracy and currency of the technical/quality requirements and for ensuring that only approved sources are identified in the acquisition identification description (AID). (Detailed policy guidance for technical/quality specialists is provided in the DLA Technical Support Policy and Procedures Deskbook, which is maintained by the Technical and Quality Policy Division, J-334, and can be accessed electronically at http***s***://***today***.dla.mil/J-3/J-334***/techsuppdeskbook.htm***.) Contracting officers are responsible for performing all necessary actions for effective contracting. They must ensure compliance with laws, regulations, and procedures; safeguard Government interests; request and consider advice of appropriate specialists (audit, law, engineering, etc.); and exercise business judgment (see FAR 1.602-2). Contracting officers have a responsibility to ensure that the selected source has the intent and capability to provide the item in compliance with the terms of the contract, including the item description; and they have broad latitude to carry out their duties. However, the contracting officer is not authorized to determine what sources should be approved and cited in the AID. Contracting officers must follow the guidance at 11.302-90(c) to determine when pre-award referral to the technical/quality specialist is required to ensure that a prospective contractor is technically acceptable.

(b) Prior procurement history not an indication of current source approval. When a previous manufacturing source is listed in the prior procurement history, this does not mean that the source is currently an approved source. A manufacturing source is not an approved source unless it is currently identified in the acquisition identification description (AID). If an offer is received from a manufacturing source that received one or more awards in the past but is not currently cited in the AID, the contracting officer must refer that offer to the technical/quality specialist for approval prior to making an award. Procurement history cannot be relied on to indicate that a manufacturing source is currently approved. For example, the previous award to the prior manufacturing source may have been made in error; the prior manufacturing source may have been approved for an earlier revision of the item but may no longer be approved for the latest revision; or parts made by the previous manufacturing source may have been defective, and the approved source cited in the AID or the Military Service Engineering Support Activity (ESA) may have revoked its approved status.

(c[A87]) Pre-award approval/referral requirements. (i) Contracting officers must acquire the item cited in the AID (i.e., an exact product) from the source(s) cited in the AID (i.e., an approved source); unless an exception is authorized in agency policy, or pre-award approval has been obtained from the technical/quality specialist. DLA policy is outlined in the table below. The table specifies when the contracting officer may proceed with the current award; or when the contracting officer is required, prior to award, to refer the offer to the technical/quality specialist and the ESA, and/or obtain approval of the award at one level above the contracting officer. Even when not required, contracting officers are responsible for obtaining technical, legal, or other advice whenever needed; therefore, contracting officers always have the discretion to go to the technical/quality specialist, the Office of Counsel, or other appropriate experts. (See 11.302-91 for additional procedures that apply to NSNs identified as CSIs.)

TYPE OF OFFER	CRITICALITY OF ITEM	CONTRACTING OFFICER (CO) CAN AWARD?	REQUIRES REFERRAL TO TECH/QUAL.?	REQUIRES APPROVAL FROM ESA?	AWARD REQUIRES APPROVAL ONE LEVEL ABOVE CO?
Approved Source	Noncritical or CIC Blank	Yes	No	No	No

Cited in AID Offering "Exact Product" Cited in AID	CAI	Yes	No	No	No
	CSI	Yes	No	No	Yes (Note 1)
Dealer/Distrib. (Nonmanufacturer) Offering "Exact Product"	Noncritical or CIC Blank	Yes (Note 2)	No	No	No
	CAI	Yes (Note 2)	No	No	No
	CSI	Yes (Note 3)	***Yes*** (Note 4)	No	Yes
Unapproved Manufacturing Source Offering "Exact Product"	Noncritical or CIC Blank	No (Note 5)	Yes	(Note 6)	No
	CAI	No (Note 5)	Yes	Yes	No
	CSI	No (Note 5)	Yes	Yes	Yes
Any Source Offering "Alternate Product"	Noncritical or CIC Blank	No	Yes	(Note 6)	No
	CAI	No	Yes	Yes	No
	CSI	No	Yes	Yes	Yes

Note 1 Does not apply to fully automated awards, if system only permits a fully automated award when an approved source cited in the AID is offering an exact product cited in the AID.
Note 2 Contracting officers may obtain traceability documentation prior to award; or may require suppliers to retain documentation and provide it for review at time of Government source inspection, if applicable (see 11.302-91(a)(11)) or during random or directed post-award audits.
Note 3 Contracting officers must obtain traceability documentation prior to award.
Note 4 ***Quality assurance specialist (QAS) must conduct pre-award review of traceability documentation on which quality assurance letter of instruction (QALI) will be based.*** Referral to ***QAS*** is mandatory after award to ***finalize*** QALI. (See 11.302-91(a)(11).)
Note 5 Contracting officers must obtain traceability documentation and refer offer to technical/quality specialist prior to award.
Note 6 Technical/quality specialists must follow J-334 Deskbook and local procedures to determine if ESA referral is required.

(ii) The table at 11.302(90)(c)(i) only applies to the items and types of offers shown. It does not apply to items being acquired under a fully competitive technical data package (Acquisition Method Suffix Code (AMSC) G); to offers of Government surplus material, which are addressed separately in the procedures at 11.302(b)(90)); or to other types of referrals to the technical/quality specialist, which are addressed in the J-334 Deskbook and local procedures (such as, for example, waiver/deviation requests or engineering change proposals).

11.302-91[f88] ***Management of critical safety items (CSIs). CSIs are a subset of a larger category of parts known as Critical Application Items (CAIs); CAIs are items whose failure could affect mission, performance, readiness, or safety. CSIs are parts whose failure potentially can cause loss of life, serious injury, loss of an aircraft, or significant damage to an aircraft or associated equipment. Due to the catastrophic consequences that can result if a CSI fails to conform to design data or quality requirements, DLA personnel must follow strict policy guidelines for managing and procuring these items. When the AID includes the statement, "This is a Critical Safety Item (CSI)," contracting officers must follow the guidance in the "Acquisition Requirement" which appears under the heading, "The Following Requirements Apply to Critical Safety Items" on the purchase request (PR) trailer. Technical/quality specialists must follow the "Technical Requirement" and "Quality Assurance Requirement" under the same heading and related guidance in the J-334 Deskbook.***

(a) Guidance for acquisition personnel. Contracting officers must refer to the "Acquisition Requirement" on the PR trailer, which will be continuously maintained to reflect the most current requirements for CSIs. The following DLAD guidance is not intended to be all-inclusive; it highlights the most important elements of the "Acquisition Requirement" and clarifies some procedures unique to contracting. If there is a discrepancy between the DLAD guidance and the "Acquisition Requirement" on the PR trailer, the "Acquisition Requirement" will take precedence.

(1) Acquire CSIs only from source(s) cited in the AID; or from a dealer/distributor who is offering the exact product (CAGE and part number) cited in the AID and who has furnished acceptable traceability documentation prior to award (see 11.302-90(c)(i), Note 3). Any variation from this requirement must be referred to the technical/quality specialist for evaluation. (See additional guidance at 11.302-90(c) and 11.304-90. ***For offers of surplus material, also see 11.302(b)***) Referral to the technical/quality specialist is required whenever a source not currently cited in the AID offers to manufacture an item for the Government; and for all offers of "alternate product."

(2) Review the Technical Guidance Information (TGI) field in the CTDF, where sources will be identified that have been removed from the AID pending revalidation by the ESA. Solicit these sources for the current buy. If, after evaluation of offers, one of these sources is in line for award but has not been added back into the AID, the contracting officer must refer the offer to the technical/quality specialist for review as an unapproved source.

(3) Origin inspection is required. Certificate of Conformance (COC) is not authorized, unless approved by the ESA.

(4) Refer all requests for waivers or deviations to the technical/quality specialist.

(5) Specifically withhold Materiel Review Board (MRB) authority (also see 11.304-90(c)).

(6) Refer all offers of Government surplus material that are under consideration to the technical/quality specialist for evaluation (see 11.302(b)(90)).

(7) Automated solicitations may be used to solicit CSIs, and automated evaluation may be used to select a potential awardee; however, a fully automated award cannot be made, unless the system is programmed to only permit a fully automated award to an approved source cited in the AID who is offering an exact product cited in the AID. Automated awards can only be made to sources that do not currently appear in the AID if the system is programmed to allow for manual evaluation of the documentation required in accordance with 52.211-9005 prior to award.

(8) For urgent requirements (IPG 1), generally allow 5 business days for a prospective awardee to provide documentation in accordance with 52.211-9005; generally allow 15 days for less urgent requirements (IPG 2 or 3; or buys for delivery into stock).

(9) Contract arrangements that authorize the contractor to select item sources, including, but not limited to, Prime Vendor (PV), Industrial Prime Vendor (IPV), and Virtual Prime Vendor (VPV), are not authorized for CSI items; unless contract terms will ensure that the contractor complies with agency policy requirements for CSIs, and prior approval is obtained from the DSC CSI focal point.

(10) Incorporate all quality requirements into the contract when specified (e.g., First Article Test, Production Lot Testing). Do not waive any quality requirement without referring the purchase request to the technical/quality specialist.

(11)[A89] When award is made, notify the quality assurance specialist (QAS), who will determine if a quality assurance letter of instruction (QALI) is required. If award was made to a dealer/distributor, a QALI is mandatory***; the QAS must have conducted a pre-award review of traceability documentation in accordance with the approval/review requirements at 11.302-90(c)(i) and Note 4.*** Advise the QAS what the QALI for a dealer/distributor should include, as follows:

(i) All QALIs must include the requirement to examine inventory control records, to establish that items offeror proposes to furnish under current award are in offeror's stock.

(ii) Specifically identify any documentation that offeror stated was unobtainable prior to award; or where a "copy" of documentation was provided prior to award, and an "original" should be examined at time of source inspection (such as, for example, documentation of quotation from approved source; or documents on approved source's letterhead (e.g., invoice, packing slip, etc.)).

(12) When multiple approved sources are identified in the AID and a long-term contract is contemplated, consider using acquisition strategies that will help maintain more than one source, if otherwise appropriate; such as, for example, split awards or multiple awards. This will also minimize the need for referrals to the ESA for revalidation, which is required for CSIs whenever an alternate source has not received an award for over 3 years.

(13) Obtain approval at one level above the contracting officer prior to making award; except that fully automated awards do not require this approval if the system is programmed to only permit a fully automated award to be made to an approved source cited in the AID who is offering an exact product cited in the AID.

(14) After award to any source other than an approved source cited in the AID, document in the Contracting Guidance Information (CGI) field in the Contracting Technical Data File (CTDF) the contract/ purchase order number and the basis for approval of award (e.g., letter from approved source identifying awardee as authorized distributor).

(15[f90]***) Carefully evaluate any post-award requests received from contractors for modifications to change a part number or anything pertaining to the representation of "exact product" in the contractor's original quote. Use the appropriate DCRL Category Code when contractors misrepresent their status as it pertains to offers of "exact product;" and provide an explanation in the "Remarks" field, so buyers on future procurements will request additional information from the vendor upon receipt of a quote or offer. Include adequate information in the DCRL "Remarks" field about how the contractor has misrepresented itself, so the buyer will know to pursue the documentation requirement. Ensure that when vendors have mispresented themselves with regard to an offer of "exact product," they are excluded from receiving any fully automated awards without a prior manual review, consistent with the policy in 11.302(91)(a)(7). In most cases, such buys must be referred to the manual buyer.***

(16) If a contractor identifies changes in its business arrangement with an approved source, in the item acquired, or in a manufacturing process/facility pursuant to 52.211-9006, notify the technical/ quality specialist. Refer documentation to technical/quality specialist, if provided by the contractor. Request that the technical/quality specialist determine if acquisition is still authorized from the contractor; if the correct item is being acquired under the contract; or if the manufacturing source is still approved, as applicable. Take corrective action as needed (issue modification, terminate contract, cancel purchase order).

(b) Requirements for business unit/management personnel.

(1) Implement internal controls to ensure compliance with this policy.
(2) Participate in periodic reviews and audits.

11.304-90[A91] Solicitation provision and contract clauses for critical safety items (CSIs).

(a) Insert the clause at 52.211-9005, Conditions for Evaluation and Acceptance of Offers for Critical Safety Items, in all solicitations and awards for critical safety items***; unless a waiver or exemption applies (see 11.304-90(d))***.

(b) Insert the clause at 52.211-9006, Changes in Contractor Status, Item Acquired, And/Or Manufacturing Process/Facility -- Critical Safety Items, in all solicitations and awards for critical safety items***; unless a waiver or exemption applies (see 11.304-90(d))***.

(c) Insert the clause at 52.211-9007, Withholding of Materiel Review Board (MRB) Authority -- Critical Safety Items, in all solicitations and awards for critical safety items***; unless a waiver or exemption applies (see 11.304-90(d))***.

(d) Waivers and exemptions to CSI policies and clauses.

(i) The DSCR Technical Oversight Office (TOO) is authorized to maintain and disseminate all information regarding exemptions/waivers from CSI policies and clauses. The TOO will maintain this information and provide electronic access on their Web site at http://www.dscr.dla.mil/vg/CriticalPartReview.htm.

(ii) Service basic ordering agreements (BOAs) may be used without issuing modifications to incorporate the DLA CSI clauses (DLAD 52.211-9005, 52.211-9006, and 52.211-9007).

11.304-91[A92] *Solicitation provisions and clause for Government surplus material.*

(a) When the clause at FAR 52.211-5 is used, insert the provision at 52.211-9003, Conditions for Evaluation of Offers of Government Surplus Material, in solicitations; and the clause at 52.211-9000, Government Surplus Material, in solicitations and contracts; unless –

(1) Offers of surplus material will not be considered (see 11.304-91(b)); or

(2) A long-term contract is contemplated, in which case, insert 52.211-9000 in the solicitation only. If offers of surplus material are received, those NSNs should be removed from the long-term contract and processed separately. Government surplus material may be used in contract performance when the contracting officer has authorized its use (see FAR 52.211-5). If the contractor proposes use of surplus material, the contracting officer should provide 52.211-9000 for completion by the contractor at that time.

(b) Insert the provision at 52.211-9009, Non-Acceptability of Government Surplus Material, in solicitations when offers of surplus material will not be considered (see 11.302(b)(92)(iii)).

SUBPART 11.4 • DELIVERY OR PERFORMANCE SCHEDULES

11.401 General.

Absent locally coordinated operating procedures, contracting personnel will not change production leadtimes or customer required delivery dates without prior coordination with the inventory manager and industrial specialist.

11.401•90 Extended contracting delays.

The contracting office shall immediately notify the item manager when extended delays in contract award are anticipated and, when possible, also advise of the length of delay in the proposed delivery schedule.

11.402 [A93]Factors to consider in establishing schedules.

Contracting officers shall ensure that delivery or performance schedules are realistic and meet customer requirements. When establishing a contract or delivery schedule, consideration shall be given to applicable factors in accordance with FAR 11.402(a) which includes urgency of need, industry standards, market conditions and transportation time.

11.402-90 Uniform Materiel Movement and Issue Priority Systems (UMMIPS) time standards

Contracting officers must ensure that planned Direct Vendor Delivery (DVD) contracts comply with UMMIPS time standards for requisition processing to the maximum extent practicable as promulgated in DoD Materiel Management Regulation DoD 4140.1-R, Appendix 8 (http://superreg.lmi.org/supreg/ap08wkg.htm). When cost considerations for obtaining UMMIPS timeframes prove not to be justifiable or are impractical, contracting officers should consider other alternatives such as: 1) obtain and use DVD support for only those lower requisition priorities for which UMMIPS can be met and use stock support for high priority requisitions; 2) contract for stock only. These business decisions must be fully supported by an economic analysis, Business Case Analysis or Vendor Stock Retention model analysis, where applicable, in accordance with PROCLTR 03-01.

In certain cases the inclusion of a "desired and required time of delivery" provision may be helpful in determining the costs as well as the vendors' ability to deliver rapidly. Consideration must be given to other factors including, but not limited to, those in the FAR reference listed above, in conjunction with the VSRM when developing the required BCA. For example, there are suppliers that consistently deliver a high percentage of their contract line items rapidly; yet, delivery may exceed UMMIPS standards. If the additional time results in reduced prices and improved supply availability, this may be a situation where DVD is appropriate. In such cases the analysis and determination should be well documented.

11.402-91 Appropriate exclusions for applying UMMIPS standards.

There are legitimate exceptions to the policy on UMMIPS standards for DVD contracts. Contracting officers should recognize the following as examples of appropriate exclusions from UMMIPS standards:

1) Planned DVD contracts for kits used by maintenance depots.
2) Planned DVD items for commercially available items (household/general purpose items only) where the vendor can support a contract delivery date not more than 3 days greater than the UMMIPS Total Order-to-Receipt Time (TORT);
3) Planned DVD contracts for a specific customer requiring support that is less demanding than the UMMIPS standards;
4) Planned DVD contracts for part numbered items (those with no NSN).
5) DVD contracts/orders for non-stocked items (Acquisition Advice Code (AAC) "J" which is not stocked, centrally procured non-stocked items). Although UMMIPS guidelines do not apply to this type of support, expedited delivery is still a critical requirement for non-stocked high priority requisitions. DVD arrangements must recognize urgency of need, item criticality, and weapon system coding, if applicable. Both Administrative Lead Time and Procurement Lead Time must be minimized.

The above exclusions do not apply to support for items assigned AAC D (DOD Integrated Materiel-Manager (IMM) stocked and issued) and AAC Z (Insurance/Numeric Stockage Objective item). These items must meet appropriate UMMIPS pipeline standards. DLA customers will expect support for planned DVDs as quickly as they are supported from stock. Pipeline standards for materiel delivery exclude weekends and holidays (except for requirements with RDDs 999, N_, or E_). The UMMIPS pipeline standards are Service-level targets that shall be met or improved upon whenever physically and economically feasible. Individual segment standards should not be considered inviolate when subsequent savings in time and improved service can be achieved.

It is recognized that several Defense Supply Centers' (DSC) order processing systems currently use Issue Priority Group (IPG) codes in assigning delivery dates - not transportation priority codes. We expect that this condition will be corrected through business system modernization efforts. Due to anticipated time and costs required to update current systems, DSCs are authorized to continue using IPG codes in assigning delivery dates until business system modernization changes are finalized.

SUBPART 11.5 • LIQUIDATED DAMAGES

11.502 Policy.

(d) Recommendations concerning the remission of liquidated damages shall be transmitted to the General Counsel.

SUBPART 11.6 • PRIORITIES AND ALLOCATIONS

11.602 General.

(a)(90) Executive Order (E.O.) 12742 implements Section 468 of the Selective Service Act (SSA). It allows for placing orders for the prompt delivery of articles or materials in support of the Armed Forces. The ***This*** E.O. provides that all regulations and delegations made under the Defense Production Act (DPA), which includes the Defense Priorities and Allocations System (DPAS) regulation, remain in effect. Therefore, whenever the DPA lapses, the DPAS will continue in effect under authority of the E.O. and the SSA as the basis for rating DoD contracts to insure preferential scheduling and priority treatment by contractors.

(c)(90) The rating authority continued in effect under E.O. 12742 also extends to food resources ***(operational rations)*** in support of troops in accordance with the Memorandum of Understanding between the Departments of Agriculture and Commerce and the determination made by the Under Secretary of Defense for Acquisition and Technology.

11.603(f)

(1) Department of Commerce (DoC) Delegation 1 to 15 CFR 700 specifies that this rating authority may not be used to support procurement of end items that are commonly available in commercial markets for general consumption, do not require major modification when purchased for approved program use, and are readily available in sufficient quantity so as to cause no delay in meeting approved program requirements. This restriction applies only to end items and is not applicable to repair parts, spares and components which by their nature do not stand alone in their intended use but are incorporated into end items. On this basis, the DLA ICPs cannot rate peacetime buys of commercial end items, unless they are not available in a timely manner which might cause an adverse impact in meeting approved program requirements. The ICPs must ensure that the DPAS officer reviews contracts for end items to verify proper ratings are applied. End items with surge and sustainment requirements for may qualify for rating eligibility even though peacetime requirements don't because of timely delivery requirements for emergencies or contingencies. When contracts have a combination of commercial and non-commercial end items on the contract, they need to specify which items are rated. A commercial item is defined in FAR 2.101.

(2) Under the DPAS regulation a person is not required to place a priority rating on an order for less than $50,000 or one half the FAR Simplified Acquisition Threshold, whichever is larger, provided that delivery can be obtained in a timely fashion without the use of the priority rating (15 CFR 700.17(f)). This does not preclude a person from rating an order under $50,000 if he chooses to do so to insure timely delivery. This threshold would also apply to the mandatory priority rating extension requirements for contractors in FAR 11.603(d)(2).

(3) Orders for eligible items placed against the various long term contracting vehicles and new business practice prime vendors/virtual prime vendors should be rated and contain a required delivery date. As a result, these orders will be considered a rated order as of the date received by the supplier, in accordance with 15 CFR 700.12(b). The basic contracting vehicle may have a rating on it, but because it does not have a specified delivery date, it is not technically considered a rated contract. It should contain a statement that orders placed against this contract will be considered rated orders. See the clause in 11.604.

11.603•90 Procedures for placement of contracts when normal solicitations fail.

(a) The following procedures, in consonance with the DPAS regulation (15 CFR 700), shall apply when industry fails to adequately respond to solicitations for supplies ***needed*** to support the Military Services as prescribed in FAR 11.603.

(1) Reserved.

(2) To be reasonably certain that the companies upon which rated orders are placed unilaterally may not legally reject the orders (see DPAS 15 CFR 700.13(b) and (c)) and to assure that the placement of a rated order is practicable, rated orders ***issued unilaterally*** shall comply with the following:

A rated order shall not be issued unilaterally to a company when a reasonable doubt exists as to its capability to produce an item***. A*** plant survey ***should be*** made by a Defense Contract Management ***Agency*** (***DCMA***) field office ***to*** determine that the company has the production capability, the financial capability, and the facilities to produce the item. The refusal of a company to permit such a survey, however, shall not alone be the basis for issuing a rated order. The ***contracting office's*** decision in such cases will be based on the best information obtainable.

(3) The rated order ***that is issued unilaterally results in*** a "forced" action which may generate complaints or objections from suppliers. Therefore, extreme caution is required to assure equitable distribution of the orders to selected individual firms. Within the limits prescribed in subparagraph (2) above, the quantity to be included in each rated order and the number of companies to be selected shall be determined in accordance with the following criteria:

(i) When a production line must be established to produce the specific item, the rated order quantity shall not be less than a minimum economical production run.

(ii) When the total contract requirement represents a minimum economical production run for only one (or a few) of the capable producers, the rated order(s) shall be issued to the company(ies) considered the most capable and on which the impact on production will be ***least adverse*** minimal.

(iii) When there are a large number of companies capable of producing the total required quantity, the most qualified companies shall be selected. The quantity placed with each company shall not exceed 20 percent of each company's total capability to produce a like or similar item during the production period, until the total quantity is covered. The 20 percent restriction may be exceeded when a company so desires. (Note: The 20 percent is applied against the company's total capability to produce the like or similar item, irrespective of whether the company has multiplant or single plant production facilities.)

(iv) When there are relatively few companies capable of producing the items, the total quantity shall be allocated among all qualified producers, regardless of the percentage of capacity utilized.

(v) Every effort shall be made in each case to spread the requirement in such a way as to minimize the overall impact on the affected industry.

(4) The price data for these rated orders ***issued unilaterally*** shall be developed using the latest published industry pricing data or the last award price, adjusted as necessary to reflect current market pricing conditions. Further adjustment of these prices may be necessary to meet a quality producer's standard, or to provide for a differential for a job shop's cost as compared with mass production costs. It should be noted that when pricing rated orders, the applicable requirements of FAR and the DFARS pertaining to cost or pricing data shall be followed.

(5) Reserved.

(6) Requirements for contract review and approval by the Executive Directorate, ***Acquisition, Technical, and Supply Directorate*** .

(i) The requirements of 1.690•6 for review and approval prior to award of certain type contracts are waived for contracts resulting from rated orders ***that are issued unilaterally***. However, such contracts for which preaward review has been waived shall be submitted to HQ DLA for a postaward review when called for by ***J-3313***.

(ii) Letter contracts still require authorization by HQ DLA in accordance with 1.690•6(g).

(7) A copy of all unilateral rated orders ***issued unilaterally*** will be forwarded to HQ DLA, ATTN: ***J-339***, at time of issue.

(8) There may be instances when suppliers refuse to accept unilateral rated orders ***issued unilaterally***. In such situations, negotiations shall be conducted at the level of the chief of the contracting office to determine whether some accommodation can be reached. If the contracting office agrees that a contract requirement is inconsistent with the contractor's regularly established terms of sale but there is no authority to waive the requirement, the matter will be referred to HQ DLA, ATTN: J-339, for resolution. If, in the judgment of the contracting office, the ***DLA*** requirement is ***valid and no agreement was reached,*** consistent with the contractor's regularly established terms of sale, but the parties disagree on the terms and conditions of the unilateral rated order (including failure to agree on a reasonable price), the contractor's written refusal, citing reasons, together with a completed DoC Form ***BXA*** ITA•999, Request for Special Priorities Assistance, shall be forwarded through established priorities assistance channels to HQ DLA, ATTN: ***J-339***, for action. It is emphasized that DoC will ***may*** not direct any company to accept a rated order when the company has proper grounds for refusing the order. Each DLA contracting office will assure that the actions and determinations described, including a physical plant survey (for exception see subparagraph (2) above) by a ***DCMA*** field office, have been accomplished prior to requesting HQ DLA sponsorship of a request for DoC special priorities assistance ***to the DoC***.

11.604 Solicitation provision and contract clause***s***.

(90) Notice to Offerors. The clause***s*** at 52.211•9002, Priority Rating, ***and 52-211-9004, Priority Rating for Various Long-term Contracts,*** shall be included as appropriate in all solicitations distributed to industry for contracting action ***and contracts,*** except for items excluded under 15 CFR 700.18(b) ***and by Delegation 1 to 15 CFR 700 for commercial end items***.

SUBPART 11.7 • VARIATION IN QUANTITY

11.701 Supply contracts.

(a) ***DESC*** is authorized to deviate from the requirements at FAR 11.701(a) and (b) and the clause at FAR 52.211•16. They may express the permissible variation in quantity of supplies as a rail car, not a percentage.

11.701•90 Procedure for closing contracts with inconsequential amounts undelivered.

The contracting officer is authorized on a case•by•case basis to consider a contract completed when an inconsequential amount not falling within the variation in quantity clause remains undelivered or, in the case of brand name subsistence or less than carload lots (LCL) of perishable subsistence items, the undelivered amount is no longer required by the using activity, provided all of the following conditions exist:

(a) Provision for payment is on a unit price basis, and the contractor advises that no further deliveries will be made;

(b) Payment is made for the units actually received;

(c) The undelivered portion is inconsequential, or in the case of brand name subsistence or LCL perishable subsistence items, the undelivered amount is no longer required by the using activity, and the cost of executing a supplemental agreement (including, but not limited to, taking termination action) is excessive in relation to the benefits to the Government from such action; and

(d) The contracting officer includes in the file a memorandum stating that no rights of the Government are being waived by this procedure, and a termination for default is not warranted. The contracting officer shall execute and distribute an SF 30, Amendment of Solicitation/Modification of Contract, as an administrative change to the contract to deobligate funds. The change shall indicate that the above criteria have been met and the contract is considered complete, and shall reference the contractor's communication which advised that no further deliveries will be made.

11.703 Contract clause.

(a) ***Defense Energy Support Center (DESC***) is authorized to use ***DESC*** clause 52.211•9F16, Variation in Quantity (DEC 1995) (DEVIATION), in lieu of FAR clause 52.211•16. Variation in Quantity, in fixed•price, indefinite•delivery type solicitations and contracts for coal. See 11.701(a).

(b) Delivery of Excess Quantities of $250 or Less. Unless there is a valid reason to the contrary, the clause set forth in FAR 52.211•17 shall be included in all contracts, purchase orders, and Blanket Purchase Agreements.

PART 12

ACQUISITION OF COMMERCIAL ITEMS

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SUBPART 12.1 • ACQUISITION OF COMMERCIAL ITEMS • GENERAL.

12.102 Applicability.

(a)(90) Part 12 is mandatory, except for the exemptions at FAR 12.102(d), if ••

(i) The Commercial Off•the•Shelf (COS) field in the Contracting Technical Data File (CTDF) is coded "Y," which indicates ***to the buyer that a technical review (either on an individual or group basis) has resulted in a preliminary determination that*** the item meets the definition of commercial item at FAR 2.101 ***(but see FAR 12.102(90)(1)) regarding the contracting officer's authority to make the final determination).***

(ii[f95]) The COS field is blank, but the item or service is clearly a type that is used by non•Government customers and that would meet the definition of commercial item at FAR 2.101;

(iii)(A) After issuance of the solicitation, the agency identifies an available item ***or service*** that will satisfy the government's requirement ***and that meets the definition of commercial item at FAR 2.101; and***

(B) ***The item, if other than the exact approved item cited in the procurement item description (PID), has been determined technically acceptable.***

(iv[f96]) A non-Part 12 long-term contracting instrument expires and a new long-term contracting arrangement will be negotiated; unless the contracting officer conducts adequate market research, seeks commercial solutions, determines FAR Part 12 is inappropriate for use, and documents the contract file appropriately (see FAR 10.001(a)(2)(ii), 10.001(a)(3)(ii), 10.002(e), and 12.101); or

(v[f97]) Simplified acquisition procedures (FAR Part 13) are being used to acquire commercial items.

(91) Part 12 cannot be used if ••

(i) The COS field is coded "N;"

(ii) The COS field is blank, but the item or service is clearly Government•unique (see FAR 10.002(d)(2));

(iii) [f98]***Only noncommercial items are being acquired; except that nondevelopmental items can compete for a requirement that was solicited under FAR Part 12 (see FAR 11.002(a)(2)(iii));***

(iv) The acquisition is conducted using an automated procurement system that (A) does not include FAR Part 12 (such as, for example, Procurement Automated Contract Evaluation (PACE)); or (B) is issuing an order against a pre-existing non-Part 12 contract;

(v) The acquisition is conducted under the Federal Prison Industries, Inc. (FPI) Program (FAR Subpart 8.6); or

(vi) The following conditions apply ••

(A) The COS field is blank;

(B) It is not clear whether the item or service is a type that is used by non•Government customers;

(C) The acquisition is below the simplified acquisition threshold (SAT); and

(D) It is not cost•effective to conduct market research (see FAR 10.001(a)(2)(iii)).

(92[f99]) When an acquisition is conducted under the Javits-Wagner-O'Day (JWOD) Program (FAR Subpart 8.7), use of Part 12 is discretionary but strongly encouraged for commercial item acquisitions. The decision whether to conduct JWOD acquisitions using Part 12 can be based on cost-effectiveness, such as automated systems capabilities or other administrative considerations.

(90)(1)***(i[f100])*** The contracting officer, not the offeror or contractor, has the ***individual*** authority ***and responsibility*** to determine if an item ***or service*** meets the definition of "commercial item" ***at FAR 2.101. The contracting officer has the latitude to employ the full flexibility of the FAR definition and the responsibility for making the best business decision appropriate to the total circumstances surrounding a particular acquisition. The statutory preference is to support commercial acquisition, unless a commerciality determination is clearly inappropriate. Contracting officers should consider whether applying commercial acquisition procedures would provide marketplace advantages resulting in lower overall costs to the Government; such as, for example, streamlined contractor proposal procedures, increased efficiencies for DLA, reduced customer wait times, increased buying leverage by joining a larger customer base, or access to improved acquisition strategies (e.g., commercial distribution systems, contractor support services, continuous upgrades, etc.) These factors should be documented in a Business Case Analysis, appropriate to the size and complexity of the acquisition. Contracting officers should not be unnecessarily restrictive in interpreting the commercial item definition. For example, the normal sales pattern of an item could be that it is sold infrequently or only to a specialized market segment, and yet the item could still be considered commercial. Contracting officers must ensure that inappropriate factors are not considered when determining commerciality. For example, a determination of commerciality is separate and independent from a determination of price reasonableness. Concerns about the future ability to determine offered prices fair and reasonable do not factor into the decision as to whether a product or service meets the commercial item definition. Issues related to quality or item criticality are also not a basis for determining commerciality. The fact that the Government has a different application for an item than the commercial application does not necessarily mean the item cannot be considered commercial. (However, the Government must minimize risk through such means as the application of quality assurance terms and conditions in the contract. For this reason, any contract requirements that have previously applied to an item should never be automatically relaxed or removed when an item is determined commercial. This is especially true for requirements involving issues such as quality, configuration control, preservation, packing, packaging, marking, etc. Therefore, in the absence of appropriate market research that demonstrates otherwise,***

contracting officers may rely on previous contracting requirements. The only exception to this is when market research has confirmed a change is appropriate; and all procedures/controls for making such a change have been followed, such as, for example, coordination with the cognizant technical/quality specialist and/or the Engineering Support Activity.) Whatever decision is made concerning commerciality, the contracting officer must be able to demonstrate that the determination is reasonable; and the determination must be documented, consistent with the size and complexity of the acquisition. If a commerciality determination is challenged, GAO considers the broad statutory and regulatory framework for defining what is a commercial item, the requirements of a specific solicitation, the substantive features of the item proposed, and the agency's contemporaneous evaluation and source selection record.

(ii) The contracting officer ***makes the final determination of commerciality but is required to*** request and consider the advice of appropriate specialists (see FAR 1.602-2(c)). ***DCMA personnel can also provide assistance in obtaining information to help support the contracting officer's determination. If a requirement includes NSNs managed by another buying activity, the contracting officer must request and consider the advice of technical specialists at the managing activity. If technical advice from the managing activity is inconsistent with technical advice from the buying activity, the contracting officer must determine the reasons for the discrepancy and document how it was resolved.*** The contracting officer is not ***generally*** required to ***conduct additional market research to confirm an entry in the commercial field in the CTDF (see 12.102(a)(90)(i)). The contracting officer may*** make a determination of commerciality ***on the basis of that recommendation, unless there is some reason to question it. Buying activities are only*** required to conduct market research ***to the extent*** "appropriate to the circumstances," in accordance with FAR and DLAD 10.001(a)(2).

(2) ***T***o meet ***paragraph (a) of*** the commercial item definition at FAR 2.101, an item must be "of a type customarily used for nongovernmental purposes" and must have been "sold, leased, or licensed to the general public" or "offered for sale, lease, or license to the general public." (See 12.102(90)(2)(i) – (iii). ***The phrase "customarily used for nongovernmental purposes" means a governmental entity is not the exclusive end user. The term "general public" does not include foreign military sales.***

(i) Invoices documenting sales to commercial customers should normally be sufficient to indicate that ***an*** item ***or service*** has been sold to the general public.

(ii) The phrase, "offered for sale, lease, or license to the general public" addresses items that are fully developed and that are ready to be made available to the general public (see 12.102(90)(2)). These could be items that were originally developed for exclusive commercial application; items that were originally developed for dual use by Government and the commercial market; or items that were originally developed for Government-unique application but for which nongovernment applications were subsequently identified and there is no reason to expect that commercial sales will not be forthcoming. Market forces are at work when a company decides to make an item available to the commercial marketplace, because that decision is based on market research indicating what the general public will demand in terms of capabilities, pricing, quality, and other criteria. To determine if an item has been offered for sale, lease, or license, the contracting officer needs evidence to indicate that the offeror or contractor makes its catalog available or otherwise markets to legitimate potential customers, appropriate to the type of item being acquired.

(iii) Knowledge that an item is in a catalog is insufficient to determine that the item is commercial, especially if the commerciality of all items included in the catalog has not been verified. The contracting officer should ask the offeror or contractor to identify to whom it markets and, if such firms are not implicitly known by the contracting officer to be legitimate customers or potential customers, ask the offeror or contractor for information on actual sales of similar items made to such customers or contact the prospective customer identified for more information to determine if the offering is legitimate.

(3[f101]) To determine that an item is commercial pursuant to one or more paragraphs of the definition other than (a), the contracting officer shall obtain appropriate documentation as necessary***, such as*** commercial product literature, technical opinion as to the effect of a modification***, etc. The following guidance addresses some of these other paragraphs:***

(i) Paragraph (b) is intended to address items that upgrade frequently, through product updates, model changes, and product improvements (for example, new versions of software). Buying activities could demonstrate that the item will be available in time to satisfy the Government requirement by, for example, obtaining an announcement documenting when the new product will be available to the public.

(ii) When making a determination under paragraph (c) of the commercial item definition, risk to the Government is lowest if the buying activity can obtain sufficient technical documentation to demonstrate direct traceability from the modified item to an item that met paragraph (a) or (b) of the definition. If that is not possible, the buying activity may attempt to demonstrate commerciality by documenting that the offeror or contractor manufactures the Government-unique items on an integrated production line, with little differentiation between the commercial and Government items. Alternatively, the buying activity may attempt to demonstrate commerciality by documenting that the Government-unique item and comparable commercial items have similar characteristics and are made with similar manufacturing processes.

(A) To support a representation that an offered item meets paragraph (c)(1) of the commercial item definition, the offeror or contractor must demonstrate that a modification is of a type customarily available in the commercial marketplace. Under paragraph (c)(1), a modification can be a "major" modification. If an offeror or contractor claims their item meets paragraph (c)(1), the buying activity must conduct appropriate market research to confirm this. Modifications made for the purpose of meeting Federal Government requirements (i.e., Government-unique modifications) are not, by definition, "customarily available in the commercial marketplace."

(B) To meet paragraph (c)(2) of the commercial item definition, the offeror or contractor must demonstrate that a modification is a minor modification made for the Government. If an offeror or contractor claims a modification is minor, the buying activity must conduct an engineering analysis and/or exercise technical judgment to confirm this claim. This portion of the definition is intended to address modifications such as Government-unique paint color; special packaging; ruggedization; and minor changes in length, diameter, or headstyle of fasteners. In making a determination whether a modification is minor, the buying activity should consider the technical complexity of the change and the degree of risk associated with it. Risk can be gauged by the extent to which a change affects the contractor's operation and the price impact of the change. For example, if the price of a modified item is significantly more than the price of the commercial item, this may indicate that the modification involves a substantial amount of risk and may not be minor.

(iii) The definition of "commercial item" includes "services" (paragraphs (e) and (f)). Paragraph (e) addresses services in support of an item that meets paragraph (a), (b), (c) or (d) of the definition. Paragraph (f) is much broader. Services are defined as commercial under paragraph (f) if they are of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. Services acquired by the Government do not have to be identical to those provided to commercial customers, if there are sufficient common characteristics between the commercial services and those required by the agency. Solicitation requirements must not individually, or in total, be of such a nature as to transform the type of services sought into something other than a commercial item. The established market price does not have to be published or written. It is a current price that is established in the course of ordinary and usual trade between buyers and sellers free to bargain and that can be substantiated by data from sources independent of the offeror. A price is based on a catalog or market price if the service being purchased is sufficiently similar to the catalog-priced or market-priced commercial service to ensure that any difference in prices can be identified and justified without using cost analysis.

(4) ***An item does not have to be developed at private expense to be commercial; except that nondevelopmental items must have been developed exclusively at private expense to be considered commercial (see paragraph (h) of the commercial item definition). Even if the Government paid for development of an item, or if an item has a military origin, a commercial market can subsequently develop for that item. The issue of who paid for development should factor into the contract negotiations but is not part of the commercial item determination.***

(5) An item does not have to be "commercially available off-the-shelf (COTS)" to meet the commercial item definition. COTS items are a subset of the broader commercial item definition. COTS items must have been sold, leased or licensed in substantial quantities in the commercial marketplace and must be offered to the Government without modification. Because of these requirements, acquisitions of COTS items are considered to involve lower risk to the Government than other types of commercial buys. The definition of COTS item does not include services, or bulk cargo (such as petroleum products).

(6) Potential indicators of commerciality. The following guidance addresses some conditions that buying activities may consider as indicators that an item or service is potentially commercial. In most cases, buying activities will need to conduct additional market research to determine commerciality when these conditions exist.

(i) Commercial sales history. Documentation of sales to commercial customers may indicate an item or service is commercial (see 12.102(90)(2)(i)).

(ii) Notices or brochures announcing new products or services. An announcement of a forthcoming product or service may indicate commerciality (see 12.102(90)(2)(ii)).

(iii) Listing in catalogs or brochures. Inclusion in a commercial catalog or brochure may indicate an item or service is commercial (see 12.102(90)(2)(iii)).

(iv) Distributors. The existence of distributors may indicate an item or service is commercial. However, the contracting officer must determine the nature of the relationship between the manufacturer and the distributor. For example, some manufacturers use a distributor to handle Government sales; this does not necessarily mean the items or services are commercial.

(v) Components of commercial end items. If an end item has been determined to be commercial, many of the components of that end item are likely to be commercial. However, every component of a commercial end item cannot be presumed to be a commercial item. For example, an end item may have a component that is unique to the Government. The end item would still meet the commercial item definition, if that component was considered a minor modification to the end item. The component itself, however, would be unique to the Government and would therefore not meet the commercial item definition. One way for the contracting officer to determine if all the components of a commercial end item can reasonably be considered commercial is to determine the basis for the commerciality determination of the end item. If an end item is a commercially available off-the-shelf (COTS) item, the contracting officer could reasonably make a determination that all the components of that end item are commercial. Generally, however, information on the end item alone will be insufficient to determine commerciality of the components, and information will be needed on the components themselves. This information could include, for example, sales and technical data. When reviewing a large number of components, commerciality reviews should be conducted on a group basis whenever possible (see 10.001(a)(2)(91)).

(vi) Prior Agency or Department determinations. When acquisition personnel have previously determined that an item or service meets the commercial item definition, buying activities should consider this a potential indicator of commerciality. The preference is to accept a prior determination of commerciality, unless there is a reason not to. However, buying activities must conduct market research, to the extent appropriate to the circumstances, to determine if a prior commerciality designation is relevant to the current buy. Some factors to be considered include the circumstances of the prior determination, the extent of market research conducted, and similarities between the current acquisition and the prior buy. Prior determinations of commerciality do not relieve contracting officers from their individual responsibility to make determinations of commerciality on current buys, based on market research appropriate to the circumstances. In some cases, previous determinations of commerciality may involve specific circumstances, and it cannot automatically be presumed the item is commercial for future buys.

(vii) Contractor/Subcontractor determinations. Only the Government has the authority to determine if an item or service meets the commercial item definition at FAR 2.101. Buying activities should consider contractor or subcontractor determinations as potential indicators of commerciality and must conduct market research to an appropriate extent to determine if such a prior commerciality designation can be applied to a current buy.

(viii) Predominantly Commercial Facilities. When buying activities have evidence that an item is produced in a facility that is predominantly engaged in producing similar items for the commercial market, this should be considered a potential indicator of commerciality. Buying activities must conduct market research to an appropriate extent to determine if sufficient documentation can be obtained on which to base a commerciality determination. It cannot be presumed that all items in a predominantly commercial facility are commercial, because some facilities produce both commercial and Government-unique items that are manufactured independently. However, products manufactured on integrated production lines with little differentiation between the commercial and Government products can generally be considered commercial.

(7) Contracts must require that additions to catalogs are subject to a determination of commerciality.

(91) If a prospective contractor offers any item other than the exact approved item cited in the procurement item description (PID), the alternate item must be evaluated for technical acceptability. Quoters or offerors must comply with the requirement in FAR 52.212-1 to provide a technical description of the items being offered in sufficient detail to evaluate compliance with solicitation requirements. When necessary, local provisions may be developed that include more specific requirements for information.

(92) The contracting officer may negotiate the Part 12 terms and conditions into the purchase order or contract when the conditions described below apply. (This is not a solicitation amendment, because all parties receiving the synopsis notice and/or the solicitation had the same opportunity to identify and offer an alternate item, including a commercial item.)

(i) The solicitation was not issued in accordance with Part 12, because the agency had not identified any commercial items that could meet the Government's need (see FAR 10.002(d)(2)); and

(ii) An item is offered that is determined by the agency to meet the definition of commercial item at FAR 2.101 and to be technically acceptable in time for award under the instant acquisition.

SUBPART 12.2 • SPECIAL REQUIREMENTS FOR THE ACQUISITION OF COMMERCIAL ITEMS.

12.204[f102] ***Solicitation/Contract form.***

(a) DLA activities are authorized to use the SF 1449 on an optional basis for all acquisitions of commercial items. This DLAD coverage constitutes a class deviation in accordance with DFARS 201.404(b)(ii). When using the authority of this deviation to conduct Part 12 buys using forms other than the SF 1449, the Part 12 terms and conditions must be applied in the same manner as if the SF 1449 were being used; and all information that would otherwise be provided on the SF 1449 itself must be included in solicitations and/or contracts (such as, for example, Method of Solicitation, i.e., Request for Quote, Invitation for Bid, or Request for Proposal). This deviation will remain in effect until Business Systems Modernization (BSM) is fully implemented. (FARS DEV 02-03)

12.207 Contract type.

(90) Indefinite•delivery contracts may also provide for economic price adjustment using a locally developed clause to set firm contract prices based on prevailing established catalog or market prices in accordance with FAR 16.501•2(c),

12.208 Contract quality assurance.

(90[f103]) Reliance on contractors' quality assurance systems is preferred. However, other quality assurance practices (such as in-process, in-plant inspection for critical application or complex items) are considered consistent with customary commercial practice when market research indicates they are at least sometimes used in the industry for items that are the same as or similar to the ones being acquired ***(see 10.001(a)(3)(iv)(90))***. When Government inspection and testing before tender for acceptance are determined necessary and cannot be considered consistent with customary commercial practices, the contracting officer may request a waiver in accordance with FAR and DLAD 12.302(c). ***When the Government needs to inspect before tender or deviate in any other way from FAR 52.212-4(a), Inspection/Acceptance, the contracting officer must tailor the solicitation/contract by attaching an addendum (see FAR 12.302(d)). If the tailoring invokes contract terms and conditions that are consistent with customary commercial practice, a waiver is not required in accordance with FAR 12.302(c). However, an addendum is still necessary to change the terms of the solicitation/contract. If FAR 52.212-4 is incorporated in the solicitation or contract reference with no addendum, the Government has only the rights explicitly stated in FAR 52.212-4(a) as written.***

SUBPART 12.3 • SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR THEACQUISITION OF COMMERCIAL ITEMS

12.301 Solicitation provision for acquisition(s) of commercial items.

(b)(2)(90) When the conditions at 13.103 and 13.104 apply, use the provision at 52.213-9004, Offeror Representations, Certifications, and Fill-in Information--Electronic Commerce, instead of FAR provision 52.212-3.

(e[f104]) *Discretionary use of FAR provisions and clauses.* ***Pursuant to FAR 12.301 and 12.302, contracting officers must use their authority to tailor the standard FAR Part 12 terms and conditions as necessary to meet the Government's needs. (For example, a catalog or market price generally includes the cost of liability or similar insurance; therefore, a contracting officer should negotiate an appropriate reduction in the catalog or market price, or tailor FAR 52.212-4(p), Limitation of liability, so the contractor is not relieved from consequential damages (see FAR 46.803***[f105]***). Also see DLAD 12.208(90) concerning how to tailor FAR 52.212-4(a), Inspection/ Acceptance.)*** Subject to the procedures in FAR and DLAD 12.302, the contracting officer may --

(90) Include other DLAD and locally developed provisions and clauses; and

(91) If necessary, make accompanying changes to the provision at FAR 52.212•1 and the clause at FAR 52.212•4.

(f[f106]) The DLA SPE has approved supplementation of the provisions and clauses in FAR Part 12 to require ***use of the following provisions and clauses, when applicable:***

(90[f107]) ***52.217-9006, Limitations on Surge and Sustainment (S&S) Investments, as prescribed in 17.9308(a), Solicitation and Contract Clauses.***

(91[f108]) ***52.212-9000, Changes – Military Readiness, as prescribed in 12.302(b)(3)(91).***

(92[f109]) The provisions and clauses below, as prescribed in FAR 16.203-4(a), 16.506(a)-(f), and 17.208(c)(1). (Alternatively, buying activities may develop local provisions and clauses for use in lieu of the standard FAR clauses when appropriate, if the activity meets the requirements in FAR 12.302.) These terms and conditions are necessary to support certain DLA business practices, including long term contracts, prime vendor arrangements, and indefinite delivery contracts.

(i) FAR 52.216-2, Economic Price Adjustment – Standard Supplies, or a clause authorized in accordance with DLAD 16.203-3;
(ii) FAR 52.216-18, Ordering;
(iii) FAR 52.216-19, Order Limitations;
(iv) FAR 52.216-20, Definite Quantity;
(v) FAR 52.216-21, Requirements;
(vi) FAR 52.216-22, Indefinite Quantity;
(vii) FAR 52.216-27, Single or Multiple Awards; and
(viii) FAR 52.217-5, Evaluation of Options.

(93) The provision at FAR 52.215-20, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, as prescribed in FAR 15.408(l); and the clause at 52.215-21, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data – Modifications, as prescribed in FAR 15.408(m).

(94[f110]) Reserved

(95) Reserved

(96) The provision at DFARS 252.209-7002, Disclosure of Ownership or Control by a Foreign Government, as prescribed in DFARS 209.104-70(b).

(97[f111]) The clause[f112] at 52.211-9005, Conditions for Evaluation and Acceptance of Offers for Critical Safety Items, as prescribed in 11.304-90(a).

(98) The clause at 52.211-9006, Changes in Contractor Status, Item Acquired, And/Or Manufacturing Process/Facility -- Critical Safety Items, as prescribed in 11.304-90(b).

(99) The clause at 52.211-9007, Withholding of Materiel Review Board (MRB) Authority -- Critical Safety Items, as prescribed in 11.304-90(c).

(100[f113]) The clause at 52.239-9000, Y2K Compliance Notice, as prescribed in 39.106(a)(92).

(101[A114]) Use of the clause at FAR 52.211-5, Material Requirements, as prescribed in FAR 11.304; and the clause at 52.211-9000, Government Surplus Material, and the provisions at 52.211-9003, Conditions for Evaluation of Offers of Government Surplus Material, and 52.211-9009, Non-Acceptability of Government Surplus Material, as prescribed in 11.304-91

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

(a) Terms and conditions that can reasonably be presumed to have application in both government and commercial markets (e.g., shipping instructions for extreme climates) may be included in solicitations and contracts for commercial items without conducting additional market research.

(b)(3) When fast payment procedures are authorized (see DLAD Subpart 13.3), contracting officers may revise the paragraph at FAR 52.212•4(i), Payment, as necessary to reflect fast payment procedures, which are authorized when specified conditions are met pursuant to the Prompt Payment Act and OMB Circular A•125.

(90) Contracting officers may delete from solicitations and contracts the portions of the provisions at FAR 52.212-3 and DFARS 252.212•7000 and the clauses at FAR 52.212-5 and DFARS 252.212-7001 that do not apply and replace them with applicable language, if any.

(91) Use clause 52.212-9000, Changes – Military Readiness, with FAR Clause 52.212-4, Contract Terms and Conditions – Commercial Items, in all contracts negotiated under Part 12. This clause provides for bilateral agreement on contract terms and conditions during normal operations, but allows unilateral changes to the method of shipment, packing, and place of delivery during contingency operations or humanitarian or peacekeeping operations.

(c) Tailoring inconsistent with customary commercial practice. Approval authority for waivers under FAR 12.302(c) is delegated to one level above the contracting officer.

(90[f115]) Contracting officers must use their authority to tailor the standard FAR Part 12 terms and conditions as necessary to meet the Government's needs (see 12.301(e)).

SUBPART 12.5 • APPLICABILITY OF CERTAIN LAWS TO THE ACQUISITION
OF COMMERCIAL ITEMS

12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(90) For the purposes of flowdown requirements pursuant to Part 12, Distribution and Pricing Agreements (DAPA) shall be treated as subcontracts (see the clauses at FAR 52.212•5(e) and 52.244•6(c)).

SUBPART 12.6 – STREAMLINED PROCEDURES FOR EVALUATION AND SOLICITATION FOR COMMERCIAL ITEMS

12.603 Streamlined solicitation for commercial items.

(a)(1) If the information necessary to prepare an offer exceeds the 12,000-character space limitation of the synopsis format (see FAR 5.207(b)(4), Item 17, Description), the information can be incorporated by referencing a source (e.g., home page or other Internet site) where the information is available for viewing.

PART 13

SIMPLIFIED ACQUISITION PROCEDURES

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13.000[A119] ***POLICY***

13.003(a) The Contracting Officer is delegated the authority to make the determination specified at 2.101, Simplified Acquisition Threshold (2), that the acquisitions are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, thereby authorizing the use of the higher SAT thresholds specified under that section. The specific authority utilized (i.e. Temporary Emergency Procurement Authority or Homeland Security Act) shall be documented in the contract file. Combining the authorities on a single procurement to take advantage of the most favorable aspects of each authority is not allowed; the requirements of whichever authority is used must be fully complied with.

SUBPART 13.1 – PROCEDURES

13.101 General.

(a)(1)(90) The Government should take advantage of quantity price breaks whenever warranted. A provision substantially the same as that at 52.213–9000***, Quantity Break,*** should be included in simplified acquisition solicitations, except where the contracting officer documents why it would serve no useful purpose. When it appears that it is in the best interest of the Government to purchase a larger quantity to take advantage of a lower unit price, the item manager should immediately be provided the details and an amendment to the purchase request quantity requested. If the item manager indicates that the quantity cannot be increased, the contracting officer shall document the contract file and purchase the original quantity.

(b)(2)(90) The provision at 52.213-9004, Offeror Representations, Certifications, and Fill-in Information--Electronic Commerce, shall be used in all solicitations below the simplified acquisition threshold issued via electronic means. It consolidates, to the maximum extent practicable, various FAR/DFARS/DLAD clauses/provisions that require the respondent/offeror to submit information to the Government prior to and

for the purpose of award. It is also intended to ensure the successful transmission and subsequent interpretation of that information within the automated processing system by means of alphanumeric coding in lieu of the "x-the-box" method of response. See also FAR 13.302-5(d).

(91)(i) When the individual FAR, DFARS, and DLAD provisions cited in provision 52.213-9004, Offeror Representations, Certifications, and Fill-in Information--Electronic Commerce, are used in solicitations issued using electronic means, the latter provision shall be used for certifications and representations, and to record and consolidate all offeror- (respondent-) provided information required by the applicable fill-in paragraphs of the cited source provisions. Although still bound by these source provisions in their entirety, offerors/contractors shall not be required to enter requested information into both the consolidated and the individual provisions. That is, their entering the requested information into 52.213-9004 shall be considered complete fulfillment of the data requirements of the applicable paragraphs of all source provisions.

(ii) The full text of source provisions used in consolidated provisions intended to facilitate electronic commerce shall be made available as follows: DLAD- or local acquisition regulation-level provisions shall be included in full text in every applicable buying activity master solicitation. If the FAR- and DFARS-level provisions are not also reproduced in full text in the master solicitation, the contracting officer shall provide a reference within the consolidated provision to an Internet location where they may be found. See 14.203-3(90).

(90) See 90.12 for the Simplified Acquisition Price Review Program.

13.106-1 Soliciting competition.

(a) Considerations.

(2) Use of best value buying procedures is encouraged in competitive purchases where they would help improve the quality of the award decisions.

(b) Soliciting from a single source.

(1) Whenever urgency of the requirement necessitates limiting competition, and precludes the use of normal automated contracting procedures, the historically lowest price source should be contacted. However, award may be placed with another source when any increased price is reasonable and consistent with the extent to which delivery is required to be expedited.

13.106-1(90)[A120] ***Solicitation and Response web (SRweb) quoting.***

The provision at 52.213-9005 shall be used in all BSM solicitations at or below the simplified acquisition threshold that are posted on the SRweb.

13.106-2 Evaluation of quotations or offers.

(b) Evaluation procedures.

(90) The procedural flexibilities described at FAR 13.103 and 13.106-2 are intended to be illustrative, not all inclusive. For example, if discussions are necessary with an offeror, contracting officers are authorized to hold discussions with one or more offerors, but need not conduct discussions with all offerors in the competitive range if such discussions are unnecessary and the procedures for these discussions are fair and equitable to all offerors.

(91[A121]***) The provision at 52.213-9006 shall be used in all BSM solicitations at or below the simplified acquisition threshold that are to be evaluated under the Offer Evaluation web (OEweb).***

13.106-3 Award and documentation.

(a) Basis for award.

(3) Contracting personnel should avoid placing orders with vendors who have a minimum order quantity/value, and/or a minimum billing/charge policy, wherever possible. In furtherance of this policy, indefinite delivery contracts (IDCs), blanket purchase agreements (BPAs), and basic ordering agreements (BOAs) shall contain a provision explicitly precluding such features. In addition, the following alternatives should be explored before placing a purchase order with a supplier that follows such practices:

(***90***) Seek to eliminate or minimize the charge. (However, when an offer is low on an individual acquisition, inclusive of minimum charge, which the offeror will not reduce or agree to remove from its offer, such offeror should receive the award.);

(***91***) When appropriate, increase the quantity of the buy; or

(***92***) Make a concerted effort to consolidate orders with other buys from the same vendor. If the foregoing efforts are to no avail, DLA contracting personnel, when writing orders with vendors having such policies, will separately identify the unit price and amount for each item ordered and the minimum billing or service charge.

(b) File documentation and retention.

(90) Data to support purchases.

(A) The price reasonableness determination shall:

(i) Be documented (including the basis thereof and other relevant information cited in the sample format in (v), below).

(ii) Address the adequacy of any price competition received for assuring price reasonableness.

(iii) Address the comparability to prior prices paid for the same or similar item, if any, and

(iv) Incorporate, attach, or reference any other analyses performed concerning the reasonableness of the award price (see FAR, this paragraph, and DFARS 217.7504), along with any source data utilized (e.g., name, date, location, and page number of contractor catalog or other reference).

(v) Sample format.

SIMPLIFIED ACQUISITION PRICING MEMORANDUM

PURCHASE REQUEST OR CALL/ORDER NUMBER: _____
ITEM NUMBER & NAME: _____

PRICE REASONABLENESS BASED ON (Check one or more):

PRICE COMPARABILITY WITH PRIOR PURCHASE PRICES (Adjusted as appropriate):
Yes _____ No _____ NA _____
Explain: _____
_____
_____

_____ ADEQUATE PRICE COMPETITION (Attach quotes/abstract) INVOLVING:
_____ ONE MANUFACTURER'S PART or ____ PARTS OF VARIOUS MFRS
Identify type competition (mfgr(s)/dealer(s)/both), competitive range of offers, etc.: _____
_____
_____

_____ COMPARISON WITH PRIOR PURCHASE PRICE(s) OF SIMILAR ITEM NAME & NO.:
_____
CONTRACT & CALL/ORDER NO._____
VENDOR_____ AWARD DATE_____
UNIT OF ISSUE_____ UNIT PRICE_____ QTY_____

EXPLAIN ADJUSTMENTS AND BASIS FOR DETERMINING PRIOR PRICE
REASONABLE: _____
_____
_____
_____

_____ COMMERCIAL CATALOG/PRICE LIST FOR:
_____ SAME ITEM or _____ SIMILAR ITEM

NAME/NUMBER_____
DATE_____ PAGE_____

EXPLAIN DIFFERENCES:_____
_____
_____
_____

_____ ESTABLISHED MARKET PRICE:

MEANS OF VERIFICATION: _____

_____ VALUE/VISUAL/COST ANALYSIS BY BUYER/USER/TECHNICAL PERSONNEL
(Attach or reference the review of technical data, examination of sample, etc.):
EXPLAIN:_____
_____
_____

_____ OTHER (Explain specific reason, e.g., valid purchase request estimate, minimum order quantity, high priority delivery, special packaging/marking, etc.):_____
_____
_____
_____

SIGNATURE OF BUYER DATE

_____ _____

(B) Pricing techniques in the absence of adequate price competition.

(i) The technique of comparing the items to a similar competitive item should offer the best assurance of fair and reasonable pricing in simplified acquisitions. In the majority of purchases over the ***micro-purchase*** threshold involving noncompetitive and non-cataloged items, this method should be used to determine price reasonableness. It is not necessary to locate an identical item or to compare every feature of the two items. Quantity, packaging, and other factors must be considered in arriving at an independent estimate of a reasonable price for the individual acquisition. Abstracts of bids maintained by the contracting office may be useful in this regard. Commercial catalogs and price lists should also be used.

(ii) When prices appearing in a contractor price list are used for determining price reasonableness, see ***15.404-1(b)(2)(iv)***.

(iii) Visual examination of warehouse samples, photographs, videotapes, drawings and/or DD Form 146, Federal Item Logistics Data Record, descriptions can be of considerable value in determining that a price is fair and reasonable. Often the actual manufacturer is revealed by this examination. Sources solicited shall include any manufacturers revealed by visual examination.

(iv) When other methods available to contracting personnel are unproductive, pricing/technical assistance should be considered for use in the buyer's ***price reasonableness*** determination.

(v) When a price reasonableness determination cannot be made via a price analysis technique, the determination may be made using one of the forms of cost analysis. When the cost analysis involves proposed, recommended, or approved forward pricing rates, factors, and/or a formula pricing methodology, see ***15.404-1(c)(90).***

13.106-90 Other solicitation issues.

(a) Evaluation of simplified acquisitions/quotations involving source inspection. The provision at 52.213 -9001, Evaluation Factor for Source Inspection, shall be inserted in ***all*** simplified acquisition solicitations. ***It shall be exercised for the acquisition of items normally requiring destination inspection (see FAR 46.402 and 46.403),*** when source inspection is ***specified*** for offerors ***under either of the following conditions: the offeror has*** a history of delivering nonconforming material on destination assigned contracts/purchases; ***or the offeror insists that inspection be performed at source, despite the Government's determination that source inspection is unnecessary.*** When source inspection is ***to be performed under either of these conditions,*** the contracting officer shall exercise the provision at 52.2 13-9001 and add ***$250*** to that offeror's quoted price. If multiple source inspections are required, the evaluation factor will be multiplied by the number of inspections required, and that figure will be added to the offerors quoted price.

(b) Evaluation of simplified acquisitions/quotations involving the conduct of preaward surveys (PASs). [This paragraph pertains only to those contracting offices that have decided, in accordance with ***15.304(c)(95)***, to use the PAS evaluation factor coverage ***therein***.] The provision at 52.215-9001, Evaluation Factor for Preaward Survey, shall be inserted in simplified acquisition solicitations and exercised when a PAS is required to determine the responsibility of prospective contractors described in ***15.304(c)(95)(A) through (F).***

(c) Disposition of unsolicited quotations.

(1) Unsolicited quotations need not be evaluated except when it is feasible and practicable to do so in order to:

(A) Satisfy the requirements of FAR 13.***104*** to provide for maximum practicable competition; or

(B) Consider alternate offers to provide competition for sole source items (also see 17.7501(b)(4)).

(2) Contracting personnel should return quotes to the offeror with an explanation of the reason(s) the quote is not being considered for award. This explanation may take the following form:

Sir/Madam:

We received your quotation but are unable to evaluate it for the following reason(s):

___ Request for Quotation (RFQ) Number or other identifying number was not included.

___ The quote did not contain the following certification requirements:

(Enter the certification requirements which are missing.)

___ The quote offers an alternate item, but evaluation data sufficient to evaluate your quote were not included. (Identify the missing data.)

___ Other. (State other reasons for returning quotation here.)

We appreciate your interest in doing business with this Center and recommend you apply for inclusion on our various solicitation mailing lists. To receive application information, you may write to the above address or call (area code/phone number).

(d) All solicitations issued under this Part, both written and oral, will be assigned a unique request for quotations number ("Q", "T", or "U" in PIIN position 9, as appropriate), to be used for the primary identification of the solicitation. While the procurement request number may be cited as an additional reference number in solicitations, it must be used in conjunction with an RFQ number.

SUBPART 13.2 – ACTIONS AT OR BELOW THE MICRO-PURCHASE THRESHOLD

13.201 GENERAL

13.201(g)(1)[A122] ***For other than Purchase Card acquisitions, the authority to make the determination that the acquisitions of supplies or services are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack is delegated to the Contracting Officer. The specific authority utilized (i.e. Temporary Emergency Procurement Authority or Homeland Security Act) shall be documented in the contract file. For Purchase Card acquisitions, the determination authority is delegated to the individual specified in DLAI 4105.3 who provides the written pre-approval when purchasing other than routine office supplies. The written pre-approval will briefly describe why the acquisition meets the requirements for the higher micro-purchase threshold authority (i.e. how it facilitates defense against or recovery from …radiological attack). Additionally, the Purchase Card Order Log shall be annotated to reflect the specific authority used***

13.202 Purchase guidelines.

(a) ***Solicitation, evaluation of quotations, and award.***

(2) A conclusion as to price reasonableness is required prior to award, regardless of dollar value. In competitive buys, review of competitive quotations and pricing history should ***normally suffice***. For non-competitive buys***, the conclusion*** may be based on comparable prior buy history or, where appropriate, a commercial catalog/price list, similar item or other price analysis technique. In the absence of any of the foregoing a price quotation from one (1) additional vendor is required.

(3) Price reasonableness verification ***(e.g., to a source document or other authority)*** is required prior to award (or call acceptance):

(90) For first-time buys.
(91) When a price is highlighted/kicked out for buyer review pursuant to a price variance check procedure in SPEDE, PACE, and other automated systems.

(b) Documentation.

(90) Award documentation shall be limited, but include:

(A) The price quote(s) received plus, for any other price(s) considered, the price, source, quantity, and effective date;

(B) The price reasonableness conclusion, in any instance where the award is to be made at a price known or suspected of being unfair and unreasonable, or where the price is not considered reasonable. (The absence of documentation of the conclusion shall be deemed as an implicit affirmation that the price was considered reasonable); and

(C) The basis/bases of the price reasonableness conclusion (e.g., catalog price, commercial off the shelf item, comparable item, etc.) for:

(i) first time buys where competitive prices were not received;

(ii) a single quote for a previously bought item is considered excessive in comparison to such prior prices(s), as adjusted for any differences in quantity, time, etc.

The absence of documentation of the basis/bases shall be deemed an implicit affirmation that the price reasonableness conclusion was based on competition received (documented per 13.202(b)(90)(A)) or on consistency of a single quote with the prior price(s).

13.270[A123] ***- Use of the Governmentwide commercial purchase card***

(a) DLA has been granted DEPSECDEF exceptions from the mandatory requirement to use the purchase card for wholesale stock fund purchases. The exceptions resulted from business cases demonstrating that introducing the manual processes associated with using the card would not be cost effective when compared to the efficiencies DLA gained from existing automation capabilities.

SUBPART 13.3 – SIMPLIFIED ACQUISITION METHODS

13.301 Governmentwide commercial purchase card.

(90) The Governmentwide commercial purchase card may be used ***as a method of purchase and/or payment*** as a method of payment for purchases and orders not exceeding the simplified acquisition threshold under existing indefinite delivery/indefinite quantity contracts, ***and*** for other contracts when the contract authorizes its use as a payment method. ***Procedural guidance on use of the purchase card is in DLAI 4105.3, DLA Governmentwide Commercial Purchase Card Program.***

13.302 Purchase orders.

13.302-1 General.

(90) Documentation of the price or cost analysis techniques as discussed at ***13.106-3(b)(90)(B)(ii) and (v)*** shall also be accomplished for awards of priced purchase orders and definitization of unpriced purchase orders (UPOs).

13.302-2 Unpriced purchase orders.

(90) ***Consistent with the intent of DFARS 217.74 t***he requirements of DFARS Subpart 217.74 and DLAD Subpart 17.74 shall be followed for all UPOs issued by DLA contracting offices.

13.303 Blanket Purchase Agreements (BPAs).

13.303-2 Establishment of BPAs.

(c)(3)(90) While BPAs may be established with Federal Supply Schedule (FSS) contractors for both non-FSS items and FSS items, a distinction between such items should be made.

(91) A BPA with an FSS contractor for non-FSS items which can be construed to cover FSS items because of a generic item description should contain a statement to the effect that the BPA excludes all items on FSSs.

(92) If it is desired to establish a BPA with an FSS contractor for items on an FSS, the agreement shall be consistent with the provisions of the applicable FSS, i.e., period of agreement, terms and conditions. The terms of the agreement should be limited to a simplification of purchasing techniques, such as placement of calls orally and provisions for submitting monthly consolidated billings.

13.303-3 Preparation of BPAs.

(a)(1) Description of agreement. The maximum aggregate amount, if any, of all calls to be issued against one BPA shall be prescribed by the HCA.

13.307 Forms.

(90) DLA Form 1224, Shipping Instructions may be used to issue automated calls made under a BPA.

(91) The SAMMS Automated Simplified Purchase System (SASPS) issues requests for quotations using DLA Form 1231, Request for Quotation.

13.390 Indefinite delivery purchase orders (IDPOs).

13.390-1 General.

An IDPO is a simplified acquisition procedure that applies indefinite delivery contract concepts to simplified acquisitions. An IDPO, when established by agreement of the contractor, establishes a standing quotation(s) from the contractor for a definite period for an indefinite quantity of supplies. However, when established as a contract, through performance undertaken by the contractor on a purchase order, an IDPO establishes a firm commitment that the contractor will perform under subsequent orders issued, at the purchase order price for a definite period for an indefinite quantity of supplies.

13.390-2 Application.

Use of an IDPO is appropriate where repetitive low dollar value purchases are made for the same item, the price of the item is expected to be stable, and expected yearly or other long–term demands are not sufficient to establish an indefinite delivery contract. The aggregate total dollar value of orders issued against an IDPO during the ordering period shall not exceed ***the simplified acquisition threshold (or $5,000,000 for acquisitions conducted under FAR Subpart 13.5).*** To establish an IDPO above $25,000 the contracting officer must satisfy the publishing requirements at FAR 5.101. Requirements shall not be split to qualify for use of an IDPO (see *FAR* ***13.003(c)***). Only one IDPO shall be established per item.

13.390-3 Ordering period.

The ordering period should not normally exceed 1 year.

13.390-4 Decision to establish an IDPO.

The decision to establish an IDPO shall be made by the contracting officer in coordination with the inventory manager.

13.390-5 Methods of establishment.

(a) Unilateral IDPO. An IDPO may be established unilaterally. When this is done, notwithstanding the fact that a vendor has quoted against the provision at 52.213-9002, the vendor, as with any unilateral purchase order quote, will not have entered into a contract that binds it to the IDPO provision for performance under subsequently issued orders. Likewise, the Government is not obligated to place subsequent orders under the IDPO provision. Effecting the purchase in this manner provides the flexibility to determine the method of purchase for a subsequent requirement (e.g., order against the IDPO, or issue a new solicitation) that is in the best interest of the Government. (Note that use of this approach does not preclude the execution of a bilateral purchase order for the basic requirement. Under this approach, however, the IDPO provision remains a unilateral offer when included in the purchase order for the basic requirement. Bilateral purchase orders may still be issued under this method for the IDPO quantities.) If this approach is used, the following applies:

(1) Publication and display. To establish a unilateral IDPO with an aggregate value in excess of $10,000 the contracting officer must satisfy the public display requirements at FAR 5.101 (post if over $10,000 and synopsize if over $25,000). The publication and display will preclude the need to publish/post subsequent orders placed under the IDPO.

(2) Solicitation provision. The provision at DLAD 52.213-9002, Indefinite Delivery Purchase Order Agreement, shall be included in solicitation documents for supplies when a unilateral IDPO is planned to be established. The solicitation shall request quotes on the basic requirement, and request that the prospective contractor state if it agrees or does not agree to accept subsequent orders within the stated quantity range at the quoted price for the current requirement specified in the Request for Quotations. The basic quantity requirement shall be within the minimum and maximum quantity range and order frequency limit included in the provision at 52.213-9002 at the time of solicitation.

(3) Evaluation and award. Quotations from offerors that do not quote against the provision at 52.213-9002 shall not be rejected as technically unacceptable. Award shall be made to that responsible offeror that submits the low, technically acceptable quotation for the basic requirement. If the price for the projected requirements is determined fair and reasonable at the time of award for the basic requirement, price reasonableness determinations need not be made for subsequent orders placed under the IDPO provision.

(b) Bilateral IDPO (purchase order with indefinite quantity terms). An IDPO may be established bilaterally. Under this approach, offerors shall be advised, by inclusion of the clause at 52.213-9003, that performance under the purchase order, by supplying the minimum order quantity (the basic order quantity), requires the contractor to provide the additional supplies specified in the clause at 52.213-9003, within the stated minimum and maximum quantities, as ordered by the designated ordering officer. Use of this approach establishes a binding contract for the IDPO, yet does not bind the Government to place orders against the IDPO. If this approach is used, the following applies:

(1) Publication. To establish a bilateral IDPO with an aggregate value in excess of $10,000, the contracting officer must satisfy the publishing requirements at FAR 5.101 (post if over $10,000 and synopsize if over $25,000). The publication will preclude the need to publish subsequent orders placed under the IDPO.

(2) Solicitation clauses.

(i) The clause at DLAD 52.213 -9003, Indefinite Delivery Purchase Order Contract, shall be included in solicitation documents when a bilateral IDPO is to be established. This clause provides that initial performance under the purchase order (by supplying the minimum purchase order quantity) obligates the contractor to provide the additional supplies, within the stated minimum and maximum quantities cited in the clause, as ordered by the ordering officer.

(ii) The clauses at FAR 52.216-18, Ordering; FAR 52.216-19, Order Limitations; FAR 52.216-22, Indefinite Quantity; and FAR 52.249-8, Default (Fixed-Price Supply and Service), shall be included in solicitations that contain the clause at DLAD 52.213-9003.

(3) Evaluation and award. A solicitation provision shall be included in RFQs that advises whether or not the Government will reject quotes as technically unacceptable from offerors that do not agree to the clause at DLAD 52.213-9003. Award shall be made, under the conditions specified in the solicitation, to that offeror that submits the low, technically acceptable quotation for either ***(a)*** the minimum requirement, or (b) the combined basic and IDPO requirements, depending on the conditions specified in the solicitation. When the award includes the IDPO clause, the price(s) for the minimum purchase order quantity and for the IDPO projected requirements shall be determined fair and reasonable at the time of award of the basic requirement.

13.390-6 Order numbering.

IDPO orders shall be numbered in accordance with the uniform procurement instrument identification numbering (PIIN) system. The initial purchase order and subsequent orders shall be distinguished by a "D" in the ninth position and a "5" in the tenth position of the PIIN. The initial purchase order shall be numbered with sub -PIIN number 0001. Subsequent orders shall be serially numbered with sub -PIIN numbers 0002 through 9999. Unless the contracting officer determines otherwise, the IDPO will be held in an open status in the SAMMS Active Contract File until the end of the ordering period or until the final payment has been made on all orders, whichever is later.

13.390-7 Contract administration.

When an IDPO is assigned to a contract administration office (CAO) for contract administration, a basic IDPO will be issued separate from the issuance of any IDPO orders. This action allows the CAO to enter basic contract information into the Mechanization of Contract Administration Services (MOCAS) system for use in processing all orders issued against that IDPO.

SUBPART 13.***4*** - FAST PAYMENT PROCEDURE

13.402 Conditions for use.

(90) The additional criteria set forth below shall be followed when determining the applicability of fast payment procedures.

(1) Depot Shipments. Requirements which are shipped to a depot and marked for stock are not authorized to use fast payment procedures.

(2) Direct Vendor Deliveries (DVDs). DVDs, including overseas shipments that go through a consolidation point and ***Foreign Military Sales requirements,*** are authorized to use fast payment procedures ***(see 25.7302•90).*** However, DVDs with source inspection ***or DVDs*** with subsistence requirements shipped through a consolidation point prior to shipment overseas are not authorized to use fast payment procedures.

(3) ***Reserved.***

(91) The ***Commander or designee*** of the ***Defense Supply Center Philadelphia*** shall review and approve all contracts exceeding $25,000 which use fast payment procedures.

SUBPART 13.5 - TEST PROGRAM FOR CERTAIN COMMERCIAL ITEMS

13.500 General.

(a)(90) Circumstances when the contracting officer may reasonably expect that quotes or offers will include only commercial items include, but are not limited to, the following:

(1) No sources of items other than commercial items are known to exist; or

(2) Sources of items other than commercial items are known to exist but are not expected to offer.

If the contracting officer reasonably expected that quotes or offers would only include commercial items but receives one or more offers of other than commercial items, the contracting officer may proceed with the acquisition under the procedures in Subpart 13.5.

(91) Contracting officers are authorized to issue purchase orders and blanket purchase agreement (BPA) calls (see FAR 13.303-5(b)(2)) in amounts greater than the simplified acquisition threshold but not exceeding $5,000,000 when the contracting officer determines, after the synopsis of the requirement, and after the evaluation of all offers or quotes in response to the synopsis, that the purchase order or BPA call is the appropriate contract vehicle. Each DLA contracting office may establish appropriate guidelines, based on the nature of the commodities it is responsible for acquiring, as to when a request for proposals may be more appropriate than a request for quotations, and may issue other guidance it determines necessary to protect the Government's interest (e.g., identifying circumstances when use of a bilateral purchase order should be considered). Each DLA contracting office shall retain BPA call limitations it determines appropriate to its automated systems and that are consistent with both the nature of the items it is responsible for acquiring and the historical pricing practices of its suppliers.

(92) Some procedures in Part 13 are expressly limited to the simplified acquisition threshold or some lower threshold, or their use is expressly superseded by a reference to differing procedures in FAR Subpart 13.5. Examples of Part 13 procedures that would not be authorized for use when conducting an acquisition under Subpart 13.5 include:

(i) Micro-purchase procedures (FAR 13.2);

(ii) Simplified justification procedures for sole source buys (FAR 13.106-1(b)(1) and 13.106-3(b)(3)(i));

(iii) Fast payment procedures (FAR Subpart 13.4); and

(iv) Imprest fund procedures (FAR Subpart 13.305).

(c) Unless Part 12 expressly provides otherwise, procedures required in other FAR parts still apply to acquisitions of commercial items, including those conducted under Subpart 13.5. Some examples include the requirements to:

(1) Synopsize proposed contract actions expected to exceed $25,000 in the Commerce Business Daily (CBD) (FAR 5.101(a)(1)); and

(2) Announce contract awards valued over $3,000,000 (FAR 5.303(a)) [$5,000,000 for DoD (see DFARS 205.303(a)(i))].

Agency and/or local requirements for review under specified circumstances also still apply, unless explicitly waived. Additionally, if an exemption applies only to acquisitions that are not expected to exceed the simplified acquisition threshold, such an exemption is not applicable when using Subpart 13.5. One example of an exception that does not apply under Subpart 13.5 is the exception from the synopsis requirement when the contract action is expected to exceed $25,000 but not expected to exceed the simplified acquisition threshold and will be made through FACNET (FAR 5.202(a)(13)). Another example is the new coverage at DLAD 7.102(91), which has been revised to require written acquisition plans for all proposed contract actions other than "those not expected to exceed the simplified acquisition threshold," instead of "those effected under FAR Part 13."

(90) Acquisitions under Subpart 13.5 cannot be conducted in the same manner as those that were formerly called "small purchases," which did not exceed $25,000 and therefore were never subject to synopsis requirements. Synopsis requirements are not waived for acquisitions conducted under Part 13 (including Subpart 13.5), and all questions or offers must be considered (see FAR 5.101(a)(1) and 13.106-2(a)(3), respectively). Therefore, acquisitions conducted under the authority of Subpart 13.5 are comparable to simplified acquisitions between $25,000 and $100,000, which also require synopsis.

13.501 Special documentation requirements.

(a) If an acquisition is conducted under circumstances that would be considered "other than full and open" if Part 6 applied, but is not conducted on a "sole source" basis, no justification and approval (J&A) is required. For example, if the exception for urgency applies but more than one source is solicited, no J&A is required. This is a different standard from the standard in FAR and DLAD Part 6, where any circumstance that is other than full and open requires a J&A. Acquisitions of commercial items described only by a single manufacturer's name and part number are sole source acquisitions and do require a J&A pursuant to FAR Subpart 13.5. When multiple manufacturers and part numbers are identified in the purchase description, the acquisition is not sole source, and no J&A is required.

PART 14

SEALED BIDDING

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SUBPART 14.2 • SOLICITATION OF BIDS

14.201 Preparation of invitations for bids.

(a) Supply and service contracts. For supply and service contracts, invitations for bids shall contain the following information if applicable to the acquisition involved. All items of information shall be set forth in the appropriate sections.

14.201•2 Part I • The schedule.

14.201•2(b) Section B, Supplies or services and prices.

(90) Pursuant to 17.203(d), a provision similar to that at 52.214•9001 should be used when item pricing of options involves separate firm fixed price and fixed price with economic price adjustment portions.

14.201•3 Part II • Contract clauses.

(90) Section I, Contract clauses. The contracting officer shall insert the clause at 52.214•9004, Subcontracting to other industrial preparedness planned producers, in solicitations and contracts whenever contracting without providing for full and open competition under the authority of FAR 6.302•3 (10 U.S.C. 2304(c)(3)).

14.201•5 Part IV • Representations and instructions.

(c) Section M, Evaluation factors for award.

(90) A provision substantially as provided at 52.214•9002, Trade Discounts, may be included in invitations for bids when appropriate. The provision advises bidders that trade discounts offered will be considered in evaluating offers for award and provides that an offered discount in excess of 2 percent will be considered as a trade or special discount, unless the offeror states otherwise. Use of such a provision will assure that the Government does not forego the benefits of intended bids of trade discounts.
(91) A provision substantially as provided at 52.214•9003, Right to Apply F.O.B. Origin Offer, may be included in invitations for bids when appropriate. The intent of the provision is to permit the Government to award f.o.b. origin offers that otherwise could not be covered in a sealed bid acquisition. Example: Items 1 and 2 are for the [f124]same [f125]product, but different item numbers are used because of the different destinations. F.o.b. origin offers are permitted. Bidders A and B bid f.o.b. origin on item 1. No bids are received on item 2. Item 1 is awarded to Bidder A. Under present conditions, item 2 would have to be resolicited. With the provision at 52.214•9000, and provided the bidder had not specified otherwise, the Bidder B offer could be applied against item 2. Assuming Bidder B's price was reasonable, item 2 could be awarded to Bidder B and the need for a resolicitation negated.

(92) Bids for incremental quantities (i.e., 500, 1000, 1500, 2000 units) or range quantities (i.e., 500•999, 1000•1499, 1500•1999 units) may be solicited provided the invitation for bids specifies that awards will be made on that quantity and price combination which is most advantageous to the Government.

14.201•8 Price related factors.

(a)(90) [This paragraph pertains only to those contracting offices that have decided, in accordance with 15.***3***04***(c)(94)***, to use this source inspection evaluation factor coverage.] The provision at 52.213•9001, Evaluation Factor for Source Inspection, shall be inserted in solicitations when the conditions at 13.10***6***(90)(a) exist. The coverage at 13.106-90(a) applies regardless of the dollar value of the acquisition.

(a)(91) [This paragraph pertains only to those contracting offices that have decided, in accordance with 15.***3***04***(c)(95)***, to use the preaward survey (PAS) evaluation factor coverage ***therein***.] The provision at 52.215•9001, Evaluation Factor for Preaward Survey, shall be inserted in solicitations and exercised when a PAS is required to determine the responsibility of prospective contractors described in 15.***304(c)(95)(A through (F)***.

14.203 Methods of soliciting bids.

14.203•3 Master solicitation.

(b)(90) Distribution of new or revised master solicitations is as follows:

HQ DLA (Executive Director, ***Acquisition, Technical, and Supply Directorate*** .....1 copy

DCMDs (ATTN: (Director, Contract Management).....3 copies each

(ATTN: Director, Quality Assurance).....2 copies each

(ATTN: Director, Program and Technical Support).....2 copies each
DCMAs (ATTN: Chief, Contract Management).....15 copies each

(ATTN: Chief, Quality Assurance).....5 copies each

(ATTN: Chief, Program and Technical Support).....2 copies each

DPROs (ATTN: Chief Contract Management).....6 copies each

(ATTN: Chief, Quality Assurance).....2 copies each

(ATTN: Chief, Program and Technical Support).....2 copies each

Defense Finance and Accounting Service: Columbus Center.....2 copies each

(b)(91) Copies of contracts forwarded to GAO shall include a copy of the master solicitation.

(90) Each applicable buying activity master solicitation shall include the full text of all DLAD and local provisions cited in, and incorporated by reference via, provisions consolidating various contractor representations, certifications, and fill-ins. See 13.104(90)(2). FAR-and DFARS-level source provisions shall also be made available as described therein.

14.203•90 Other distribution.

One information copy of each invitation for bids involving the production testing of items will be forwarded at time of issue to HQ DLA, ATTN: ***J-339*** in accordance with DLAR 4125.1, Production Testing of DLA•Managed Items.

SUBPART 14.3 • SUBMISSION OF BIDS

14.302 Bid submission.

(b)(1) Telephonic communication of a telegraphic bid shall not be acceptable. A copy of the written telegram must be received by the designated office not later than the exact time set for opening of bids.

14.303 Modification or withdrawal of bids.

(a) A telegraphic modification or withdrawal of a bid received by telephone from the receiving telegraph office shall not be considered. The guidance in 14.302(b)(1) also applies to modifications and withdrawals of bids.

14.304 Late bids, late modifications of bids or late withdrawals of bids.

14.304•90 Hand•carried bids.

Suppliers shall be notified that it is a responsibility of the bidder to place the bid in the bid depository if a bid is hand•carried. Each DLA activity shall establish procedures to ensure that Government personnel do not handle, stamp, or mark the bid envelopes prior to placement of the bids in the depository by the supplier.

(c) Determinations to cancel invitations for bids made pursuant to FAR 14.404•1 shall be in writing, shall describe the items solicited, quantities, number of bids received ***and prices***, ***and shall include*** a discussion of the basis for canceling, and why it is a compelling reason.

14.407 Mistakes in bid.

14.407•3 Other mistakes disclosed before award.

(e) The Director, DLA, acting as head of the agency, has delegated the authority to make the determinations under FAR 14.406•3(a), (b), and (d) to the General Counsel, DLA; Deputy General Counsel, DLA; Associate General Counsel, Procurement, DLA; and the Chief Counsels of the Defense Supply Centers, the Defense Reutilization and Marketing Service, and the ***Defense Distribution Center***. This authority may not be redelegated. Requests to the General Counsel to make these determinations shall be forwarded through local Offices of Counsel.

14.408 Award.

14.408•1 General.

(d) It is particularly important that copies of the award document furnished for contract administration and finance purposes include detailed information as to acceptable additions or changes made by a bidder in the bid. The award document shall include the following data to the extent applicable:

(90) A list of the items or lots accepted with the quantity, unit price, and total price of each item.

(91) An indication of the extent to which award is made on the basis of f.o.b. destination or f.o.b. origin.

(92) Any discount offered by the successful bidder, whether or not such discount was considered in the evaluation of bids.

(93) When the invitation for bids authorizes bids on the basis of brand name or equal, the brand, model, part number, and any other identifying characteristics of the item to be furnished by the successful supplier.

(94) The place of manufacture of the supplies or the performance of services awarded and the name of the supplier when different from that of the contractor.

(95) The place of inspection and acceptance and the name of the activity authorized to effect inspection and acceptance on behalf of the Government.

(96) When the invitation for bids includes the requirement for minimum size of shipments or guaranteed maximum shipping weights (and dimensions, if applicable), and award is made f.o.b. origin, see 47.305 (91).

(97) The time of delivery.

(98) The place of delivery.

(99) The place for the submission of invoices and payment.

(100) A statement that the award confirms a notice of award.

(101) A statement that the progress payment clause is a part of the contract.

(102) A provision for advance payments.

14.408•2 Responsible bidder • Reasonableness of price.

(90) When a sole responsive bid is received, and in other situations where the sealed bidding method may not have achieved competition sufficient for award at a fair and reasonable price, a price reasonableness determination shall be made based on a price analysis (see 15.***404-1(a)(90)(2)***) which is documented in the contract file.

14.409 Information to bidders.

14.409•1 Award of unclassified contracts.

(b) Notification to unsuccessful bidders should not be delayed pending preparation and distribution of contractual documents. In cases where a bidder is apparently low based on a comparison of bid price only, the notification should take the form of a letter including the specific reasons for the rejection of the lower bid. This is especially important where rejection results from a transportation evaluation, a negative preaward survey, or for any reason not readily apparent to the bidder. The following is an example of such a letter. This letter may be modified to fit the specific circumstances of the acquisition.

Sir/Madam:

Receipt is acknowledged of your bid in response to our Invitation for Bid No._____. This is to inform you that award was made to:

Contractor:_____. City _____.

State:_____. Item:_____. Price:_____.

Your interest in bidding on the requirements of this Center is appreciated; however, we were unable to make the required determination that your company is "responsible" within the meaning of that term as defined in paragraph 9.101 of the Federal Acquisition Regulation. The information upon which our decision was based was contained in a preaward survey which was issued by (insert name of appropriate activity). Further details with respect to their findings will be furnished by that activity if you so request. Your name will be retained on the bidder's list to receive future solicitations.

A letter such as the above, if complete and issued promptly, should minimize further correspondence and result in improved contractor relations.

14.90 Requests for decision by the Comptroller General.

Where a decision by the Comptroller General is desired on contracting or disposal matters such as mistakes in bids, remission of liquidated damages, reformation of contracts or other contract issues, the request will be coordinated by local counsel and forwarded to the General Counsel. Each case submitted for a Comptroller General decision will be accompanied by an administrative report which shall include a summary of the matter at issue, the recommendation of the contracting office, and all documents and information deemed pertinent to the issue.

PART 15

CONTRACTING BY NEGOTIATION

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SUBPART 15.1 – SOURCE SELECTION PROCESSES AND TECHNIQUES

15.***101-90*** Phased competition

(a) Definition - Phased competition is a risk reduction strategy that provides for the development of business approaches, systems development, etc. under contract with subsequent down-select competitions among contractors for further development or full performance within the same contract.

(b) Application - Phased competition procedures may be appropriate when state of the art solutions are sought and significant development work is required by industry. The Government must first explore existing commercial methods and determine whether commercial solutions are available or can be readily adapted to the Government problem or requirement. Where a best commercial alternative is not apparent, or where limited development and adaptation are required, early industry involvement in exploring solutions can be elicited in the presolicitation stage through several alternative approaches addressed in DLAD sections 15.201 and 35.016. However, when state of the art solutions are sought and significant development work is required by industry, reliance on either a single Government solution or an untested commercial solution increases risk for both parties. The risk for industry is that the cost of development work required to submit a proposal will not be recouped if the proposal is not accepted. Such risk reduces industry's interest and willingness to offer innovative solutions. The risk for the Government is that the proposed approach will not meet the Government's requirements or provide the optimal solution. Risk can be reduced for both parties if development and testing are accomplished under contract through the use of a phased competition. While this is the classic method used to acquire major systems, it is also an appropriate method for business practice reengineering where state of the art solutions are being sought. Before using a phased competition, the Government must carefully weigh the costs and benefits inherent in this approach.

(c) The Statement of work (SOW). Either a general statement of need or a SOW as described below may be used for the first phase of a phased competition. This is in consonance with the order of precedence established in FAR Subpart 11.1. A SOW that engages industry participation would have the following features:

(1) It addresses the current state of operations and provides insight into future operating conditions;

(2) It defines the desired business process future state in terms of the goals of the reengineering effort, and;

(3) It limits specific requirements to essential Government needs, such as systems interface requirements, etc., that must be met in the reengineered business process.

The solicitation allows offerors the freedom to propose solutions to the Government and to describe how the proposal will meet the goals of the reengineering effort. Meaningful industry dialog can help the Government to further refine both the solicitation process and the SOW.

(d) SOW for subsequent phases. Solicitations should describe the content and format for deliverables at each phase of the competition. When this procedure is followed, the contractor's proposed approach, a deliverable which may require revision during negotiations, becomes the SOW for the subsequent phase. Task orders should incorporate the contractor's proposal by reference to prevent the disclosure of the contractor's strategy to competitors.

(e) Pricing of phases. Because of the evolutionary nature of this process, the Government cannot reasonably expect industry to price each phase of development, testing, and/or implementation as of the closing date of the solicitation. Price proposals for phases beyond the initial priced phase can be obtained as deliverables under each subsequent phase of the contract when requirements for each subsequent phases are more fully defined. Under these circumstances, the SOW for the first phase should include a requirement for deliverables, such as the statement of work for contractor-proposed tasks for the second phase, and the prices proposed to accomplish this work. This procedure can be repeated in subsequent phases, as necessary.

(f) Competition. A phased competition is full and open competition where all responsible sources are afforded the opportunity to compete for the initial contract award. The competition includes the evaluation of written proposals for the first phase, and continues as the Government evaluates deliverables and performance during the subsequent phase(s). No justification and approval is required to issue task orders to continue performance in subsequent phases of a phased competition when the phases were included in the synopsis and the solicitation clearly describes the phased approach contemplated.

(g) Source selection through phased competition.

(1) During early industry involvement in this process, the Government may propose phases or work with industry to define the phases that will be used to develop, test, and implement contractual solutions for reengineering processes. Examples of phases that might be used are: concept development, proof of concept, and full implementation or production. During the first phase, the primary goal of the source selection should be to select capable contractors that have a sound understanding of the goals of the acquisition and a reasonable approach. Source selection should also consider the degree of difference in competing proposals to ensure the Government does not pay for duplicate development and testing. In the final phase, evaluation criteria should ensure that the prospective contractor(s) have sufficient background and resources to carry their proposed concept through to fruition.

(2) The SOWs for phases beyond the first phase will develop and evolve through the phased competition process. For this reason, the solicitation should generally request proposals only for the first phase. While the solicitation must include the criteria that will be used to evaluate performance and/or deliverables in each phase, the evaluation criteria for subsequent phases can be described only in general terms initially in the solicitation. However, definitized evaluation criteria must be developed and incorporated into the contract(s) before performance in the next phase is ordered. The same evaluation criteria must apply to all contractors.

(3) Contractors may be asked at any phase to recommend additional evaluation criteria for subsequent phases. However, the same evaluation factors must apply to all contractors involved in a particular phase. When contract proposals differ greatly in their approach, the evaluation factors should allow evaluation of deliverables and performance in terms of the reengineering goals. This method affords the Government the flexibility to make a comparative assessment of different solutions. If evaluation criteria based on contractor suggestions are used, Government personnel must carefully review these factors before including them to ensure their applicability to all potential solutions, and that the use of these factors would not result in favoring one contractor over another. Evaluation factors should be discerning and should elicit information that will allow the evaluators to qualitatively distinguish differences in proposals.

(4) The solicitation must clearly describe how the Government will conduct the procurement. The following types of statements must be included in a description of the procedures:

(i) The procurement uses a phased competitive approach in which the Government will evaluate deliverables and performance at the completion of each phase to determine which contractor(s) will be selected to continue into the subsequent phase(s);

(ii) Only contractors participating in the immediately preceding phase will be considered for participation in the next phase;

(***iii)*** The Government intends for performance under full implementation or production to be performed by a contractor or contractors who have tested and developed their services/products under all previous phases of competition. Offerors selected must have sound concepts and the resources and background to carry this competition through to fruition;

(iv) The Government reserves the right to make one or more awards as a result of the solicitation, and award to other than the lowest priced offeror after assessment of each offeror's technical and business proposal. The contract should also include the appropriate clauses and provisions regarding task and delivery order procedures under FAR Subpart 16.5; and,

(v) The Government reserves the right to discontinue performance at any phase of the competition.

(5) Normally, multiple awards are made for the initial phase with competitive down- selections in subsequent phases to determine the most promising contractor(s). However, if it is determined that only one of the proposals received is promising, the resulting contract should continue to allow Government evaluation of development and testing for each phase in the Government environment to manage the risk associated with a single strategy.

(h) Notification and debriefing of unsuccessful offerors/contractors. Care must be taken during debriefings to ensure no data is released that would affect the ongoing competition. The names of contractors selected should be fully disclosed at the time the initial award is made and later when subsequent orders are placed. Contractors shall be afforded the opportunity for a debriefing whenever they are eliminated from further participation in the contract. Adequate safeguards must be in place throughout all phases to protect proprietary information, trade secrets, or business confidential information, such as deliverables that will be evaluated to determine which contractor(s) will be selected to perform in subsequent phases.

(i) Contract award. The scope of each contract awarded includes the potential for orders for all phases of contract performance. Task orders will be placed for work to be performed in each phase and this contract will be used, while the contractor remains in the competition, to move through each phase of contract performance.

(j) Cost or pricing data. Normally, cost or pricing data should not be requested in the initial phase of a phased competition, or when more than one contractor will participate in any subsequent phase. It may be appropriate to request information other than cost or pricing data (See FAR 15.403 for additional guidance), however, especially when contractor concepts differ greatly in their approach.

(k) Options. The contract may include horizontal options for additional periods of performance or vertical options for additional quantities during any single phase. For example, the Government may wish to include an option in the solicitation to test solutions at more than one site. Another example would be an option for additional years of performance by the selected contractor(s).

(l) Communications/dialog with contractors. During contract performance, the timely and accurate exchange of appropriate information between the Government and participating contractor(s) is essential. Information must be shared in a manner that precludes preferential treatment throughout all phases.

(m) Type of contract. Both offerors and the contractors selected should be allowed the flexibility in their proposals to suggest the type of contract for each phase. The Government evaluation of proposals should include a review of the type of contract proposed in consonance with the approach proposed, and how the contract type fits with program goals when establishing negotiation objectives. Contract type may differ in each phase, resulting in a hybrid contract.

SUBPART 15.2 - SOLICITATION AND RECEIPT OF PROPOSALS AND ***INFORMATION***

15.201 Exchanges with industry before receipt of proposals.

(b) Early exchanges with industry, an essential part of the procurement process, are used to elicit industry participation in the planning and execution of the acquisition, especially when seeking to re-engineer business processes. The acquisition team (for example: program manager, contracting officer, technical support, requirements personnel, and customer representatives) should tailor the nature and extent of the techniques used to each acquisition. Early exchanges with industry can also facilitate the following objectives:

(i) Overcome barriers to acquiring commercial items and technologies and emulating commercial business practices;

(ii) Develop more effective acquisition strategies and procurements tailored to elicit the best commercial solutions available;

(iii) Emulate commercial manufacturing, distribution, and inventory management techniques (e.g., manufacturing on demand, direct vendor delivery, electronic tracking of inventory, and the electronic commercial catalogue);

(iv) Create new buyer-seller relationships that reduce suppliers' dependence on defense business and facilitate integration of defense and commercial industrial bases (e.g., teaming arrangements, dual-use technologies, and shared production agreements with suppliers); and

(v) Make available a defense mobilization base capable of responding to peacetime supply requirements and in time of emergencies.

(c)(3) *Sources sought announcements and letters to known potential sources are effective* ***market research methods*** *to identify interested suppliers and available products and capabilities.*

(c)(6) Draft requests for proposals (DRFP's) ***provide*** industry ***an opportunity to comment on*** any aspect of the proposed acquisition prior to issuing a solicitation. It is appropriate to use DRFP's whenever, in the contracting officer's judgment, the acquisition will benefit significantly from early industry involvement***. DRFPs are*** an effective means to resolve potential contract issues and obtain feedback from prospective offerors. Such information can lead to significant cost savings and productivity enhancements; reduce proposal preparation and evaluation time; reduce the need for solicitation amendments and preclude other delays that disrupt timely completion of the acquisition; and result in better proposals, end products, and services. The use of DRFPs can encourage potential sources to provide valuable comments on such matters as:

(A) Proposed customer requirements, including identification of requirements that are "cost drivers;"

(B) Proposed acquisition and evaluation strategy, including business and technical approaches;

(C) Contract methodology, including how best to elicit proposals based on current and emerging commercial practices, and contract type;

(D) Methods to reduce proposal and contract costs and explore technology advancements and contract incentives; and

(E) Revisions to performance, schedule, or other contractual requirements.

The contracting officer should publicize the DRFP using a variety of methods, such as CBD announcements and those methods addressed at 15.***201***(c) and FAR 5.101(b). The publication and response times for proposed contract actions at FAR 5.203 are not mandatory for DRFPs. The contracting officer should establish reasonable times for receipt of responses to DRFPs that reflect the nature of the product or service, the supply base, and the specifics of the individual procurement. Requirements shall be synopsized in accordance with FAR 5.203 prior to issuing the solicitation. Alternatively, notice of the availability of the DRFP and a future date when the solicitation will be issued may be included in the same synopsis.

15.204 Contract format.

15.204-2 Part I--The Schedule.

(b) Section B Supplies or services and prices/costs. Guidance at 14.201-2(b)(90) also applies to Request for Proposals (RFPs) and Request for Quotations (RFQs).

(90[f127]***)*** Guidance at 14.201-2(b)(90) also applies to Request***s*** for Proposals (RFPs) and Request***s*** for Quotations (RFQs).

(91[f128]***) When clause 52.216-9000 (or substantially the same clause) is used with FAR clause 52.216-2, include a note in Section B that essentially states "as stated in FAR clause 52.216-2, the price the offeror is to record in the Schedule in submitting its offer shall instead be recorded in clause 52.216-9000 (See Section I)."***

(92) When clause 52.216-9001 (or substantially the same clause) is used with FAR clause 52.216-3, include a note in Section B that essentially states "as stated in FAR clause 52.216-3, the price the offeror is to record in the Schedule in submitting its offer shall instead be recorded in clause 52.216-9001 (See Section I)."

(c) *Section C, Description/specifications/****statement of work****.* Clearly stamp or otherwise indicate "Foreign Military Sales (FMS) Requirements" on the face of each negotiated contract which includes FMS

requirements.

15.204-3 Part II--Contract Clauses.

Section I, Contract clauses. The contracting officer shall insert the clause at 52.214-9004[f129], Subcontracting to other industrial preparedness planned producers, in solicitations and contracts whenever contracting without providing for full and open competition under authority of FAR 6.302-3. 10 U.S.C. 2304(c)(3).

15.204-5 Part IV Representations and Instructions.

(c)***(90)*** Section M, Evaluation factors for award. A provision substantially as provided at 52.214-9002, Trade Discounts, may be included in Request for proposals and Requests for Quotations when appropriate. See 14.201-5 Part IV (c)(90) for the effect of this provision.

(i) When prices are solicited on incremental quantities, i.e., 500, 1000, 1500, 2000 units, or range quantities, i.e., 500-999, 1000-1499, 1500-1999 units, notice shall be given to all offerors that award may be made on the basis of that quantity and price combination that is most advantageous to the Government without discussion of proposals.

(ii) For negotiated contracts which are anticipated to be awarded using the adequate price competition exemption to the P.L. 87-653 requirements ***at*** FAR 15.403-1(b)(1), price shall be stated to be a substantial factor. If weights are assigned to the various evaluation factors, price must be weighted at least 20 percent for an adequate price competition exemption to be claimed.

(iii) Defense Energy Support Center (DESC) is authorized to use DESC clause 52.215-9F33 Shipping Point(s) used in Evaluation of F.O.B. origin offers (FUELS APR 1984) in lieu of FAR clause 52.214-7, late Submissions, Modifications, and withdrawals of Bid, and with the Strategic Petroleum Reserve (SPR) program.

SUBPART 15.3 - SOURCE SELECTION

15.301 Definitions.

“Preaward survey (PAS) evaluation factor” is an amount of money which is added solely for evaluation purposes to the offer of an apparently successful offeror whose performance history normally dictates the conduct of a preaward survey.

Source inspection evaluation factor” is a fixed amount of money added solely for evaluation purposes to the offer of an apparently successful offeror with a history of delivering nonconforming material on destination-assigned contracts/purchase orders.

15.303 Responsibilities.

The Executive Director, Acquisition, Technical, and Supply Directorate has delegated the authority to appoint the source selection authority, if other than the contracting officer, to the Chief of the Contracting Office (CCO). (See 2.101 for designation of the CCO at each of the contracting activities/offices). This delegation is not further delegable. Notwithstanding this delegation, the Executive Director, Acquisition, Technical, and Supply Directorate reserves the right to designate the source selection authority for acquisitions on an exception basis, including acquistions subject to I-ARB review (see 7.104-90). FAR Part 3 provides guidance regarding improper business practices and personal conflicts of interest that must be considered in the conduct of an acquisition.

15.304 Evaluation factors and significant subfactors.

(b) Each evaluation factor or subfactor for a given solicitation must address a separate aspect of the offeror’s proposal or capabilities in order to avoid double counting. For example, past performance may not be evaluated as a separate technical evaluation factor if the same performance is evaluated elsewhere as part of another evaluation factor or subfactor. It is not double counting, however, to combine a delivery evaluation factor, which evaluates different offered delivery dates, with the past performance factor (e.g., the Automated Best Value System), which evaluates past performance in assessing the risk that an offeror will ***not*** deliver on the promised date.

(c)(3)[f130] ***Statute (15 U.S.C. 637(d)(4)(G)(i) and (ii)) requires that, where a bundled requirement offers a significant opportunity for subcontracting, the procuring agency must designate the following factors as significant factors in offer evaluation:***

- ***A factor that is based on the rate of participation provided under the subcontracting plan for small business in the performance of the contract; and***
- ***For the evaluation of past performance of an offeror, a factor that is based on the extent to which the offeror attained applicable goals for small business participation in the performance of contracts.***

[f131]***(4)*** Use of small, small disadvantaged and women-owned small businesses ***(socioeconomic evaluation factor). To implement the guidance contained in FAR 15.304(c)(4) and DFARS 215.304(c)(i),*** the contracting officer shall establish an evaluation factor ***to evaluate*** the extent of an offeror's proposed use of small, small disadvantaged and women-owned small businesses, ***or historically black colleges/universities or minority institutions (HBCUs/MIs)***, in order to incentivize offerors to subcontract with such concerns. The weight or relative order of ranking of this factor is at the discretion of the contracting officer, but this factor may not be combined with any other factor. ***Although this factor only applies to acquisitions that require submission of a subcontracting plan, the factor itself*** should be separate and distinct from the subcontracting plan (FAR 19.219-9) ***as well as from use of*** the MBA factor (see ***(c)(90)***) ***and the factor to promote use of Javits-Wagner-O'Day Act (JWOD) entities (see (c)(91)).*** All offers ***submitted in response to the solicitation***, whether from small or large businesses, shall be scored/rated on this factor, ***except that acquisitions that are set aside for small business, or for very small business or HUBZone participation, shall not include this factor***. Proposals that demonstrate a strong commitment to affording small, small disadvantaged, and women-owned small businesses, ***or HBCUs/MIs***, a real opportunity to participate shall be rated more favorably than those that demonstrate little or no such commitment.

(***A***) In making decisions whether to exercise options on contracts, the contracting officer shall evaluate whether a firm has or has not performed in accordance with its small, small disadvantaged and women•owned small business, ***or HBCU/MI***, subcontract requirements in the contract. The Defense Contract Management Agency's small business offices shall be used to assist in assessing a contractor's compliance with these requirements.

(***B***) Solicitation provisions. Solicitation provisions similar to the ones at 52.215•9002, Socioeconomic Proposal, and 52.215•9003, Socioeconomic Support Evaluation, shall be included in all solicitations that meet the criteria in ***15.304(c)(4).***

(c)(***90***) ***DLA Mentoring Business Agreements (MBA) Program evaluation factor***. Proposed participation in the DLA MBA Program (see 19.90) shall be separately considered as an evaluation factor in all long term contracts expected to exceed $500,000 per year.

(c)(91) Use of Javits-Wagner-O'Day Act (JWOD) qualified nonprofit agencies for the blind or other severely disabled – evaluation factor. The contracting officer shall establish an evaluation factor for the extent of an offeror's proposed use of Javits-Wagner-O'Day Act (JWOD) qualified nonprofit agencies for the blind or other severely disabled, in order to incentivize offerors to subcontract with such concerns. (See 8.702.) The weight or relative order of ranking of this factor is at the discretion of the contracting officer, but this factor may not be combined with any other factor. This factor is separate and distinct from both the socioeconomic evaluation factor described in (c)(4), and also from the MBA factor (see (c)(90). All offers submitted in response to the solicitation, whether from small or large businesses, shall be scored/rated on this factor, except that acquisitions that are set aside for small business, or for very small business or HUBZone participation, shall not include this factor. Proposals that demonstrate a strong commitment to affording JWOD entities a real opportunity to participate in the Government contracting arena (beyond the statutorily mandated use of these entities by prime contractors; see FAR 8.001(c)) shall be rated more favorably than those that demonstrate little or no such commitment.

(i) In making decisions whether to exercise options on contracts, the contracting officer shall evaluate whether a firm has or has not performed in accordance with its commitment to use of JWOD entities. Field elements of the Defense Contract Management Agency shall be used to assist in assessing a contractor's compliance with these requirements.

(ii) Solicitation provisions. Solicitation provisions similar to the ones at 52.215-9004, Javits-Wagner-O'Day Act Entity Proposal, and 52.215-9005, Javits-Wagner-O'Day Act Entity Support Evaluation, shall be included in all solicitations that meet the criteria in 15.304(c)(91).

(iii) Contract clause. A clause substantially the same as the one at 52.215-9006, Javits-Wagner-O'Day Act Entity - Contractor Reporting, shall be included in each contract for which the successful offeror submitted a JWOD entity subcontracting proposal with its offer.

(c)(92) Transportation evaluation preference. Consistent with Department of Defense (DoD) Transportation Acquisition Policy and DoD Readiness objectives, solicitations for integrated logistics management arrangements, such as prime vendor, virtual prime vendor, On Demand Manufacturing, Quick Response, ECAT, and EMall, that may include contractor arranged transportation outside the continental United States, shall include an evaluation factor favoring offerors whose transportation arrangements include the use of carriers with commitments to DoD mobility agreements under Civil Reserve Air Fleet (CRAF) and the Voluntary Intermodal Sealift Agreement (VISA).

(A) When contracting for commercial transportation providers, the requirement of the contractor to support DoD contingency requirements through participation in the Civil Reserve Air Fleet (CRAF) and Voluntary Intermodal Sealift Agreement (VISA) programs, and the required use of Electronic Commerce/Electronic Data Interchange (EC/EDI) and the required providing of their In-Transit Visibility (ITV) data to DoD shall be used as evaluation criteria. A sample evaluation factor and language describing the factor for inclusion in solicitations are shown below.

(i) Description of the preference

This solicitation, consistent with Department of Defense (DoD) Transportation Acquisition Policy and DoD Readiness objectives, includes a transportation preference that favors contractors whose transportation arrangements outside of the continental United States (OCONUS) include the use of carriers with commitments to DoD mobility agreements under Civil Reserve Air Fleet (CRAF) and Voluntary Intermodal Sealift Agreement (VISA).

Offerors, as a part of their proposal, shall indicate the carriers that the offeror will use for air and ocean transportation, if awarded the contract. Offers received will be evaluated to determine the degree of commitment to DoD readiness programs.

Under CRAF, select civil air carriers are contractually committed to support airlift requirements in emergencies when U.S. airlift needs exceed the capability of military aircraft. DoD provides financial incentives via transportation contracts with air carriers in exchange for pledged aircraft for international, long-range, short-range, domestic and Alaskan transportation requirements ready for activation, when needed. During activation, DoD controls the mission of these aircraft. Air carriers continue to operate and maintain their committed aircraft with their own resources. Before receiving a CRAF contract, air carriers must be certified as DoD-approved.

If air transportation OCONUS is anticipated, offerors should provide the name of the transportation company and a statement as to whether the transportation company(ies) has/have a commitment to CRAF. CRAF carriers are preferred.

The VISA was jointly developed by the Department of Transportation Maritime Administration, the DoD, and industry to make intermodal shipping services/systems, including ships, intermodal equipment and related management services available to the Department of Defense to support the emergency deployment and sustainment of U.S. Military forces by augmenting the capacity of DoD's organic sealift capabilities.

If ocean transportation is contemplated, offerors should provide the name of the company(ies) and category(ies) shown below that best describes the transportation arrangements under the proposed contract. VISA preferences are as follows:

a. U.S. Flag vessel capacity operated by a Participant and U.S. Flag Vessel Sharing Agreement (VSA) capacity of a Participant.
b. U.S. Flag vessel capacity operated by a non-Participant.
c. Combined U.S. flag/foreign flag vessel capacity operated by a Participant and combination U.S./foreign flag VSA capacity of a Participant.
d. Combined U.S. flag/foreign owned vessel operated by a non-Participant
e. U.S. owned or operated foreign flag vessel capacity and VSA capacity of a non-Participant.
f. U.S. owned or operated foreign flag vessel capacity and VISA capacity of a non-Participant
g. Foreign-owned or operated foreign flag vessel capacity of a non-Participant.

For further information on the Voluntary Intermodal Sealift Agreement, see Federal Register Notice of February 13, 1997 (Volume 62, No. 30, pages 6838 - 6846).

(ii) Evaluation factor:

The extent to which the offeror has, or uses other companies that have, CRAF and VISA commitments in both its DoD and commercial shipping methods.

(c)(93) Surge and Sustainment evaluation factor. When surge and sustainment (S&S) requirements are, or will be, included in the contract, the offeror's capability to meet S&S requirements, or approach for conducting a S&S capability assessment, shall be included as a technical evaluation factor. Examples of S&S related elements which can be evaluated include: offeror's methodology enabling visibility of supplier base resources on a continuing basis; identification of supplier base capabilities to meet S&S requirements and S&S strategy for all items; identification of "problem" items for which S&S cannot be easily met, proposed solutions for these items, and any significant investments needed to implement these solutions; description of access to and plans for coordinating distribution and transportation services for meeting S&S requirements; and offeror's agreements with suppliers and service providers that reflect access to S&S resources.

(c)(94) Cost of Source Inspection evaluation factor. (***See also*** (13.106-90(a), 14.201-8(a)(90), and 52.213-9001). When contractors deliver nonconforming supplies or provide nonconforming services, the contracting officer normally requires inspection and acceptance at source, rather than at destination. ***The evaluation factor for source inspection is the expression of the Government's recognition that it incurs costs resulting from poor contractor performance or from contractor demands for additional Government performance not otherwise considered necessary from the Government's perspective.*** When ***the conditions set forth in*** 13.106-90(a) ***exist,*** the provision at 52.213-9001, Evaluation Factor for Source Inspection, shall be inserted in solicitations. The coverage at 13.106(90)(a) applies regardless of the dollar value of the

acquisition.

(A) The source inspection and preaward survey cost factors in offer evaluation can be applied to any procurement. ***They*** can be applied in conjunction with any source selection method.

(c)(95) Cost of preaward survey ***(PAS) evaluation*** factor. ***(See also*** 13.106-90(b), 14.201-8(a)(91), and 52.215-9001)***).*** When a contractor delivers nonconforming supplies or provides nonconforming services or ***is*** delinquent in delivery, the contracting officer normally requires a PAS to determine such offeror's responsibility for subsequent acquisitions. ***(See 9.106)*** The contracting officer also generally requests a ***PAS regarding*** a prospective contractor ***in accordance with the criteria listed at (A) through (F), below. The evaluation factor for conduct of a preaward survey is the expression of the Government's recognition that*** conducting a PAS is an additional expense to the Government. There are certain situations (based on a contractor's prior performance) for which it is appropriate to apply a factor for offer evaluation purposes to the apparently low offer of a prospective contractor when the Government must base its responsibility determination on the results of the survey of that firm or individual. When ***these situations*** exist, the provision at 52.215•9001, Evaluation Factor for Preaward Survey, shall be inserted in solicitations. ***Additionally,*** an amount which is the equivalent of the cost of the survey, currently $369.00, shall be added to the offeror's proposed price for each survey, regardless of the level of survey (formal or informal) to be performed. The cost of the PAS shall be added to the offer of a prospective contractor (manufacturer or non-manufacturer) who:

(A) Has been listed on the GSA List of Parties Excluded from Federal Procurement Programs within the past three years (or other locally-determined time period); or

(***B)*** Is undergoing or has undergone reorganization under bankruptcy laws within the past three years (or other locally-determined time period); or

(C) Is known to the contracting officer to have a poor or marginal performance history; or

(D) Has, within the past year (or other locally-determined time period), received a negative PAS for an item within the same Federal Supply Class (FSC), or for the same type of service, as the item or service being purchased; or

(E) Has failed to liquidate indebtedness to DLA (the extent of such indebtedness shall be determined locally); and

(F) The contracting officer has determined must be surveyed for the contracting officer to make a responsibility determination (see 9.104-1(90)(a) and 9.106-1).

15.304•90 Automated *b*est *v*alue system*.*

(a) Scope. The Automated Best Value System (ABVS) is a past performance information system that provides the contracting officer with historical performance data. ABVS analyzes historical quality and delivery performance within each Federal Supply Class (FSC), and provides a numeric score for each offeror that has a performance history. Additionally, ABVS provides an aggregate score for historical performance in all FSCs at the Defense Supply Center (DSC).

(b) Applicability. ABVS will be used primarily for best value award decisions under negotiated acquisitions processed through the DLA Preaward Contracting System (DPACS). ABV*S* can be used ***in any source selection decision***, when determining whether to exercise an option, or request a preaward survey. ABV*S* may be used in conjunction with total small business set•asides and total small and disadvantaged business set•asides (but see FAR 19.502•3(b)(2) when a requirement is to be partially set•aside for small business).

(c) Overview.

(1) The ABVS score is a reflection of a contractor's past delivery and quality performance over a 12-month period. The delivery history is based on the most recent 12 calendar months exclusive of the most recent 2 calendar months prior to score calculation, and all delinquent undelivered or partially delivered lines. The 2-month offset allows the opportunity to verify late deliveries and determine cause for open contracts. Delinquent deliveries are held against a contractor for 12 months. The quality score is based on quality discrepancies and confirmed laboratory test failures measured over the most recent 12-month period with a 1 month offset. Offset periods are not grace periods. Verified late deliveries and nonconformances that occur during the offset period will be reflected in the score when the offset expires. The past performance timeframe may be expanded up to 24 months at the center's discretion.

(2) An ABVS score represents the aggregate of the individual weighted scores for each of the following performance indicators: product quality nonconformances, packaging nonconformances, laboratory test results, delinquencies, and order rejections where the company has demonstrated an intent to perform. Whenever the contractor's performance on any contract line item number (CLIN) in the FSC results in a contractor caused discrepancy, the score for that element will be less than 100. Contractor performance data within the specified timeframes is collected from source databases. ABVS scores are calculated for a calendar month for each FSC and for all FSCs at the DSC, and will remain in effect until the next monthly update.

(3) Data Sources. The quality performance data is retrieved from the DLA Customer Depot Complaint System (CDCS) and the System for Analysis of Laboratory Testing (SALT). The delivery performance data is retrieved from the Standard Automated Materiel Management System (SAMMS) Active Contract File (ACF), the DLA Operations Research Office's archived closed and open contract file (ALLACF) and a file containing contracts closed within the last 6 months.

(d) Use in source selection.

(1) Past performance information is an indicator of performance risk. Contractors will be scored on the basis of their past performance in the solicited FSC, and all FSCs for which they have a history at the DSC. No minimum ABVS scores will be established to dictate award eligibility, technical acceptability, responsibility or nonresponsibility.

(2) When the solicitation includes an ABVS provision, the contracting officer shall use the ABVS score in a comparative assessment of offers. The contracting officer should not rely solely on the performance score and should consider reviewing the data used to construct the performance score if the circumstances of the procurement dictate (e.g., significant price differential or close scores).

(3) ABVS requires the contracting officer to exercise business judgement. ABVS does not rate or rank offered price. When the offeror with the highest ABVS score is not the lowest price, a trade•off decision must be made. ***Other*** consider***ations*** in the trade•off decision ***should*** include: item designation as a weapon•system or personnel support item; inventory supply status and required delivery schedule; limited sources of supply and industrial base concerns; dollar difference between the low technically acceptable offeror and a higher•priced, higher scored offeror, and the presence of new offerors.

(4) Each DSC may establish a minimum volume of business below which an offeror will not be scored. An offeror with insufficient performance history in the solicited FSC will be evaluated based on the performance score for its cumulative performance history in all FSCs at the Center. Center•wide scores are not as relevant as FSC scores for performance required under the anticipated contract. For this reason, a higher Center score may not represent lower performance risk than a lower FSC score. Care should be taken when making trade•off decisions based on Center versus FSC scores.

(5) The contracting officer should also consider the volume of business on which the performance score is based as a measure of confidence that the score indicates performance risk on future contracts. When a minimum level of business has not been established for an FSC, award to an offeror with a greater level of business activity and the same or lower score, at a higher price must be approved at a level above the contracting officer. However, an offeror that satisfies the minimum level of business requirement can not be displaced by an offeror with a greater level of business activity and the same or lower score, at a higher price.

(6) An offeror with no performance history in any FSC procured by the center will not be scored, and will be considered a "new offeror." ***See FAR 15.305(a)(iv) regarding treatment of offerors without a record of relevant past performance***. However, the lack of a score does not preclude the contracting officer from making an award to one of these offerors. New offeror status will not be grounds for award disqualification. A new offeror may represent lower performance risk than offerors with marginal or poor performance scores and may be more favorably considered than scored offerors. Contracting officers should use both the ABVS FSC score and the average ABVS FSC score to determine the relative risks of scored offers and new offerors.

(7) Price related evaluation factors (e.g., Buy American Act evaluation factors, Small Disadvantaged Business (SDB) evaluation preferences, transportation factors, delivery evaluation factors, etc.) shall be added to the applicable offered price, and the evaluated price must be used in determining the trade•off of price for past performance. ABVS shall not be a reason for waiving application of the SDB preference.

(8) Each center is responsible for establishing internal review procedures and controls for ABVS awards. Dollar thresholds for higher level review will be established locally. There is no dollar limit above the lowest offered price that can be paid on awards using ABVS. Some award decisions will be more difficult than others. In those cases, it may be beneficial for the award decision to be a team effort until best value award decisions becomes a routine business practice.

(9) When the DSC uses ABVS for source selection, each offeror's performance score is confidential source selection information during the month in which it is effective, and as such, is protected from release under the procurement integrity rules (see FAR 3.104•4 and 3.104•5). The score is available only to the business entity to which it applies. The score and all related data must carry a restrictive legend substantially the same as the following: "Confidential Contractor Information • for Official Use Only." This legend must appear on all hard•copy printouts. Release of ABVS information to any other Governmental entity, including any other DSC, must have the concurrence of the local counsel. Release to any other private entity shall be strictly limited, have the concurrence of the local counsel, and be in accordance with Freedom of Information Act (FOIA, 5 U.S.C. 552) guidelines (see FAR Part 24.2, Freedom of Information Act, and DFARS 224.2, Freedom of Information Act). Any FOIA decision to release performance data to other contractors will be made on a case•by•case basis.

(e) Data review and access.

(1) Quality nonconformances and delinquencies are shared with contractors through routine contract administration as they arise. In addition, each DSC must allow offerors the opportunity to review and challenge their negative data prior to its use in source selection. Contractors will be provided access to their negative past performance data via the most favorable means available to the DSC (i.e., electronic bulletin board, electronic data interchange). Contractors shall also be notified of the date on which the data will be used and the method for challenging the data.

(2) It is in the Government's interest to identify and resolve as many challenges as possible prior to using the data in source selection. Each DSC shall determine an appropriate challenge period to accomplish this. All negative performance data used to calculate the ABVS score will be made available to contractors, and should not be used in source selection for at least 14 days. In addition to the data used to calculate the ABVS score, DSCs should provide contractors access to quality nonconformance data that falls within the 1 month offset period, and delinquency data that falls within the 2 month offset period (e.g., CLINs shipped after the contract delivery date; CLINs not shipped 31 to 60 days after the contract delivery date; and CLINs shipped on•time but the quantity is not in accordance with the Variation in Quantity Clause). Delinquencies aged 30 days or less will not be available for data verification unless they are established as contractor caused.

(3) Contractors who challenge their performance data must provide evidence that substantiates their claim to the ABVS Administrator. Challenged data that has been investigated and validated prior to the next monthly ABVS update will be reflected in the new score. (Corrections to data that fall within the offset period are not considered in that month's score.) Challenges that are received before the end of the challenge period, but are not resolved prior to the next monthly update will be flagged as challenged. The challenge flag alerts the contracting officer to look beyond the ABVS score; it shall not be used to eliminate any offeror from award consideration.

(4) The challenge period for the performance data used to calculate the ABVS score for a particular month ends the day before the new score becomes effective. (For example, the challenge period for the performance data used to calculate the October score ends on 30 September). However, contractors may challenge negative data at any time. For challenges received after the challenge period ends, the current month's score will only be flagged if and when the challenge is validated, or at the discretion of the ABVS Administrator. The subsequent month's ABVS score must be flagged as challenged unless the challenge is resolved in the interim. Once an ABVS score is flagged, it will remain flagged until the challenge is resolved. Challenges to data that falls within the offset period will not be flagged since that data is not reflected in the ABVS score.

(5) The ABVS Administrator shall make every effort to resolve data challenges within ten working days. If the contractor and the ABVS Administrator can not arrive at a mutual agreement on challenged data, it becomes disputed data. Disputes which cannot be resolved will be elevated. Authority for resolution of disputed data is one level above the contracting officer. Award decisions resulting from reliance on disputed data must also be approved one level above the contracting officer.

(f) Award justification. Contract files must be documented with the rationale supporting all award decisions, except those to the lowest priced and highest scored offer. The award decision must demonstrate how paying more than low price reduces performance risk. The award justification must be commensurate with the price difference between the awardee and the low offeror, i.e., the greater the difference in price, the stronger the award justification must be. There are several preprinted award justification forms available to assist with the documentation process. These forms can be supplemented with additional information as necessary.

(g) Synopsis. Commerce Business Daily synopses of solicitations made under this subpart shall indicate that, while price is a significant factor in the evaluation of offers, the final award decision will be based upon a combination of price and past performance.

(h) Solicitation provision. When ABVS is used in source selection, the contracting officer must include in the solicitation a provision that specifies:

(1) Award will be made based on a comparative assessment of offerors' prices, and past performance;

(2) Relative importance of price and past performance, (See FAR 15.304(e);

(3) Timeframe over which past performance will be evaluated;

(4) Sources of the performance data;

(5) Other factors considered in the price/performance trade•off decision;

(6) DSC focal point (address and telephone number) for questions/challenges;

(7) Discrepant data resolution process;

(8) A statement the award may be made to other than the low priced, technically acceptable offeror.

(i) Program administration/responsibilities.

(1) The ABVS Administrator is responsible for: controlling the weighting of relative importance of quality and delivery performance by FSC; receiving, tracking, and responding to contractor challenges; and controlling the DPACS challenge flag.

(2) The ABVS Administrator is the DSC focal point for any questions, requests for information or data access, and data challenges. Contractors may challenge data discrepancies in the DSC records by submitting documentation that identifies the questionable contract number and CLIN and evidence supporting the challenge to the Administrator.

(3) Upon receipt of a properly documented challenge, the Administrator will make every effort to expeditiously resolve the challenge. There will be instances where the Administrator has sufficient information to resolve the matter. In cases where the Administrator is unable to resolve the matter, a copy of the challenged data will be forwarded to the responsible functional office (the office of primary responsibility (OPR)) for a decision. The OPR, represented by the responsible contracting officer, administrative contracting officer, or quality specialist must investigate the challenge and determine whether it has merit within 5 days of receipt. When the OPR determines the challenge can not be supported, the Administrator will be advised and the challenge flag removed. When the OPR determines the challenge has merit, the OPR is responsible for processing corrective updates to the appropriate databases, and providing to the Administrator confirmation of the corrections to the database. (See 15.***304(e)*** for challenge protocol). The Administrator will have the ability to recalculate the ABVS score off•line upon request.

(4) In rare instances, the ABVS Administrator can exclude certain elements of past performance from the ABVS score. This may occur, for example, where a contractor has introduced a new manufacturing process or management system that will eliminate the previous problems and where the contractor is able to provide information from other customers supporting the improved performance. The OPR responsible for quality shall review and validate any corrective action that the contractor has taken and provide a recommendation as to whether the past performance should be excluded. Exclusion of past performance data is at the sole discretion of the DSC and must be approved by the chief of the contracting office.

(j) Other uses for ABVS.

(1) Options. When exercise of an option is contemplated, the contractor's current ABVS score should be considered in determining whether exercising the option is the most advantageous method of satisfying the Government's needs. The contracting officer's decision to exercise an option at a higher price than what may otherwise be available (see FAR and DLAD 17.***207(e)(90)*** should be based on the same evaluation factors that applied to the basic award;

(2) When determining whether to obtain a preaward survey.

15.305 Proposal Evaluation.

(a)(4) The Center Senior Procurement Official is delegated authority to determine whether technical evaluators may have access to cost information.

(a)(5)[f132] ***As stated in the FAR, the procuring agency must give to the small business offeror on bundled acquisitions the highest possible score for the factors set forth in 15.304 (c)(3), above. However, note that subcontracting plans are not required from small business concerns, and are only required from large businesses for contracts valued at $500,000 or more ($1 million or more in the case of construction).***

15.308[A133] ***Source Selection Decision***

(90) (a) The Source Selection Authority (SSA) must perform the analysis and make the source selection decision. The Source Selection Authority's Decision Document (SSDD) must identify and evaluate the significant differences between proposals, and assess relative value.

(b) The rationale and justification for business decisions and non-cost/technical tradeoff determinations must be reasonable, consistent with evaluation factors listed in the solicitation, and adequately documented. "Adequately documented" means written point-by point qualitative comparisons of the solicitation's source selection criteria with the offer, and the rationale for any business judgments or tradeoffs. (Specific reference, to include page and paragraph numbers, is useful during review.) The rationale must include a comparative analysis of offerors' relative strengths and weaknesses in all factors and sub-factors and their advantages or disadvantages to the Government. There is no requirement to give credit for special features of a proposal, if it has been reasonably determined and documented that such features will not make a meaningful contribution or better satisfy government needs. (See 15.308(91).)

(c) The SSDD should not contain conclusory statements, partial comparisons, or generalizations. For instance, use quantities or percentages, rather than the generalized "many."

(d) When planning highly complex acquisitions, establishment of a formal Source Selection Advisory Board (SSAB) or Source Selection Advisory Council (SSAC) is suggested. The board should consist of members with relevant expertise who may also serve as members of the non-cost evaluation team. The SSAC or SSAB performs the comparative analysis and makes a recommendation per (e) below.

(e) When the SSA is other than the contracting officer, the contracting officer and/or evaluators with relevant expertise will evaluate the proposals in their respective areas and provide written documentation of the results. The documentation of non-cost factors must include a rating that reflects the strengths and weaknesses of the proposals. Cost/price documentation must include details on the cost/price proposals, cost/price differences, and cost/price reasonableness. The SSA may use one of the following three procedures in making the Source Selection Decision:

(1) <u>The SSA solely performs the comparative analysis</u>. The SSA will perform the comparative analysis of the cost/price, technical, past performance, socioeconomic, and other non-cost factors of each offer determined by the contracting officer to be within the competitive range. The SSA will write the SSDD. The SSDD will document the differences among the offers, including strengths and weaknesses, and the advantages or disadvantages to the Government. This integrated assessment of the offers will include the benefit of any cost/price trade-off, detailing the rationale for selecting the awardee over the other offerors. The analysis must be consistent with the source selection criteria in the solicitation.

(2) <u>The contracting officer performs the comparative analysis first, and makes a recommendation to the SSA</u>. The contracting officer will evaluate the proposals and provide written documentation of the analysis and recommendation for the SSA that will be a summary of all offers, recommend factors that may be considered as particularly valuable in a tradeoff analysis and suggest a potential awardee. The SSA should then read the supporting documentation, review the rating, independently extrapolate and evaluate tradeoff options, and come to an <u>independent</u> conclusion that need not be the same as the one suggested by the contracting officer. The SSA will then write the SSDD. The SSDD will document the differences among the offerors, including strengths and weaknesses, and the benefit or lack of benefit to the Government. This integrated assessment of the offers will include the benefit of any cost/price trade-off, detailing the rationale for selecting the awardee over the other offerors.

(3) The <u>contracting officer drafts the SSDD</u>. The contracting officer will perform the comparative evaluation and document the file on the cost/price and non-cost factors. The contracting officer will also draft the SSDD for the SSA. The SSDD will document the difference between the offerors, including strengths and weaknesses, and the benefit or lack of benefit to the Government. This integrated assessment of the offers will include the benefit of any cost/price trade-off, detailing the rationale for selecting the awardee over the other offerors. The SSA must perform an independent review and evaluation. If the SSA concurs with the contracting officer's suggestion, the SSA may adopt that decision by signing the document. The SSA may reject the contracting officer's draft. Then the SSA may write the SSDD or edit the draft SSDD to reflect the SSA's <u>independent</u> conclusion. The analysis must be consistent with the source selection criteria in the solicitation.

(f) If the contracting officer is the SSA, the content requirement of the SSDD is the same.

(g) If the solicitation requires a determination of price realism, this determination is made following the cost/price and non-cost evaluations. Realism decisions must also be fully documented

(91) Specific features included in a proposal may be reasonably determined to provide no meaningful satisfaction of government needs or to be of no benefit to the government under the solicited requirement. When the SSA determines that one or more features provide no additional benefit to the government, the decision documentation must provide the rationale and justification for the determination.

(92) The SSDD does not need to be a lengthy document, but it needs to:
(i) Describe the solicited requirement.
(ii) Specify the number of offers included in the competitive range.
(iii) Name the offerors.
(iv) List non-cost evaluation factors and subfactors and their relative importance as cited in the solicitation.
(v) List each offeror's overall factor ratings and subfactor ratings. Include cost/price in the listing.
(vi) Provide a narration comparing the non-cost rating of each proposal, to include the strengths and weaknesses.
(vii) Describe the business justification, and/or cost benefit analysis of the best value decision.

SUBPART 15.4 – CONTRACT PRICING

15.401 Definitions.

"Cost or pricing data" also encompasses decrement factor information.

"Decrement factor information" is the historical data necessary to determine the average difference between vendors' and subcontractors' proposed prices and the actual prices negotiated by the contractor with a specific supplier, all suppliers, or suppliers for a specific contract, commodity, or commodity group.

15.403 Obtaining cost or pricing data.

15.403-1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

(b) Exceptions to cost or pricing data requirements. The existence of an exemption or a waiver does not alter the requirement for performing some form of price or cost analysis to ensure price reasonableness (see FAR 15.404-1(a)(1) and (2)) and for documenting the results (see FAR 15.406-3(a)(11)).

(c) Standards for exceptions from cost or pricing data requirements.

(1) Adequate price competition. In an effort to decide whether additional information is necessary to determine the reasonableness of the otherwise successful offeror's price in accordance with FAR 15.403-1 (c)(i)(B) and (ii)(B), the contracting officer shall review it in comparison to prior prices paid, considering any changed conditions (see FAR 15.403-1(c)(iii)).

(3) Commercial items. See 15.404-1(b)(92).

(4) Waivers. If none of the statutorily•sanctioned exemptions (***FAR 15.403•1(b)(1) through (b)(3) and (b)(5) exist, but the procurement cannot be foregone, the*** head of the contracting activity ***(not delegable)*** may, in an exceptional case, after review of the information submitted pursuant to the procedural requirements of ***15.403-1(c)(4)***, ***and any comments and recommendations from Cost and Price Analysis,*** waive the requirements for submission or certification of cost or pricing data ***under*** one or more of the following ***additional conditions***:

(i) there is insufficient data on which to base either an exemption and/or a price reasonableness determination,

(ii) the Government was unable to obtain cost or pricing data in the face of an offeror's refusal, or

(iii) the price is determined unfair and unreasonable. Notwithstanding the existence of a blanket waiver, ***(including those at DFARS 215.403-1(c)(4)(A) and (B))*** the contracting officer must accomplish the price analysis required by ***FAR 15.404•1(a) in an effort*** to ensure that the overall price is fair and reasonable.

Prior to forwarding the waiver request through channels to the HCA, the contracting officer shall coordinate, and furnish a copy of, the recommended waiver with Cost and Price Analysis. And when action has been completed, he or she shall advise Cost and Price of the disposition action taken and furnish a copy of the signed waiver, if any.

(A)(90) The DoD waiver of submission of certified cost or pricing data from the Canadian Commercial Corporation (CCC) ***(DFARS 215.403-1(c)(4)(A))*** states that the integrity of the assurance of fair and reasonable prices by the Government of Canada can be assumed. However, ***proposal analysis is required (FAR 15.404-1). W***here price analysis indicates a fair and reasonable price significantly different than that offered by CCC, the contracting officer should initiate discussions with the CCC to request confirmation of the price reasonableness determination. A brief explanation of why the confirmation is being requested, i.e., the results of the price analysis, should accompany the request.

15.403-4 Requiring cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

(a)(1) If the contracting officer cannot determine that an item claimed to be commercial is in fact commercial and no other exception or waiver applies, the contracting officer shall require submission and subsequent certification of cost or pricing data. See additional guidance at 12.102(90).

(i) Pricing a contract award (other than an undefinitized contract action).

(90) In determining whether an ***award*** meets the $550,000 ***Truth in Negotiations Act (TINA)*** threshold for requiring cost or pricing data, consider the ***basic contract quantity (or estimated value of an IDC*** base period***)***, ***plus*** the ***value of either a quantity option or the*** estimated value ***of a period*** option ***that will*** be exercised at time of award.

(ii) Pricing ***a contract*** change or ***other*** modification ***exceeding the $550,000 threshold.***

(90) ***T***he requirement for ***[***certified***]*** cost or pricing data ***applies to actions exceeding the $550,000 threshold of the following types:***

(A) Exercise of priced options that ***were not*** evaluated at time of award ***(in accordance with 17.206(b)(90), an unevaluated option exceeding $550,000 for which TINA applies shall be specified as an undefinitized option),***

(B) Definitization of undefinitized options,

(C) Definitization of other undefinitized contract actions, and

(D) Repricing actions, e.g., an actual cost type EPA, under Changes clause, claims, price reopener, and prospective repricing.

(91) The requirement for cost or pricing may be excepted for the following ***postaward*** actions:

(A) Exercise of priced options which were evaluated at time of award,

(B) ***Price adjustment under an*** EPA based on ***an*** established price or on ***an*** index, and

(C) Actions for which an exemption is applied (see FAR ***15.403•1(b)(1) through (b)(3) and (b)(5)***), e.g., when the price for an option is based on the price of a basic award for the same or similar item(s) for which one of the statutory exceptions apply; or when an EPA or other repricing action is based on a change in an established price (includes ***instances where*** cost or price indexes reflecting ***a change in a*** market ***is used***), or ***a change in a*** price set by law or regulation.

(b)(90) Contracting officers shall,

(i) identify in solicitations, any options which are subject to the requirement for cost or pricing data prior to award which are expected to be subject to such requirement prior to the exercise;

(ii) specify in solicitations where applicable, that the offeror must specifically identify on any certificate (***FAR 15.406-2)*** required to be submitted and any evaluated option price(s) covered by the certificate;

(iii) identify in solicitations and resulting contracts any options expected to exceed $55[f134]0,000 which the contracting office does not plan to include in the preaward pricing evaluation and stipulate that as a prerequisite of exercise, they are subject to the submission and certification requirements of P.L. 87•653 as implemented by the applicable clause (FAR 52.215***•20*** or 52.215***•21***, whichever will be included in the contract) ***and***[f135][f136]

(iv[f137]***) coordinate with the local cost/price analysis element as soon as pricing assistance is needed IAW 15.404-1(a)(90)(1)(i) or (ii***[f138][f139]***).***

15.403-4(b)(91) Cost or pricing data for indefinite quantity and requirements contracts.

FAR 16.503 and 16.504 state that estimated total quantities to be ordered under requirements and indefinite quantity contracts respectively should be as realistic as possible. This information, along with the estimated number of orders and variability in order quantities, is required for realistic contract pricing. To avoid delays when contract price data must be obtained under these types of contracts, the solicitation should provide this information and specify that••

(1) It should be used by the offeror in developing the unit price(s) proposed;

(2) The price proposal must include an explanation of the production quantity and period used in developing the proposed unit price(s) (The planned production quantity may be greater than, equal to, or less than the maximum quantity of an indefinite quantity contract/total estimated quantity of requirements contract, exclusive of any contract options.); and

(3) The offeror is requested to quantify any reduction in the offered unit price(s) available if the minimum order quantity were raised and/or a guaranteed minimum contract quantity established.

15.403-5 Instructions for Submission of Cost or Pricing Data or Information Other Than Cost or Pricing Data.

(b)(2) Solicitation instructions for submission of cost or pricing data shall include or ***incorporate by*** reference in Section L, the ***Table 15-2 general*** instructions, ***cost elements*** and format requirements specified at ***FAR 15.403-5(b)(1)*** and shall require identification of decrement factor information, defined at ***15.401***, as part of the data submission requirements.

15.404 Proposal analysis.

15.404•1 Proposal analysis techniques.

(a) General.

(90) The cost/price analysis element shall provide:

(1) A price or cost/price analysis report, as appropriate, for:

(i) all sealed bid acquisitions of $55**0**,000 or more where a sole responsive bid is received, and

(ii) all negotiated acquisitions (including awards to the Canadian Commercial Corporation) of $55**0**,000 (***$200,000*** for FPI ***(***see 8.602(a)(9**1**)(iii)***)) or more***, where adequate price competition was not received (see FAR ***15.403-1(c)(1)(i))***, unless the contracting officer performs a price analysis (including, for rebuys, a comparison to prices paid for the same item in accordance with ***15.404•1(b))*** which documents that the price is fair and reasonable and is:

(A) based on adequate price competition (FAR ***15.403-1(c)(1)(ii) or (iii)),***

(B) set by law or regulation (FAR ***15.403•1(c)(2)***), or

(C) ***for a commercial item*** (FAR ***15.403-1(c)(3)).***

(2) A price analysis or cost/price analysis, as appropriate, for any other acquisition where assistance is deemed necessary by and requested by the contracting officer.

(3) Recommendations and coordination on all planned actions involving the "resolution" and "disposition" (see ***15.406-3(b)(91)b(2) and (3)*** respectively) of defective pricing and other "reportable" audits, and instances of suspected overpricing.

(4) All reports of reviews covering multiple line items shall include comments on the results of an assessment for unbalanced bids or offered prices (FAR ***15.404-1(g))***.

(91) The contracting officer (the price analyst and/or value engineering/other technical specialist when requested to furnish an analysis of the proposal}, shall identify or have identified from existing data bases and/or files, any independent Government estimate ***(IGE)***{"should cost") that had been performed; and include in the proposal evaluation report and prenegotiation briefing memorandum, comments as to the extent of utility of the IGE results as analytical or corroborative information for determining price reasonableness, establishing negotiation objectives, and for contract negotiations.

(92) If the contracting officer determines that a procurement is for an item that meets the commercial item definition at FAR 2.101, the contracting officer cannot determine the offered price to be fair and reasonable on that basis alone. Some form of proposal analysis is also required.

(b) Price analysis.

(90) Whenever cost or pricing data or ***c***[f140]***ommercial item*** exemption data is obtained, the analysis shall also address the reasonableness of the offered price in comparison to prior prices paid for the item.

(2)(ii) When a comparison or trend analysis to prior prices is used, the rationale and amount of allowance (negative, zero, or positive adjustment) for each factor cited in the FAR shall be included in documentation of the price reasonableness determination, along with a statement of how these prior prices were determined reasonable. ***The contracting officer must consider the nature of the Government's requirement (e.g., quantities being acquired, how the item is managed) compared with the circumstances under which prices were paid by another customer (e.g., quantities being acquired, whether an urgent requirement drove the price up). The contracting officer should take maximum advantage of the Government's potential purchasing power and should expect terms and prices at least equal to those available to commercial or other customers that have similar size and influence in the market.***

(2)(iv) When a price appearing in a contractor catalog or price list is utilized to determine price reasonableness, the contracting officer shall include in the reasonableness determination documentation of the steps taken in confirming that the price list is current and depicts prices at ***which sales*** are currently being made or were last made. ***See 12.102(90) for guidance on determining if a procurement is for an item that meets the commercial item definition at FAR 2.101.***

(2)(v) However, the standard price, ***the material acquisition unit price (MAUC) (unless based on recent purchases and escalated to the intended award date),*** budgetary estimates, and provisioning estimates are invalid bases for comparative price analysis and price reasonableness determinations.

(c) Cost analysis.

(90) When a contractor catalog or other price developed using proposed, recommended, or approved forward pricing rates, factors, and/or a formula pricing methodology is utilized to determine price reasonableness, the contracting officer shall include in the price reasonableness determination documentation of the steps taken in confirming that the rates and factors and/or formula pricing methodology and catalog prices are current and have been reviewed and determined reasonable, the review date, and the office accomplishing that review (i.e., normally the field ACO). Use of this technique also requires documentation that the direct material quantities/prices, direct labor hours, and/or other bases against which the rates and factors are applied have been reviewed and determined reasonable.

(c)(2)(iii) The comparison may be to actual costs incurred for the same item or for a similar item (with any necessary adjustments to achieve comparability of market conditions, quantities, time periods, and terms and conditions) by the same or another supplier.

15.404-2 Information to support proposal analysis.

(c) Audit assistance for prime contracts and subcontracts.

(90) For price proposals involving significant subcontracted amounts, requests for field pricing reviews should solicit decrement factor information (see ***15.401***) relevant to the award. Where extreme urgency necessitates award prior to completion of a subcontract review, negotiation of an appropriate decrement would obviate the need for a reopener clause (see DFARS ***215.407-5-70***(g)(2)(vi) or an undefinitized contractual instrument.

(d) Deficient proposals. When the offeror refuses to submit or certify cost or pricing data the reasons why the data are needed and why they were not provided should be discussed with the offeror and confirmed in writing prior to escalation to higher Government and ***offeror*** management levels. In the event the efforts of the contracting officer and higher management are unsuccessful in obtaining the data, the matter shall be escalated, after review by the local pricing and contract review elements, to the head of the contracting activity (HCA) along with the following information:

(1) What steps were taken to:

(i) Secure essential cost or price data.

(ii) Secure the contractor's cooperation, and

(iii) Assure the contractor that the information furnished by the contractor would be adequately safeguarded.

(2) An explanation as to why an exemption cannot be based on current or recent prices for a similar item or any of the other bases for exemption ***(FAR 15.403-1(b)(1) through (b)(3) and (b)(5))*** to the requirement for cost or pricing data.

(3) The ***offeror's*** written refusal to provide the cost or pricing data or a statement explaining why the contractor refuses to provide a written refusal.

(4) An explanation of whether, and under what circumstances, the offeror furnished cost or pricing data for prior contracts with this or another contracting office.

(5) The identification and results of attempts (including attempts made by the auditor, the ACO, and other contracting offices) to secure cost or pricing data concerning the current and prior contract actions, including date(s), contract award(s), and the names and organizational level of participants in the negotiations.

(6) A copy of the price analyses performed, which shall include a comparison with prior prices and an independent Government estimate, and results of the price reasonableness determination.

(7) Substantiation that the item is mission essential.

(8) The alternatives to proceeding with the acquisition.

(9) The suggested course of action considering the alternatives in (8) above.

Negotiations with top management of the firm shall be conducted by the CCO and, as appropriate, by the Commander (Administrator, DNSC, ***Director***, ***DAPS***). When a contractor/subcontractor has refused to provide the required data for the first time, or when the Commander (Administrators, DNSC, ***Director, DAPS***) has not personally negotiated with the contractor/subcontractor recently to obtain such data, the Commander (Administrator, DNSC, ***Director, DAPS***) should attempt to secure the data. The Commander (Administrator, DNSC, ***Director, DAPS***) shall execute a detailed memorandum setting forth the rationale for any decision not to personally negotiate for the data. This memorandum shall be included in the contract file, along with the above information and any Determination and Findings waiving the cost or pricing data requirements of 10 U.S.C. 2306(f)(1), as implemented by ***FAR 15.403-4***. In the event of waiver where the price is determined unfair and unreasonable or could not be determined fair and reasonable, furnish an information copy of the Determination and Findings ***t***[f141]***o the local cost/price analysis element and*** to HQ DLA, ATTN: ***J-3313.***

15.404-4 Profit.

(c) Contracting officer responsibilities.

(2)(c)(2) Approval of an alternate structured approach required for other than awards cited in DFARS 215.***404-4(c)(2)(C)(1)*** may be redelegated not lower than the chief of the contracting office. The Executive Director for Procurement at DSCR may further delegate this authority to the Deputy Executive Director for Procurement and the Chief, Base Support Division, without power of redelegation. Promptly upon execution, a copy of each approval shall be furnished to HQ DLA, ***J-3313.***

(2)(e)(70) Include documentation of the rationale and derivation of the profit factors and amounts on the DD Form 1547 approved at the time of the prenegotiation briefing in the prenegotiation briefing memorandum or attach it thereto, e.g., as a separate attachment or as part of the price/cost analysis report.

15.404-73 Alternate structured approaches.

(c)(***1***) The DD Form 1547, Record of Weighted Guidelines Application, shall be used whenever an alternate structured approach is utilized. When a zero weight is assigned to one or more of the factors specified in DFARS 215.***404-71-1(a)*** or additional factors are utilized, complete rationale shall be documented.

15.404-71-4 Facilities capital employed.

(b)(2) See DFARS ***215.404-71-4(b)(2)*** for the treatment of Facilities Capital Cost of Money on production special tooling and production special test equipment.

15.405 Price negotiation

(a)***(90)*** Occasionally, the price is not as close to the negotiation objective as the contracting officer would like, but it cannot be judged unreasonable. In such cases, the file should contain a positive statement that the price is ***either*** considered fair and reasonable under the circumstances ***or cannot be determined reasonable***, and enumerate the circumstances. For every price reasonableness determination, the

contracting officer ***should*** accomplish price or cost/price analysis, as necessary, to determine the price either to be reasonable or unreasonable. The offeror's refusal to provide and/or certify cost or pricing data or information other than cost or pricing data does not relieve the contracting officer from the requirement to perform a proposal analysis; nor does such refusal provide a sufficient basis for determining the price unfair or unreasonable.

(d)(90) The referral of a contract action to higher authority ***for resolution of a price, profit or fee that the contracting officer deems to be unreasonable*** may be any level above the contracting officer, including the Commander (Administrator, DNSC and ***Director***, ***DAPS***). ***For estimated awards over $550,000 where an offeror refuses to provide cost or pricing data required pursuant to FAR 15.403-4, and/or a price that can be determined fair and reasonable,*** the ***chief of the contracting office*** shall personally negotiate with the ***offeror or contractor in an*** attempt to ***secure cost or pricing data and/or*** delete those elements of the offer that render the price unreasonable. If ***unsuccessful,*** a detailed memorandum setting forth the ***results*** shall be forwarded with the referral to ***the head of the contracting activity for appropriate action. (See 15.404-2(d)).***

15.406-1 Prenegotiation objectives.

(b)(90) Whenever it is decided that the contract auditor will not be participating in the prenegotiation and/or price negotiation meeting for a contracting action which involved an audit, the contracting officer shall document in the prenegotiation briefing memorandum (PBM) and/or price negotiation memorandum (PNM), as applicable, the results of discussions with the auditor or other basis for such decision.

(b)(91) Prior to the beginning of any contract price negotiation, the award of a competitive negotiated contract, or the disposition of any other recommended contract action cited below, a briefing of the proposed negotiation, award, or settlement shall be presented to the chief***/acting chief*** of the contracting office (CCO) for approval:

(1) Every award exceeding $25,000 ($100,000 for ***ICPs***) of a letter contract, undefinitized BOA order or other undefinitized instrument. (The responsibility in paragraph (b)(91) above is delegable only for awards that do not exceed $250,000 (***ICPs*** only), without power of redelegation, to ***one level (two*** level***s for ICPs)*** below the CCO, and, ***for ICPs only, any other awards for*** filling a backordered or nonstocked requirement meeting DLA's criteria for heightened management (see 17.7404•1(a));

(2) Every definitization exceeding $100,000 ($250,000 for ***ICPs***) of a letter contract, undefinitized BOA order, or other undefinitized instrument. ***(For ICPs only, the responsibility in paragraph (b)(91) above is delegable, without power of redelegation, to one level below the CCO when the contract action does not exceed $550,000);***

(3) Every ***other negotiated*** contract ***pricing, repricing and final pricing*** action that exceeds $100,000, ($550,000 for the ***ICPs)***. (For ***other than ICPs***, the responsibility in paragraph (b)(91) above is delegable, without power of redelegation, to one level below the CCO when the contract action does not exceed $***250***,000. ***For ICPs, to one level below the CCO; two levels when the action does not exceed $1,000,000)***;

(4) "Resolution" of reports of defective cost or pricing data and other "reportable" audits (see ***15.406-3(b)(91)(b)(1))***. (For ***ICPs*** only, the responsibility in paragraph (b)(91) above is delegable, without power of redelegation, to ***two*** level***s*** below the CCO if the value of the action does not exceed $100,000); and

(5) Any action not cited in (1) thru (4) above which requires HQ DLA ***(J-33)*** review and approval. (The responsibility in paragraph (b)(91) above is delegable, without power of redelegation, to one level below the CCO.)

Note that pursuant to (1)-(5) above, (a) delegees must occupy a supervisory chief or deputy chief position at the immediately lower organizational (not procurement functional) level (or, for ICPs, at the either the first or second lower organizational level) and be certified at Level III in the Contracting Acquisition Career Field; (b) chief and their deputy/deputies are deemed to be at the same organizational level; and (c) dollar value determinations shall be made IAW 1.690-6(a).

(b)(92) At a minimum, the briefing shall cover:

(1) The acquisition situation, including any unique features.

(2) Previous price history.

(3) Where price negotiations are contemplated, the analytical methods utilized in establishing the prenegotiation objectives (i.e., price, improved delivery schedule, etc.):

(i) For proposals ***not*** involving cost or pricing data ***or a cost breakdown***, discuss and include a written schedule showing the buildup of the offeror's price and any significant differences between the proposed price negotiation objectives (i.e., minimum, target, and maximum prices, ***which should be prepared independent of the current offered prices***) and the proposed price, and any audit, ACO, or cost/price analyst recommendations. Also discuss when there are dissimilarities between the item or quantity offered and the commercial item for which a catalog price exists;

(ii) For acquisitions to be awarded based on cost or pricing data, or cost realism data, discuss the buildup of the offeror's price by element of cost and profit, and any significant differences between the proposed price negotiation objectives (i.e., includes minimum, target, and maximum objectives for costs, profit, fee, and price) and the contractor's proposed price, audit findings, technical report comments, ACO recommendations, and cost/price analyst recommendations, together with rationale supporting the overall price negotiation objectives. Include a comparative schedule showing each element of cost and profit included in the contractor's proposal; the recommendations contained in the audit, technical, and field pricing reports; any independent Government estimate (IGE), the cost/price analyst's recommendations; and the price negotiation objectives.

(iii) Negotiation plan (i.e., phone or in person).

(iv) Anticipated negotiation problems (e.g., contingencies, required deletions or changes in contract clause, etc.) and proposed solutions.

(4) Where price negotiations are not contemplated, the analytical methods utilized in determining price reasonableness:

(i) If award is to be made as a result of initial competitive offers received, include a written schedule comparing the offerors' prices, price history, and any IGE.

(ii) If award is to be made following BAFOs received, address the nature and results of discussions and offers, include a written schedule comparing the initial offers and BAFOs if exemption data or cost/cost realism data are obtained, also include the requirements (excluding prenegotiation price objectives) of (3)(i) or (3)(ii) above respectively.

(iii) If award is to be made based on competitive prices of current or recent awards for the same or comparable items, include a written schedule comparing the offered prices to such recent competitive award prices and any IGE.

(iv) For other sole offers, include a written schedule showing the price for each line item (and offeror's buildup by element of cost and price, if known, with a written comparison to any significant differences in the audit findings or review recommendations).

(b)(93) A memorandum summarizing the principal elements of the briefing prenegotiation objectives, the attendees, and the results of the briefing (including any significant comments or specific recommendations made by briefing attendees) and attaching the price schedule used in the briefing, shall be prepared for signature by the approving official.

(b)(94) The appropriate prenegotiation approval authority ***or delegee***, shall be notified of the need for any significant change in negotiation objectives. A copy of the approval of revised price objectives shall be made an attachment to the PBM.

(b)(95) The following are exempt from the requirement for prenegotiation/preaward briefings:

(1) Perishable subsistence acquisitions.

(2) Subsistence commodity market items that are subject to marketing exigencies, such as coffee, flour, and salad oil.

(b)(96) The following exceptions are authorized to the requirements for a prenegotiation briefing to the official specified at ***15.406-(b)(91):***

(1) ***DESC*** petroleum acquisitions not involving a cost proposal audit, that consist entirely of unrelated line items that are consolidated solely for administrative purposes. The briefing in such cases may be conducted at a level lower than the chief of the contracting office when no single line item is valued $***2***00,000 or more, even though the total acquisition is valued $500,000 or more.

(2) For ***DSCP***, subsistence actions cited at ***15.406-1(b)(91***) may be delegated, regardless of dollar value, by the chief of the contracting office to the Defense Subsistence Region commanders, with redelegation authorized to the purchasing division chiefs.

(3) Orders against Federal Supply Schedules or mandatory orders placed under the Javits•Wagner•O'Day Act (FAR Subpart 8.7).

15.406-3 Documenting the negotiation.

(a) While excessive detail should be avoided, the PNM, standing alone, must convince all reviewers that the price negotiated (or awarded without negotiations***)*** was reasonable, given the circumstances of the particular acquisition. Although the content will vary depending on the magnitude of the contract, contract type, cost or pricing data obtained, the extent of negotiations, etc., a standard format should be used. The PNM should have the following subdivisions: "Subject," "Introductory Summary," "Particulars," "Procurement Situation," "Negotiation Summary," and "Miscellaneous." For acquisitions involving cost or pricing data, the Negotiation Summary shall include a schedule reflecting each element of cost and profit in the contractor's proposal, the approved negotiation objectives, any revised proposal or negotiation objective, and the final negotiated amount. A copy of the PBM, along with any changes thereto, shall accompany and be listed as an attachment to the PNM.

(11) The price reasonableness determination shall be documented in the contract file and in appropriate automated price history records (e.g., SAMMS price reasonableness codes). It is essential to accurately complete the price reasonableness codes, because when conducting price analysis on future proposed prices for the same or similar items, the contracting officer cannot consider a comparison of prior contract prices with current proposed prices to be valid if the prior price was unreasonable (see FAR 15.404-1(b)(2)(ii).

(b)(90)(1) A copy of the PNM shall ***also*** be furnished to the ***local*** cost/price analyst, value engineer, and/or other technical specialist that was involved in ***any*** price review or negotiation.

(b)(90)(2) When an IGE was furnished for assistance in proposal evaluation, the contracting officer should assure information on its utility is included in the Contracting Technical Data File and any other local data bases for future reference. Additionally, the contracting officer should forward this information, along with any specific suggestions based on lessons learned on the buy, to the office(s) preparing and furnishing the IGE.

(b)(90)(2) When an IGE was furnished for assistance in proposal evaluation, the contracting officer should assure information on its utility ***in making the award*** is included in the ***PNM, the*** Contracting Technical Data File and any other local data bases for future reference. Additionally, the contracting officer should forward this information, along with any specific suggestions based on lessons learned on the buy, to the office(s) preparing and furnishing the IGE.

15.407•1 Defective cost or pricing data.

(b)(7) The 26 U.S.C. 6621 quarterly interest rate cited in the corresponding FAR paragraph, is published in an Internal Revenue Bulletin the Federal Register during the third week of March, June, September and December. ***The annual rate for the forthcoming quarterly period and information on its application is available on the DLA Pricing Webpage at*** http://www.dla.mil/j-3/j-336/Pricing/Default%20test.asp .

(d)(90) If, following review by the pricing element and legal (see 1.691(a)) and approval in accordance with ***15.406-1***(b)(91), the contracting officer's planned settlement objective is less than 70 percent of the amount reported by the GAO, DoD IG, or DCAA, a copy of the approved briefing memorandum, including the audit and pricing reports and other relevant documentation (see ***15.406-1***(b)(91)(5) and (93)), shall be furnished for receipt in HQ DLA, ATTN: ***J-3313*** at least ***10*** working days prior to initiating settlement action with the contractor.

15.407-5 Estimating systems.

Refer to DFARS 215.407-5-70, Disclosure, maintenance, and review requirements, ***215.407-5-70***(g)(2)(vi) and (3). See ***also*** subpart 17.92.

(b***)(91)*** Follow•up on contract audit reports.

(a) Responsibility of the chief of the contracting office. The contract follow-up official for DLA contracting offices (the Executive Director, ***Acquisition, Technical, and Supply Directorate***) has designated the chief of the contracting office as the official responsible for full and effective implementation of the requirements of DoDD 7640.2, Policy for Follow•up on Contract Audit Reports (***http://www.dtic.mil/whs/directives/corres/html/76402.htm***). A local contract audit focal point (the cost/price analysis element, where one exists) shall be established to assist in discharging the tracking and reporting requirements of the Directive (see ***15.406-3(b)(91)(c)).***

(b) Responsibilities of contracting officers.

(1) Promptly upon receipt of a contract audit report involving indirect cost rates, defective pricing, incurred costs, final pricing, terminations, claims, cost accounting standards, and reviews of a contractor's system the contracting officer shall furnish a copy of the report to the local contract audit followup focal point, and, if "reportable" (see DoDD 7640.2, paragraph F.3.), a detailed milestone plan for timely "resolution" and "disposition" (see ***15.406-3(b)(91)(c)(2)).*** Updated milestone plans, reflecting the actual dates milestones were achieved and revised target dates, shall be forwarded to the local contract audit follow-up focal point at the time any milestone is achieved or missed.

(2) Contracting officers shall "resolve" any differences between their planned action and that recommended by the contract audit activity for all "reportable" audits. The contracting officer shall accomplish the required "resolution" promptly, and in no case later than 6 months following issuance of the audit report (P.L. 96•527). "Resolution" occurs upon approval obtained, in accordance with local review procedures, of the planned negotiation/settlement objectives.

(3) The contracting officer shall endeavor to accomplish disposition of all audit reports as soon as possible after "resolution." "Disposition" should normally occur within 12 months following audit report issuance. As stated in Enclosure 1 to DoDD 7640.2 a reportable audit is closed when "disposition" occurs, i.e.:

(i) The contractor implements the audit recommendations of the contracting officer's decision; or

(ii) The contracting officer negotiates a settlement with the contractor and a contractual document has been executed; or,

(iii) The contracting officer issues a final decision pursuant to the Disputes Clause, and 90 days elapse without contractor appeal to the Armed Services Board of Contract Appeals (ASBCA). (Should the contractor appeal to the Claims Court within the 12 months after final decision, the audit must be reinstated as an open report in litigation); or

(iv) A decision has been rendered on an appeal made to the ASBCA or U.S. Claims Court and any corrective actions directed by the Board or Court have been completed and a contractual document has been executed; or

(v) Audit reports have been superseded by, or incorporated into, a subsequent report; or

(vi) Any corrective actions deemed necessary by the contracting officer have been taken, so that no further actions can be reasonably anticipated.

(4) In addition:

(i) Upon completion of the "disposition" action, the contracting officer shall promptly furnish a memorandum of actions taken to the local contract audit follow-up focal point, the ACO, and to the auditor (DoDD 7640.2, paragraph F.5.a.).

(ii) When award does not result to the contractor whose offer was subject to a preaward audit report (due to cancellation, award to a competitor, etc.), the contracting officer shall promptly provide written notification to the local contract audit follow-up focal point, the ACO, to the auditor (DoDD 7640.2, paragraph F.5.b.).

(c) Responsibilities of contract audit follow-up focal points. The contract audit follow-up focal point is responsible for tracking and reporting the status of audit reports as specified below:

(1) Tracking every contract audit report, excluding "nonreportable audits," using milestone status information furnished by the contracting officer. The current status of each action is to be maintained in a log or similar document that includes all information required by the semiannual contract audit follow-up status report.

(2) Preparing the semiannual report ***spreadsheets*** of "open" and "closed" audits (formats in DoDD 7640.2) ***in MS Excel*** for submission by the chief of the contracting office and receipt in HQ DLA, ATTN: ***J-3313***, not later than 10 April and 10 October of each year, along with a current milestone chart on each open audit (see ***15.406-3(b)(91)(c)1***)). Negative reports are required. ***Electronically transmit a copy of the report spreadsheets to jerry.gilbart@dla.mil .***

15.408 Solicitation provisions and contract clauses.

[f142]***(***l) Requirements for cost or pricing data or information other than cost or pricing data. ***Reserved. (See 12.301(f)(93).)***

(m) Requirements for cost or pricing data or information other than cost or pricing data – Modifications. ***Reserved. (See 12.301(f)(93).)***

PART 16

TYPES OF CONTRACTS

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TYPES OF CONTRACTS

SUBPART 16.2 • FIXED PRICE CONTRACTS

16.203 Fixed•price contracts with economic price adjustment.

16.203 Definitions.

(90) As used in this section---

"Established catalog price" means prices (including discounted prices) recorded in a catalog, price list, schedule, or other record that (a) are regularly maintained by the manufacturer or vendor; and (b) are published or otherwise available for customer inspection.

"Established market price" means a price that is established in the course of ordinary and usual trade between buyers and sellers free to bargain and that can be substantiated by data from sources independent of the offeror.

"Existing[f143] ***EPA clause" means a clause prescribed in FAR 16.203-4 or DFARS 216.203-4-70, respectively, or a locally developed EPA clause that has been reviewed and approved in accordance with agency procedures (16.203-3(93)).***

16.203•1 Description

(a)(90) Adjustment based on established prices. Established prices may reflect industry•wide and/or geographically based market price fluctuations for commodity groups, specific supplies or services, or contract end items. (***DAR Tracking Number 95-D0003***, FARS DEV 96•10).

(c)(90) Adjustments based on cost indexes of labor or material. These price adjustments may also be based on increases or decreases in indexes for commodity groups, specific supplies or services, or contract end items. (***DAR Tracking Number 95-D0003,*** FARS DEV 96•10).

16.203•2 Application.

(90) Established prices and cost indexes need not reflect changes in the costs or established prices of a specific contractor. The established price or cost index may be derived from sales prices in the marketplace, quotes, or assessments as reported or made available in a consistent manner in a publication, electronic database, or other form, by an independent trade association, Government body, or other third party independent of the contractor. More than one established price or cost index may be combined in a formula for economic price adjustment purposes in the absence of an appropriate single price or cost index. (***DAR Tracking Number 95-D0003,*** FARS DEV 96•10).

(91) Although a specific item or element of cost may require EPA coverage, the contracting officer should ***also*** determine whether an EPA ***clause*** should cover the entire end item to take advantage of competitive market forces to moderate price fluctuations. The decision should be based on risk and price analyses of the alternatives, and may be an appropriate element of tradeoff in negotiations.

16.203•3 Limitations.

(90) ***A fixed price contract with economic price adjustment may also be used to provide for price adjustments authorized in this section.*** (***DAR Tracking Number 95-D0003,*** FARS DEV 96•10). ***(See 16.203-1, 16.203-2 (90) and 16.203-4(90).***

(91) ***An economic price adjustment (EPA) clause may be planned for use in the event the contracting officer substantiates in documentation included as part of the acquisition plan that the conditions cited in FAR 16.203-3 exist and an EPA provision is required to achieve one of the two objectives stated therein, and/or its use is authorized in this section***.

(92[f144]) When the contracting officer determines that no existing ***FAR*** EPA clause ***(including a FAR EPA used in conjunction with the corresponding FAR EPA "Implementation" DLAD clause (see 16.203-4(a)(1)(90), -4 (b)(1)(90), and -4(c)(1)(90)), no DFARS EPA clause and no locally-developed HQ DLA approved clause*** satisfies the need for an EPA ***clause***, a new EPA clause may be developed in accordance with FAR 16.203-4, DFARS 216.203-4-70, and this section.

(93[f145]) Prior to issuance of a solicitation containing a new EPA or revision to an existing EPA clause, the contracting officer shall submit it ***to*** the local policy office ***for review and approval. All new EPA clauses and revisions to existing EPA clauses shall be forwarded*** to HQ DLA, ATTN: J-3313, for review and approval, along with identification of any options and other EPA to be included. This ***DLA*** approval requirement also applies to acquisitions of commercial items. However, ***this DLA approval requirement*** does not apply to a minor, ***(i.e., editorial*** revision ***clarification, or an incidental*** correct***ion*** or update ***change to*** an existing (HQ DLA-approved, locally-developed) EPA clause, provided ***that*** a copy of the revised clause is furnished to J-3313 at the time of decision to include it in the solicitation***; nor to use of a FAR EPA "Implementation" DLA clause***.

(9***4***) The CCO or designee (not lower than one level above the contracting officer) shall approve any ceiling exceeding ten (10) percent. Such approval may cover more than (1) contract and extend over a stated definite period of time not to exceed two (2) years.

(9***5***) If not included in the EPA clause, the solicitation and contract shall elsewhere contain, and the contracting officer shall assure compliance with, the contractor's warranty that the contract prices do not include allowance for any contingency to cover increased costs also considered by the EPA clause. (When a contract option is also planned see 17.203(d).)

(9***6***) If it becomes apparent that an EPA clause is clearly justified in a solicitation that did not include one, a FAR, DFARS, ***DLAD*** or ***locally developed*** HQ DLA•approved EPA clause may be included ***by amendment to the solicitation and in*** any resulting contracts if all EPA contingencies covered by the EPA clause are removed from ***any formerly offered*** price(***s***).

16.203•4 Contract clauses.

(90[f146]) When the contracting officer determines that ***no*** existing EPA clause ***(including a FAR clause used in conjunction with the corresponding FAR EPA "Implementation" DLAD clause (see (a)(1)(90), (b)(1)(90) and (c)(1)(90) below)*** is appropriate, the contracting officer may develop and use ***a modification to an existing*** EPA clause***, or a new clause,*** in accordance with 16.203-1(a)(90) or (c)(90). Established prices and cost indexes need not reflect changes in the costs or established prices of a specific contractor. The established price or cost index may be derived from sales prices in the marketplace, quotes, or assessments as reported or made available in a consistent manner in a publication, electronic database, or other form, by an independent trade association, Governmental body, or other third party independent of the contractor. More than one established price or cost index may be combined in a formula for economic price adjustment purposes in the absence of an appropriate single price or cost index upon approval pursuant to 16.203-3(91). (DAR Tracking Number 95-D0003, FARS DEV 96-10).

(91) Adjustments based on established ***market*** prices or ***indexes (see also (d.) below)***.

(i) The contracting officer shall determine the most appropriate international, national, regional, or local area market. The EPA clause included in the solicitation shall identify the index or established market price, the document containing such index or price, and its effective date or period.

(ii) If the contracting officer is unable to identify an established market price or index that satisfactorily reflects economic fluctuations, then the EPA provision included in the solicitation may provide for offeror fill•in to recommend the most appropriate established market price or index (if none, the most appropriate established catalog price), along with the document containing the established price or index and the effective date/period of the established price or index (and, for established catalog price EPA clauses, the identification and amount of any applicable extras, discounts, or rebates used in calculating the contract price). The contracting officer shall select the most appropriate established market price or index identified (if none, the most appropriate established catalog price). The contracting officer may amend the request for proposal (RFP), after requesting and receiving best and final offers, to include this selection.

(iii) In addition, when ***p***[f147]***reparing a new, locally developed EPA clause or a revision to an existing clause involving*** using an established or published market price clause, include the provision at (d)(iv)(90), after substituting ***the phrase*** "market price" ***indicator*** for the ***five*** occurrences of the word "index".

(92) Adjustments based on established catalog prices. An established catalog price-type EPA clause (FAR 52.216-2 or –3, DFARS 252.216-7000 or –70001, or similar locally-developed clause) may be included in solicitations and resulting contracts for an item previously bought without such EPA clause only after the contracting officer determines that neither an index-type or an established market priced EPA is suitable (i.e., the requirements of FAR 16.203-4(d) and DFARS 216.203-4(d) are not met or there is no suitable index or established market price describing the supplies with specificity) and documents in the acquisition plan the results of actions taken in reaching this determination.

(a) Adjustments[f148] ***based on established prices--standard supplies.***

(1)(90) The clause at 52.216-9000 (or substantially the same clause) may be used with FAR clause 52.216-2.

(b[f149]***) Adjustments based on established prices--semistandard supplies.***

(1)(90) The clause at 52.216-9001 (or substantially the same clause) may be used with FAR clause 52.216-3.

(c) Adjustments based on actual cost of labor or material.

(90) An actual cost type EPA clause (FAR 52.216•4 or a locally•developed clause) may be included in solicitations and resulting contracts for an item previously bought without such an EPA clause only after the contracting officer determines that no other type of EPA clause is appropriate and documents in the acquisition plan the results of actions taken in reaching this determination. A provision shall also be included in the solicitation and any resulting contracts that••

(***i***) Identifies the specific direct cost factor and dollar amount needed to establish the baseline from which adjustments will be made, regardless of whether cost or pricing data was submitted;

(***ii***) Incorporates by reference, the cost principles and procedures in FAR Subpart 31.2 for use as the basis for pricing the baseline and any adjustment under the EPA clause;

(***iii***) Identifies any appropriate markup factors/amounts; and

(***iv***) Provides the methodology for price adjustment calculations.

(1[f150]***)(90) The clause at 52.216-9002 (or substantially the same clause) may be used with FAR clause 52.216-4.***

(3)(90) When the FAR "Implementation" DLAD clause is also used (along with the note specified at 15.204-2(b)(91)), the contracting officer shall include the required information in such clause vice the contract Schedule.

(4)(iii)(90) When the FAR "Implementation" DLAD clause is also used (along with the note specified at 15.204-2(b)(91)), the contracting officer shall include the required information in such clause vice the contract Schedule.

(d) Adjustments based on cost indexes of labor or material. An index clause may be included in solicitations and resulting contracts only if the contracting officer documents in the acquisition plan, rationale indicating that the acquisition satisfies the requirements of FAR 16.203•4(d) and DFARS 216.203•4(d). The contracting officer shall select the most appropriate index published by the Bureau of Labor Statistics (BLS). Another index may be used provided the contracting officer determines that no BLS index is suitable and documents in the acquisition plan the specific BLS indexes considered, why they were unsuitable, and rationale demonstrating the suitablility of the index selected.

(d)(iv)(90) "***In the event—***

(i) Any applicable index is discontinued or its method of derivation is altered substantially; or

(ii) The contracting officer determines that the index consistently and substantially fails to reflect market conditions—

the ***parties shall agree upon an appropriate substitute index for determining price adjustments hereunder. T***he contract ***shall be modified to reflect such substitute index***, effective on the date the index specified in the contract ***is no longer published or*** bega***n*** to consistently and substantially fail to reflect market conditions."

(d)(***v***)(90) When planning to use an index•type clause which provides for price adjustment, whenever the actual index for a period differs from the projected index for that period sufficiently to trigger a price adjustment, the contracting officer shall ensure that the projected index for each period to be included in the clause at least equals the projected indexes used in pricing the same cost element under the contract.

SUBPART 16.5 • INDEFINITE•DELIVERY CONTRACTS

16.501•2 General.

(c) The requirements of DFARS Subpart 217.74 and DLAD 17.74 shall be met for indefinite•delivery contracts providing for issuance of undefinitized delivery orders (UDOs).

(90) IDCs that enable decentralized ordering shall contain provisions for customers and other users the options of (i) placing orders to be paid using their Governmentwide purchase card and (ii) ordering against their purchase card, for individual orders not to exceed $100,000. An exception is authorized only to the extent the prospective contractor refuses to accept the purchase card for ordering and payment. Customers and other users of the Governmentwide purchase card against IDCs issued by contracting offices of DLA and other agencies are bound by any applicable restrictions and policies issued by or in accordance with procedures applicable to the indvidual users (DLA users are governed by DLAD 4105.3 & DLAI 4105.3, DLA Governmentwide Commerical Purchase Card Program).

(d) Indefinite-delivery contracts may provide for any appropriate cost or pricing arrangements under Part 16, including firm fixed price, fixed price with economic price adjustment, fixed price with prospective redetermination, or price based on catalog or market prices. When prices are based on catalog or market prices, the price to be paid may be determined by establishing an adjustment factor and applying it to the price in industry-wide pricing guides or manufacturers' price catalogs. Normally, the adjustment factor will be a fixed percentage discount to be applied to the price in effect on the date of each order.

16.503 Requirements Contracts.

(d) The determination that award of multiple contracts is not practicable shall be contained in the acquisition plan or otherwise documented in writing prior to issuance of the solicitation.

16.504 Indefinite-quantity contracts.

(a) The Government's quantity limitations may be stated in different ways; for example, as a number of items or a dollar value worth of items. Stating the Government's minimum/maximum liability for the entire contract is appropriate for multiple line item contracts when, due to the unique nature of the requirement, it is difficult or impossible to predict, prior to solicitation, the number of individual items needed. The contracting officer must balance the risks inherent in providing more specific limitations with the increased risk to the contractor, and possible increased cost to the Government, of providing less specific

limitations.

(4)(iv) Consideration of past performance in order placement decisions shall include success in implementation of proposed socioeconomic support programs (see 15.605(b)(1)(91) and performance in carrying out Mentoring Business Agreement ***proposals*** (see 19.***90***)***and 15.605(b)(92), and support of Javits-Wagner-O'Day Act (JWOD) qualified entities (see 15.605(b)(1)(94)).*** Solicitations shall so state in the explanation of order placement criteria (FAR *16.504*(a)(4)(iv)).

(c) The determination not to make multiple awards shall be contained in the acquisition plan or otherwise documented in writing in the contract file.

16.505 Ordering.

(a)(90) A delivery order must be issued for any quantity ordered, including a quantity ordered concurrent with award of a basic contract.

(a)(5) DLA Form 1224, Shipping Instruction, may be used to issue automated orders under indefinite-delivery contracts not exceeding the simplified acquisition threshold.

(b) Solicitations shall advise offerors that (1) the competition requirements of FAR Part 6 do not apply to placement of individual task and delivery orders; (2) individual orders shall be placed in accordance with the selection criteria specified in the solicitation/contract; and (3) complaints about the placement of individual orders shall be reviewed by the activity competition advocate.

(2) The determination not to provide all awardees a fair opportunity to be considered for a particular order in excess of $2,500 should be documented in the order file.

(4) The competition advocate at each contracting activity/office (as defined in DLAD 2.101) shall act as the activity task and delivery order contract ombudsman pursuant to FAR 16.505(b)(4). The ombudsman shall attempt to resolve contractor complaints relative to placement of individual task and delivery orders at the local level. Complaints which cannot be so resolved shall be forwarded to the HQ through ***J-3312*** for resolution by the DLA competition advocate. Each activity is responsible for developing procedures for executing the duties and responsibilities of its local ombudsman.

SUBPART 16.6 • TIME•AND•MATERIALS, LABOR•HOUR, AND LETTER CONTRACTS

16.601 Time and materials contracts.

(c) Limitations.

(90) "Not to exceed" price ceilings shall be included in each option and delivery order.

16.603 Letter contracts.

16.603•3 Limitations.

The determination required by FAR 16.603•3 shall be included with the DFARS 217.7404•1 authorization request.

16.603•90 Procedures.

(a)(2) Requests for HQ DLA preaward review and approval of a letter contract or other undefinitized contract action (UCA) shall be made by the chief of the contracting office. Requests subject to 1.690•6(g) may be transmitted electronically to ***J-3313***.

(b) At a minimum, requests for approval shall include:

(1) A written Statement of Urgency supporting the requirement for a UCA, including:

(i) The quantities, dates and priorities of existing and projected requirements to be filled by the buy;

(ii) The date that the requirement was first known to exist;

(iii) Why the interests of national defense demand that a contractor be given a binding commitment so that work can begin immediately;

(iv) Why negotiation of a definitive contract or priced order did not and cannot occur in sufficient time to meet the acquisition need; and

(v) The determination required by FAR 16.603•3 (letter contracts only) and authorization to take the necessary actions for entering into an UCA required by DFARS 217.7404•1;

(2) The contracting officer's responsibility determination of the prospective contractor (FAR 9.103);

(3) The ceiling total price and ceiling unit price(s) to be included in DFARS Clause 252.217-7027 Contract Definitization, an explanation of how they were derived, and documentation of the reasonableness of each ceiling unit price (see 16.703(d)(90) or 17.7603•3(a), as applicable), to include identification of the lowest unit price for each item within the most recent 12•month period.

(4) The obligated amount, interim billing price, and the predefinitization limits of the Government's liability under the UCA;

(5) A discussion of any requirement for progress payments, provisional payments, and options for increased quantity or performance period;

(6) The proposed definitization schedule including dates for••

(i) Receipt of the contractor's proposal;

(ii) Beginning of negotiations;

(iii) Completion of negotiations;

(iv) Target date for definitization; and

(7) The following additional milestone dates (unless another contract management activity will definitize):

(i) Receipt of field pricing report;

(ii) Receipt of the local price or cost/price analysis; and

(iii) Submission of the proposed definitive contract and supporting file for HQ DLA review and approval, pursuant to 1.690•6(c)(6).

(8) The delivery schedule.

(c) A copy of the signed letter contract shall be forwarded to HQ DLA, ATTN: ***J-3313***, within 1 week of execution.

SUBPART 16.7 • AGREEMENTS

16.703 Basic ordering agreements.

(c) Limitations.

(90) If a DLA BOA is to permit progress payments, such payments should normally be precluded on orders with a ceiling price below $1 million and/or having deliveries scheduled to commence in less than 6 months (less than $100,000 and/or less than 4 months for small business firms). This exclusion may be waived where the contracting officer documents the review and results specified in FAR 32.502•1(d)(1) and approval is granted at a level above the contracting officer.

(1)(ii)(90) The requirements of DFARS 217.7404•1 through 217.7404•4, DFARS 217.7405 through DFARS 217.7406, and DLAD 17.7404•2 through 17.7404•90 shall be included in the terms and conditions of BOAs executed by DLA contracting offices which authorize issuance of undefinitized delivery orders (UDOs), for applicability to such UDOs.

(d) Orders.

(90) The file shall be documented when the price or cost analysis techniques discussed at 15.***404-1(b) and –1(c)*** are used for award of priced delivery orders and definitization of UDOs.

(2)(ii)(90) If a DLA BOA contains a progress payment clause without an exclusion provision for orders with a ceiling price below $1 million ($100,000 for small business firms) and/or having deliveries scheduled to commence in less than 6 months (4 months for small business firms), a provision precluding such applicability shall be included in all delivery orders below these thresholds except where the contracting officer documents that the requirements of 16.703(c)(90) and/or FAR 32.502•1 have been met.

(3)(90) The requirements of DFARS Subpart 217.74 and DLAD 17.74 shall be met on all UDOs issued by DLA contracting offices.

(3)(91) The requirements of 16.603•90(a)(2) through (90)(c) shall be followed when HQ DLA preaward review and approval to award a UDO is required by 1.690•6(g).

PART 17

SPECIAL CONTRACTING METHODS

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SUBPART 17.1 • MULTIYEAR CONTRACTING

17.103•1 General.

(b)(iii) The responsibility for making the determination required by DFARS 217.103•1(b)(iii) is delegated to the Commander, DRMS, with power of redelegation to the Director, Directorate of Contracting (DRMS•P), for contractual actions not exceeding $10 million in total procurement value and for which the cancellation ceiling does not exceed $500,000. The delegation is unlimited for multiyear determinations when a cancellation ceiling of $0 is included.

17.104 General.

(a[A151]) DLA contracts that have a base and/or an option period of performance greater than one year that includes more than one year's worth of requirements are not considered multi-year contracts as set forth in FAR/DFARS 17.1 or as defined in the DoD Financial Management Regulation if 1) they are funded exclusively with working capital funds, and 2) funds are fully obligated at time of award to cover the contract commitment (i.e., guaranteed minimum). However, such acquisitions must comply with the following:

(1) An analysis must be conducted during the acquisition planning process to determine the most beneficial period of performance length, and for indefinite-quantity contracts, the appropriate guaranteed minimum. This analysis must address why the proposed duration and contract minimum provide pricing and business benefits, and also must address the degree of Government risk associated with a longer-term arrangement. Items that should be considered at a minimum include: cost, future potential for competition on the solicited items, whether the resultant contract will contain an EPA clause, associated contractor start-up costs, and potential impact on the current/future small business base. Results of the analysis must be documented in the Acquisition Plan.

(2) Acquisition personnel must coordinate with their comptroller's office to ensure adequate funding procedures are in place so that such acquisitions do not, singly or cumulatively, create a negative impact on cash flow or obligation authority that impedes support to other procurement requirements.

(b) The authority to approve modification of cancellation provisions pursuant to FAR 17.104(b) is delegated to heads of contracting activities (HCAs). HCAs may further delegate this authority, without power of redelegation, to the Center Senior Procurement Official at each of the Inventory Control Points. Contracting offices not designated as contracting activities (see DLAD 2.101) shall forward requests for modification of cancellation provisions to the Executive Director, Acquisition, Technical, and Supply Directorate (J-33) for approval.

17.105-1 Uses.

(b) The authority to enter into a multiyear contract for supplies pursuant to FAR 17.105-1(b) is delegated to heads of contracting activities (HCAs). HCAs may further delegate this authority, without power of redelegation, to the Center Senior Procurement Official at each of the Inventory Control Points. Contracting offices not designated as contracting activities (see DLAD 2.101) shall forward requests to enter into a multiyear contract for supplies to the Executive Director, Acquisition, Technical, and Supply Directorate (J-33) for approval.

(c) For the Defense Energy Support Center, the authority to enter into a multiyear contract for services pursuant to FAR 17.105-1(c) is delegated to the HCA, with redelegation permissible to the Center Senior Procurement Official only.

17.171 Multiyear contracts for services.

(a)(3) For DESC, the responsibility for making the determination required by DFARS 217.171(a)(3) is delegated to the HCA. The HCA may further delegate this authority, without power of redelegations.

SUBPART 17.2 • OPTIONS

17.202 Use of options.

(90) The requirements of DFARS subpart 217.74 and subpart 17.74 shall be met for surge, emergency, services or other options which are undefinitized at time of exercise by the Government, i.e., an undefinitized option (UO).

17.203 Solicitations.

(a) Highlight the inclusion of an option provision in a solicitation by a cross•reference to the option in the price schedule. The option shall require a positive acknowledgment by the contractor (e.g., annotation of its option price). Under no circumstances shall an option procedure be used which results in inclusion of an option clause in any contract due to failure of the offeror to explicitly signify the unacceptability of the provision or counteroffer a different price for the option.

(b) The requirements of 15.***403-4***(a)(1) shall be addressed when stating the basis of evaluation.

(d) When a separately priced option quantity or period is permitted in a solicitation which also includes an economic price adjustment (EPA) or similar repricing provision applicable to the same option quantity or period price(s) for the same item(s) of supply or services, the contracting officer shall preclude potential overpricing, usually by providing for a price buildup in the schedule (see 52.214•9001) from mutually exclusive portions of the (basic and option) price subject to EPA and the firm fixed price portions. The firm fixed price portion of the option price may exceed the comparable portion of the basic award price (see 52.217•9001). However, "overlap" (i.e., where any portion of the option quantity or period price is also covered by an EPA clause) is permitted only when the contracting officer documents reasons why overpricing will not occur and utilizes a provision which requires offering of prices for the firm fixed price portion of the quantity or period prices which are no higher than that for the basic contract (see also 16.203•3(93)).

(f) Such option price restriction may be used in other exceptional circumstances where fully justified (FAR 17.203(f)) by documentation included in the acquisition plan.

(g) The approval cited in FAR 17.203(g)(2) should also be included in the acquisition plan. The option price restriction shall be conspicuously included in Section M of the solicitation. The cautionary notice (FAR 17.203(g)(1)) shall also be included in Section M.

17.204 Contracts.

(e) The total of the basic and option periods in the case of services, or the total of the basic and option quantities in the case of supplies, may exceed 5 years when approved by the chief of the contracting office, provided no statutory restriction limits the term of the contract.

17.206 Evaluation.

(b)(90) The determination and approval not to evaluate an option estimated to exceed $5***5***0,000 prior to contract award (or definitization, if an undefinitized contract) shall be in the contract file, and shall include (see also 15.***403-4***(b)(90)) either,

(i) An explanation of the specific exemption that can be applied to avoid the data submission and certification requirements of P.L. 87•653, and identification of the pricing technique(s) available to subsequently determine the option price fair and reasonable without submission of certified cost or pricing data or catalog exemption data; or

(ii) A statement that such option price(s) are identified in the solicitation and contract Schedule as "not to exceed" ceiling price(s) subject to later definitization (see 17.208(a)(90)).

17.207 Exercise of options.

(a) The option clause shall require that the contractor be given adequate notice (see FAR 17.207(a)) of the requirement to perform under the option (as a general rule, at least 14 days prior to the last scheduled delivery date).

(c)(90) In addition to those considerations set forth in the FAR, exercise options only if it is determined that:

(1) There is no ***cardinal*** change in the requirement; and,

(2) The contractor's performance is satisfactory. A record of demonstrated superior performance may warrant additional consideration under buying best value guidelines. (See 17.207(e)(90).) Satisfactory performance includes successful implementation of any support to socioeconomic programs which was evaluated as part of source selection as well as any Mentoring Business Agreements which were proposed and evaluated during source selection. ***For contracts that effected a Shift to Commercial Practices or change in method of customer support, see 42.1103(90).***

(d)(1) A new solicitation should not normally be used as a means to determine reasonableness of option prices. Tests of the reasonableness of the option price should generally be made by one of the methods identified in FAR 17.207(d)(2) or (3). Whenever a contracting officer determines that it is necessary to test the reasonableness of the option price by use of a formal solicitation, the contract file must contain a memorandum which briefly explains the reasons for the decision.

(2) The following are examples of factors which may be considered in the informal test of the market and evaluation of the option price(s):

(i) The fact that the option price was evaluated for price reasonableness prior to initial award.

(ii) The relationship of the option price to the price for the initial contract quantity.

(iii) The adequacy of competition at time of initial award and the length of time since the award.

(iv) Changes in the general economy that could affect the contractor's costs.

(v) The results of any market research and analysis efforts (see Part 10).

(e)(90) An additional factor to be considered is the desirability of continuing a successful contractual relationship with a vendor that has demonstrated superior quality and delivery performance. Where the market analysis or survey shows that the item may be available at lower cost, this need not preclude the exercise of the option given a history of superior performance by the contractor. Performance criteria, may be used in determining superior performance and evaluating its importance relative to market price considerations and other factors.

(f) Prior to exercising an option, the contracting officer shall consider the factors at FAR 9.104•1 particularly the contractor's performance under the base contract period and any previous options. A decision not to exercise the option after considering responsibility•type factors is not a determination of contractor responsibility, and is not subject to referral to the SBA if the contractor is a small business.

17.208 Solicitation provisions and contract clauses.

(a)(90) If the contract includes an option in amount exceeding $500,000 which was not evaluated prior to award, the contracting officer shall include a clause substantially the same as the clause at DFARS 252.217•7001, Surge Option, providing for definitization of the option before option exercise, except in the event urgency dictates post•exercise definitization.

SUBPART 17.73 • IDENTIFICATION OF SOURCES OF SUPPLY

17.7301 Policy.

In the interest of maintaining supply system and item integrity, and fostering the spare parts breakout programs, it is essential to know what is being purchased and from whom. It is the policy of DLA to retain the right to require identification of the manufacturing sources of the items purchased. Therefore, refusal of offerors to provide such information when specifically required is a valid basis for rejection of offers.

17.7302 Procedures.

(c) When required, the source of manufacture must be identified. Refusal of offerors to do so precludes a contracting officer from determining the technical acceptability of the item to be supplied. Therefore, the offer cannot be accepted. Additionally, if an offeror furnishes the information but restricts its use on the basis of confidentiality, except as provided in subparagraph (e) below, the contracting officer must advise the offeror that••

(1) It is not DLA policy to make awards with such restrictions or to hold such information in confidence;

(2) In order to be eligible for award, the confidentiality requirements must be removed; and

(3) If such limitation is not removed, the offer may be rejected.

(d) Obvious reasons for not maintaining confidentiality are that it is operationally impractical because the total administrative costs could outweigh savings on the instant purchase. In addition, because of the volume of purchases, it is difficult to guarantee confidentiality, and DLA could be liable for inadvertent disclosure. Finally, it is contrary to DoD efforts to expand competition.

(e) Notwithstanding subparagraph (d) above, there may be instances when award may be beneficial to the Government whether or not the confidentiality restriction is removed. In these instances, prior to award, the contracting officer shall review the validity of the restriction. For example, if the identified manufacturing source is advertised in trade journals, commercial source listings, or is otherwise known to industry and Government, then holding the identity of the manufacturing source in confidence is not appropriate and shall be challenged. If it is determined that the confidentiality restriction is valid, then that information shall be held in confidence.

(f) Accordingly, a solicitation provision substantially as set forth in 52.217•9003 shall be included in negotiated solicitations, except in solicitations for commercial items. (Note: This provision, when used, may not be used as a modification to the provision at 52.217•9002, Conditions for Evaluation and Acceptance of Offers for Part Numbered Items.)

(g) It must also be noted that, if there is no provision in the solicitation which requires the offeror to disclose manufacturing/production sources, the offeror may properly conceal those sources in a competitive atmosphere.

SUBPART 17.74 • UNDEFINITIZED CONTRACT ACTIONS

17.7403 Policy.

(a)(90) The contracting officer shall expedite Government and contractor efforts to secure an acceptable price proposal and evaluation pending and following approval to award a UCA. The chief of the contracting office shall monitor usage of UCAs for conformance with regulatory requirements.

17.7404 Limitations.

17.7404•1 Authorization.

The authority in DFARS 217.7404•1(b) to authorize use of a UCA for a non•urgent requirement, exists only where the non•urgently needed quantity should be included and priced coincident to definitization of an urgently required quantity of the item. Authorization to take this action or the actions cited in DFARS 217.7404•1(a) or (c) is delegated, without authority for further delegation, to:

(a) The chief of the contracting office at the DSCs for a UCA to fill a requisition for a backordered or non•stocked quantity requiring heightened management, i.e.:

(i) a Military Service requisition with Issue Priority Designator (IPD) 01;

(ii) a Military Service requisition with IPD 02 or 03; and either an Anticipated Not Mission Capable Supply (ANMCS) or Not Mission Capable Supply (NMCS) indicator in the required Delivery Date field (record positions 62•64) beginning with a "9", "N", or "E" or an OSD/JCS project code (record position 57•59) beginning with a "9".

(iii) a Foreign Military Sale requisition under the Cooperative Logistics Program Support Agreement (CLSSA) with IPD 02 or 03 and an OSD/JCS project code beginning with a "9".

For such high priority UCAs where the not•to•exceed ceiling price does not exceed the simplified acquisition threshold, this authorization is delegable, but not lower than one level above the contracting officer.

(b) The Administrator/Deputy Administrators, Defense National Stockpile Center and ***Director,*** Defense Automated Printing and Support Center;

(c) The Commanders/Deputy Commanders of other activities.

The written approval shall document the specific urgency which compels use of a UCA, demonstrate that the restrictions of DFARS 217.7403 are met, and identify the consequences of failure to take such action.

17.7404•2 Price ceiling.

(90) The "not to exceed" definitized contract total price ceiling shall be based on a "not to exceed" unit price included in the UCA for each item (each labor rate, for labor hour or time and materials type UCAs) with the stipulation that in no event shall the delivery quantity be decreased to affect or minimize increased costs to the contractor.

17.7404•3 Definitization schedule.

(90) The definitization schedule shall include milestone dates for receipt by the contracting officer of a price proposal that provides the required cost or pricing data, normally within 30 calendar days following award, and for beginning negotiations. ***(This requirement is not applicable to unpriced purchased orders (UPO))***

17.7404•4 Limitation on obligations.

(90) To preserve the DFARS flexibility to increase the pre•definitization level following submission of a qualifying proposal (i.e., one which provides the required cost or pricing data and/or other information the contracting officer deems necessary for price definitization), the contracting officer must keep the obligation level below 50 percent of the not•to•exceed UCA ceiling price until receipt of such proposal. ***(This requirement is not applicable to UPO's)***

17.7404•6 Allowable profit.

(90) The chief of the contracting office shall assure conformance with the requirements of DFARS 217.7404•6(a) and (b). ***(This requirement is not applicable to UPO's)***

17.7404•90 Other requirements .

(a) Payment limitations. To facilitate timely proposal submission and price definitization, contracting officers should establish initial funding available for interim financing and payments (e.g., progress payments, interim delivery payments (DFARS 232.102•70), public vouchers, and DD250s) consistent with the estimated amounts of contractor expenditures as of the dates specified in the definitization schedule for submission of a qualifying proposal and for price definitization. The contracting officer should subsequently relax or tighten such controls and incentives (e.g., by revising interim billing rates, reducing or suspending progress payments (DFARS 232.503•6), etc.) as necessary and appropriate to achieve timely definitization.

(b) Delivery schedule. Specify a firm delivery schedule, otherwise a "not to exceed" schedule reflecting the Government's minimum needs. A tentative schedule permitting the unilateral contract extension of the delivery schedule shall not be used.

(93) The contracting officer shall identify and include with any delegation of an undefinitized delivery order (BOA, IDC, T&M contract, etc) ***or other UCA*** for definitization by the cognizant ACO, any independent Government estimate ("should cost") that have been performed and found useful for determining price reasonableness, establishing negotiation objectives, and for contract negotiations. The delegation letter should request that the ACO furnish feedback on the utility and effectiveness of the IGE to the Center and to office(s) preparing and furnishing the IGE.

17.7406 Contract clauses.

(a) and (b) These clauses are not applicable to UPOs.

SUBPART 17.75 • ACQUISITION OF REPLENISHMENT PARTS

17.7501 Procurement of parts.

(b)(3) Solicitation Provision.

(i[A152]) The provision at 52.217-9002 entitled "Conditions for Evaluation and Acceptance of Offers for Part Numbered Items" may be used in negotiated acquisitions of replacement parts, components, and assemblies which are identified ***in the acquisition identification description (AID)*** only by the name ***of an approved source, a*** part number, and a brief description, except that the provision at 52.213-9004, Offeror Representations, Certifications, and Fill-in Information--Electronic Commerce, ***or an alternative method of collecting the data therein,*** shall be used instead, and shall incorporate 52.217-9002 by reference, whenever a solicitation below the simplified acquisition threshold is automated. (See 13.104(90).) ***The provision at 52.217-9002 shall be used verbatim, except that the acronym "CLIN" may be substituted for the word "item" wherever it appears in the provision. When the provision is used, the following shall be inserted in the solicitation after each item description:***

"Offer" based on:

Manufacturer's Name . . . . . .
Part No. . . . . .

(ii) T[f153]he provision[f154] ***at 52.217-9002 may also be used*** in acquisitions of NSNs identified as "critical safety items (CSIs)" ***in the AID*** (see 11.302-91); however, ***when acquiring CSIs, offers*** of "exact product" are evaluated in accordance with the clause[f155] at 52.211-9005, Conditions for Evaluation and Acceptance of Offers for Critical Safety Items.

(iii) The provision ***at 52.217-9002*** may be used for simplified acquisitions as well as large purchases, provided that the full text of the provision shall be made available to offerors. (When 52.213-9004***, or an alternative data collection method,*** is used, its inclusion of pertinent fill-in portions of 52.217-9002, and the latter's overall incorporation by reference, shall, along with directions to the offeror on electronic access to, and other availability (including hard copy) of, all applicable guidance, constitute provision in full text.)

(iv) The provision should not be used in procurements when technical personnel have specifically advised that for the current procurement, alternate products cannot be evaluated, e.g., restricted source or source controlled items, National Institute for Occupational Safety and Health (NIOSH) items for which necessary testing equipment is not reasonably available, etc.

(v) It is the Government that determines if evidence furnished by offerors in accordance with 52.217-9002 is acceptable. At a minimum, evidence must be sufficient to establish the identity of the product and its manufacturing source. Contracting officers have broad flexibility to determine if a particular response conforms, as long as the decision is reasonable. Evidence is not necessarily limited to paper documentation. (For example, the contracting officer may request a sample item for testing.)

(vi) When the product being offered is manufactured for an approved source cited in the AID, the offeror must, if requested by the contracting officer, furnish evidence sufficient to demonstrate that the approved source (A) is overseeing and involved in the manufacturer's production of items; and (B) has authorized the manufacturer to produce the item, identify it by that approved source's name and part number, and sell the item directly to the Government (see 52.217-9002(b)(1)). Such evidence could be documentation obtained directly from the approved source; or identification on a Web site maintained by the approved source, confirming that the manufacturer is an acceptable source for the item identified by that approved source's name and part number. If evidence cannot be obtained directly from the approved source, this does not necessarily preclude acceptance of the offer, if the contracting officer can adequately document that the approved source has oversight of and involvement in the manufacturing process by other means.

(b)(4)[A156] Evaluation of alternate item offers for spare parts. When the "Conditions for Evaluation and Acceptance of Offers for Part Numbered Items" provision is used, procedures shall be established by each DSC such that they will evaluate alternate offers when the savings projected will meet the savings threshold stated in the provision and there is a reasonable expectation that the alternate offer may be in line for award. When the provision is not used, all alternate offers will be evaluated, unless the solicitation has provided information that only the item cited in the ***acquisition*** identification description (***A***ID) will be acceptable (e.g., restricted source or ***source*** controlled items, NIOSH items for which necessary testing equipment is not reasonably available, etc.). ***The level of technical data that the Government has available for use to evaluate the acceptability of an alternate product offered, and the corresponding level of technical data that must be furnished with an offer of alternate product, will be identified either in the AID or in paragraph (c)(2) of the provision at 52.217-9002. If the level of data and submission requirements are not identified in either of these locations in the solicitation, then 52.217-9002(c)(3)(a) applies.*** DSC procedures shall also provide for prompt notification by the contracting officer to alternate offerors of interim status (when required) and final status of the alternate offer, i.e., approved, disapproved, returned without evaluation. Several other factors should be considered in making a decision to evaluate items prior to award.

(i) Reserved.

(ii[A157]) For any purchase, if the time before proposed award does not permit evaluation, and delay of award would adversely affect the Government, then alternate offers may be considered technically unacceptable for the ***current*** acquisition and award made to the otherwise acceptable offeror. The benefits which may accrue to the Government, if the alternate item were accepted, must be weighed against any adverse effects caused by delaying award. Consideration shall be given to requesting expedited evaluation if the benefits are significant. ***For automated procurements, offers of alternate product (which includes offers of previously reverse-engineered product) will not be evaluated for the instant procurement, but will be evaluated for potential use on future procurements. The clause may still be included in the solicitation for purposes of informing vendors about necessary submissions for evaluation under current or future procurements.***

(iii) The contracting officer may forward alternate offers for technical evaluation that are not in line for award or offers that do not meet the savings threshold if other factors indicate that an evaluation should be performed. While savings may not be evident without further consideration, benefits should not be weighed only against the instant acquisition. Future benefits should be considered as well; for example, projected future savings on high demand items, breaking a chronic sole source situation, etc. The other factors must be cited on the request for evaluation that is forwarded to technical personnel. If a preaward evaluation cannot be performed for offers that meet these criteria, a postaward evaluation will be performed. Offers that do not meet the above factors will be returned to the offeror without evaluation.

(iv) When a potential contractor submits an alternate item for evaluation for which there is no active procurement request, the activity Competition Advocate***, or other office if designated by local guidance***, will determine if the alternate item meets the criteria for evaluation listed for alternate offers in DLAD 17.7501(b)(4)(iii) above. The ***same office*** will provide the status to parties submitting alternate items and will forward qualifying alternate items to the appropriate technical personnel with the reasons the alternate items should be evaluated. These alternate item evaluations will be tracked according to the time frames set forth in DFARS Appendix E.

(v) When a postaward evaluation is performed, the alternate item offeror will be advised of the evaluation results. The Competition Advocate***, or other office if designated by local guidance,*** will maintain a tracking system for postaward evaluations, in order to insure followup with contractors. Technical personnel will perform a postaward evaluation within 45 days of receiving the alternate offer, unless unusual circumstances require a longer evaluation period. After the 45 days have elapsed, followups will be generated by the Competition Advocate***, or other designated office***, every 15 days. If the evaluation must be performed by an Engineering Support Activity, the time allowed for evaluation is 90 days with followups generated every 30 days (after the first 90 days)..

(vi[A158]) If it is determined that award will be delayed pending an alternate item evaluation, such evaluation request will be forwarded to the appropriate functional element and an estimate made of the time required for evaluation. Upon expiration of the estimated time, inquiry shall be made regarding the status of the evaluation. If the evaluation has not been completed or it is otherwise not imminent, determinations shall be made as to how much longer the evaluation will take and how much longer the award can be delayed. A new suspense shall be established based thereon, or award shall be made immediately if it is not in the Government's interest to further delay the award. Technical personnel are responsible for communication with all parties involved. The decision to hold or proceed with award should not be made until such communication is established and the status of the evaluation has been assessed as accurately as possible. Under simplified acquisition procedures, awards normally should not be held for protracted periods of time unless there are substantial benefits.

(vii) To aid in prioritizing workload, the amount of potential savings or other benefits should be included on any referrals to technical personnel together with any other pertinent factors which would influence the evaluation process.

17.7504 Limitations on price increases.

(a)(2) The thresholds for base price comparison check procedures under SAMMS simplified purchase procedures and local automated procedures shall not exceed 25 percent and $250, after adjustments specified in DFARS 217.7504(a)(1).

(b) The requirement for review and certification to be accomplished before the purchase applies after awards under simplified purchase procedures where the price is not known until after acceptance of the Government's offer. Further, the certification to the HCA is required as a notification to management, not an approval requirement, of substantial price increases. The method and frequency of periodic notification and the degree and level of management involvement may vary, depending on such factors as dollar value, nature of the procurement, and extent of competition; however, regardless of the approach taken (e.g., quarterly oral or written brief using a table comparing the numbers of certified buys by percentage ranges of price increase within award value ranges, with the results of prior periods), HCA awareness is required of significant price increases on a continuing basis. A local focal point (the price analysis branch/element, where one exists) shall compile and provide local management and ***J-3311***, at least annually, with information on such usage based on a copy of each certification furnished by contracting officers.

SUBPART 17.76 • CONTRACTS WITH PROVISIONING REQUIREMENTS

17.7602 Contracting requirements.

17.7602•2 Issuance of provisioned item orders (PIOs).

(90) Reserved.

(91) The file shall be documented when the price or cost analysis techniques discussed at 13.106(c)(90)(ii) and (v) are used for award of priced PIOs and definitization of undefinitized provisioned item orders (UPIOs).

(92) If the contract contains a progress payment clause without an exclusion provision for orders with a ceiling price below $1 million ($100,000 for small business firms) and/or having a delivery schedule of less than 6 months (4 months for small business firms), a provision precluding such applicability shall be included in all PIOs below these thresholds.

(93) Reserved.

(94) Reserved.

(c) The requirements of DFARS 217.74 and subpart 17.74 shall be met for all UPIOs awarded by DLA contracting offices.

17.7603•3 Negotiating and executing supplemental agreements.

(c)(90) The file shall be documented when the price or cost analysis techniques discussed at 13.106(c)(90)(ii) and (v) are used for the exercise of priced PIOs and definitization of UPIOs.

17.7690 Contracting officer's representative • Provisioning.

Technical personnel at each DSC and additional personnel within that office shall be designated as Contracting Officer's Representative for Provisioning for the purpose of providing technical assistance to offerors/contractors with regard to requirements for equipment support and provisioning for DSC acquired end items/components. Delegation of responsibility shall include authority for actions to be taken by the Provisioning Coordination Office as set forth in DLAD 4100.8, Surveillance of the Contractual Aspects of the Provisioning Cycle in the Defense Supply Centers. For example, the COR for Provisioning is responsible for reviewing purchase request (PR)/MIPR provisioning requirements to ensure compliance with provisioning policy and procedures and proper presentation of provisioning requirements in solicitations and contracts, conducting Pre•Provisioning Guidance and Source Coding Conferences when required by the contract, negotiating reductions in provisioning technical documentation requirements, including recommendations for equitable adjustments in the contract price or delivery terms based on technical provisioning considerations, surveillance necessary to assure receipt of provisioning technical documentation, and notifying the contractor of required corrections (rejection) or acceptance of provisioning technical documentation. The delegation will not include any authority to modify or change the terms of the contract or to make any agreement which will result in an increase in the contract amount or extend the time for delivery of the end items.

17.7691 Reserved.

17.7692 Data pricing, evaluation, and award.

The clause cited at 52.217•9000, Data Pricing, Evaluation, and Award, shall be inserted in solicitations for acquisition of data with end items. The clause shall be inserted in Section M, Evaluation Factors for Award.

SUBPART 17.90 • MULTISOURCE CONTRACTING

17.9000 Scope of subpart.

This subpart prescribes policies and procedures for acquisitions of supplies and services from multiple sources when the coverage at FAR 16.504 for making multiple awards of indefinite-quantity task and delivery order contracts is not used.

17.9001 Policy and authority.

(a) Provision for making awards to more than one source of supply or service may be made for the following purposes or reasons under the authority described for the respective purpose or reason.

(1) Establishing or maintaining alternative sources. See FAR 6.202.

(2) Industrial mobilization; or engineering, developmental or research capability. See FAR 6.302•3.

(3) Production test. See DLAR 4125.1, Production Testing of DLA Managed Items and FAR 6.101.

(4) Prospective contractor not responsible for entire quantity. See FAR 9.103.

(5) Supply assurance. See FAR 6.101.

(b) Contracting officers shall obtain the advice of local counsel both in acquisition planning and prior to award whenever multisource contracting is proposed on an other than full and open competition basis.

17.9002 Conditions for use.

(a) The conditions for use of multisource contracting for the purposes or reasons described in 17.9001(a)(1) and (a)(2) above are described in FAR 6.202 and 6.302•3, respectively.

(b) Multisource contracting may be used when it is necessary for the purpose of testing under contract, the adequacy and practicability of specifications for a new or modified item to assure that the specification will permit quantity or mass production of quality items within economical production practices, and that the specification does not restrict competition.

(c) When the otherwise low, responsive or technically acceptable offer is from a prospective contractor that cannot be determined to be responsible for the entire quantity on which it offered, award may be made to that offeror only for the portion of the total requirements for which the offeror can be determined responsible. In such cases, the contracting officer may award the balance of the total requirements or that portion of the balance of the total requirements to the next low, responsive or technically acceptable offeror(s) to the extent that such offeror(s) is determined to be responsible, provided that the terms and conditions of the solicitation do not limit the Government's right to make multiple awards and the prospective contractor(s) does not condition its offer to preclude such awards. (Note that when the provision at FAR 52.214•10, Contract Award • Sealed Bidding, is included in IFBs, as required by FAR 14.201•6(e)(2), the Government has the right to award less than the total quantity solicited. Bids that take exception to this provision are not responsive. When the provision at FAR 52.215•16, Contract Award, is included in RFPs, as required by FAR 15.407(d)(4), the Government has the right to award less than the total quantity solicited. Offers that take exception to this provision are not technically acceptable.)

(d) Provision for making multiple awards may be made to ensure the availability of supplies in business risk situations. A reasonable basis for making multiple awards in such situations must exist, for example, the record shows a history of poor performance (unrelated to Government caused delay) for a critical item due to a contractors' or inadequate production capacity; or the specification is complex or difficult and requirements must be satisfied in a relatively constrained timeframe. To adequately justify making multiple awards in such cases, the contracting officer must demonstrate that awarding less than the total requirements to more than one source will aid in ensuring that the prior contractor performance problems will not recur. Further, the benefits of having more than one source under contract for the same supplies or services at the same time should outweigh any anticipated increased prices that result from the award of more than one contract.

17.9003 Limitations on use.

(a) When provision for multiple awards is made for the purpose of production testing a specification:

(1) The Government's minimum need must be principally for the purpose of determining that an item of supply can be manufactured to the specification on a production basis. Obtaining delivery of supplies is a secondary purpose.

(2) The quantity to be awarded to any contractor should, normally, be limited to the minimum economic production quantity required to ensure an adequate production test.

(b) When multiple awards are made due to the fact that the low, responsive or technically acceptable offeror cannot be determined to be responsible for the entire quantity solicited, the responsibility determination made on such offeror must reasonably describe the rationale for determining that award of more than the proposed award quantity to such prospective contractor would be beyond that prospective contractor's production or service capacity.

(c) When provision for multiple awards is made to ensure the availability of supplies in business risk situations:

(1) The contracting officer must adequately document a reasonable basis for making multiple awards that: supports the Government's need to make multiple awards to obtain the requirements when needed; explains how awarding more than one contract will reduce or eliminate past performance or supply availability problems; and describes the benefits of obtaining more than one source that outweigh any anticipated increases in prices resulting from the award of more than one contract (see 17.9002(d) above).

(2) The solicitation must permit award of the entire requirement to one offeror.

(3) The solicitation should include a provision reserving the Government's right to make multiple awards to other than the lowest priced offerors.

(4) Sealed bidding cannot properly be used because the solicitation provides that award may not be made solely on the basis of lowest price.

(5) The contracting officer must document, after receipt of offers and prior to award, that a reasonable basis to award to multiple sources exists.

(6) The contracting officer should make provision for a degree of competition, when practicable (e.g., low offeror will be awarded 60 percent of the total requirement, whereas the second low offeror will be awarded 40 percent of the total requirement).

SUBPART 17.91 USE OF PUBLIC MANUFACTURERS

17.9100 Scope of subpart.

This subpart prescribes policies and procedures for the soliciting from and placing project orders with public manufacturers. This subpart does not address procedures for conducting public•private competition (i.e. OMB Circular A-76). Authority for this section is 41 U.S.C. 23. This section provides additional guidance to that found in DoD Financial Management Regulation (FMR) 7000.14-R, Volume 11A. The contracting officer should review and be knowledgeable of this FMR to ensure all provisions of public manufacturing are met.

17.9101 Definitions.

"Project Order Memorandum of Agreement (POMOA)" is an agreement between a Defense Supply Center and a public manufacturer that establishes the basic terms and agreements for any subsequent project orders placed against that POMOA, whether issued by the same Center, or another Defense Supply Center. The POMOA, in itself, is not a project order.

"Project Order" is a specific, definite, and certain order issued under the authority of 41 U.S.C. 23 for the manufacture of materials, supplies and equipment, or for other work or services which, when placed with and accepted by a separately managed DoD establishment, serves to obligate appropriations in the same manner as orders or contracts placed with private sector enterprises. As used in this part, it is the obligation instrument used to "contract" with a public manufacturer, and may be a streamlined order placed against a POMOA, or may be a "stand-alone" obligation instrument.

"Public Manufacturer" is a DOD owned and operated establishment, including, but not limited to, equipment overhaul or maintenance shops, manufacturing or processing plants or shops, research and development laboratories, computer software design activities, testing facilities, and proving grounds.

"Public Sector Bidders List (PSBL)" is a bidders list consisting of the names and CAGE codes of public manufacturers available for use by the Agency, the Federal Supply Classes they are capable of supporting, and identification of part numbers/National Stock Numbers of items previously manufactured.

"Rough Order of Magnitude (ROM) Estimate" is an informal request for approximate cost, price and availability information from a public manufacturer. The ROM estimate is used to determine whether the public manufacturer can meet agency requirements for an item, without burdening the public manufacturer with the cost of preparing a detailed proposal.

17.9102 General policy.

(a) The Defense Logistics Agency relies on the private sector as the primary source of supply for required material and services. However, public manufacturers will be solicited when the private sector cannot meet Agency requirements, or where using the public sector meets the intent of laws providing direct access (e.g., Army Arsenal Act (10 U.S.C. § 4532)).

(b) Only Contracting Officers shall award "stand-alone" Project Orders or POMOAs. However, if an order is placed against an existing POMOA, the order may be placed by an authorized Ordering Officer. POMOAs shall define authorized ordering officers (if any). Contracting offices shall use similar business systems and practices for public and private sectors. Contracting personnel are responsible for issuing the ROM request, Request for Quote (SF•18 or similar form), and award document; entering the project order into the DLA Contract Action Reporting System (DCARS); and performing/delegating post award functions. Supply, Technical, and Quality functional activities will be the same as used for private sector acquisitions to the maximum extent possible.

(c) Contracting officers shall ensure that quality assurance provisions consistent with private sector vendor requirements are contained in the award document. For example, if a certificate of conformance is required from a private sector manufacturer for an item (or for an equivalent item in the case of a first time Agency acquisition), the same will be required from the public manufacturer. Similarly, if DCMC would be tasked to perform source inspection at a private manufacturer's plant, DCMC should provide the same service at the public manufacturing facility. These provisions will be clearly specified in any issued project order. Additionally, Configuration Control measures will be consistent with private sector procurements.

17.9103 Conditions for use.

Public manufacturer(s) should be solicited when:

(a) No responsive/technically acceptable offers from a responsible private sector source are received in response to a solicitation. The determination that the offer is unacceptable requires contracting officer consideration of several factors, including the urgency of need, the potential that an acceptable agreement could be obtained through negotiations, and the possibility of breaking out non•urgent quantities for a private sector award. A private sector response may be considered unacceptable if any of the following unresolvable conditions exist:

(1) The offeror can not meet the required delivery date (RDD).

(2) The proposed price is considered unreasonable (or not fair and reasonable under the circumstances in accordance with DLAD 15.405(a)(90)). Caution must be exercised to ensure that a project order is not subsequently issued at a price exceeding the price found unreasonable in the private sector. However, the contracting officer may determine that it is in the government's best interest to issue a project order under these circumstances if: (a) the public manufacturer's price includes one•time startup costs, (b) there is a recurring demand for the item, and (c) subsequent prices for the item are anticipated to be lower than the unreasonable private sector price. Such determination must be in writing and approved by the head of the contracting activity. This approval authority may be delegated to the Chief of the Contracting Office. Note that these same considerations should be applied to private sector quotes as part of the price reasonability determination.

(b) If an item has never been acquired from the private sector as a result of being designated for public manufacture under the authority of the Army Arsenal Act (10 U.S.C. § 4532) or similar Military Department authorities, the contracting officer may continue to rely exclusively on a public manufacturer as the source of supply (this situation may exist for a large number of items to be acquired as Numerical Stock Objective (NSO) or "insurance" items).

17.9104 Limitations on use.

Project orders may be issued only to DoD owned establishments that have been given the authority to operate a reimbursable program in an amount equal to or exceeding the project order amount(s). Additionally, project orders shall be issued only to those DoD owned and operated establishments that are capable of substantially performing the work ordered (i.e., the project order recipient should incur costs of not less than 51% of the total costs attributable to rendering the work or services ordered). The contracting officer should ensure that applicable restrictions of DoD Financial Management Regulation 7000.14-R, Volume 11A

are met. Additionally, acquiring activities shall obtain a letter signed by the public manufacturers Commander/Director or authorized designee specifying who is authorized to accept a project order on behalf of the public manufacturer.

17.9105 Solicitation procedures.

When an applicable condition of paragraph 17.9103 is satisfied, the following procedures shall be used in soliciting public manufacturers:

(a) A Rough Order of Magnitude (ROM) estimate should be requested, rather than a firm proposal, when the public sector estimate is required only to assist in the acquisition decision making process. To prevent the incursion of unnecessary proposal costs, public sources should not be solicited for a firm proposal unless there is a high probability that a project order will be issued. Following review of the ROM estimate, if the acquiring activity determines that the public manufacturer is likely to be capable of meeting Agency needs, a Request for Quote (SF•18) or similar form consistent with agency procedures for soliciting private sector quotes should be issued to obtain a firm proposal.

(b) Public manufacturers may be solicited concurrently with private sources if the Contracting Officer believes that acceptable offers will not be submitted by the private sector. The purpose of concurrent solicitation is to reduce lead-time; it is not a public•private competition. Either a ROM or Request for Quotations may be requested from the public manufacturer, depending on the likelihood of issuing a project order. The public manufacturer must be made aware of the fact that the private sector is being solicited concurrently, and that the private sector will receive the award if an acceptable offer is received (see 17.9103).

(c) All public manufacturers that have indicated an interest in the Federal Supply Class as shown in the Public Sector Bidders List (PSBL) should be solicited, except in the following circumstances:

(1) Solicitation may be limited to a specific manufacturer when that manufacturer has previously made that exact item.

(2) When an acquisition is being made for an item designated solely for public manufacture (see 17.9103(b)), only public manufacturers from the "requiring Service" shall be solicited. For example, Navy shipyards or depots shall not be solicited for the manufacture of an item with an Army system application designated for public manufacture pursuant to the Army Arsenal Act (10 U.S.C. § 4532), regardless of their capability to manufacture the item.

(d) A special Commerce Business Daily notice (see 5.205(c)) shall be published annually to solicit private sources interested in furnishing items that have been previously supplied by public manufacturers. The contracting officer shall ensure that viable potential sources identified through the CBD notice are solicited for future requirements. In addition to the CBD, the publication of notices in trade publications, industry journals, etc., is encouraged as a method of locating potential sources. After an item has been acquired from the public sector for the reasons delineated in 17.9103(a), or if previous solicitations of the private sector have been unsuccessful, and if no response is received to the required CBD notice, there is no requirement to resolicit the private sector prior to soliciting public manufacturers for subsequent requirements.

17.9106 Evaluation of Public Manufacturer Offers.

Public manufacturer offers, including price reasonableness, shall be evaluated for project order issuance in the same manner as private sector offers.

17.9107 Assignment of project orders.

DoD Financial Management Regulation 7000.14R, Volume 11A, REIMBURSABLE OPERATIONS,POLICY AND PROCEDURES, provides the primary guidance for the issuance and acceptance of project orders. The following is provided as implementing guidance for issuing Agency project orders to public manufacturers:

(a) The establishment of a Project Order Memorandum of Agreement (POMOA) is the preferred method for establishing the common terms and conditions for project orders issued by DLA contracting offices to public manufacturers. DLSC-PRT shall designate lead Supply Centers to execute POMOAs with designated public manufacturers. These POMOAs shall be reviewed by appropriate Legal, Contracting, and Financial representatives for sufficiency. Following the execution of a POMOA, the lead Supply Center shall provide a copy of the POMOA to all other DLA Supply Centers. This POMOA shall be used by all DLA Supply Centers. In order to standardize business relationships and procedures, all POMOAs should share a common baseline. [Consistent with this, Centers shall use the POMOA format identified in DoD 7000.14-R, Volume 11a, chapter 2, addendum 3.] In addition to the elements identified in addendum 3, POMOAs shall also address:

(1) Applicable project order acceptance/quality assurance/delivery procedures;
(2) Project order modification procedures (note: project orders may be changed or increased as long as proper funding is available, and the new work otherwise meets the general conditions governing issuance and acceptance of project orders identified in DoD 7000.14-R, Volume 11A);
(3) Project order default procedures;
(4) Center Senior Procurement Officials are delegated the authority to authorize activities to include additional provisions as necessary (i.e., First Article Approval, etc.).

(b) Project orders may be issued as an order under an existing POMOA (see paragraph (a) of this section), or may be issued as a “stand-alone” obligation instrument. “Stand-alone” project orders may be utilized if 1) no POMOA exists and the anticipated total ordering requirement from that public manufacturer does not warrant the development of an POMOA (e.g., repetitive requirements are not anticipated), or 2) no POMOA exists and operational customer needs preclude the development of an POMOA for the immediate requirement (in this case, if additional requirements are anticipated, a POMOA should subsequently be established in a timely fashion to preclude multiple stand-alone orders for the same or similar items being placed). Project Orders shall be specific, definite, and certain as to the work encompassed by the order and the terms of the order themselves. Project orders should be issued substantially in the format of that shown in the Universal Order Format identified in DoD 7000.14-R, Volume 11A, chapter 2, addendum 4. Equivalent forms may also be utilized to accommodate DPACS or local procedures (i.e., DD Form 1155, SF 33, etc). For stand-alone project orders, Contracting Officers shall ensure essential elements of the data contained in the specified POMOA format (paragraph (a) of this section) are incorporated in the stand-alone project order.

(c) Procurement Instrument Identification Numbers (PIIN). PIINS shall be assigned to POMOAs and the Project Orders issued against them, and shall also be assigned to all “stand-alone” project orders. PIIN numbering shall comply with DFARS 204.7003 and DFARs Appendix G.

(d) Defense Contract Management Command (DCMC) support. In the event that a project order requires DCMC to provide quality assurance, a copy of the project order shall be provided to the applicable Defense Contract Management Command (DCMC) Office at the time of issuance.

(e) Use of data in project orders. Activities shall ensure that any technical data utilized during the performance of project orders is used consistent with the Government rights associated with that data in accordance with FAR Part 27.

(f) Reporting.

(1) Project orders issued to the public sector shall be recorded in the DLA Contract Action Reporting System (DCARS). To report these actions on the DD Form 350, code the form the same way contract award DD Form 350s are coded, except assign code "4" to Block B7, Type Obligation.

(2) Public manufacturers' quality, cost and schedule performance shall be tracked using the same Automated Best Value System (ABVS) system used to track private sector companies. This information shall be used when evaluating public manufacturers for project orders.

(g) Records Retention.

Contract files for project orders shall be maintained in accordance with FAR 4.7.

SUBPART 17.92 • REOPENER CLAUSES

17.9201 General.

(a) A reopener clause is a special contract provision which creates a right for an equitable adjustment in the contract price at a specified time or due to the occurrence or non•occurrence of an event or contingency of the type specified in FAR/DLAD 31.205•7(c)(2).

(b) A reopener clause provides a means of achieving an equitable resolution of the treatment of a significant contingent cost during both the initial pricing of a contract as well as at any time an equitable adjustment to such price is called for under the provisions of the clause. However, its use requires deliberate care to avoid a shift in risk from the contractor to the Government. Consequently, it should be used only in extraordinary circumstances involving high dollar value procurements (i.e., rarely less than $500,000) where the uncertainty associated with particular cost element(s) substantially impacts the contract price.

(c) Circumstances in which its use may be appropriate include, but are not limited to, the following:

(1) The price reasonableness of one or more subcontracts representing a substantial portion of the prime contractor's proposed price cannot be determined prior to award of the prime contract for such reasons as:

(i) The prime contractor's inability to obtain subcontractor cost or pricing data timely

(ii) An adequate cost/price analysis was not performed by the prime contractor; or,

(iii) Adequate field report(s) were not received prior to conclusion of negotiations.

(2) A Forward Pricing Rate Agreement (FPRA) or Recommendation (FPRR) is not achievable because of uncertainties having a significant impact such as:

(i) Supporting contractor budgetary data was not submitted;

(ii) A substantial portion of the business base has not yet materialized; or,

(iii) A potential for purchase, merger, or sale of part of a contractor's operations exists.

(3) The price impact of a change in a contract requirement, term, or condition made during negotiations is significant but cannot be reasonably quantified and resolved prior to award.

(4) The offeror's estimating system contains significant deficiencies (DFARS 215.811•70(g)(2)(vi) and (3)).

17.9202 Procedures.

When the contracting officer documents that use of a reopener clause is the most appropriate means of overcoming a contingency (see 31.205•7(c)(2)(90)(v)) that will significantly affect the pricing of a contract, as a minimum, the following should be accomplished:

(a) Request the field ACO provide a recommended clause for those cases in which the DCMA recommended its use. In other instances, contact the local cost/price analyst and the field ACO, as appropriate, for assistance in developing and/or modifying a reopener clause;

(b) Query the field ACO, regarding ***(1)*** the adequacy of the contractor's accounting system to provide all necessary cost data in the form required to price the adjustment ***(***obtain a review of the adequacy of the accounting system if necessary***), and (2) the adequacy of the contractor's estimating system and whether any estimating system deficiencies have been identified, and if so, whether a reopener clause or other technique is recommended (DFARS 215.407-5-70(g)).***

(c) Obtain, as necessary, cost or pricing data applicable to the cost element(s) and markup factors, to establish the base level in the clause from which adjustment will be made, and ensure such data has been verified;

(d) When the weighted guidelines method is used, the profit objective otherwise developed should reduce the value for contract type risk (DFARS 215.***404-***71•3(d)(4)(iii)); and the values for management and***/or for*** cost control under the performance risk factor, when use of ***a reopener*** clause is ***needed*** due to an inadequate analysis of the subcontractor's proposal by the prime contractor (DFARS 215.***404-***71•2(e)(3)(i)(E)) and***/or when there areestimating system deficiencies, cost proposal inadequacies and/or ineffective cost/schedule control (DFARS 215.404-71-2(f)(3)), respectively;***

(e) Prepare a proposed schedule of calculations for each affected CLIN which identifies each specific rate, factor, element of cost, profit, etc., to be covered by the reopener clause; and explicitly describes or provides an example of the precise methodology to be used to calculate any resulting price adjustment. Consider whether it is appropriate to retroactively apply a price, as subsequently finalized, to items already delivered on time and to late deliveries.

(f) Obtain legal review for sufficiency and consistency with other contract clauses;

(g) If the clause is to provide for an upward adjustment, notify the local budget office of the necessity to commit funds over and above the contract price to the amount of the ceiling established, or obtain a confirmation from the requiring activity that funds are available and have been set aside) to cover the potential increased obligation (in the event the award is funded by a Military Inter•departmental Purchase Request);

(h) If use of a locally developed clause or one of the clauses at 17.9205 is contemplated on a modified basis, provide an advisory copy of the draft reopener clause, after completing steps (a) through (g) above, to the local contract policy office for review.

(i) If the modifications to one of the clauses at 17.9205 exceed minor changes, ***i.e., would*** substantially alter or eliminate any of the provisions of the clause, or if a local clause is used, promptly provide a facsimile copy of the draft clause to Headquarters DLA***, J-3311***.

(j) Incorporate the amounts and methodology reached through preaward discussions/negotiations with the contractor, in a document executed by both parties which is made an attachment to the price negotiation memorandum (PNM). Absent such agreement, calculations supporting the contracting officer's interpretation of negotiations should be incorporated in the PNM. (NOTE: Because such information may be considered confidential by the contractor, the details should not be incorporated into a reopener clause or otherwise included in the contract.); and

(k) Indicate in any letter of delegation for contract administration that the award contains a reopener clause. Advise the field ACO of any awards retained for local administration which will be affected by a prospective FPRA/FPRR, to assure the required information will be furnished timely.

17.9203 Contract requirements.

Incorporate the cost principles and procedures in FAR Subpart 31, for use as the basis for pricing any adjustment under the reopener clause, and the clauses at FAR 52.215•23, Price Reduction for Defective Cost or Pricing Data • Modifications, FAR 52.215•25, Subcontractor Cost or Pricing Data • Modifications, (if applicable), and FAR 52.215•2, Audit • Negotiation.

17.9204 Clause requirements.

A reopener clause shall, at a minimum, incorporate the following:

(a) A title clearly designating it as a reopener clause;

(b) A clear statement of purpose;

(c) A clear identification of the items, amounts, event triggering the reopener procedure, and the responsibilities and rights of the contractor and the Government, including the requirement for certified cost or pricing data, and applicability of the Disputes clause (except for the circumstances in 17.9204(d)(iii)), as specified in DFARS 215.***407***•5-70(g)(3)(i)•(iv);

(d) A clear statement of the methodology for pricing any adjustment, in the following order of preference:

(i) A preestablished pricing formula which precludes the need for further negotiations;

(ii) If the nature of the contingency is such that its price impact can only be anticipated to fall within a broad range of prices vice one or several alternative price outcomes, the clause may identify the range and specify that the amount for that cost element may be revised within such range through negotiations. A pricing formula or methodology would be used to apply appropriate markup factors from the original contract price negotiation;

(iii) If the nature of the contingency is such that its price impact cannot be anticipated to fall within a broad range and/or original price negotiations did not involve cost or pricing data, the clause may instead specify that the parties will enter into good faith negotiations under the clause and may include a "walk•away" option terminating performance a specified number of days following receipt of written notice by either party in the event of a failure to agree.

(e) To minimize excessive obligation of funds and the potential for substantial over or under•payment, if there is reason to believe one co others, then the amount corresponding to the most likely contingency should normally be incorporated as the value of the interim cost element when establishing the contract price. If all alternatives are of equal likelihood, then a value based on a "best estimate" should normally be used. It may also be appropriate to provide for a price adjustment whenever information indicates, prior to the scheduled time established in the clause for an adjustment in the contract price, that there may be a significant variance from the anticipated finalized price;

(f) A provision for a downward and/or upward adjustment as appropriate (see 17.9104(e)). An exception is authorized only when necessary to achieve final agreement on price. For contracts allowing an upward adjustment above the contract price, establish a firm, not to exceed ceiling, on an aggregate basis (and per unit basis if applicable), above which no price adjustment shall be made;

(g) The method of adjusting any option quantity/period prices, if any, which may result from operation of the clause;

(h) If the contract is not subject to the Cost Accounting Standards (FAR Part 30), the treatment of accounting system changes which impact the price adjustment contemplated by the clause; and

(i) A contractor certification that the award price does not include any amount for the specified contingency except as provided for in the clause.

17.9205 Contract clauses.

The reopener clauses listed below are available for use in negotiated contracts only after an advisory copy has been submitted and reviewed in accordance with 17.9202(h):

(a) Reopener clause • Cost of specified direct materials/other direct cost items (52.217• 9004); and

(b) Reopener clause • Pending indirect rates proposal (52.217•9005).

Subpart 17.93 Surge and Sustainment (S&S)

17.9300 Scope of subpart.

This subpart prescribes policies and procedures for obtaining S&S capability through DLA contracts.

17.9301 Definition.

"New business arrangements," as used in this subpart, include corporate contracts, prime vendor (PV) contracts, virtual prime vendor (VPV) contracts, and other forms of innovative acquisition.

"Newly sourced items," as used in this subpart, are items that DLA is purchasing for the first time, either because they have just become available in the marketplace (i.e., are being manufactured for the first time), or because DLA has not used them before as an item of supply.

"Quarterly Program Review (QPR)," as used in this subpart, includes periodic reviews between the Inventory Control Point (ICP) industrial support teams and DLA Headquarters to discuss progress made against readiness metrics, progress in incorporating well-defined S&S requirements, S&S capability assessments, and S&S testing in DLA's new business arrangements, industrial preparedness measures, and industrial preparedness funding.

"Surge and sustainment (S&S)," as used in this subpart, means the ability of the industrial base to meet increased quantity/accelerated delivery requirements, using industrial capabilities, across a broad spectrum of possible contingencies. This includes both the capability to ramp-up quickly to meet early requirements (i.e., surge), as well as to sustain an increased pace throughout the contingency(ies) (i.e., sustainment). The spectrum of possible contingencies includes major theatre warfare and smaller-scale contingency operations as defined in the Defense Planning Guidance. The increased quantity/accelerated delivery requirements are those above and beyond normal peacetime requirements.

17.9302 Background.

(a) The primary mission of DLA is to support the warfighter in peace and during contingencies (i.e., major theatre war and smaller-scale contingencies). The ability to ramp-up quickly to meet early requirements (i.e., surge), and to sustain an increased pace throughout the contingency, are critical to the execution of U.S. military strategy. DLA's designation as a Combat Support Agency makes it directly responsible for the timely support of critical material to the Commander-in-Chiefs (CINCs) of Unified and Specified Commands in support of their operational requirements. Because of DLA's unique role, S&S capability must be a primary consideration in all acquisition strategies and resource investments.

(b) The following are existing statutory, regulatory, and policy coverage related to S&S:

(1) Defense Planning Guidance

(2) Joint Publication 4-0, Doctrine for Logistics Support of Joint Operations (Internet site: www.dtic.mil/doctrine/index.html).

(3) Defense Production Act of 1950

(4) Defense Priorities and Allocations System, 15 CFR 700

(5) DoD 4400.1-M, Department of Defense Priorities and Allocations Manual
(6) House Report 102-311 for FY 93 Defense Authorization Act
(7) DoD Directive 3110.6, War Reserve Materiel Policy
(8) DoD Directive 5000.60, Defense Industrial Capabilities Assessments
(9) DoD 5000.60-H, A DoD Handbook: Assessing Defense Industrial Capabilities.

17.9303 Policy.

(a) In the past, DLA inventories have played a large role in meeting contingency requirements. As DLA continues to downsize and reduce its own inventories, new strategies must be developed to assure access to commercial inventories and production capabilities or other industry-based solutions that will enable DLA to satisfy contingency needs. As DLA adopts new business practices that increasingly rely on contractors to provide a full range of integrated logistics support services, S&S capability must also be developed within the contractors' supplier bases and included as part of their contract support.

(b) The contracting officer shall –
(1) Consider S&S in all peacetime acquisition strategies;
(2) To the maximum extent possible, include S&S in DLA's new business arrangements and other long-term contracts;
(3) Develop alternative contractual arrangements for surge and/or sustainment, if more practical than under DLA's new business arrangements and long-term contracts; and
(4) Obtain access to S&S capability through contractual, versus non-contractual, arrangements, to the maximum extent possible.

(c) The contracting officer shall include the following elements in new business arrangements and long-term contracts with S&S.
(1) A clear definition of S&S requirements (i.e., items, quantities, and delivery terms).
(2) A requirement that the contractor conduct an assessment of its capability to meet S&S requirements, identify shortfalls, and develop S&S strategies for all items.
(3) A requirement for participation in S&S tests (to include participation in the Joint Chiefs of Staff (JCS) and CINC exercises approved in the DLA Joint Training Plan).

17.9304 Acquisition strategy for new business arrangements and long-term contracts.

(a) Clear definition of S&S items, quantities, and delivery terms.

(1) Clear definition of S&S items, quantities, and delivery terms provides a baseline against which the offeror/contractor can assess its supplier base capabilities and determine shortfalls. It also provides a baseline against which the offeror/contractor's S&S performance can be measured, and for which the contractor can be held accountable.

(2) In determining S&S items, consider all items to be included in the new business arrangements and long-term contracts for which increased demands are anticipated during a contingency. Items for which increased demands are anticipated may be excluded only if an industrial base analysis or market research has been performed and contractual arrangements have already been made to access sufficient S&S capability, or DLA peacetime assets that can reasonably be associated with the business base covered under the contract are sufficient to cover the full S&S requirement. The latter exception needs to be reassessed periodically, as assets may be drawn down over time. Report all exclusions and their basis in the Acquisition Plan and, if an Acquisition Planning Executive Council (APEC) review is not accomplished, in the QPR or directly to J-339.

(i) In some cases, it may be appropriate or advantageous to:
(A) Include S&S portions (e.g., surge portion or sustainment portion) under separate contracts.
(B) Include surge and/or sustainment requirements for a broader customer base than that served for peacetime support under the contract.
(C) Include provisions for one contractor to act as a back up for another contractor.

In these cases, clearly define in the Acquisition Plan the portion (e.g., surge or sustainment) included in the contract for the peacetime customer base supported under the contract, and any additional surge and/or sustainment requirements included in the contract.

(3) Commodity expertise, historical demand during previous contingencies, Military Service (MILSVC) input, shortfalls from the War Material Requirement or the World Wide Web Industrial Capabilities Assessment Program (WICAP) Analytical Tool (http://dscp123.dscp.dla.mil), and any other information available can be used to define the quantities and delivery terms of S&S items. The S&S quantities shall reflect an overall capability that encompasses the potential for multiple contingencies during the life of the contract, each of which involves a ramp-up and sustainment period.

(4) The definition of S&S requirements should be realistic. This requirements definition is not intended to constrain the contractor from providing parts support exceeding that defined, if needed during an actual contingency and if the contractor is able to provide it.

(5) Clear definition for individual acquisitions may necessitate intensive work with MILSVC customer(s). ICP industrial support teams shall play a large role in the definition process, including interfacing with MILSVC customers. Their knowledge of War Reserve Material, shortfalls identified through the DLA War Reserve Program, weapon systems and components considered to be of critical importance to the CINCs, industrial base capabilities and shortfalls, and existing industrial base solutions shall be considered for the items under each acquisition. Also, industrial support teams need to be an integral part of individual acquisition processes to enable their visibility of S&S capabilities from numerous sources, and their identification of potential integration issues (such as multiple distributors using the same manufacturing sources).

(6) The basis for development of the S&S requirements shall be documented in the Acquisition Plan. When only a portion (e.g., either surge portion or sustainment portion of the requirement) is included in the contract, identify the portion included, and the other contractual arrangement(s) that cover the remaining portion.

(7) There may be instances where definition of S&S requirements (i.e., surge items, quantities, and delivery terms) cannot be achieved prior to award. Under these circumstances, the contracting officer shall identify who will perform this definition and in what time frame. Also, S&S items, quantities, and delivery terms may change during the contract period. To address this, the contracting officer may include requirements for periodic reassessments and bilaterally agreed-upon redefinition. In both instances, the amount of time that S&S items, quantities, and delivery times are indefinite shall be minimized, to prevent lack of coverage and inability to measure contractor performance.

(8) Inclusion of S&S requirements does not negate the contractor's responsibility to fulfill peacetime level requirements under the contract, even during contingencies.

(b) Contractor assessment of S&S capability.

(1) Assurance that contractors' S&S capabilities actually exist is of paramount importance. Without this assurance, DLA's capability to support the warfighter could be seriously degraded. This assurance shall be obtained by requiring the contractor to conduct an assessment of its capabilities to meet S&S requirements and to report the outcome of this assessment.

(2) A S&S evaluation factor, or a contract requirement for a post-award S&S capability assessment shall be used to ensure the contractor actually has the required S&S capability. When S&S capability can easily be assessed (e.g., when item population is small, or consists of parts from only one source), a detailed S&S evaluation factor by itself may be sufficient to provide assurance that S&S capability actually exists. In cases where substantial effort is needed to determine S&S capability (e.g., complex acquisitions requiring the contractor to provide numerous parts from various suppliers), a contract requirement for a S&S capability assessment and submission of a S&S capability report shall be used. When the S&S capability assessment will be conducted after award, a S&S evaluation factor should also be used to determine, prior to award, the contractor's ability to perform the S&S capability assessment. ICP industrial support staff shall participate in all evaluations of contractors' proposals under S&S evaluation factors, and in evaluations of S&S capability reports. Defense Contract Management Agency (DCMA) in-plant personnel may be consulted for verification of contractor capabilities or assessment of any contractor identified "problem items" (i.e., items for which S&S cannot be easily met) and proposed investment strategies.

_____(3) In some circumstances, post-award S&S capability assessments may be complex and resource intensive. In these cases, industrial support staff may request industrial preparedness funds from J-339 to cover the contractor's cost of performing the post-award S&S capability assessment. Program Description and Approval Documents (PDADs) requesting these funds must include the S&S requirements (i.e., items, quantities, and deliveries), the basis for these requirements, and within what time frames during the contingency (i.e., beginning, middle, end) these requirements will be needed; a detailed explanation of the S&S assessment work to be conducted; and the contractor's estimate of S&S assessment costs (with basis of the estimate).

(4) The following information shall be obtained through the S&S evaluation factor or S&S capability report:
(i) Contractor's methodology enabling visibility of supplier base resources on a continuing basis;
(ii) Identification of supplier base inventories, production capability, on-demand manufacturing and advanced technology capabilities, or any other means of support available

to meet S&S requirements and, based on this identification, a description of S&S strategies for all items;

(iii) Identification of "problem" items for which S&S cannot be easily met, proposed solutions for these items, and any significant investments (dollars or otherwise) needed to implement these solutions;

(iv) Description of access to, and plans for, coordinating distribution and transportation services for meeting S&S requirements; and

(v) Contractor's agreements with suppliers and service providers that reflect access to S&S resources. _

(vi) Clear identification of any significant investments (dollars or otherwise) under (iii) or other subparagraphs above, needed to develop S&S capability, with the following information:

(A) Why the investment is needed.

(B) What will be purchased with the investment.

(C) Basis for the investment cost.

(D) The S&S capability to be gained from the investment.

(E) For investments to effect S&S strategies, an analysis of what strategies were considered and why the proposed strategies are the most cost effective ones.

(5) When evaluating contractors' past performance, consider past experience in conducting S&S assessments and providing S&S requirements. Offerors', and their suppliers', participation in the industrial capabilities data collection effort (electronic submission via DLA's WICAP) or hard copy (DD Form 2737 submission) shall be considered as past experience in conducting S&S assessments.

(6) For items that the contractor already knows are readily available and accessible in sufficient quantities to meet the S&S requirements, a contractor-signed statement may be used in lieu of obtaining the more extensive S&S assessment information in 17.9304(b)(4). This statement shall contain

(i) The contractor's rationale for concluding the S&S items are readily availableand

_____(ii) The contractor's ability to meet the S&S requirements through access to these resources.__

The commercial nature of an item, in and of itself, is not an adequate rationale for concluding the item is readily available. The statement shall be accompanied by a description of access to, and plans for, coordinating distribution and transportation services for meeting S&S requirements.

_____(7) S&S solutions.

(i) Use industry-based solutions for S&S, such as access to commercial inventories and production capabilities, to the maximum extent possible. In cases where existing commercial capabilities or access to these capabilities fall short of anticipated S&S quantities and delivery terms (i.e., "problem" items), it may be necessary to make S&S investments. If so, industrial support staff may request industrial preparedness funds from J-339 to finance these solutions.

(ii) Industrial preparedness funds can only be used to fund S&S solutions—

(A) Based on S&S quantities no greater than those estimated for the wartime scenario set forth in the DPG (e.g., two major theatre wars). This limitation is based on the expectation that quantities needed for smaller-scale contingency operation(s) would be much lower than those needed for major theatre wars, and therefore would be covered by the larger estimate;

(B) When commercial capabilities, such as commercial inventories and production capabilities, are insufficient or inaccessible;

(C) When substitute items or alternate manufacturing processes are not available;

(D) After existing DLA and MILSVC customers' assets (when MILSVC customer base is limited) have been reduced to the minimum amount to be maintained for peacetime support under the new support method, or to an amount close to that minimum;

(E) That are the most cost-effective means of ensuring S&S capability; and

(F) For DLA-managed items.

(iii) Examples of S&S solutions that can be funded with industrial preparedness funds are--

(A) Access to commercial capabilities, if efforts to obtain such access at no cost are unsuccessful.

(B) Raw materials and partially finished parts needed to provide long lead-time items in short time frames, not finished parts;

(C) Contractors' storage costs for S&S materials;

(D) Production tooling needed to expand production capability beyond that needed to meet peacetime requirements.

(iv) Use of S&S investments. S&S investments—

(A) Cannot be used as safety stock to support peacetime spikes in demand;

(B) Can be used to support smaller-scale contingencies;

(C) Are for use in support of major theatre wars.

(v) (A) Industrial support staff shall submit PDADs to J-339 to obtain industrial preparedness funds for S&S solutions. PDADs must include a description of the S&S requirements (i.e., items, quantities, and deliveries), the basis for these requirements, and the time frames during the contingency (i.e., beginning, middle, end) when these requirements will be needed; the reason solutions are needed for this specific set of items (e.g., long lead-time items and insufficient contractor supplier base inventories or production capability, and DLA and MILSVC (when the MILSVC customer base is limited) inventories); and a detailed explanation of what will be purchased, the S&S capability gained through the investment (i.e., level and time period of coverage provided), the estimated cost of the solutions (with basis for these costs), an analysis of what S&S strategies were considered and why the proposed strategies are the most cost effective ones, and the strategy for handling S&S investments at the end of the contract.

(B) Because industrial preparedness funds are programmed, notification to J-339 of potential need should be provided as soon as possible. S&S efforts and solutions to be funded with industrial preparedness funds should also be incorporated into ICP business plans, with yearly costs projected through the POM cycle.

(vi) The contracting officer, through ICP industrial support staff, shall—

(A) Obtain approval from J-339 for any exceptions to use of industrial preparedness funds defined in paragraphs (ii) and (iii) of this subsection, prior to obligation of these funds.

(B) Notify ICP readiness staff and J-339 when S&S investments are used for smaller-scale contingencies, so they are aware of the impact on readiness for potential major theatre wars.

(vii) The approach for handling S&S investments at the end of the contract (or in the event of termination of the contract), and whether S&S investments will be considered government property, must be included in the Acquisition Plan and PDAD. The approach should be coordinated with legal and comptroller staff, to ensure any statutory, regulatory, or policy guidance concerning government property and appropriate use of funding are met. Any changes in the approach, made as a result of negotiations, should be reported to J-339 prior to award of the contract (or, if in the post-award phase, prior to issuing the contract modification).

(c) S&S tests.

(1) Once S&S capability has been developed through conduct of a S&S capability assessment and implementation of any necessary S&S investments, S&S tests can be performed to validate the developed capabilities. A requirement for S&S testing shall be included in all DLA contracts that include contractor-provided S&S capability. The requirement shall include, but is not limited to, participation in JCS and CINC exercises approved in the DLA Joint Training Plan, and testing of both ramp-up (i.e., surge) and sustainment capabilities. S&S tests may also be paper exercises, simulations, participation in live exercises, command post exercises, or any other methodology that can validate the S&S capability.

(2) The contracting officer shall also consider requiring--

(i) Contractor submission of S&S test plans, as the contractor's methodologies for gaining visibility of supplier base capabilities may enable cost-effective Government or contractor testing within an already existing structure for monitoring supplier base capabilities;

(ii) Contractor submission of S&S test reports describing S&S test performance;

(iii) Remedial actions for any deficiencies identified during S&S testing.

(3) If needed, industrial support staff may request industrial preparedness funds from J-339 to cover these costs:

(i) Development of test plans.
(ii) Actual test costs (except purchase of parts themselves).
(iii) Development of test reports.

(4) PDADs must include the S&S requirements (i.e., items, quantities, and deliveries), the basis for these requirements, and when these requirements will be needed (i.e., at beginning or end of the contingency); a description of the test function(s) (development of S&S test plan, performance of S&S tests, development of S&S test reports) to be purchased; and the estimated costs and their basis.

(d) Maintaining S&S capability. The contractor needs to maintain S&S capability once it is established. Periodic redefinition of S&S requirements by the Government (or contractor), and reassessments of supplier base capabilities by the contractor may be necessary, especially if items are added after award of the contract. For contracts allowing items to be added after award, include in the Acquisition Plan the approach for the added items, for: defining S&S requirements, obtaining the contractor's assessment of surge capability, and addressing surge testing. Industrial preparedness funds may be used to cover contractor costs to maintain the capability, if needed. Requests for such funds should be part of the original PDAD to obtain funds for S&S assessment and testing, and to show the basis for the maintenance costs.

(e) Separate contract line items (CLINs) and SUBCLINS are required, as specified in 4.7103-2(a)(90) and 4.7104-2(a)(2)(90), for each S&S element (i.e., definition of S&S requirements, S&S capability assessment, S&S investments, S&S testing, maintenance of S&S capability) to be financed through industrial preparedness funds. Visibility of element costs will facilitate industrial preparedness budget planning for future S&S efforts.

(f) The following methods may be used to overcome barriers to contractor provision of S&S capability, or to such provision at a reasonable cost:
(1) Compete S&S requirements to the maximum extent possible.
(2) Hold industry conferences or pre-proposal conferences.
(3) Elevate negotiations.
(4) As a last resort, obtain partial capability, if available and if such action is in the best interests of the Government.

(g) Reporting requirements.

(1) For each new PV/VPV initiative, ICP industrial support staff shall report to J-339 on how S&S will be addressed in the acquisition, prior to award of the PV/VPV contract. If an APEC is conducted on the initiative, this reporting can be accomplished via the APEC process. If an APEC is not conducted, this reporting can be accomplished during the Quarterly Program Review (QPR) (if QPR occurs prior to award) or directly to J-339(if award will occur prior to the QPR). For corporate and other long-term contracts, ICP industrial support staff may be required to report on S&S coverage in these contracts on an ad hoc basis.

(2) After award of PV/VPV initiatives, the status of S&S actions taken under these initiatives shall be reported to J-339 during the QPRs.

(3) If contractor provision of S&S capability is not possible, after all potential avenues for providing such capability have been explored and negotiations have been elevated to the level of the ICP Commander/Director, the lack of S&S coverage shall be documented in the contract file and reported to J-339 prior to contract award. If the contractor is not the sole manufacturer, also report your plans to pursue alternative strategies to obtain S&S coverage.

17.9305 Other acquisition strategies.

(a) Other acquisition strategies must be pursued:
(1) If surge and/or sustainment capability cannot be obtained through peacetime contracts identified in subpart 17.9304;
(2) If it is more practical to obtain surge and/or sustainment capability through alternative contractual arrangements than through peacetime contracts identified in subpart 17.9304; and
(3) To cover S&S requirements for items not under new business arrangements and long-term contracts.

(b) Industrial support staff must identify S&S items and work with contracting staff to ensure S&S capability is developed for items in (a)(3) above.

(c) Examples of acquisition methods that may be used are:
(1) Stock rotation contracts and other forms of vendor-managed inventory arrangements;
(2) Third party shared production or shared inventory agreements with manufacturers and their commercial customers;
(3) Industrial base maintenance contracts;
(4) Minimum sustaining rate (MSR) contracts;
(5) Corporate exigency contracts (i.e., acquiring visibility of and access to industrial base resources).

17.9306 Other issues.

(a) Defense conversion (i.e., contractors' decreased dependence on Government contracts based on developing or expanding a commercial base of customers) and use of dual use technologies should be encouraged, when appropriate, to avoid maintaining expensive defense unique production capabilities.

(b) Prepositioned Government-furnished equipment (GFE) or leasing arrangements may be used as means of augmenting contractors' production capabilities in order to meet contingency requirements. This is appropriate whenever industry is unable or unwilling to invest in capital equipment due to diminishing peacetime requirements. Providing GFE should also be considered as a means of disseminating dual-use technology to industries supplying critical items to facilitate their cultivation of commercial business. Storage and maintenance agreements should also be negotiated to facilitate contractor maintenance of the GFE in their possession.

17.9307 Surge and sustainment (S&S) requirements for commercial items.

___(a) The current environment of downsizing and inventory reduction necessitates reliance on the commercial capabilities to fulfill S&S requirements. When S&S requirements for commercial items exist, the government's S&S needs may necessitate incorporating S&S terms and conditions. This may include tailoring inconsistent with customary commercial practice. See FAR 12.302 (c). J-33 has obtained the approval required by FAR 12.301(f) to include the clause at 52.217-9006 in solicitations and contracts for commercial items made under FAR Part 12.

(b) The following addresses use of S&S requirements and related terms and conditions in commercial item contracts:

(1) If S&S requirements are cost-based, they cannot be included under FAR Part 12 procedures because of the statutory prohibition on use of cost type contracts for commercial items. Any such requirements would be considered a separate "non-Part 12" requirement. However, cost-based S&S requirements can be placed on the Part 12 contract, along with non-Part 12 terms and conditions applying to them, for convenience.

(2) If S&S requirements are fixed price, the contracting officer will need to determine whether the S&S requirement is part of the commercial item requirement for the parts themselves or constitutes a separate requirement, and to document the basis for this determination in the contract file. This determination would include an assessment of the S&S requirement based on the definition of "commercial item" in FAR 2.101.

(i) When the S&S requirement is part of the commercial item requirement, Part 12 terms and conditions apply to the S&S requirement. The contracting officer will then need to determine whether any S&S terms and conditions to be used are consistent with customary commercial practice or not.

(A) When consistent with customary commercial practice, the contracting officer must document this finding in the contract file and can incorporate the commercially consistent S&S terms and conditions. No approval is required.

(B) When inconsistent with customary commercial practice, the contracting officer must follow the policy regarding tailoring at FAR 12.302(c).

(ii) When the S&S requirement is a separate requirement, the contracting officer will need to determine whether the requirement meets the definition of a commercial item, and to document the basis for this determination in the contract file.

(A) When the S&S requirement meets the definition of a commercial item, FAR Part 12 terms and conditions apply to the S&S requirement.

(a) When any S&S terms and conditions to be used are consistent with commercial practice, the contracting officer must document the finding of consistency in the contract file, and can incorporate the commercially consistent S&S terms and conditions in the solicitation and the resulting contract.

(b) When any terms and conditions to be used are inconsistent with customary commercial practice, the contracting officer shall follow the policy regarding tailoring at FAR 12.302(c).

(B) When the S&S requirement does not meet the definition of a commercial item, FAR Part 12 terms and conditions cannot apply to the S&S requirement, but the S&S requirement can be placed on the Part 12 contract, along with applicable non-Part 12 terms and conditions.

17.9308 Solicitation provision and contract clause.

(a) The contracting officer shall insert the clause at 52.217-9006, Limitations on Use of Surge and Sustainment (S&S) Investments, in solicitations and contracts when use of industrial preparedness funds for surge and/or sustainment solutions is contemplated. The Contracting Officer, through ICP industrial support staff, shall obtain the approval of J-339 prior to authorizing any exceptions to this clause, including any access requested under paragraph (h) of the clause.

PART 19

SMALL BUSINESS PROGRAMS

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19.001 Definitions.

"Fair market price" as defined in the FAR is a price DLA would expect to pay under "normal competitive conditions," which means under full and open competitive conditions (without a reservation, set•aside, preference, or the like).

SUBPART 19.2 • POLICIES

19.201 General policy.

(b)(90) DLA small business specialists are guided by DLAM 9100.1, Small Business Program Operations Manual. Contracting personnel should recognize the assigned responsibilities of these individuals and work cooperatively with them to achieve the objectives of the DLA Small Business and Small Disadvantaged Business Utilization Program and to avoid duplication of effort.

(d)(10)(A)[A162] ***DLA contracting and small business personnel have been granted a deviation (FARS DEV 2002-05) to forego this review for transactions with a value less than or equal to $25,000 when such transactions are accomplished electronically via the "SPEDE" (SAMMS (Standard Automated Material Management System) Procurement by Electronic Data Exchange); "SASPS II" (SAMMS Automated Simplified Procurement System, Phase Two); or "PACE" (Procurement Automated Contract Evaluation) systems.***

(d)(10)(B) Whenever the deviation in (d)(10)(A), above, is used, buyers shall ensure that a blanket DD Form 2579, Small Business Coordination Record, is either system-generated or prepared manually for inclusion in the contract file.

(d)(10)(90) Periodic reviews of automated awards to which this deviation pertains shall be conducted to determine whether certain buys may be set aside in the future for HUBZone business concerns or 8(a) program participants. The contracting officer and small business specialist shall jointly consider backing out individual or groups of transactions, based on a national stock number or federal supply class with PRO-Net-listed HUBZone or 8(a) suppliers, from these automated systems.

(d)(10)(91)(i)[A163] ***There are times when a contract action's estimated value will be less than $10,000, thus precluding the need for a DD 2579 review, but the resulting contract's actual value exceeds the review threshold. So long as the estimate was originally made in good faith, there is no need to conduct an after-the-fact review in accordance with DFARS 219.201(d)(10).***
(ii) However, if changes (e.g., quantity increases) are made to the scope of the acquisition subsequent to establishment of the original good-faith estimate, and if these changes cause the potential value of the contract to exceed the DFARS 219.201(d)(10) review threshold, do not proceed with the acquisition until a DD Form 2579 review is conducted.

19.202-1[f164] ***Encouraging small business participation in acquisitions.***

(e)(90) Contract Bundling. See section 7.107, paragraph 10.001(c), and subparagraphs 15.304(c)(3) and 15.305(a)(5) for a complete discussion of this topic.

SUBPART 19.3 • DETERMINATION OF STATUS AS A SMALL BUSINESS, ***HUBZONE SMALL BUSINESS, OR SMALL DISADVANTAGED BUSINESS CONCERN***

19.***307*** Solicitation provisions.

(90) ***When the provision at FAR 52.219-1, Small Business Program Representations, is used in solicitations issued via electronic means, one of the following provisions shall be used to record information required by FAR 52.219-1, paragraph (b). For purchases below the simplified acquisition threshold (SAT), use the provision at 52.213-9004, Offeror Representations, Certifications, and Fill-in Information--Electronic Commerce; for purchases above the SAT, use 52.219-9004, Small Business Program Representations. See 13.101(b)(2)(91).***

SUBPART 19.5 – SET-ASIDES FOR SMALL BUSINESS

19.502-1[A165] ***Requirements for Setting Aside Acquisitions.***

(b)(90) Notwithstanding FAR 19.501(a) and 19.502-1(b), Federal Prison Industries (FPI) may also compete for, and could receive award of, set-aside acquisitions of items *listed on the FPI Schedule.* ***Accordingly, insert the provision at 52.219-9001, Set-Asides of Acquisitions*** *of* ***Items*** *Listed in the Schedule of Products Made in Federal Penal and Correctional Institutions,* ***in acquisitions of such items whenever a comparability determination leads to a competitive acquisition and a FAR set-aside clause is used.***

19.503 Setting aside a class of acquisitions ***for small business.***

(d) The DD Form 2579, Small Business Coordination Record, shall be used to give written notice of a withdrawal from a class set•aside to the procurement center representative (PCR). The form shall be sent through the office of the Small Business Specialist (SBS). The basis for the withdrawal shall be documented in the remarks section.

19.505 Rejecting Small Business Administration recommendations.

(b) If the chief of the contracting office approves the action of the contracting officer, the next level of appeal shall be the activity commander. If the Commander approves the action of the contracting officer, the PCR shall be so advised and may proceed with the appeal actions prescribed in FAR 19.505(c).

19.508[A166] ***Solicitation Provisions and Contract Clauses.***

(90) Set-aside clauses unique to Business Systems Modernization (BSM) applications.

(a) Insert the clause at 52.219-9005, Combined Set-Aside Instructions, in automated solicitations and contracts in BSM applications when: values will exceed the micro-purchase threshold, but will be less than or equal to $25,000; simplified acquisition procedures will be used; an exception to the non-manufacturer rule applies; and a set-aside to a very small business concern, HUBZone small business concern, or small business concern is anticipated.

(b) Insert the clause at 52.219-9006, Combined Set-Aside Instructions (Alternate I), in automated solicitations and contracts in BSM applications when: values will exceed the micro-purchase threshold, but will be less than or equal to $50,000; the non-manufacturer rule applies; and a set-aside to a very small business concern, HUBZone small business concern, or small business concern is anticipated.

(c) Insert the clause at 52.219-9007, Combined Set-Aside Instructions (Alternate II), in automated solicitations and contracts in BSM applications when: values will exceed the micro-purchase threshold, but will be less than or equal to $50,000; the non-manufacturer rule is waived; and a set-aside to a very small business concern, HUBZone small business concern, or small business concern is anticipated.

(d) Insert the clause at 52.219-9008, HUBZone Set-Aside Instructions, in automated solicitations and contracts in BSM applications when: values will exceed the micro-purchase threshold, but will be less than or equal to the simplified acquisition threshold; the non-manufacturer rule applies; and a set-aside to a HUBZone small business concern or a small business concern is anticipated.

(e) Insert the clause at 52.219-9009, HUBZone Set-Aside Instructions (Alternate I), in automated solicitations and contracts in BSM applications when: values will exceed the micro-purchase threshold, but will be less than or equal to the simplified acquisition threshold; the non-manufacturer rule is waived; and a set-aside to a HUBZone small business concern or a small business concern is anticipated.

(f) Insert the clause at 52.219-9010, Very Small Business Set-Aside Instructions, in automated solicitations and contracts in BSM applications when: values will exceed the micro-purchase threshold, but will be less than or equal to $25,000; simplified acquisition procedures will be used; an exception to the non-manufacturer rule applies; and a set-aside to a very small business concern or a small business concern is anticipated.

(g) Insert the clause at 52.219-9011, Very Small Business Set-Aside Instructions (Alternate I), in automated solicitations and contracts in BSM applications when: values will exceed the micro-purchase threshold, but will be less than or equal to $50,000; the non-manufacturer rule applies; and a set-aside to a very small business concern or a small business concern is anticipated.

(h) Insert the clause at 52.219-9012, Very Small Business Set-Aside Instructions (Alternate II), in automated solicitations and contracts in BSM applications when: values will exceed the micro-purchase threshold, but will be less than or equal to $50,000; the non-manufacturer rule is waived; and a set-aside to a very small business concern, HUBZone small business concern, or small business concern is anticipated.

(91) Each of the clauses at (a) through (h), above, refers to and applies multiple FAR set-aside clauses. However, only the FAR clause matching the awardee's small business program and type representation applies to the award. See 19.590, below.

19.590 Cascading/Combined Set-Aside Logic Clauses for Business Systems Modernization (BSM) Applications[A167]***.***

(a) The systems logic used in BSM automated procurements is able to consider the applicability of more than one kind of set-aside in a combined or "cascading" fashion, according to an order of precedence. It simultaneously accommodates HUBZone small business set-asides, very small business set-asides, and total small business set-asides, including exceptions and waivers to the non-manufacturers rule, where applicable. If, at the time of solicitation, there is a reasonable expectation of receiving offers from two or more HUBZone small business concerns or, for acquisitions estimated between $2,500 and $50,000, two or more very small business concerns, the BSM software (PD2 and Event Manager) will use a combined set-aside for the automated solicitation. All small businesses should be encouraged to submit quotes; however, offerors will be informed (by means of the provision language itself, and possibly by a message on the face of the solicitation)about the order of precedence in which the set-asides will be applied.

(b) If there is a reasonable expectation of receiving competitive offers from two or more very small business concerns and two or more HUBZone small business concerns, the RFQ produced automatically in BSM will contain a combined set-aside that follows this order of precedence for acquisitions valued between $2,500 and $50,000:

(1) Very small business concerns; then, if no qualified quote is received from a VSB -
(2) HUBZone small business concerns; then, if no qualified quote is received from a HUBZone concern -
(3) Small business concerns.

(c) If the acquisition is valued between $2,500 and $50,000 and there is a reasonable expectation of receiving competitive offers from two or more very small business concerns, but not from two or more HUBZone small business concerns, the RFQ produced automatically in BSM will contain a "cascading" set-aside that follows this order of precedence:

(1) Very small business concerns; then, if no qualified quote is received from a VSB –
(2) Small business concerns.

(d) If the acquisition is valued between $2,500 and $100,000 and there is a reasonable expectation of receiving competitive offers from two or more HUBZones small business concerns, but not from two or more very small business concerns, the RFQ produced automatically in BSM will contain a "cascading" set-aside that follows this order of precedence:

(1) HUBZone small business concerns; then, if no qualified quote is received from a HUBZone concern –
(2) Small business concerns.

(e) If the acquisition is valued between $2,500 and $100,000 and there is a reasonable expectation of receiving competitive offers from two or more small businesses, but not from very small business concerns or HUBZone small business concerns, the RFQ produced automatically in BSM will become a total small business set-aside.

(f) If, after combining and "cascading" these set-asides, no qualified quote is received from a small business at a fair market price, the set-aside will be withdrawn and the buy resolicited on an unrestricted basis.

SUBPART 19.6 • CERTIFICATES OF COMPETENCY

19.602 Procedures.

19.602•1 Referral.

(a)(2) Prior to referring a potential contractor to one of the SBA's area offices in accordance with FAR 19.602•1 and DFARS 219.602•1, the contracting officer shall thoroughly review all the pertinent facts available, including the preaward survey (PAS), and make a determination of responsibility in accordance with FAR 9.105•2. This determination should so thoroughly consider all pertinent data and the circumstances of the acquisition that, barring substantial evidence refuting the specific elements for which the contractor was determined nonresponsible, it represents the contracting officer's intention to pursue an appeal if the SBA Headquarters notifies the contracting officer of its intent to issue a certificate of competency (CoC). Evidence to refute the identified elements of nonresponsibility may come from the SBA, the

contractor, contract administration office (CAO) personnel, or any credible source, as long as the information uncovered specifically addresses the deficient elements cited in the nonresponsibility determination. Recognizing that valuable lead time may be lost if the CoC procedure is delayed, the contracting officer may initiate the CoC process pending resolution of the type of correctable deficiencies that may have been identified in the PAS.

(90) All contracting activities are encouraged to utilize a standardized and simplified form letter for CoC referrals. DLA Form 1756, Referral of Small Business for Certificate of Competency (CoC) Consideration, is available for this purpose.

19.602•3 Resolving differences between the Agency and the Small Business Administration (SBA).

(a) The contracting officer shall request the SBA to specifically address those elements considered to be unsatisfactory and document the file accordingly. The reconciliation of differences should include, as appropriate, requests for updates and additional data from the CAO personnel responsible for the PAS.

(a)(90) If the SBA notifies the contracting officer of its intent to issue a CoC, the contracting officer shall either:

(1) Appeal the issuance of the CoC in accordance with DFARS 219.602•3(c)(i), as detailed below; or,

(2) Using the information currently available, determine the contractor to be responsible, document the file, and proceed with contract award; or,

(3) Determine to accept the CoC, without determining the contractor to be responsible. This alternative allows consideration of the circumstances of an individual acquisition which may make accepting the CoC the most reasonable alternative. Notice of the award shall be provided to the division chief (or another appropriate level above the contracting officer), to the activity postaward monitor, and to the contractor general file (see FAR 4.801(c)(3)).

(c)(90) If the contracting officer intends to appeal the issuance of the CoC, the contracting officer shall request the ***Small Business Specialist (***SBS***)*** to notify the SBA Headquarters of the intent to appeal the CoC in accordance with DFARS 219.602•3(c)(i). Within 3 workdays of receiving the SBA Headquarters notification of its intention to uphold the SBA Region's decision to issue a CoC, the contracting officer shall fax a report to ***J-3311*** summarizing the pertinent facts of the case. (***V***oluminous reports should be express mailed.) The pertinent facts shall include: name of the prospective contractor; item; quantity; dollar value; the specific elements for which the prospective contractor was determined to be nonresponsible; a copy of the pertinent portions of the preaward survey; SBA's rationale for issuing the CoC; and, the proposed alternative means of satisfying the requirements. A copy of this report shall also be forwarded to the SBS at the activity. The Executive Director, ***Acquisition, Technical, and Supply Directorate*** shall review the information provided and advise the contracting officer within 5 workdays of the decision to support the appeal, or to recommend acceptance of the CoC. The Executive Director, Acquisition, Technical, and Supply Directorate shall provide a copy of that decision to the Director, Small and Disadvantaged Business Utilization (DDAS). If the Executive Director, Acquisition, Technical, and Supply Directorate elects to support the formal appeal, the contracting officer will be advised to expeditiously prepare the formal appeal and forward it through the activity SBS to DDAS in accordance with DFARS 219.602•3(c). The formal appeal shall include at a minimum: the particulars of the contract, (i.e., item, quantity, etc.); the PAS; the contracting officer's determination of nonresponsibility; any appropriate update on the contractor's progress toward becoming responsible; and a discussion of the attempts made to reconcile differences with the SBA. The Executive Director, ***Acquisition, Technical, and Supply Directorate*** shall be provided a simultaneous copy of the appeal. Formal appeals shall be forwarded for receipt at DLA within 5 workdays of notice that the Executive Director, Acquisition, Technical, and Supply Directorate supports the contracting officer's intent to appeal. Formal appeals should be indexed and tabbed.

(91) Once the contracting office requests the SBA Headquarters to review the intention of the Area office to issue a CoC, DLA contracting personnel are not authorized to waive the right to appeal, or to forfeit an appeal, without the concurrence of the Executive Director, ***Acquisition, Technical, and Supply Directorate*** . Requests for such concurrence shall include substantially the same type of information submitted in the report notifying the Executive Director, Acquisition, Technical, and Supply Directorate of the contracting officer's intention to appeal.

(92) All reports submitted by the contracting officer to the Executive Director, ***Acquisition, Technical, and Supply Directorate*** concerning CoC appeals shall be forwarded through the chief of the contracting office (see 2.101) for all other activities.

(93) The requirements of subparagraphs 19.602•3(c)(90) and (91) do not apply to simplified acquisitions. Contracting offices are authorized to develop local procedures to process appeals on simplified acquisitions.

19.602•4 Awarding the contract.

(c)(90) If the activity has not heard from the cognizant SBA field office within 5 working days after referral, the activity will contact the SBA office to which the matter was referred to determine whether a CoC is being processed. The contract file shall be documented to reflect that this action was taken.

(91) In awarding a simplified acquisition:

(i) The contracting officer shall not agree to a longer period of time than 15 business days for the SBA reply before proceeding to award to another offeror unless the extension is approved by the chief of the contracting office.

(ii) The contracting officer may proceed in accordance with FAR 19.602•4(c) when 15 calendar days have elapsed since the date of referral of the matter to SBA.

SUBPART 19.7 – THE SMALL BUSINESS SUBCONTRACTING PROGRAM

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

19.705•4 Reviewing the subcontracting plan.

(d)(7) The services of the activity and CAO Small Business Specialist (SBS) are available to assist in review of subcontracting plans. Requests for review of a subcontracting plan by the cognizant CAO shall be forwarded through the SBS at the contracting office to the SBS at the CAO. The buyer should provide a reasonable length of time (generally, at least 7 working days) for the CAO review. The results of a CAO review, and any recommendations which arise therefrom, shall be evaluated by the contracting officer prior to approval of the subcontracting plan. The contract file shall be documented to reflect the review and the contracting officer's final decision on the goal accepted.

19.790 Responsibility for reviewing the subcontracting program.

When administration of contracts containing the Small Business, Small Disadvantaged Business, Women•Owned Small Business Subcontracting Plan clause is retained by the contracting office, the procedures in 42.20***2(e)(90)*** apply.

SUBPART 19.8 • CONTRACTING WITH THE SMALL BUSINESS ADMINISTRATION
(THE 8(a) PROGRAM)

19.803 Selecting acquisitions for the 8(a) Program.

(a)(4)(90) The contracting office shall assure that follow•on Section 8(a) contract support will be provided for that period of time reflected in the SBA approved business plan. In furtherance of this, close coordination between the contracting officer and SBS is essential.

(c)(90) In addition to responding to SBA requests for potential requirements to support an approved business plan of a small disadvantaged firm, it is the policy of DLA to identify other requirements which are considered suitable for placement with SBA under the Section 8(a) program. Contracting officers will consider the Section 8(a) program as a possible method of satisfying all new requirements being processed for contract action. Special attention will be given to those commodities and services which are anticipated to be recurring requirements and for which there are a limited number of prospective small business sources.

19.804•2 Agency offering.

(a)(1) The SBA notification***, if required (see DFARS 219.804-2(2)),*** shall be provided in writing through the SBS and a copy provided to the local SBA PCR. If no response is received from SBA by the ***applicable*** due date, ***(i.e., within 10 working days of receipt of the offering in accordance with FAR 19.804-3(a) or within 5 working days of receipt in accordance with DFARS 219.804-3),*** the requirement may be withdrawn or the time extended at the option of the contracting office.

19.804•90 Withdrawal of requirements.

(a) When circumstances arise indicating a need to withdraw requirements previously committed for Section 8(a) contracting, the contracting officer shall seek SBA agreement for such withdrawal through the SBS. If the SBA does not agree with such withdrawal, complete data supporting such proposed withdrawal shall be provided through the SBS to the Small and Disadvantaged Business Utilization Office for review and concurrence or nonconcurrence.

(b) When a requirement previously committed for Section 8(a) contracting is withdrawn and subsequently acquired by normal acquisition methods, the contracting officer shall, within 15 days after award, provide a summary of the facts to the SBS on each item stating: (i) the DLA estimated fair market price (FMP), (ii) the SBA final offered price, and (iii) the final contract price.

19.806 Pricing the 8(a) contract.

(b) Although an 8(a) supplier may be able to justify a price exceeding the FMP, award at a price that exceeds FMP is prohibited (see section 921 of P.L. 99•661). Occasionally, cost and price analysis discloses that award should be made at a price below FMP. But in most cases, the analysis supports the FMP as fair and equitable to both parties and the award is consummated at that price.

19.807[A168] Estimating fair market price.

(a) ***A fair market price is one which the government can be expected to*** pay ***in a competitive environment,*** *in the current open market place.* ***It is not necessarily the lowest price resulting from a competition under ideal conditions.***

(b) *In determining the FMP* ***for an acquisition*** other ***than those covered in paragraph (c) (90) of this section,*** *the contracting officer, whether using previous buys,* ***a*** *market survey, pricing data, and/or cost or pricing data, would exclude any* ***identifiable*** *abnormally priced offers. This includes prices which, although reasonable, were found to have been abnormally low or high due to special or non-recurring circumstances, such as a one-time price reduction, premium charge, distress sale, etc. The EMP should normally be derived based on adjusting the lowest (except for repeat purchases* ***(see*** *19.807(c) (90)) remaining reasonable price consistent with the Government's requirements in the manner specified in FAR and DLAD 19.807(c). No other price differential or adjustment factor shall be used (e.g., for independent government estimate inaccuracies, for differences between fully competitive awards and reservations, for differences between awards to manufacturers and to dealers, etc.).* ***The practice of soliciting quotes from non—8(a) sources for the sole purpose of determining the FMP should be used only after the contracting officer/buyer has exhausted the use of cost or price analysis and considered commercial prices for similar products and services, available in— house cost estimates, data (including cost or pricing data) submitted by the SBA or the 8(a) contractor, and data obtained from any other Government agency. Soliciting market quotes is an acceptable means of conducting a market survey. However, market quotes provided by contractors for this purpose could be misleading, since there is no corresponding performance risk for the contractor.***

(c) (90) Establishing an FMP does not mean that the section 8(a) subcontractor will always be able to meet the most recent, lowest, and /or comparable price obtained through full and open competition or sealed bidding.

(91) When there have been recent awards for comparable quantities of the item being purchased, which resulted from "normal competitive conditions," the most recent award shall be the basis upon which FMP is determined. A comparable quantity is not necessarily a similar quantity but must be one to which a logical price comparison can be made with the current quantity. ***Recent award prices of incomplete contracts or orders may be considered if they*** were ***determined reasonable under normal competitive conditions and*** there ***is no evidence of poor performance.*** *All recent award prices are to be considered in determining if the most recent comparable price is representative of "normal competitive conditions." If the most recent award price is not representative of "normal competitive conditions," the file shall be so documented and the next most recent comparable award price shall be considered as the basis for the FMP determination.* ***The contracting officer must ensure that the differences in acquisition strategies are fully considered when developing the*** FMP. ***Factors to consider when developing the flip include but are not limited to: direct vendor delivery, required delivery schedule, minimum order quantities, maximum order quantities, surge requirements, potential ship to locations, estimated annual quantities, contract period including options, FOB point, quality/inspection requirements , and packaging.***

(92) Award of a section 8(a) contract shall not be delayed pending award of a recently issued solicitation which resulted in competitively priced offers, unless there is no reasonable basis for determining FMP other than the pending competitive award price.

(93) When a solicitation for a particular item would generally result in different unit prices for different line items, it may be desirable to develop separate FMP5 for each line item. However, it is not permissible to establish a range of FMPs for any ***single*** *item or group of items.*

(94) Averaging of previous bid or award prices is prohibited.

(95) Previous section 8(a) award prices may be used to determine the current FMP only when: (a) a suitable previous competitive price is not available; and (b) when the previous FMP was established in accordance with FAR and DLAD guidelines.

(96) A format similar to that in paragraph 19.807(91), below, shall be used to document consideration of all relevant factors affecting price used to adjust the previous award price (base FMP), or the reason the factors were not adjusted.

(97) Once the FMP is established, considering previous award prices and all relevant factors affecting price, it will be the highest price that DLA will pay, except when a revised FMP, established within the FAR/ DLAD guidelines, is fully supported and documented by the contracting officer.

(98) Although use of previous competitive award prices is the required method of determining FMP, whenever applicable, nothing in this directive shall preclude consideration of the unique factors of an individual acquisition or the application of another method of determining FMP, as listed in the FAR/DLAD, provided that the file clearly documents the reasonableness of the chosen approach.

(90) Documentation of FMP.

(i) For repeat purchases, the contract file shall be documented as to how the FMP was established in the format prescribed in paragraph (91). Section 2 of the prescribed format provides for identification of the current requirement and identification of previous award prices. As indicated in subparagraph (c)***(91)***, unless unusual circumstances exist, the most recent award price under normal competitive conditions will be the base unit price. Other previous award prices are listed for purposes of comparison. A statement documenting that the base unit price being used is reflective of normal competitive conditions shall be included in section 4 "Discussions." If other than the most recent competitive award price is used the file shall be documented as to why the most recent award price was not used and as to the reasonableness of the selected base unit price.

(ii) The base unit price established in accordance with subparagraph (c)(90) above shall be adjusted for the factors listed in section 3 of the prescribed format and any other relevant factors. Adjustments can be increases or decreases to the base unit price. Calculation and rationale for the use of adjustment factors shall be documented. Factors not considered shall be annotated "not applicable." The adjustment factors shall be added to or subtracted from the base unit price to arrive at the FMP for the current requirement.

(iii) Section 4 of the format shall be used to supplement sections 2 and 3 and to provide additional justification, as necessary, to determine that the established FMP is a price that DLA would expect to pay under normal competitive conditions.

(iv) The buyer/contracting officer may request the assistance of the activity cost and price analyst. The price analyst shall either prepare or review and coordinate on the FMP determination. If the price analyst does not concur with the buyer's FMP determination the file shall be documented with the reasons for nonconcurrence. The FMP shall be approved by the contracting officer. If there is a disagreement between the SBA/8(a) contractor and the contracting officer concerning the FMP determination, the SBS shall be given an opportunity to review the FMP determination and to provide comments. The disposition of any pricing or SBS comments shall be documented in the contract file.

(91) Prescribed FMP format.

DETERMINATION FOR REPETITIVE PROCUREMENTS

1. IFB/RFP_____NSN_____ITEM_____

2. Base of FMP Qty FOB U/P Award date

_____

Current Requirement:
Previous Procurement(s): 1)
2)
3)
Base Unit Price $_____

3. Adjustments (Show all calculations) + or • $

a. Quantity _____
b. EPA Index (List index source, #, dates, title and values) _____
c. Transportation (List rate and source) _____
d. Delivery Schedule _____
e. Packing and Packaging (List rate and source) _____
f. Other (Specify differing specs, terms, conditions, etc.) _____
Net Adjustment (a through f above) _____

FMP for Current Requirement
(Base Unit Price + or • Net Adjustment) _____

4. Discussions (Use reverse if necessary)
_____
_____
_____

5. Coordination/Approval:
Buyer's Signature/Date

_____

Price Analyst Signature/Date

_____

Prepared _____ Reviewed _____

Concur _____ Nonconcur _____

Approved: Contracting Officer_____Date_____

19.812 Contract administration.

(d) The contracting officer or authorized representative shall notify the SBS prior to initiation of any adverse action against an SBA subcontractor. In cases involving initiation of default procedures, at the request of the SBS, the contracting officer shall provide the facts required for notification to DDAS.

(90) Requests for technical and/or management assistance which are in excess of DSC or DCMA capability and resources shall be referred through the SBS to DDAS. Through agreement between HQ DLA and SBA, technical and management assistance teams can, under certain circumstances, be made available to augment assistance provided by the contracting officer.

(91) As described in FAR 42.5, postaward orientation conferences with contractors ***are conducted*** to assure a clear understanding of the scope of the contract, the technical requirements, and the rights and obligations of the parties. The contracting officer or technical representative should initiate a request for such a conference on all first time 8(a) contract***ors*** and when the 8(a) firm has experienced problems. Assure that all matters requiring clarification or resolution are considered and contractual requirements are explained. Specific attention shall be given to the requirements of statutes, executive orders, and labor provisions.

(92) Early notification to the SBA of deficiencies in contract performance by a Section 8(a) firm is particularly important in the administration of 8(a) contracts.

(93) Whenever it becomes known that the 8(a) subcontractor has encountered problems which could jeopardize contract performance, the SBS shall be notified. The contracting officer or authorized representative shall provide all reasonable assistance to the subcontractor to correct deficiencies.

SUBPART 19.71 - PILOT MENTOR-PROTEGE PROGRAM

19.7100 Scope.

The Mentoring Business Agreements (MBA) Program ***(see Subpart 19.90, below) is a DLA variation on the DoD Pilot Mentor-Protege Program, which was established under Section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), as amended. The DLA program is not intended to supersede the DoD program.***

SUBPART 19.90 **-** DLA MENTORING BUSINESS AGREEMENTS (MBA) PROGRAM

19.9001 General.

The Mentoring Business Agreements (MBA) Program is a DLA variation on the DoD Pilot Mentor-Protege Program (although it does not supersede the latter). Under the DLA Program, experienced (generally large business) entities serve as mentors to selected proteges in reciprocally rewarding relationships. The protege is ordinarily a small, small disadvantaged, or women-owned small business; however, it may also be a Javits-Wagner-O'Day Act (JWOD)-qualified nonprofit agency for the blind or other severely disabled, approved by the Committee for Purchase from People Who Are Blind or Severely Disabled. This Agency program differs from the DoD Mentor-Protege Program in that it:

(a) is not statutorily mandated;

(b) will remain in effect so long as it achieves the purposes for which it is intended;

(c) permits the selection of any small business or JWOD-qualified nonprofit agency as a protege;

(d) does not require potential mentors to undergo a substantial approval process in order to qualify for that role, or to identify intended proteges "up front";

(e) is determined successful more by the establishment of long-term business relationships between mentors and proteges (and perhaps the latter's improved business processes and penetration into new markets) than by numbers and dollar values of subcontracts with SDBs or any other category of small entity; and

(f) offers no direct monetary incentives to contractors. (Instead, it relies on a market-based incentive consisting of the extension of favorable consideration to the mentor under the instant and future source selections, and within the context of option exercise or order placement under multiple-award contracts.)

19.9002 Policy.

Through the DLA MBA Program, ***experienced*** prime contractors ***(large or small, including JWOD entities) extend*** developmenta***l*** assistance, ***with Government encouragement***, to small, small disadvantaged, and women-owned small businesses ***or JWOD entities*** in return for ***the recipient's providing*** value-added services and/or products. ***The mentor provides the benefit of its managerial expertise, technical capabilities, market knowledge and penetration, and economies of scale***. ***The protege provides*** a distinctive proficiency or capability ***(such as a specialized product, service, or, potentially, admission into its own market)*** which supports the mentor's business objectives.

19.9003 Scope.

Contractor participation in the DLA MBA Program shall ***be the focus of an evaluation factor to be included*** in all solicitations ***or other announcements*** for long-term contracting arrangements expected to exceed $500,000. ***This requirement shall not be mandatory for contracts for commercial items, unless logistics services in support of those items are also being acquired under the same contract. Any other exception to this requirement must be approved by the chief of the contracting office, without power of delegation. An explanation for the exception must be included in the solicitation file, and a copy must accompany the report required in 19.9006(e). Inclusion of the program coverage in solicitations below $500,000, though optional, is encouraged in all appropriate circumstances.***

19.9004 Purpose and approach.

(a) There are three purposes ***served by*** the DLA MBA Program. ***It is intended to:***

(1) Provide maximum opportunity to the small business/***JWOD*** community to participate in DLA's reengineered business processes at either the prime or subcontract level.

(***2) Remove the tendency on the part of some small businesses to depend on doing business with the Government exclusively, and to lead them to new opportunities that are chiefly available today in the commercial marketplace.***

(3) Foster private-sector, mutually beneficial mentor-protege relationships that transcend performance under specific contracts. ***These long-term relationships can lead to equally long-term stability and opportunities for growth.***

(b) The Government benefit realized is the establishment of stronger, better sources - the large or experienced and the small or disadvantaged entity - in whose abilities there can be greater confidence than ever before. The mentoring process strengthens the likelihood of a small firm's being able to compete for DLA contracts at either the prime or the subcontract level, and provides another outlet, vision, and opportunity to those whose prior range of operations was unnecessarily limited.

(c) A typical approach ***to MBA*** could be an arrangement between two entities who are both in similar business lines, with the prime contractor providing the advantage of its experience, technical capabilities, and business networks to the protege. ***Another*** could involve a prime ***from*** the warehousing/distribution business ***sector*** teaming with ***one or more*** proteges - not only in product lines, but also in software development, management of hazardous materials, transportation, electronic communications, ***and*** other such areas. The DLA MBA Program can be applied across the entire spectrum of DLA commodities ***and required services (but see 19.9003 for the commercial-item supply contract exception to mandatory inclusion).***

19.9005 Contracting officer responsibilities and program considerations.

(a) DLA contracting offices will work together with their ***respective*** small business offices as catalysts and facilitators, identifying entities willing to participate as mentors. Prospective prime contractors are responsible for selecting small, small disadvantaged, and women-owned small businesses ***(or JWOD entities)*** for participation ***with them*** in the Program. However, when requested, the DLA contracting office and/or small business office will assist prospective prime contractors in the process of locating small entities as potential proteges. ***The prime must establish for itself the parameters of its involvement under the Program; its*** proposal for participation, ***identifying*** the assistance ***already undertaken or*** to be rendered, ***shall be incorporated into its contract with the Government. The prospective contractor is obligated, as part of its contractual undertaking, to enter into a written, binding mentoring business agreement with a protege based on this plan. (Thus, the MBA, by its being expressly contemplated by the mentor's proposal and by the latter document's incorporation into the prime contract with DLA, binds the mentor firm to both the protege and the Government.)***

(b) Even though the Government does not enjoy privity of contract with the protege (and therefore cannot be a party to, or require a copy of, the MBA), the contracting officer shall inform the prospective offeror/mentor that the future agreement must reflect the plan included with the latter's offer.

(1) Notwithstanding that the agreement is not made a deliverable under the contract, or that a copy cannot otherwise be demanded by the contracting officer, he or she shall nevertheless request that the agreement be made available to the Government. The contractor shall be advised that any agreement so provided will be compared with the proposal contained in the contract with DLA, to ensure that it adequately reflects the mentor's obligations expressed within that contract.

(c) DLA contracting offices shall lead by example in this mentoring concept by placing greater emphasis on assisting small, small disadvantaged, and women-owned small businesses through their Business Counseling Center services and other functions/specialists throughout the activity. ***These*** contracting offices will actively ***promote*** and participate in industry-sponsored conferences and organizational seminars/meetings, using ***the*** events as a forum to discuss and ***forward*** Program goals.

(d) To promote ***P***rogram participation, the DLA MBA Program shall ***(as stated in 19.9003)*** be included as an evaluation factor in best-value acquisitions that meet applicability standards. Prospective offerors shall be asked to include, as part of their overall proposal, a plan to participate in the Program as a mentor; ***each plan must delineate the assistance already undertaken or to be rendered to a protege.*** The factor is an element in the overall award decision, and ***the proposal provided by a*** successful ***offeror shall be*** incorporated into the ***resulting*** contract and monitored during performance by the contracting officer ***and other pertinent parties.***

(1) Participation ***in the MBA Program*** is ***entirely*** elective; however, proposals that demonstrate a strong commitment to affording small, small disadvantaged, and women-owned small businesses a real opportunity to compete in the reengineered business environment ***will ordinarily*** receive a more favorable rating for this evaluation factor than those that demonstrate ***a lesser*** or no ***such*** commitment. ***(Examples of this type of "real opportunity" include the mentor's developing the protege into a stronger competitor by designating the latter a*** "valued supplier," ***or by permitting it to*** perform part of the contract work in conjunction with the prime through a type of teaming arrangement.) There is no limit to the type of assistance the prime contractor may provide to achieve its ***Program*** objectives. ***Of course, the "helping hand" that any firm can extend necessarily depends upon unique variables, including its business sector, range of market penetration, capitalization, competition, location, etc. The Government shall determine the adequacy of the contractor's proposal, but shall not dictate the kind of assistance to be provided.***

(***e) For applicable contract actions, the contracting officer shall provide*** incentives for prime contractors to establish and administer ***MBA*** arrangements. ***These include:***

(1) evaluation of current or proposed participation in the MBA Program ***as an independent*** factor ***(separate from any overall past performance evaluation factor)*** in source selection;

(2) use of MBA performance under previous contracts as part of the ***overall*** past performance evaluation ***factor in source selection;***

(3) evaluation of ***present MBA*** performance in determining placement of orders under multiple-award contracts; and/or

(4) consideration of contractor ***present and*** past ***MBA*** performance in ***the*** exercise of options ***for the follow-on years of long-term contracts.***

(f) The DLA MBA Program shall be monitored, ***and performance under it analyzed,*** by the ***contracting officer and the*** cognizant small business specialist(s) to ensure the intended purposes of the Program ***are*** being achieved. ***Because activity must be evaluated specifically in terms of the contractor's commitment to the advancement and viability of a protege, and because oversight reviews must be conducted in accordance with the plan contained in the prime's contract with the Government, rather than in accordance with the agreement (see 19.9006(a) through (c)), care must be taken not to assess intentions, without regard to outcomes. The value of both effort expended and results achieved must be considered in each individual mentoring situation.***

19.9006 Reporting.

(a) Participating mentors shall be required to submit periodic progress reports on ***the fulfillment of their proposals. Furthermore, when a mentor voluntarily furnishes a copy of the MBA to the Government, the contracting officer shall compare the later agreement to the mentor's earlier proposal.***

(b) All ***accomplishments against MBA proposals*** shall be reviewed semi-annually with the mentor and the protege by the contracting officer and the cognizant small business specialists **from the buying activity and the DCMA component(s). (Administration of contracts containing the MBA provision/clause should ordinarily be delegated to DCMA; however, when overall administration is retained, supporting administration by DCMA must nevertheless be requested for purposes of Program oversight. See, generally, 42.202*(e)(90)*. *Activity/component*** Commanders or their Deputies are strongly encouraged to participate in such reviews. HQ DLA (***J-33*** and DDAS) shall also be afforded an opportunity to participate.

(c) Not only shall small business specialists monitor contractor activity under the plan, but they shall also, at least implicitly, oversee and report on performance under the agreement, when that document has been provided to the Government. Note, though, that even if activity in accordance with the agreement is able to be monitored, such information cannot be used as the basis for any contractual determination (including source selection, option exercise, or order placement), because the mentor's contractual duties to DLA extend only to the contents of the plan. Similarly, a formal assessment of the protege's fulfillment of its undertakings (as set forth in the MBA) cannot be made, because that party's contractual obligations extend only to the prime. Despite this, the general monitoring of all aspects of performance is one of the Government's primary duties under the MBA Program. A proper balance must therefore be maintained between the demands occasioned by legitimate Government interests, and respect for a contractual relationship to which the Government is not a party.

(d) Wherever possible, this Program will utilize existing reporting mechanisms to evaluate prime contractor compliance.

(e) A Reports Control System (RCS) number has been established for reporting the number of MBAs in place each ***fiscal*** quarter. ***Additionally, you are required to indicate whether, for the applicable buys, offers were received from both small/JWOD and large entities, whether the successful offeror chose to participate in the MBA program, and, if so, whether the successful offeror was a small/JWOD or a large business.*** The RCS number ***remains*** DLA(Q)2609(MM). ***These*** reports ***are mandatory, and*** are due ***from the corporate contract policy office at each Center*** to HQ DLA, ATTN***: J-3311,*** by the 10th working day of the month following the end of the quarter.

(f) Notification of ***a mentor's and protege's arrangements regarding signing ceremonies for these MBA agreements*** shall, whenever practicable, be provided to Headquarters, DLA (DDAS and J-3311) at least two weeks prior to ***the planned event*** so that DLA executives may attend, ***at their election***. Formal ceremonies with appropriate publicity are encouraged.

19.9007 Solicitation provision and contract clause.

A provision substantially the same as the one at 52.219-9002 shall be inserted in all solicitations meeting the criteria in ***19.9003***, above. ***Additionally, a*** clause substantially the same as the one at 52.219-9003 shall be included in all solicitations and contracts containing provision 52.219-9002.

PART 22

APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

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22.001 Definition.

"Labor advisor" means:

(1) Directorate of Procurement, MMPPP, for all matters except those involving contracts administered by DCMA;

(2) Directorate of Contract Management, AQOG, for matters involving contracts administered by DCMA.

SUBPART 22.1 • BASIC LABOR POLICIES

22.101 Labor relations.

22.101•1 General.

(a) For contracts administered by DCMA, the Industrial Labor Relations Officer (ILRO) in the Directorate of Contract Management within each DCMD provides services to contracting officers in accordance with DLA Directive 5000.4, Contract Management ("The One Book"), Part VI, Chapter 18. For contracts not administered by DCMA, contact the labor advisor to determine if ILRO services can be obtained through the Directorate of Contract Management, AQOG.

(90) Whenever labor representatives request permission to enter a DLA installation on which private contract employees are engaged in contract work to conduct union business during working hours, the commanding officer may admit such representatives, provided: the presence and activities of the labor representatives will not interfere with the progress of the contract work involved; and the entry of such representatives to the installation shall not violate pertinent safety or security regulations. Commanding officers shall take all necessary action to enforce the above policy and facilitate ready access to worksites within military installations. One method which has met with success in appropriate situations is the maintenance by commanding officers of a list of labor representatives who have been cleared with regard to safety and security considerations and who may be admitted into respective installations to conduct union business. The determination as to who are appropriate labor representatives should be made by the commanding officer on recommendation of the contracting officer and after consultation with local union officials. Business offices or desk space for labor organizations for solicitation of membership, collection of dues, or other business of the labor organization not directly connected with the contract work, shall not be permitted on the installation except for the routine functions of the working steward whose union duties are incidental to the steward's assigned job. In the event that a commanding officer of an installation or the contracting officer or representative of the contracting officer denies entry to a labor representative for any reason, such officer shall notify, through channels, Headquarters DLA, ATTN: ***J-3311***. Such notification shall include the reasons for denial, including names, addresses of representatives denied entry, and union affiliation, if known, of such representatives.

22.103•4 Approvals.

(a) The approving official for contractor's requests for overtime is the chief of the contracting office.

22.103•5 Contract clauses.

(90) The clause at 52.222•9000, Davis•Bacon Act • Price Adjustment shall be included in contracts for installation support and maintenance and repair containing option or multiyear provisions.

SUBPART 22.4 • LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION

22.404•3 Procedures for requesting wage determinations.

(b) The office responsible for the preparation of specifications or award of contracts shall initiate the request. Send the original SF 308, Request for Wage Determination and Response to Request, to the Department of Labor with a copy to Headquarters DLA, ATTN: ***J-3311***.

22.406•8 Investigations.

(d) Contracting officer's report. (1) For all contracts except those administered by DCMA, forward the report to HQ DLA, ATTN: ***J-3311***. For contracts administered by DCMA, forward the report to Defense Contract Management Agency, ***DCMA***-OG. Forward the recommendations of the HCA with the report.

SUBPART 22.15 - PROHIBITION OF ACQUISITION OF PRODUCTS PRODUCED BY FORCED OR INDENTURED CHILD LABOR

22.1503 Procedures for Acquiring End Products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.

(e) Whenever a contracting officer has reason to believe that forced or indentured child labor was used to mine, produce, or manufacture an end product or component furnished pursuant to a contract, the contracting

officer shall refer the matter to the servicing DLA legal office for discussion with fraud counsel and subsequent referral to the Defense Criminal Investigative Service, if appropriate.

PART 23

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SUBPART 23.1 • POLLUTION CONTROL AND CLEAN AIR AND WATER

23.107 Compliance responsibilities.

The contracting officer shall report violations of the clean air or water standards which come to his/her attention to HQ DLA, ATTN: ***J-3312***.

SUBPART 23.3 • HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

23.303 Contract clause.

In addition to the clauses set forth at FAR 52.223•3 and DFARS 252.223•7001, the contracting officer shall insert a clause substantially the same as 52.223•9000, Material Safety Data Sheets and Hazard Warning Labels, in solicitations and contracts for items described in FAR 23.302(c).

(90) Notwithstanding paragraph 4. of ***the latest version of*** Federal Standard (FED•STD) 313, the contractor shall submit copies of Material Safety Data Sheets (MSDSs) and Hazard Warning Labels (HWLs) to the contracting office, rather than directly to DSCR. The contracting officer, in turn, shall provide a copy of each MSDS, as well as each HWL, received from apparently successful offerors to the address indicated below for entry into the DLA Hazardous Material Information System:

(91)

Defense Supply Center Richmond
ATTN: DSCR•***VBA***
Richmond, VA 23297•5000

PART 25

FOREIGN ACQUISITION

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SUBPART 25.1 • BUY AMERICAN ACT • SUPPLIES

25.10***3*** ***Exceptions***.

(b) (1) (90) The fact that an item to be procured is on the list at FAR 25.104(a) does not eliminate the buying activity's responsibility to conduct market research appropriate to the circumstances, to include seeking domestic sources, before soliciting offers. (See 10.001(a)(2)(93)).

(b)***(i)*** Prepare nonavailability determinations in Determination and Findings (D&F) form.

(b)(i)(C) For contracting offices where the Executive Director, Acquisition, Technical, and Supply Directorate is the HCA, submit waiver requests to HQ DLA, Attn: J-3312.

(b)(ii) For purposes of determining the approval level, do not add option totals to basic award amounts. Prior to exercising an option, however, a new determination of nonavailability (for the option total only) must be made.

25.104 Nonavailable Articles
[A173]
(b)(90) If it is determined that an article contained on the list at FAR 25.104(a) is available domestically in sufficient and reasonably available quantities of a satisfactory quality, steps should be taken to propose a revision to the FAR to remove the article from the list. (See FAR 25.104(b)). Document the file with the results of the market research and include a definitive statement concerning the item's domestic availability. (See 1.201-91 for procedures on amending the FAR or the DFARS.)

SUBPART 25.8 • INTERNATIONAL AGREEMENTS AND COORDINATION

25.870 Contracting with Canadian contractors.

25.870•1 General

(e)(90) See 15.403-3(c)(4)(A)(90)(91) for price analysis and price reasonableness determination requirements for offers from Canadian Commercial Corporation.

SUBPART 25.***9*** • CUSTOMS AND DUTIES

25.***903*** Exempted supplies.

(3) The Commander, ***DESC***, or designee, is authorized to execute duty•free entry certificates for the ***fuels-related*** supplies in DFARS 225.***903***(b)(i)***(2).***

SUBPART 25.70 • AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND
OTHER STATUTORY RESTRICTIONS ON FOREIGN PURCHASES

25.7002 Restriction on food, clothing, fabrics, and specialty metals.

25.7002•2 Exceptions.

25.7002-2 (90)[A174] ***Domestic NonavailabilityValidation.***

DFARS 225.7002-2(c) contains an exception to the Berry Amendment domestic source restriction for those articles listed at FAR 25.104(a). Before soliciting offers for items covered by the restriction at DFARS 225.7002 that fall under the exception, the buying activity shall verify, through market research, that the article should remain on the list and thus, still be exempt from the Berry Amendment restriction. The contract file is to be documented accordingly. (See 10.001(a)(2)(93) and 25.104(b)(90)).

(a)[A175] All domestic non-availability determination approval requests made pursuant to 10 U.S.C. 2533a, also known as the Berry Amendment, shall be forwarded ***to the DLA Senior Procurement Executive*** for submission to the Under Secretary of Defense (Acquisition, Technology & Logistics) ***for approval***. Options not exercised at time of award require a separate non-availability determination. ***(See DLAD 90.17)***

(b) Each activity that has been granted a domestic non-availability determination (DNAD) is required to annually report 1) results of market research to find domestic sources that would preclude the continuing need for the DNAD; 2) results of specification reviews with requiring activities in order to find acceptable substitute products that would not require a DNAD; and 3) results of any additional requirements specified in the DNAD approval. The first submission is due to J-3312 on December 31, 2003.

25.7002•***3*** Contract clauses.

(c) Alternate 1 of the clause at 252.225-7014, preference for Domestic Specialty metals, must be used for weapon-systems-coded items procured for one of the enumerated programs.

SUBPART 25.73 • ACQUISITIONS FOR FOREIGN MILITARY SALES

25.7302•90 Foreign Military Sales (FMS) shipping instructions.

(a) In order to reduce misdirected shipments of FMS materiel, do not place shipping addresses on FMS contracts except as provided in paragraphs (b) and (c) below. Instead, place a notice in the contract requiring the contractor to contact the transportation officer (TO) at the contracting activity that awarded the contract or that placed the order, unless contract administration responsibilities were assigned to an office other than the contracting activity that awarded the contract. Orders and contracts assigned to DCMA for administration shall include a notice to require the contractor to submit a DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions, to the transportation officer at the contract administration office for shipping instructions. Use a clause substantially the same as that provided at 52.225•9002, FMS Shipping Instructions (June 1998).

(b) A shipping address may be placed in FMS contracts if complete shipment is anticipated within 120 days of award.

(c) Contracts contemplating using f.o.b. origin shipping terms may include a firm shipping address.

(d) Additional contract provisions may be appropriate to satisfy unique requirements for requisitions that contain a "Z" or "Y" in card column 46. However, do not list the freight forwarder or embassy addresses in the contract.

(e) By memorandum dated August 10, 2000, the Defense Security Cooperation Agency approved the use of DVD with fast payment procedures as a means to improve support to foreign military sales customers. This approval will allow the inclusion of FMS customer requirements in many contract arrangements and eliminate unnecessary Government source inspections. However, the following considerations may affect the decision to include FMS requirements in DVD contracts:

(i) The ability to include FMS requirements in contracts may still be limited by preservation and packing requirements. Marking requirements must comply with MIL-STD-129 and the Security Assistance Management Manual for FMS requirements. Commercial marking practices do not generally contain all information required by those documents. It is particularly important to clearly mark the requisition number on the packaging.

(ii) Under the terms of the Letters of Offer and Acceptance (LOA) negotiated with foreign governments, title transfers to the foreign government at the contractor's loading dock. [Note: The LOA language pertaining to title transfer at the contractor's shipping dock does not require inspection and acceptance at origin or the use of f.o.b. origin shipping terms]. The LOAs also require repair and replacement of items for one year after shipment. Under fast payment procedures, the contractor is responsible for repair and replacement of items for a period of 180 days from the date title to the supplies vests in the Government. For FMS requirements, this would equate to 180 days from the date of shipment. In order to comply with the terms and conditions of the LOA when using fast payment procedures, problems not identified within 180 days of shipment must still be resolved by the Defense Supply Centers.

(iii) Material supplied to fulfill FMS requirements should receive the same level of inspection that is afforded to U.S. Military customers for the same material.

(iv) Direct Vendor Delivery of FMS shipments to freight forwarders may use Fast Payment procedures in accordance with 13.402(90)(2).

SUBPART 25.***75*** • BALANCE OF PAYMENTS PROGRAM

25.***7501*** Policy.

(c) The public interest determination shall be made by the Executive Director, Acquisition, Technical, and Supply Directorate. Requesting activities shall submit their request in the form of a proposed D&F to HQ DLA, ATTN: J-3312. Include the rationale for the determination as well as all relevant facts.

PART 27

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SUBPART 27.6 • FOREIGN LICENSE AND TECHNICAL ASSISTANCE AGREEMENTS

27.675•91 Review of agreements.

27.000 Scope of section.

27.000•90 Authority.

The General Counsel, HQ DLA, is authorized to act for the Director, DLA, on all patent, copyright, rights in data, and trademark matters arising in the DLA. Any question on such matters shall be referred to the General Counsel, HQ DLA.

27.000•91 Supply of patented components as Government•furnished property (GFP).

When patented or proprietary components are required in end items purchased by DLA activities, particularly military type items, consideration may be given to furnishing such components as GFP.

SUBPART 27.2 • PATENTS

27.203 Patent indemnification of Government by contractor.

27.203•6 Waiver of indemnity by the Government.

Specific patents may be excluded in accordance with FAR 27.203•6 only with the prior approval of the General Counsel, HQ DLA.

27.204 Reporting of royalties • anticipated or paid.

Counsel for the contracting activity concerned will forward to the General Counsel, HQ DLA, a copy of each royalty report received in accordance with FAR 27.204 which indicated that royalties in excess of $250 have been paid or are to be paid to any person or firm.

27.205 Adjustment of royalties.

The report required by FAR 27.205 shall be made to counsel for the contracting office concerned who shall forward the report to the General Counsel, HQ DLA, for appropriate action.

SUBPART 27.3 • PATENT RIGHTS UNDER GOVERNMENT CONTRACTS

27.302 Policy.

27.302•90 Processing of infringement claims.

(a) Any direct or indirect charge or threat of patent, trademark, or copyright infringement received by any contracting office, shall be referred to counsel for the activity who will notify and coordinate all actions on such cases with the General Counsel, HQ DLA.

(b) The General Counsel, HQ DLA is hereby authorized to make acquisitions in accordance with 10 U.S.C. 2386 and to enter into agreements in settlement of claims under the Foreign Assistance Act of 1961 (22 U.S. C. 2356) and 35 U.S.C. 181•188. The General Counsel, HQ DLA shall coordinate with the Departments of the Army, Navy, and Air Force in the processing and final disposition of each claim.

SUBPART 27.6 • FOREIGN LICENSE AND TECHNICAL ASSISTANCE AGREEMENTS

27.675•91 Review of agreements.

Proposed foreign license and technical assistance agreements between domestic concerns and foreign governments or concerns forwarded to the DLA under the provisions of DFARS 227.675•2 shall be referred to the General Counsel, HQ DLA for action in accordance with DFARS 227.675•1.

PART 28

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SUBPART 28.1 – BONDS ***AND OTHER FINANCIAL PROTECTIONS***

28.103 Performance and payment bonds for other than construction contracts.

28.106 Administration.

28.106•90 Review of bonds and consent of surety.

All bonds and all consents of surety shall be reviewed by local counsel for legal sufficiency. The original signed bond shall subsequently be retained with the original copy of the contract when practical.

SUBPART 28.3 • INSURANCE

28.305 Overseas workers' compensation and war•hazard insurance.

(d)(90) For the Defense Logistics Agency, submit waivers to the ***Commander, Defense Contract Management Agency (DCMA).***

28.307 Insurance under cost•reimbursement contracts.

28.307•1 Group insurance plans.

(90) For the Defense Logistics Agency, submit insurance policies under the Defense Department Group Term Insurance Plan to the ***Commander, Defense Contract Management Agency (DCMA)***, for approval.

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29.490 Kentucky Sales and Use Tax • application for exemption.

SUBPART 29.4 • CONTRACT CLAUSES

29.490 Kentucky Sales and Use Tax • application for exemption.

(a) The Commonwealth of Kentucky provides procedures for obtaining an exemption to the Kentucky Sales and Use Tax for sales made directly to the Federal Government (Kentucky Regulation 103 KAR 30:235). DLA activities may apply for this exemption. Requests for copies of the application forms should be directed to:

Department of Revenue
Sales and Severance Tax Division
Annex Building
Frankfort, KY 40601

Copies are also available from the Department's 11 regional offices.

(b) The regulation and instructions on the reverse side of the application form require each administrative division within a Federal unit, which makes purchases in its own name, to file a separate application. Kentucky will then issue an exemption authorization letter to that unit. Each contractor in Kentucky doing business with that unit will then request a copy of this exemption authorization letter. Once we furnish a copy to our contractors, they should retain it in their files for use in connection with claiming deductions in their state sales and use tax returns with respect to sales to the Federal Government.

(c) Solicitations which anticipate responses from firms in the Commonwealth of Kentucky should include the clause at 52.229•9001.

PART 30

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SUBPART 30.2 • CAS PROGRAM REQUIREMENTS

30.201 Contract requirements.

30.201•1 CAS applicability.

Refer to 30.201-3(a) in determining whether the exemption at 9901.201-1(b)(2) applies for negotiated contracts and subcontracts not in excess of $500,000.

30.201-3 Solicitation provisions.

(a) The provision at 52.230-1, Cost Accounting Standards Notices and Certification, shall be included in negotiated solicitations expected to result in contracts exceeding $500,000, as specified in 48 CFR 9903.201. To qualify, the “net award” calculated at the time of contracting action must be expected to exceed the CAS $500,000 threshold. The calculation shall include yet-to-be-provided incremental funding and the potential value of orders expected to be issued over the life of the contract, including options, excluding any not likely to be exercised. The reason for any exclusions shall be documented.

30.201-4 Contract clauses.

(90) Refer to 30.201-3(a) to determine whether the award meets the $500,000 threshold and thus should retain the solicitation provision specified at FAR 30.201-3(a) and the clauses specified at FAR 30.201-4(a)-(e).

30.201•5 Waiver.

(90) Prior to referral by the chief of the contracting office to HQ DLA, ATTN: ***J-3313***, of a proposed waiver of the CAS requirements, the Commander shall personally negotiate with the proposed contractor and attempt to obtain the required statement(s). When it is determined that the Commander should not personally conduct negotiations, a detailed memorandum setting forth the rationale shall be forwarded with the referral to HQ DLA.

SUBPART 30.6 – CAS ADMINISTRATION

30.602-2 Noncompliance with CAS requirements.

(c)(2) and (d)(2) For information on the interest rate specified at this FAR cite, see 15.407-1(b)(7)(i).

SUBPART 30.70 • FACILITIES CAPITAL EMPLOYED FOR FACILITIES IN USE

30.7001 Use of DD Form 1861.

30.7001•2 Completion instructions.

(e) The interest rate ***cited in the corresponding FAR paragraph is*** determined by the Secretary of the Treasury ***under the criteria established by the Renegotiation Act of 1971, and used pursuant to the Contract Disputes Act of 1978 and the Prompt Payment Act. The annual rate for the forthcoming semi-annual period and information on its application*** is available on the ***DLA Pricing Webpage*** at **http://www.dla.mil/j-3/j-336/Pricing/Default%20test.asp**

The annual rate for the forthcoming semi-annual period is published in the Federal Register during the fourth week of December and June. ***The rate and information on its application*** is forwarded each six months via a PROCLTR and is also available on the worldwide web at http://www.publicdebt.treas.gov/opdprmt2.htm. ***This information*** may also be obtained from the local cost and price analysis branch/element.

30.7004 Administrative procedures.

30.7004•1 Forms CASB•CMF.

(c) A local provision requiring submission of completed Form(s) CASB•CMF or the cost of money factors, and advice of the review/approval status of such data by the cognizant administrative contracting officer (ACO) for each contractor fiscal year (or portion) covering the planned period of contract performance, shall be included in solicitations expected to exceed $500,000 which require submission of cost or pricing data.

30.7004•2 DD Form 1861.

(b)(3) A local provision requiring submission of the contractor's land, buildings, and equipment distribution percentages necessary to complete DD Form(s) 1861, Contract Facilities Capital Cost of Money, for each contractor fiscal year (or portion) covering the planned period of contract performance, and advice of the review/approval status of such data by the cognizant ACO, shall be included in solicitations expected to exceed $500,000 which require submission of cost or pricing data.

30.7100 Definitions

(c)(1) For information on the interest rate specified at this DFARS cite, see 30.7001-2(e).

30.7101 Calculations.

30.7101-1 Cost of money

(a) For information on the interest rate specified at this DFARS cite, see 30.7001-2(e).

PART 31

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SUBPART 31.2•CONTRACTS WITH COMMERCIAL ORGANIZATIONS

31.205•7 Contingencies.

(c)(2)(90) When a negotiated fixed price type contract (including indefinite delivery, labor•hour, or time•and•materials contracts) is contemplated, whether to be awarded on a firm•priced or flexibly priced basis (includes economic and award fee bases), the following techniques should be considered to overcome contingencies described in FAR 31.205•7(c)(2) which present a substantial uncertainty and financial risk to the contractor and/or the Government:

(i) Applying a decrement factor for contingencies involving materials (see 15.***401***);

(ii) Delaying the award so that the contingent effect may reasonably be determined or the contingency resolved, and the contract priced accordingly;

(iii) Using a cost reimbursable type contract;

(iv) Segregating the contingency as a cost reimbursable line; or,

(v) When the contracting officer documents why each of the preceding techniques will not suffice, incorporating a reopener clause in the contract (see Subpart 17.92).

31.205-10 Cost of money.
(a)(1)(ii)(c) For Information on the interest rate specified at this FAR cite, see 30.7001-2(e).

31.205-19 Interest and indemnification.

(a)(3)(i) For information on the interest rate specified at this FAR cite, see 30.7001-2(e).

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32.907 Interest penalties.
32.907-1 Late invoice payment.

32.004 Contract performance in foreign countries.

(a) Foreign currencies owned by the U.S. Government shall be used, when feasible, to make payments under contracts in foreign countries. The provisions of DODD 7360.11, Use of Foreign Currencies, will govern.

32.***006*** Reduction or suspension of contract payments upon finding of fraud.

32.***006***•1 General.

(b) Level IV of the Executive Schedule is the Under Secretary of Defense (Acquisition and Technology).

32.***006***•2 Definitions.

(a) DLA's remedy coordination official is the Associate General Counsel, Fraud Remedies Program.

32.***006***•3 Responsibilities.

(b) Instances of suspected fraud shall be promptly forwarded by the chief of the contracting office to local fraud counsel for appropriate action.

32.***006***•5 Reporting.

The DLA remedy coordination official shall prepare the report which shall be submitted by memorandum by the Director, DLA or his deputy to the Under Secretary of Defense (Acquisition and Technology) through the Director of Defense Procurement.

32.***0***71 Contract Finance Committee.

(b)(2) Deviations. Requests for authority to deviate from the provisions of FAR Part 32, DFARS Part 232, or Part 32 of this directive shall be submitted to HQ DLA, ATTN: ***J-3313***.

SUBPART 32.3 • LOAN GUARANTEES FOR DEFENSE PRODUCTION

32.304 Procedure.

32.304•1 Application for guarantee.

(a) ***In the event Congressional authority to use guaranteed loans again becomes available (see DFARS 232.302(a)),*** **a**ny application based on a contract which cites or will cite DLA funds ***shall*** be ***forwarded by the Chief of the Contracting Office (not delegable)*** to HQ DLA, ATTN: ***J-85, with a copy to HQ DLA, ATTN: J-3313***. This ***procedure*** will be used regardless of the office responsible for administration of, or payment under, the contract.

SUBPART 32.4 • ADVANCE PAYMENTS FOR NON•COMMERCIAL ITEMS

32.402 General.

(e)(1) Authority for approving advance payments has been retained at the OSD level (see DFARS 232.070(a)).

32.407 Interest.(a)(2)8(b). For information on the interest rate, see 30.7001-2(e).

(a)(2) and (b). For information on the interest rate specified at these FAR cites, see 30.7001-2(e).

32.409 Contracting officer action.

32.409•1 Recommendation for approval.

The contracting officer's report, containing all the information specified in FAR 32.409•1, shall be forwarded by the ***C***hief of the ***C***ontracting ***O***ffice (***not delegable)*** to HQ DLA, ATTN: **J-85**, with a copy to HQ DLA, ATTN: ***J-3313***. The items indicated in FAR 32.409•1(b) and (c) require submission and investigation of all information cited in FAR 32.408. Information on how advance payments, in lieu of all other financing methods, are necessary for performance of the contract, and how the authorization of advance payment is in the public interest or, as applicable (see FAR 32.402), will facilitate the national defense, shall be included in documentation to be furnished pursuant to FAR 32.409•1(d).

32.409•2 Recommendation for disapproval.

If the contracting officer determines that the request should be disapproved, the determination shall be forwarded for approval by the ***C***hief of the ***C***ontracting ***O***ffice ***(not delegable).***The response to the contractor should include suggestions as to alternate financing methods. If the contract cites DLA funds, an information copy of the documents should be transmitted to HQ DLA following the distribution cited in 32.409•1 above. (The office administering or making payments under the contracts or maintaining the allotment records to which the payment will finally be charged is not pertinent.)

SUBPART 32.5 • PROGRESS PAYMENTS BASED ON COSTS

32.501 General.

32.501•2 Unusual progress payments.

(a) All unusual progress payments provisions along with supporting information, shall be s***forwarded by the Chief of the Contracting Office (not delegable)*** for coordination and approval to HQ DLA, ATTN: **J-85**, with a copy to HQ DLA, ATTN: ***J-3313***, if the request concerns a contract which cites DLA funds.

32.502 Preaward matters.

32.502•1 Use of customary progress payments.

The use of a progress payments clause in orders with the Federal Prison Industries (FPI) and in orders with the workshops of the National Industries for the Blind (NIB) and the NISH shall be based on the criteria in FAR 32.502•1. These entities shall be afforded the same privileges for and rate of progress payments as are permitted for large business concerns.

32.502•3 Solicitation provisions.

(90) To specify the applicable progress payment rate, a provision substantially as follows shall be included in orders with FPI and the workshops of NIB/NISH that authorize progress payments.

"Paragraph (a) of the clause at DFARS 252.232•7004, DoD Progress Payment Rates, which is hereby incorporated by reference, specifies the progress payment rate applicable to this order."

SUBPART 32.6 • CONTRACT DEBTS

32.610 Demand for payment of contract debt.

(b)(2) For information on the interest rates specified at this FAR cite, see 15.407-1(b)(7)(i) or 30.7001-2(e) as applicable.

32.613 Deferment of collection

(h)(3) and (i) See 32.610 (b)(2).

32.614 Interest.

32.614-1 Interest charges.

(c) For information on the interest rate specified at this FAR cite, see 30.7001-2(a).

32.690 Claims processing.

Follow directions contained in DLAM 7000.1, chapter 12.

SUBPART 32.7 • CONTRACT FUNDING

32.703 Contract funding requirements.

32.703•2 Contracts conditioned upon the availability of funds.

It is recognized that there may be instances, other than those described in FAR 32.703•2, when it may be necessary to initiate a purchase prior to the availability of funds. In such instances, the action will only be taken after the facts concerning the proposed solicitation are ***forwarded by the Chief of the Contracting Office (not delegable)*** to HQ DLA, ATTN: ***J-3313***, for review as to the necessity for such action and the obtaining of the required FAR deviation permitting use of the provisions set forth in FAR 52.232•18.

SUBPART 32.9 • PROMPT PAYMENT

32.906 Contract financing payments.

(a) The DFARS 232.906(a) requirement that the contracting officer coordinate payment terms with offices involved in the payment process applies only when a timeframe longer than the normal 7 or 14 day requirements specified in the Prompt Payment clause at FAR 52.232•25(a)(6) and at FAR 52.232•25(b)(2) is used.

32.907 Interest penalties.

32.907-1 late invoice payment.
(d) and (e) For information on the interest rate specified at this FAR cite, see 30[f177]***.7001-2(e).***

PART 33

PROTESTS, DISPUTES, AND APPEALS

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33.212 Contracting officer's duties upon appeal.
33.213 Obligation to continue performance.
33.214 Alternate dispute resolution (ADR)

SUBPART 33.1 • PROTESTS

33.103 Protests to the agency

(c) All DLA field activities shall provide a protest procedure as an alternative to filing a protest with the contracting officer. The decision maker for such an alternative "agency level" ***protest*** shall be

the Chief of the Contracting Office (CCO) (not delegable). In those instances where the CCO has had previous personal involvement with the procurement, the decision-maker shall be the Deputy Commander. Legal ***review*** is required on all agency level protest decisions.

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(d)(4) DLA field activities have flexibility in designing specific procedures for alternative "agency level" protests. However, procedures used shall ensure the decision-maker reviews input from both the protester and the contracting officer in order to reach a separate, independent decision.

(91) Each activity shall collect information concerning protests filed each fiscal year under the alternative protest procedure. This information shall include the number of protests filed and their disposition, whether or not there was a stay of procurement/award, and the number of any subsequent protests to the General Accounting Office.

DLAD 33.104 -- Protests to GAO

(a) General Procedures.

(90) ***(i)*** Headquarters, General Counsel (GC), is the administrative focal point for all DLA protests filed with the General Accounting Office (GAO). Immediately after receiving written notice from GAO of a protest, GC will notify the local office of counsel for the contracting activity involved that a protest has been filed with GAO. The local office of counsel shall promptly assign an attorney to the protest and notify GC and GAO of the name and phone number of the assigned attorney. Field counsel should consult DLA's Bid Protest Procedures Manual for specific procedures regarding protests before GAO.

(90) For local offices that have not been delegated the authority and responsibility to represent DLA in bid protests filed with GAO, GC will notify GAO of the assigned attorney.

(ii) The Chief Counsels of the following offices have been delegated the authority and responsibility to represent DLA in bid protests filed with GAO: DSCC, ***DESC***, DSCR, ***DSCP***, DRMS, ***DCMD-East and DCMD-West***.

(iii) Contracting offices, through their legal staff, shall promptly inform GC of any protests which concern significant or unsettled issues of contracting law, regulation, or policy.

(2) Contracting activities and offices are responsible for providing notice to interested parties in accordance with FAR 3.104(a)(2).

(3) ***(90)*** Upon receipt of a protest, the Chief Counsel of the field office must ensure that the protest is reviewed for possible corrective action or disposition using Alternative Dispute Resolution (ADR). For protests not resolved through ADR, the Chief Counsels shall ensure appropriate representation by their offices, including preparing and transmitting the documents required by FAR 33.104(a)(3). Letters transmitting agency reports should be signed by the Chief Counsels.

(91) Local offices of counsel that have not been delegated the authority and responsibility to represent DLA in bid protests filed with GAO shall forward the complete report, including all relevant documents, to GC within 20 days after the protest was filed with GAO, unless the circumstances in FAR 33.104(3)(i)(A) or (B) apply. If GAO has invoked the express option, local offices of counsel should contact GC to establish a report due date. Field counsel shall also furnish the names and addresses of any interested parties. GC shall be responsible for submitting the report required by FAR 33.104(a)(3) to GAO, and copies of the report to the protester and other interested parties.

(i) ***(B)*** Requests for time extensions must first be approved by GC. Field counsel must submit a written request to GAO describing the circumstances requiring a time extension. This written request must be submitted to GAO early enough to permit filing of the report within the original time frame if the request is denied. If a time extension is granted, the field counsel must advise GC that GAO has established a new deadline for the submission of the agency report.

(4) ***(i)*** Field counsel are also responsible for ensuring that GC receives a copy of the agency report by the day the report is due to GAO.

(90) Local offices of counsel that have not been delegated the authority and responsibility to represent DLA in protests filed with GAO shall delete any information and/or documents described in 33.104(a)(4) and shall identify the information and documents deleted in the cover letter transmitting the report to GC.

(5) ***(iv)*** If field counsel believes that a party has violated the terms of a protective order, field counsel shall immediately notify GAO and GC.

(6) Field counsel shall promptly forward a copy of any comments received from the protester or any interested party to GC.

(7) The name, title, and telephone number of the senior procurement attorney in GC has been furnished to GAO as the designated DLA contact for protests.

(b) Protests Before Award

(1) If the contracting activity determines to award a contract after receipt of a protest, the head of the contracting activity (HCA), with the concurrence of the local office of counsel, shall make the written finding required by FAR 33.104(b)(1). Field counsel must send a copy of the finding to GC.

(90) Contracting offices for which the Executive Director, ***Acquisition, Technical, and Supply Directorate*** is the HCA (see DLAD 2.101) shall submit the proposed finding to GC for concurrence, through their local office of counsel. If concurred in, GC will then forward the proposed finding to the Executive Director, ***Acquisition, Technical, and Supply Directorate*** for approval. After the Executive Director, ***Acquisition, Technical, and Supply Directorate*** has signed the finding, ***J-33*** shall notify GC immediately and provide GC a copy of the written determination.

Before the contracting activity authorizes contract award, field counsel shall notify GAO of the finding made under FAR 33.104(b)(1). For contracting offices where the Executive Director, Acquisition, Technical, and Supply Directorate is the HCA, GC will notify GAO of the finding made under FAR 33.104(b)(1).

(c) Protests After Award

(1) For purchase orders, award is considered to be made on the date the purchase order is issued. If a protest is received within 10 days of the date a purchase order is issued, the purchase order should be either suspended or canceled. This determination should be made in conjunction with the local office of counsel.

(2) If the contracting activity decides to continue contract performance pursuant to a written finding by the HCA under FAR 33.104(c)(2), that finding must be made with the concurrence of the local office of counsel. After the HCA has signed the authorization to continue performance, the local office of counsel shall notify GC of the HCA's finding and immediately provide GC a copy.

(90) Contracting offices for which the Executive Director, ***Acquisition, Technical, and Supply Directorate*** is the HCA (see DLAD 2.101) shall submit the proposed finding to GC for concurrence, through their local office of counsel. If concurred in, GC will then forward the proposed finding to the Executive Director, ***Acquisition, Technical, and Supply Directorate*** for approval. After the Executive Director, ***Acquisition, Technical, and Supply Directorate*** has signed the finding, ***J-33*** shall notify GC immediately and provide GC a copy of the written determination.

(3) Before the contracting activity lifts the stop work order or performance is otherwise continued, field counsel shall notify GAO of the finding made under FAR 33.104(c)(2). For contracting offices where the Executive Director, ***Acquisition, Technical, and Supply Directorate*** is the HCA, GC will notify GAO of the finding made under FAR 33.104(c)(2).

(g) Notice to GAO.

(90) When a protest has been sustained, Chief Counsel shall notify GC if the contracting activity or office recommends the agency not follow the Comptroller General's recommendation. A final decision not to follow the Comptroller General's recommendation shall be made by the Executive Director, ***Acquisition, Technical, and Supply Directorate*** , with the concurrence of GC. If the Executive Director, Acquisition, Technical, and Supply Directorate determines, with GC concurrence, not to follow the Comptroller General's recommendation, GC shall notify the Chief Counsel in writing of the determination. Chief Counsel shall then submit the report, which must be signed by the HCA in accordance with FAR 33.104(g), within 60 days of receipt of the Comptroller General's decision, to GAO.

(h) Award of costs.

(90) The authority and responsibility for resolving claims for protest costs has been delegated to the Chief Counsels of the following offices: DOCCR, ***DESC***, DSCR, ***DSCP***, DRMS, ***DCMD-East and DCMD-West.*** This authority cannot be redelegated. The concurrence of the contracting officer is required on all decisions resolving claims for protest costs.

(91) The authority to resolve protest claims is applicable not only when the Comptroller General issues a decision recommending protests cost be paid, but also when the head of the agency takes corrective action after determining the solicitation, proposed award, or award does not comply with applicable laws and/or regulations. The amount paid, however, is limited by 31 U.S.C. § 3554(c)(2).

(92) Local offices of counsel that have not been delegated the authority to settle claims for protest costs shall forward requests for protest costs, attorneys' fees and/or bid or proposal preparation costs to GC. GC, in consultation with field counsel, will be responsible for disposition of the claim. After settlement of such requests, notice of the costs approved by GC will be sent to field counsel. Field counsels are responsible for ensuring the contracting offices pay the protester.

33.106 Solicitation provision and contract clause.

(c) The contracting officer shall insert a provision substantially the same as the provision at 52.233-9000 in all solicitations, ***including solicitations for acquisitions of commercial items.***

SUBPART 33.2 • DISPUTES AND APPEALS

33.208(b) For information on the interest rate, see 30.7001-2(a).

33.209 Suspected fraudulent claims.

Referrals of suspected fraudulent claims will be referred to the local office of counsel for reporting to the General Counsel, in accordance with the DFARS 209.406 and DLAD 9.406.

33.211 Contracting officer's decision.

(a)(4)(v) Language about alternative dispute resolution (see FAR 33.214) shall be included in the contracting officer's final decision, unless the proper official has determined ADR to be inappropriate in accordance with DLA Directive 5145.1, Alternative Dispute Resolution, Section E3. Add a sentence substantially as follows to the end of the paragraph regarding the contractor's appeal rights: "Subject [f178] ***to the appeal time frames specified above, you may request that this dispute be resolved using alternative dispute resolution procedures."***
."

33.212 Contracting officer's duties upon appeal.

The notice of final decision required by FAR 33.011 advises the contractor that it may submit a notice of appeal directly to either the Board of Contract Appeals or the U.S. Claims Court. When the contracting officer receives a copy of a notice of appeal, all records pertaining to the appeal will be held for review until final resolution. The appeal will then be processed as follows:

(a) Notice of Appeal to the Board of Contract Appeals. Notices of appeal or appeals, if submitted directly to the contracting officer, or responses to appeals if submitted directly to the Board of Contract Appeals, will be presented to the Board of Contract Appeals by the Counsel of the DLA field activity involved. Direct communication with the Board is authorized. The charter and rules of the Boards of Contract Appeals are set forth in the Supplement, Appendix A. All official correspondence to the Board will be addressed to the Recorder, Armed Services Board of Contract Appeals, ***Skyline 6, 5109 Leesburg Pike, 7th floor, Falls Church, VA 22041***.

(b) Notice of Appeal to U.S. Claims Court. Notices of appeal filed directly with the U.S. Claims Court will be docketed and forwarded to General Counsel, by the Department of Justice. Upon receipt by General Counsel, of notice that litigation proceedings have been instituted, further notice and instructions shall be furnished to the Counsel for the DLA field activities involved for processing under normal litigation procedures.

33.213 Obligation to continue performance.

(a) When the Alternate I of the clause at FAR 52.233•1, Disputes, is proposed to be used in contracts when permitted by the circumstances described in DFARS 233.214(2), the determination shall be approved by the chief of the contracting office at the DSCs, the Commanders ***DDC***, T•ASA, DRMS, DCMDs, and ***DCMDI***, ***the*** Administrator, DNSC, and ***DSS:Staff Director, HQC Operations***. For those DLA activities not designated as a contracting activity (see DFARS 202.1(a)), the determination to use the Alternate I, as provided in DFARS 233.214(3), shall be forwarded to DLA Procurement (***J-3312***) by cover letter signed by the Commander or the Administrator, DNSC, or the ***DSS:Staff Director, HQC Operations*** , for approval by the Executive Director, ***Acquisition, Technical, and Supply Directorate*** . Examples of the types of unusual circumstances when continued performance may be determined to be vital to the national security or public health and welfare include the acquisition of weapons support systems, and related components other than those listed in DFARS 233.214(1), or other essential supplies or services whose timely reprocurement from other sources would be impracticable.

33.214 Alternate disputes resolution (ADR)

The contracting officer shall insert the clause at 52.233-9001 in all solicitations when the clause at FAR 52.233-1 is used or, for commercial items, FAR 52.212-4(d) is used, unless the conditions at FAR 33.203(b) apply, or unless a different ADR clause is used specifically tailored to the acquisition.

PART 35

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35.016 Broad agency announcement.

(a) General. Use of a BAA should be considered when the Government is seeking unique, creative solutions or advances in knowledge, understanding, technology, or the state•of•the•art, and is only able to state its requirements in terms of general areas of need or interest, rather than by means of a common statement of work with specific solutions or outcomes. If supply or service requirements can be adequately described to industry in a statement of work, proposals should be solicited by an invitation for bids or request for proposals.

(**1**) **P**rovide the maximum practicable opportunity for participation in the acquisition process by small business/small disadvantaged business concerns, historically black colleges and universities (HBCUs), and minority institutions (MIs). Normal set•aside policies and procedures apply. More specific guidance is provided at DFARS 205.207, 226.70, and 235.016.

PART 37

SERVICE CONTRACTING

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SUBPART 37.5 - MANAGEMENT OVERSIGHT OF SERVICE CONTRACTS

37.590 Management Oversight Structure within DLA.

37.590-1 Background.

(a) Section 801 of the FY 2002 National Defense Authorization Act (P.L. 107-107) called for a program review structure, similar to the one pertaining to procurement of weapon systems (i.e., "the DOD 5000 series"), for service acquisitions. The section also addressed standards for determining which procurements should be subject to review, key decision points, and specific matters to be considered.

(b) The Under Secretary of Defense (Acquisition, Technology and Logistics) (USD(AT&L)) Office of the Director, Defense Acquisition Initiatives, released a policy memorandum on May 31, 2002 that fulfilled the statutory requirement. It requires Office of Secretary of Defense (OSD) review of service acquisitions valued at $2 billion or more, or "special interest" acquisitions (e.g., A-76 cost comparisons; high Congressional interest; etc.) of any dollar value. It reasserts that ASD(C31) will continue to review and approve proposed service acquisitions pertaining to information technology in accordance with established policy (i.e., ASD(C31) July 25, 1997 memorandum, "Information Technology Investment Management Insight Policy for Acquisition" or its revisions, with attachments); however, dollar thresholds for IT services acquisition reviews are revised to conform with dollar levels for major automated information systems contained in DoDI 5000.2, Operation of the Defense Acquisition Systems. It directs that other service acquisitions below the $2 billion threshold are to be managed under component-level review structures established in accordance with Departmental guidelines; see 37.590-4, below.

(c) This section (with field-level supplementation, where indicated and appropriate) fulfills the mandate of the USD(AT&L) policy cited above by establishing a more strategic and integrated approach to the acquisition of services.

37.590-2 Purpose.

The purpose of this policy is to ensure:

(a) that sufficient attention is paid to fulfillment of the Departmental goal that 50% of service acquisitions shall be performance-based by FY 2005 (see Subpart 37.6);

(b) that acquisitions of services are based on clear, performance-based requirements (whether or not formally designated "performance-based");

(c) that required outcomes are identified and measurable;

(d) that there is a consistent review and approval process for service acquisitions; and

(e) that acquisitions are properly planned and administered to achieve the intended results.

37.590-3 PoliCy.

(a)(i) Create a documented acquisition strategy in support of each proposed service acquisition valued above $100,000, to be updated when changes Occur. This strategy should ensure that services are acquired by business arrangements that are in the best interests of the Department and DLA, that reflect a strategic approach, in terms of overall spending on services, and that are entered into or issued and managed in compliance with applicable statutes, regulations, directives, and other requirements. It should also guarantee enterprise-wide approaches to procurement and development of new ways of doing business. Approval of the appropriate decision authority (see 37.590-4, below) shall be obtained for each acquisition strategy prior to your initiating any action to commit the Government to the strategy. In addition to the following, see Subparts 7.1 and 90.11, as well as J-38's (draft) One-Book chapter, "Initiative Management Process," for guidance in preparing this documentation

(ii) The acquisition strategy shall address the following (modified, as appropriate, on the basis of complexity and dollar value of the acquisition):

(1) Requirement — Include the outcomes to be satisfied; whether these outcomes are performance-based; measures of success for the service acquisition; and, for other than newly identified requirements, how it was previously satisfied.

(2) Risks — Include current and potential cost; schedule and performance risk; and a risk mitigation plan.

(3) Competition - Include either an explanation of how full and open competition will be provided, or a statutory citation for the authority permitting less than full and open competition; include a similar explanation or citation for procurements subject to DFARS 208.404-70 and 216.505-70. Address plans for competition for foreseeable follow-on acquisitions.

(4) Small business and related considerations - Include a discussion of how the acquisition will affect achievement of small business goals/targets, and how it will support any other applicable directed programs.

(5) Business arrangements — Include details on funding; type of contract; duration (including option periods); total cost estimate; and pricing arrangements. NOTE: The Advance Acquisition Planning Template provided in 90.1103, while not required to be submitted for service acquisitions, provides an excellent outline of the kind of information required here.

(6) Special considerations for multi-year contracts — If the acquisition strategy calls for a multi-year service contract under authority of 10 USC 2306c, the strategy must address DLA's plans for budgeting for termination liability. For further guidance on multiyear contracting for services, see DFARS Section 217.171.

(iii) Further guidance on acquisition strategy for information technology acquisitions may be found in FAR Part 39 and DFARS Part 239. In addition, all IT acquisitions for services will be processed in accordance with J-6's One Book chapters, "Information Technology Acquisition Requirements Planning" (draft) and "Automated Information Systems Portfolio Management."

(iv) For actions described in 37.590-4(c), below, see also 7.104-90(e) for documents required to be submitted for Integrated Acquisition Review Board review and approval.

(b) Establish metrics for each proposed service acquisition. These should generally pertain (as appropriate) to cost, schedule, and performance. The cognizant decision authority (see 37.590—4, below) will approve the metrics selected, and will conduct execution reviews to assess outcomes against requirements. These will occur at certain milestone points; see 37.590-5, Milestone Reviews, below.

(c) Accurately report required data regarding each service acquisition having a value greater than $25,000 via the DD 350 system; this requirement includes services pertaining to information technology. Applicable data to be collected via the DD 350 include the following:

(1) Services purchased.

(ii) Total dollar amount.

(iii) Form of contracting action.

(iv) Whether the purchase was performance—based and fixed price; performance—based, other than fixed price; or not performance-based.

(v) For a purchase made through an agency other than the Department of Defense, the agency through which it was made.

(vi) Extent of competition provided, and whether there was more than one offer.

(vii) Whether the purchase was made from a small business concern; a small disadvantaged business concern; or a woman—owned small business concern.

37.590-4 Decision Authority.

The decision authority (review and approval) level associated with each dollar range for service acquisitions valued above $100,000, as depicted in the chart at 7.104-90 and described more fully, below, shall ensure that each such acquisition is reviewed and approved at a level above the contracting officer. Also, to ensure the appropriate level of interest and strategic decision-making, local procedures should require that service acquisitions greater than the simplified acquisition threshold be reviewed and coordinated at the highest levels practicable.

(a) The decision authority for all service acquisitions with a total value greater than $2 billion is USD(AT&L). Submit acquisition strategy documentation for all such acquisitions to J-3312 for review and coordination. Following intermediate approval levels, including the Senior Procurement Executive (SPE) and/or the Integrated Acquisition Review Board (I-ARB; see (c), below), the documentation package will be forwarded through the OSD Director, Acquisition Resources and Analysis, to USD(AT&L) for review and approval.

(b) The decision authority for all service acquisitions with a total planned dollar value equal to or greater than $500 million, but less than $2 billion, is the Component Acquisition Executive or designee (i.e., the SPE). Forward acquisition strategy documentation for all such acquisitions through J-3312 for review and coordination.

(c) The decision authority for all service acquisitions greater than $50 million, but less than $500 million, is the I-ARB, or a streamlined review board, under the chairmanship of the SPE; see 7.104-90 and 90.1503 for composition and procedures of the I-ARE. Submit acquisition strategy documentation through J-3312 to the I-ARE or other board, as designated, for acquisition and business case analysis approval.

(d) All acquisitions with a total planned dollar value below $50 million shall be reviewed and coordinated in accordance with field activity/DSS management structure and dollar threshold review/approval procedures, except that all activities other than DESC, DSCP, DSCC, and DS~R must submit acquisitions valued between $20 million and $50 million to J-3312 for review and coordination. Minimum acquisition and business case analysis (BCA) approval levels are as follows:

(i) For acquisitions valued between $100,000 and $5 million: no lower than one level above the contracting officer. Special attention should be given to non-performance-based services acquired through a DoD contract or task order, or any service acquisition, whether or not performance-based, acquired by contract or task order awarded by an agency other than DoD.

(ii) For acquisitions valued between $5 million and $20 million: Chief of the Contracting Office.

(iii) For acquisitions valued between $20 million and $50 million: Head of the Contracting Activity or designee for DESC, DSCP, DSCC, and DS~R; Streamlined I-ARE for all other activities.
(e) The thresholds set forth above are inclusive of both the base period and any option periods of the proposed acquisitions. They are established for routine acquisitions; they do not prevent reviews of acquisitions designated as "special interest" at higher organizational levels. For example, the SPE may choose to review an acquisition valued below $50 million if Congressional or OSD interest is anticipated.

37.590-5 Milestone Reviews.

(a) Milestone review and approval levels and criteria for service acquisitions Subject to I— ARE review (see 37.590-4 (c) and (d), above) shall be in accordance with 90. 1502 (a) (iii) (i.e., after the Business Strategy and Acquisition Planning phase (Phase II) as illustrated in the chart at 90.1502 (a); Phase I is not applicable). At each decision point, the I-ARB shall either permit the acquisition to proceed, modify the strategy, or terminate the process.

(b) (1) For acquisitions with a total value under $50 million (that is, not subject to I-ARE review), milestone reviews and approvals shall be established and conducted in accordance with local procedures. These procedures should ensure that the contract is continuously reviewed and assessed.

(2) As a general rule, business strategy and acquisition plans should be evaluated by the decision authorities identified in 37.590-4, above, prior to release of the solicitation; this is Milestone A. Some elements to be reviewed may include, but shall not be limited to, logistical benefits; statement of work/statement of objectives (SOW/SOO); contract type; contract incentives/disincentives; metrics; and method of contract performance management, such as a performance management plan or performance review board.

(3) Following the solicitation and offer evaluation process, another review should be conducted to ensure the apparently successful proposal is consistent with all the SOW/SOO requirements. The cost/price proposal should also be compared with historic support costs or other available comparative cost/price data, as applicable. Authorization to proceed to award, or determination to terminate the process, is Milestone B.

(4) Implementation review consists of continuous contractor performance monitoring by means of the methods and measurements included in the SOW/SOO or in the Government's Quality Surveillance Plan. Monitoring should be conducted to ensure that all expected outcomes from previous phases are appropriately evaluated and addressed before moving on to the next phase of the acquisition; this is especially critical when a contract includes options. Again, the review should focus on an assessment of contractor performance against established, measurable outcomes called out in the contract. It should also include (as appropriate) a reconsideration of logistical costs and benefits, as measured against baseline documentation prepared for Milestone A. Formal exercise of this post-award review process, especially prior to option exercise, is Milestone C. A final assessment should also be made, and entered into the Contract History file, upon completion of contract performance.

SUBPART 37. 6 - PERFORMANCE-BASED CONTRACTING

37.601[A182] ***General.***

(90) The Under Secretary of Defense (Acquisition, Technology and Logistics (USD(AT&L)) directed in an April 5,2000 memorandum-1 that a minimum of 50 percent of the components' service acquisitions, measured both in dollars and in actions, will be performance-based by 2005. In order to fulfill this directive, you should be aware of performance-basing criteria. Consult the Performance Eased Services Acquisition (PBSA) home-page (http://www.dla.mil/j-3/j-336/PBSA.htm) accessible from the DLA Regulatory home-page, for assistance and considerations. The web site may be especially helpful in your establishment of performance metrics for cost, schedule, and performance.

(91) In order to receive credit toward fulfilling the goals mentioned above, make sure you record performance—based service acquisitions correctly on the DD 350, Individual Contracting Action Report; see 37.590-3 (c), above. See DFARS 253.204-70(b) (1) (v) for instructions for the correct coding of line B1E, Performance Based Service Contract. Note that a contract may be considered performance—based if at least 80% of its value is for work that is performance-based.

(92) Although these will not be considered for inclusion in the reporting required above, you should make every effort to performance—base the services aspects of acquisitions that are primarily considered supply contracts, such as prime vendor arrangements.

SUBPART • 37.90 • SERVICES OF GRIEVANCE EXAMINERS/EQUAL EMPLOYMENT OPPORTUNITY (EEO) INVESTIGATORS

37.9001 General.

Requirements for services of grievance examiners/EEO investigators shall be satisfied by the most appropriate FAR/DFARS prescribed contracting procedure. The contracting officer shall be responsible for selection of the contracting procedure and for administration of the resulting contract(s). Small purchase contracts for these services shall be placed only with sources identified in the qualified pool of estimators/ examiners list maintained by the HQ DLA Office of Equal Employment Opportunity (CAAH), Defense Switched Network (DSN) 284•7192. Contracting officers shall contact (CAAH) to obtain a current required source list for soliciting in accordance with FAR 13.106 procedures.

PART 39

ACQUISITION OF INFORMATION ***TECHNOLOGY***

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PART 39

ACQUISITION OF INFORMATION TECHNOLOGY

39.000 Scope.

This subpart prescribes interim policies and procedures for the acquisition of Information Technology (IT) and Telecommunications.

39.101 Policy.

To the greatest extent possible, acquisitions for IT and Telecommunications should be treated as any other acquisition and unique requirements should be kept to a minimum.

39.106 Year 2000 compliance (Y2K).

(a) (90) All solicitations and contracts for non-IT items (non-IT items are those items that contain embedded microcircuit chips with a clock mechanism, timing device, or control device) that are required to perform date/time processing involving dates subsequent to December 31, 1999, shall require the deliverables to be Year 2000 compliant or be upgraded to Y2K compliant.

(91) Orders for IT shall not be placed against a contract or other acquisition instrument unless the contract instrument requires Y2K compliance or the order itself requires Y2K compliance.

(92[f184]) The contracting officer must insert the clause 52.239-9000, Y2K Compliance Notice, in all solicitations and contracts for items, including items acquired under Part 12, containing embedded microchips with a clock mechanism, timing device, or control device required to perform date/time processing involving dates subsequent to December 31, 1999, to describe the Y2K compliance requirement.

(93) Exception or waiver requests to Y2K compliance must be approved by the DoD Chief Information Officer (DoD CIO). All requests for exception or waiver shall be submitted to the DLA CIO for review and approval prior to submission to the DoD CIO. The exception or waiver request must be supported with a written commitment from the contractor to provide the Y2K enhancement by a specific date in the future, no later than December 31, 1999.

(94) Contracting officers should consider requiring testing for Y2K compliance based on the complexity of the IT requirement. Testing procedures should allow for a representative sampling of the IT delivered to be tested for Y2K compliance and the results should be documented in writing, either by the supplier or the acquiring activity.

39.900 Procedures for IT procurement.

(a) Contracts for IT may be awarded by DLA contracting offices other than DSS-O under the following conditions:

1. The total value of the contract (including options) does not exceed $500,000;

2. The contract will occur by placing an order not exceeding $500,000 against a GSA schedule contract;

3. The contract will occur by placing a delivery order against an applicable HQ DLA or joint service indefinite quantity or requirements contract (as authorized by the contract), except for items for the mid-tier. Mid-tier refers to those machines that fall in the range between the work station and the mainframe. Examples of their uses include, but are not limited to, client servers, network controllers, process controllers, and dedicated single application processors. All mid-tier requirements must be submitted to DSDC-TB for technical coordination with the appropriate DSDC offices prior to submission to DSS-OC. DSS-OC will acquire the initial maintenance requirements in support of mid-tier requirements. However, all follow-on maintenance in support of mid-tier equipment may be acquired by the contracting office supporting the DLA activity; or

4. The contract is for IT supplies, training, or subscriptions (excluding software operating or application systems).

(b) Acquisitions in excess of the established thresholds shall be submitted to the Chief Information Officer Customer Support (CIC) office to: review the package for compliance with current DLA technical initiatives and policies; coordinate the package with the appropriate business office; and forward the package to DSS-OC for procurement.

(c) All requests for use of the Defense Information Systems Agency (DISA) Defense Enterprise Integration Services (DEIS II) contracts shall be submitted to CIC, unless otherwise authorized in writing by the DLA Chief Information Officer (CIO). Use of other multi agency and government-wide agency contracts (GWACs) for IT supplies or IT support services shall be processed through CIC, unless otherwise authorized by the DLA CIO.

(d) Prior to acquiring IT supplies or IT support services from a multi agency contract, the requesting activity shall comply with FAR Subpart 17.5, Interagency Acquisitions Under the Economy Act (EA). If an EA determination is required, it shall be submitted to CIC with the request to use a multi agency contract. Prior to approving the use of a multi agency contract, CIC shall submit the EA determination to DSS-O for review and action.

(e) All requirements to be acquired under the GSA Federal Systems Integration and Management (FEDSIM) Program shall be staffed through CIC for informational purposes and investment accountability by the CIO.

39.901 Documentation requirements for IT procurement.

(a) The following documentation will be forwarded to the contracting office to be included in the contract file.

1. Documentation for acquisitions valued below $100,000 shall be in accordance with local procedures, or as appropriate for the complexity of the requirement.

2. Documentation for acquisitions valued between $100,000 and $500,000 require a modified justification. The following information shall be provided in a justification for an acquisition in this dollar range.

(i) A paragraph or less describing why the IT is needed and the program/project/ Automated Information System (AIS) being supported by the IT.

(ii) A description of what is being acquired, such as hardware or software, etc. Identify the product, model number, version number, quantity, unit cost and any other attributes such as essential physical characteristics. For support services include a Statement of Work.

(iii) Delivery information: Must include the exact location and point of contact with commercial and DSN telephone numbers. Example:

Defense Logistics Agency (DLA)
8725 John Kingman Road
Pod B. Room 1246
Fort Belvoir, VA 22060
POC: Jane Doe, Commercial (703)767-1234, DSN 427-1234

(iv) Sources: Attach a copy of the market survey for each recommended source.

(v) Funding Document.

(vi) For sole source (only one source, specific make or model or compatibility-limited) attach appropriate Justification for Other than Full and Open Competition.

(vii) Other: Any miscellaneous information.

(b) Documentation in the form of a Requirements Analysis (RA) and an Analysis of Alternatives (AA) shall be prepared and submitted to the contracting office for inclusion in the contract file for acquisitions exceeding $500,000.

1. A Requirements Analysis is a prerequisite to the acquisition of IT, which provides the basis for an AA for meeting the stated requirements, and it should be commensurate with the dollar value and complexity of the procurement. A Requirements Analysis should address the following elements in support of the requirement: information needs, system life, description of requirements, compatibility-limited requirements, justification of specific make and model (if applicable), security requirements, accessibility requirements for individuals with disabilities, space and environmental requirements, workload and related requirements, and record management requirements.

2. An Analysis of Alternatives is conducted after the completion of the RA and compares and evaluates various alternatives for meeting the requirements and to determine which alternative is the most advantageous to the Government. The AA should be commensurate with dollar value and complexity of the results from the RA. The AA should consider the following: the results of the market research, use of GSA's IT programs, IT available for reuse, use of existing IT on a shared basis, cost for each alternative, conversion costs, benefits (quantifiable/nonquantifiable), and obsolescence.

(c) Acquisitions valued between $500,000 and $1,000,000 shall be supported by an RA and an AA that demonstrates that the benefits of the acquisition exceed the cost.

(d) Acquisitions in excess of $1,000,000 shall be supported by an RA and an AA. The AA must calculate the total estimated costs using net present value for each of the possible alternatives.

39.902 Telecommunications equipment and services.

(a) Telecommunications equipment and services meet the definition of information technology.

(b) Contracts for telecommunications equipment and services may be awarded by DLA contracting offices other than DSS-O under the following conditions:

1. The contract will occur by placing an order not exceeding $500,000 utilizing the GSA Purchase of Telecommunications & Services (POTS) type contracts.

2. The total value of the procurement (including options) does not exceed $500,000.

(c) Acquisitions for telecommunications equipment and services in excess of the thresholds in (b) above shall be submitted to CIC who will: review the package for compliance with current DLA technical initiatives and policies; coordinate the package with the appropriate business office; and forward the package to DSS-OC for procurement.

(d) Communication Services Authorities (CSAs) shall only be signed by contracting officers.

PART 42

CONTRACT ADMINISTRATION

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SUBPART 42.2 • ASSIGNMENT OF CONTRACT ADMINISTRATION

42.202 Assignment of contract administration.

(a)(2)(90) When, in the contracting officer's judgment, a contract or order requires special attention by a field CAO that cannot be adequately conveyed by a criticality designator, this need will be communicated in writing by the contracting officer to the ACO. Drawing the attention of field CAOs to special contracting officer area(s) of concern should normally be accomplished during the assignment process, or as soon as possible thereafter. (See ***(a)***(2)(92) below.)

(a)(2)(91) Contracting officers shall provide a complete purchase history to the CAO with the delegation of all unpriced orders for definitization.

(a)(2)(92) The letter of delegation required by (a)(90) ***below*** will state that the award is the first to the SDB (or the first for the item being procured) and request that a postaward orientation conference be conducted in accordance with FAR Subpart 42.5, Postaward Orientation (see especially FAR 42.501(b)). The letter should highlight any specific areas the contracting officer believes should be covered in the conference. It should also indicate that a letter or other form of written communication can be utilized in lieu of a postaward conference, provided that a copy is furnished to the contracting officer, and the CAO has performed a recent postaward conference with the SDB.

(a)(90) When a contracting activity makes an award having a dollar value of $25,000 or more to a small disadvantaged business (SDB), whether for the first time or for an item not previously purchased from the SDB, the award will be assigned for administration to the appropriate contract administration office (CAO).

(91) To implement the direction of the Secretary of Defense, December 6, 1995, and the Under Secretary of Defense (Acquisition and Technology), December 8, 1995, concerning single process/block changes, such changes to technical or management requirements in DoD contracts shall be accomplished as follows:

(1) When a contractor volunteers to participate in the single process initiative, the ACO shall organize a management council consisting of CAO, DCAA, key DoD customers (notionally defined as those representing 80% of the total dollar value of affected DoD contracts at the contractor's facility), and contractor personnel to perform an initial review of the adequacy and reasonableness of the contractor's single process concept with regard to that facility. Technical feasibility (including the impact on quality, maintenance, schedule, etc.), cost effectiveness, and program risk will be addressed during the council's preliminary review. A "rough order of magnitude" cost•benefit analysis will then be performed, sufficient to permit a determination whether the proposed changes can be approved, and contracts modified, on a no•cost, block change basis. The formal, single process proposal shall be reviewed and approved by the management council prior to the issuance of block modifications to existing contracts by the ACO.

(2) When DLA has contracts at a contractor's facility where a single process proposal has been submitted by the contractor, the following procedure shall be followed:

(i) If an ICP has a sufficient dollar value of contracts to warrant its participation as a key customer in the management council established to review single process proposals at a contractor's facility, or if its participation in the management council is otherwise considered necessary and appropriate, the ACO shall request, and the ICP shall designate, in writing, an individual to serve as its representative on the management council. The representative shall be a senior member of the acquisition workforce. The ICP's management council representative shall be empowered to speak on behalf of the ICP's contracting officers having cognizance of affected contracts. He/she shall request assistance, as necessary, from technical and other subject matter experts whenever a concept paper or proposal is submitted.

(ii) Each ICP shall also designate, in writing, a senior member of its acquisition workforce as its team leader for single process initiative issues ("SPI team leader"). In the absence of ICP representation on the management council, the SPI team leader shall be responsible for reviewing and making recommendations on the acceptability of concept papers or proposals referred to the ICP by the ACO. (This will typically occur when there are contracts with one or more DLA ICPs at the affected facility, but the Agency is not considered a "key customer," as defined above.) The SPI team leader shall be presumed to provide a coordinated delegation of authority for effecting block changes to the applicable DCMA component from cognizant contracting officers. Additionally, he/she may consult, as necessary, with appropriate technical and other subject matter experts prior to providing the ICP's concurrence with the proposed single process change. The SPI team leader shall be authorized to resolve disputes among that activity's contracting officers regarding concurrences/nonconcurrences with concept papers or proposals.

(iii) If an ICP has the largest total dollar value of, but not the only, DLA contracts with a contractor submitting a concept paper or proposal, its management council representative (or, if the ICP has no representation on the management council, its SPI team leader) will be considered the DLA component team leader with regard to the process proposal. He/she must brief, solicit recommendations from, and achieve consensus with the other affected ICPs' SPI team leaders on the acceptability of the single process concept and proposal. This individual shall then speak on behalf of the entire Agency. When consensus cannot be reached between and among the affected ICPs, disagreements shall be elevated by the DLA component team leader, and shall be resolved by ***J-33***.

(iv) Notwithstanding that the single initiative/block change process is strongly supported at the highest levels of DoD, appointment of a DLA component team leader, ICP SPI team leader or ICP management council representative does not relieve the contracting officer of accountability for programs and contracts under his/her cognizance. Therefore, a contracting officer may appeal to ***J-33*** any single process proposal decision he/she considers antithetical to the Government's best interests, and, if necessary, may carry that appeal through ***J-33*** to the Defense Acquisition Executive or designee.

(c)(90) Responsibility for negotiation and execution of modifications to definitize undefinitized BOA orders or unpriced purchase orders shall not be delegated by the contracting office when a ceiling unit price is 125 percent or more of the lowest price paid within the 12 months preceding the effective date of the undefinitized BOA order or unpriced purchase order.

(e)(90) When contracts containing the Small Business, Small Disadvantaged Business and Women•owned Small Business Concerns Subcontracting Plan clauses are retained for contract administration by the contracting office, the contracting office shall request support from the cognizant CAO to administer the program imposed by these clauses. Section C of these contracts shall contain a statement substantially as follows: "The Small Business, Small Disadvantaged Business and Women•owned Small Business Concerns Subcontracting Plan clauses in this contract will be administered by the cognizant Contract Administration Office." (Note: Assignment for supporting administration will be made to the cognizant CAO of the geographical area in which the prime contractor is located.) Three copies of the contract and the Small Business, Small Disadvantaged Business and Women•owned Small Business Subcontracting Plan shall be forwarded to the cognizant CAO with a request for supporting contract administration of these clauses in accordance with FAR 42.20***2*** (***e***) and DFARS 242.204. The CAO will monitor the prime contractor's small business, small disadvantaged business, and women•owned small business concerns subcontracting programs and accomplish the periodic reviews required by FAR 42.302(a)(55).

(***e***)(91) When assignments of supporting contract administration are made to a field CAO under the administrative retention provisions of DFARS 242.203(a)(***i***) for either contracts and orders subject to a Master Solicitation Agreement, or large purchase awards that are not subject to a Master Solicitation Agreement, the following otherwise•optional functions should be delegated:

CANCELLATIONS • Modifications to cancel contract line item numbers (CLINs) not shipped, when requested by the contracting officer.

DIVERSIONS • Modifications effecting diversion when notice from the contracting officer provides shipping instructions.

EXCUSABLE DELAYS (e.g., strikes, floods, etc.) • Modifications to extend delivery date when delinquencies will result because of excusable delays.

NONEXCUSABLE DELAYS • Modifications, to revise delivery time up to 90 days, issued for consideration.

42.203 Retention of contract administration.

(a)(i)(90) ***DESC*** may retain administration of contracts for coal or bulk petroleum.

(90) If the contracting officer retains administration of a contract or order and a need subsequently arises to delegate any aspect of contract administration to a CAO, the contract or order shall be assigned for performance of all contract administration functions, except as stated in paragraph 42.204 above.

42.205 Designation of the paying office.

(2) All contracts assigned to a Service Plant Cognizance Representative for administration shall designate the disbursing office supporting the contracting office as disbursing office for the contract except for contracts resulting from MIPRs, which shall cite the disbursing office in accordance with DLAR 4115.3, Implementing Procedures for Purchase of Supplies Assigned to DLA Under the DoD Coordinated Procurement Program, paragraph (VI)(A)(13).

SUBPART 42.3 • CONTRACT ADMINISTRATION OFFICE FUNCTIONS

42.302 Contract administration functions.

(b)(2) See 42.202(c)(90).

(b)(7) The authority to negotiate and definitize adjustments to contract prices resulting from exercise of an economic price adjustment clause should be delegated to the contract administration office except in exceptional circumstances. If a decision is made to retain this function in the contracting office, the reason for retention shall be documented.

SUBPART 42.5 Postaward Orientation

42.501(e)(90)

Post award orientation agendas should include discussion of dispute avoidance, early dispute resolution, and alternative dispute resolution.

SUBPART 42.11 • PRODUCTION SURVEILLANCE AND REPORTING

42.1103 Policy.

(90) For all contracts that involve a Shift to Commercial Practice or other change in the method of customer support (i.e., including corporate contracts, prime vendor and virtual prime vendor contracts), the DLA contracting office shall monitor contractor performance (price, delivery, etc.) to assure a satisfactory level of performance is achieved and maintained and is consistent with the planned levels throughout the contract period, including options.

42.1106 Reporting requirements.

(a) Submission of DD Form 375, Production Progress Report, will be required under the following circumstances, as a minimum:

(i) Items required to satisfy requisitions bearing UMMIPS priority 01 through 06.

(ii) Items that have been designated by the DSC Commanders as being in a critical supply position.

(iii) Items on the DoD, Military Service, or DLA critical list.

(iv) Items in direct support of the DoD Master Urgency List (MUL) categories.

(v) Contractors on the Military Services Contractor Experience Lists.

(vi) When requested by the DoD Project Manager.

42.1190 Contract acceleration/status requests.

Procurement personnel will initiate contract acceleration/status requests to contractors and CAOs as appropriate. However, to facilitate the handling of special•emphasis and high•priority items, Centers may, at their option, establish local procedures which will permit supply personnel to initiate contract acceleration/status requests to cognizant CAOs. Those Centers using this option must assure that local procedures are jointly developed and contain the following controls and provisions [note: subparagraphs (i) through (v), below, do not pertain to commodity business units or similar structures]:

(i) Strong prohibitions against supply personnel contacting contractors directly.

(ii) Strict controls to preclude identical requests for the same items being sent by supply and procurement personnel to CAOs.

(iii) A procedure whereby information obtained by supply personnel from the cognizant CAO is provided to procurement personnel for updating the active contract file.

(iv) Direct communications between supply personnel and CAOs shall normally be by letter or message. Under the most urgent circumstances (UMMIPS priorities 01 thru 03), telephone requests for acceleration/status are permitted after supply personnel determine that procurement personnel are not working the same item. Telephone requests from supply personnel for contract acceleration will be immediately followed by confirming documentation to cognizant CAOs.

(v) Requests for contract acceleration/status will be made as infrequently as possible and will specify, at a minimum, contract number, contractor, and location. Contract acceleration requests should not take the place of effective, up front acquisition planning. In addition, such requests shall contain sufficient information to convey the urgency of the circumstances and minimum quantities needed to satisfy high•priority requisitions or backorders.

SUBPART 42.15 -CONTRACTOR PERFORMANCE INFORMATION

42.1502 - Policy.

(b)(90) Bulk, Bunkers and Into-Plane buying programs within the Defense Energy Support Center (DESC) are exempt from the collection and reporting of contractor past performance information.

SUBPART 42.71 • VOLUNTARY REFUNDS

42.7101[A186] Solicited refunds.

(90) Overpricing.

(1) Before any recoupment action is taken, the contractor shall be contacted for any explanation of the basis of its price, and whether a pricing error has occurred. A determination shall then be made as to the existence of overpricing.

(2) If it is determined that overpricing has occurred, the contract should be canceled or a price reduction/voluntary refund requested, as applicable. Voluntary refund requests of $***50,000*** or more shall be approved by the chief of the contracting office (CCO). This approval ***authority*** may be delegated ***for up to a 2-year period***, to one level below the CCO, ***(not redelegable, except at DSCs, where it may be redelegated,*** for requests does not exceed ***$500,000)***, to the chief of the pricing element and to a level no lower than the level above the contracting officer. The Refund requests with supporting rationale should be made in writing to an appropriate contractor official, and should include amounts related to any previous awards by the contracting office for the item for which a voluntary refund is also requested. Awards to other suppliers of the same item should also be reviewed for apparent overpricing, and any appropriate corrective action pursued in accordance with DFARS 242.71 and this subpart. Apparent overpricing on any award made by any other contracting office should be referred thereto for resolution.

(3) In the event efforts to secure a voluntary refund are unsuccessful, ***voluntary refund requests to the company head*** shall be referred ***for coordination/issuance by*** the approving official cited in (2), above.

(91) Nonconformance. Voluntary refunds for contractor•caused nonconformances discovered after Government acceptance shall be handled in accordance with procedures set forth in 46.407(f)(92) through (95).

42.7102 Disposition of voluntary refunds.

(90) Overpricing. The contract shall be modified, canceled, or terminated, or a voluntary or contractual refund request issued, as appropriate. The price recorded in the Contract Technical Data File shall be revised to reflect the price reduction, or the recoupment, and advice of corrective actions initiated or completed shall be forwarded to the Center Comptroller with a request for immediate revision of the standard price, if applicable. This section does not apply to voluntary refunds for contractor•caused nonconformances.

PART 43

CONTRACT MODIFICATIONS

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SUBPART 43.1 • GENERAL

43.102 Policy.

(b)(90) See 17.74 when issuing a UCA.

43.103 Types of contract modifications.

(a) Bilateral.

(90) Delivery schedule extension • modifications.

(1)(i) It is the Government's express expectation that contractors will make all deliveries in accordance with contractual terms. It is, therefore, DLA's policy neither to endorse nor condone delivery extensions for the convenience of the contractor. There are times, however, (as, for example, when we deal with sole source suppliers, or when our supply position for a particular item will not permit the time and effort necessary for termination and reprocurement) when contracting officers determine that extending a delivery schedule at the contractor's request via contract modification is in the Government's best interest. At those times, they must decide on the form of consideration that is most acceptable under the circumstances. Often, the most appropriate form of consideration is a monetary adjustment to the contractual total. When this is so, the contracting officer/administrative contracting officer for items managed by DSCC, ***DSCP***, or DSCR is strongly urged to use the following guidance. (***DESC*** is not included because, in general, delays in delivery of the items it manages are governed by demurrage procedures.)

(ii) For supply contracts other than for direct vendor delivery or base support, contracting officers at the centers listed above are encouraged to use the calculation provided at (2), below, when a delivery schedule has to be extended for monetary consideration due to contractor•caused delay. The result should be used as a guide in determining the amount of consideration to assess the contractor for a contractor•requested delivery extension/delay.

(2) As a consequence of the Government's cost incurrence associated with a contractor's delinquent delivery, the following formula will generally be used to determine the basis for an adequate amount of consideration for a delivery schedule extension when that schedule is extended as a result of contractor caused delay:

Amount of consideration = D + [R * L * V]

Where • D = Direct costs for the particular supply center, as detailed in DLA• DORRA Report entitled "Cost of Late Contract Delivery Update" ***April 1998*** ("the Report");

```
......              DSCC (Construction)        = $  76
                    DSCC (Electronics)         = $  76
          DSCR (General)             = $  73
                    DSCP (C & T)               = $ 175
          DSCP (Medical)                   = $ 115
          DSCP (Subsistence)         = $  85
......              DSCP (Industrial)          = $  84
......              Contracts Administered by:
......              DCMA                       = $ 291
```

R = Day/Cost ratio ***(the cost per day of lateness of additional inventory resulting from increased production lead time triggered by late delivery*** expressed as a proportion of overall contract cost) for the particular supply center, as follows (see details in the Report):

```
                    DSCC (Construction)        = .00118
                    DSCC (Electronics)         = .00256
          DSCR (General)                   = .00079
                    DSCP (Industrial)          = .00077
                    DSCP (C & T)               = .00017
                    DSCP (Medical                    = .00004
                    DSCP (Subsistence)         = .00017
```

L = Total number of days the delivery Schedule is extended;

V = Dollar Value of the extended portion of the contract.

Step One: Multiply the total number of days the contract delivery schedule is being extended by the "Day•Cost Ratio" for the appropriate Center.

Step Two: Multiply the result from step one, above, by the contract dollar amount of the supplies being extended. This is the total variable cost component for delinquent delivery.

Step Three: Add the direct cost to the DLA Component of the delinquent delivery (the $100 in the formula) to the result of step two. This is the total amount of consideration which should be used as a guide in determining the adequacy of the contractor's final offer of compensation for the extension.

(3) It is important to note that, if the contracting officer chooses to use this guidance, but is unable to obtain agreement with the contractor on a reasonable (vice a token) consideration amount, the Government is not obligated to accept a lesser amount merely for the sake of reaching that agreement and restoring the contractor to a "current status." In such situations (and assuming demand for performance or explanation of delinquency has been made in writing to the contractor), it is preferable to leave the contract in a delinquent status than to modify it for an insignificant amount, or at no cost to the contractor. Refusing to restore the contractor to a satisfactory status in the event of its failure to make a good•faith offer of adequate consideration permits the Government to maintain a record of the delinquency, and to consider future business with the contractor in light of this poor performance. Concern about the possibility of failure to reach agreement with the contractor should, therefore, not affect the contracting officer's decision to use this means of determining the adequacy of the contractor's offer.

(91) Modifications for waivers and deviations are discussed at 46.407(f)(91).

SUBPART 43.2 • CHANGE ORDERS

43.201 General.

(90) The requirements of DFARS 217.74 and DLAD 17.74 shall be met when an undefinitized change order (UCO) which involves a Government directed change to the design/manufacturing drawings or specifications is issued by a DLA contracting office.

PART 45

GOVERNMENT PROPERTY

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45.000 Scope of Part.

This part is also applicable to those items for which the rotational/storage stock concept is used to maintain a sufficient quantity of items with short shelf life needed for wartime requirements. Rotational stocks should be considered government property (GP) and the appropriate GP clauses prescribed in this part should be incorporated to ensure that the stocks are properly maintained and accounted for by the contractor. Specific or unique requirements over and above those contained the GP clauses, such as a provision for acceptable replenishment rates, should be spelled out in the statement of work for the contract.

SUBPART 45.1 • GENERAL

45.102 Policy.

(90) It is DLA policy to rely on the private sector to furnish all the production equipment needed to produce the contracted item. Where property is unique to the production of an item and it is not economical for contractors to own such equipment, DLA may be required to acquire and retain this production equipment.

(a) Government property (GP) associated with the production of end items being assigned to DLA for management under the consumable item transfer (CIT) should be identified, located, moved to DLA•controlled storage, and entered into an accountable property record to assure availability for production when needed. For that property in the hands of contractors, steps should also be taken to ensure proper accountability of the property.

(b) Property will be retained in the DLA Industrial Equipment Reserve (DLAIER) to meet current and future production requirements and will be disposed of when no longer justified. Retention of DLAIER equipment will require a biennial certification. Detailed guidance and procedures on management of GP are contained in DLAI 4215.4, Acquisition and Management of Industrial Resources.

45.103 Responsibility and liability for Government property.

(90) Management of property associated with CIT.

(a) Each Supply Center that has GP will establish a property focal point who will:

(1) Verify the location, quantity, type, and condition of property being transferred to DLA. DCMA personnel can be used to assist in this process.

(2) Work with supply management and technical and logistics services to develop the identifying number (NSN, local stock number, part number) that will be used in the official system to account for GP.

(b) Supply management personnel are responsible for storage and accountability of GP.

(91) Management of property in DLAIER.

(a) The property focal point will:

(1) Ensure that a copy of the record for each set/piece of equipment under the Center's cognizance is available for authorizing its use on contracts as needed.

(2) Provide verification of availability and authorization to use equipment to contracting officers.

(3) Review the items in the DLAIER for continued retention or disposal. If continued retention is required, a biennial certification should be prepared for those items at the end of each even FY in accordance with the retention criteria in DLAI 4215.4.

(b) Supply management personnel are responsible for storage and accountability functions for GP.

45.105 Records of Government property.

(90) The property focal point will document additions and deletions to the DLAIER of idle and active equipment to ensure availability of this information and serve as the basis for the biennial certification signed by the chief of the contracting office.

(91) The supply management function will maintain the accountable inventory record of property under a Center's cognizance and report the property into DLA's accountable record.

SUBPART 45.2 • COMPETITIVE ADVANTAGE

45.205 Solicitation requirements.

(b) The preferable evaluation procedure is to use rental equivalents and authorize rent•free use of GFP because the resulting award price will be lower. This conserves DLA's funds because rental monies flow back into the U.S. Treasury at the expense of the DLA budget. Charging the contractor rent shall be used only when absolutely necessary.

SUBPART 45.3 • PROVIDING GOVERNMENT PROPERTY TO CONTRACTORS

45.302 Providing facilities.

45.302•1
Policy.

(a) Maximum reliance shall be placed on the use of contractor•owned facilities to support current production requirements for DLA•managed items. If the Government authorizes the contractor to acquire facilities for the account of the Government, no fee or profit will be allowed, regardless of the type of contract used to reimburse the contractor for the cost of the facilities. This policy does not apply to the acquisition of general purpose components of special tooling or special test equipment.

(4) Requests for new facilities will be forwarded to HQ DLA, ATTN: ***J-339***, for approval by the Director,***DLA*** . Sufficient documentation shall be provided with the request to show that the need for supplies or services cannot be met by any other practical means or that the furnishing of facilities will be in the public interest. A copy of the contractor's written statement, expressing its unwillingness or financial inability to acquire the necessary facilities with its resources, shall be included as a part of requests for new facilities. In addition to a contractor's statement of inability or unwillingness to own facilities essential to contract performance, the following certification must be made by a contracting official at least one level above the contracting officer:

(90) That private financing of individual facilities was sought but was not available or that private financing was determined not to be advantageous to the Government.

(91) That the defense contract cannot be accomplished without Government• owned industrial facilities being provided. This requirement for certification applies to new facilities or existing facilities and to extending the authorized period of use. The original of the certification shall be included in the contract file and copies retained in a central office for oversight review. The certification will be included in the request for approval to acquire facilities or to provide existing facilities.

(c) When determination is made that solicitations should include an offer to furnish existing Government facilities because adequate price competition cannot be otherwise obtained, the case will be fully documented to indicate the basis for such determination.

45.306***(90) Providing*** special tooling.

Criteria for acquisition. When the contracting officer receives notice of the contractor's intent to acquire or fabricate special tooling, the contracting officer will, before agreeing to the classification and approval for payment of the property as special tooling, obtain a written determination from a Defense Contract Management Agency (DCMA) representative that the property is needed and properly classified. The written determination by the DCMA technical evaluator will be included in the contract file.

45.307•2 Acquiring special test equipment.

(b) Notice and approval. When the contracting officer receives notice of the contractor's intent to acquire or fabricate special test equipment, the contracting officer will, before permitting contractor acquisition or fabrication of the equipment as special test equipment, obtain a written determination from a DCMA representative that the property is needed and properly classified. The written determination by the DCMA technical evaluator will be included in the contract file.

SUBPART 45.4 • CONTRACTOR USE AND RENTAL OF GOVERNMENT PROPERTY

45.407 Non•Government use of plant equipment.

(a)(i) Authority to approve non•Government use of metalworking machinery exceeding 25 percent is delegated to the Heads of the contracting activities (HCAs) without power of redelegation. All other contracting offices for which the Executive Director, ***Acquisition, Technical, and Supply Directorate*** serves as HCA, shall forward requests for approval to HQ DLA (***J-339***).

SUBPART 45.6 • REPORTING, REDISTRIBUTION, AND DISPOSAL OF
CONTRACTOR INVENTORY

45.608 Screening of contractor inventory.

45.608•1 General.

(a) Approval to transfer GP to a DLA contract must be based upon known requirements under the gaining contract or other appropriate justification. Approval for transfer, and the justification upon which it is based, will be placed in the contract file of the gaining contract. The justification will specify the consideration the Government will receive for transfer of the property. If there is no known use for the property under an existing contract, but there is adequate justification and approval for retention of the property, the property shall be transferred to a facilities contract or directly funded storage agreement. Approvals for transfer and the justification upon which the approval is based shall be placed in the file of the gaining contract/agreement. The approval must be at a level above the contracting officer. Property which does not meet this criteria for transfer to another contract will continue to be screened through the plant clearance process. For each item transferred, the contracting officer will include the following descriptive data in the contract to which the items are transferred:

Category of Property (facilities, special tooling, special test equipment, material, and agency•peculiar property).

National Stock Number (NSN) and Part Number (P/N), or P/N if NSN is not assigned.

Noun.

Acquisition Cost.

Condition Code.

Age, if known.

45.612 Removal and storage.

45.612•3 Special storage at the Government's expense.

(b) Storage of GP for which there is not a known contract requirement will be separately priced and directly funded by the DLA contracting office benefiting from the storage. Storage will not be charged to

indirect costs to be paid by the Government. Retention plans will be prepared for storage of inactive property. Retention plans will provide a detailed description of the property requiring storage, storage cost, location, planned period of storage, and source of funds for storage. Retention plans will be submitted to HQ DLA, ATTN: ***J-339***.

(90) The use of no cost or no direct cost storage agreements is prohibited. Individual activities justifying retention of the property are responsible for funding storage agreements. Consideration of storage costs should be included in retention/disposition decisions.

PART 46

QUALITY ASSURANCE

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SUBPART 46.1 • GENERAL

46.101 Definitions.

Nonconformance. A departure from the requirements specified in the contract, specification, drawing, or other approved product description.

Nonconforming Material. Any item, part, or product with one or more characteristics which depart from the requirements in the contract, specification, drawing, or other approved product description.

Deviation. A written authorization, granted after contract award and prior to manufacture of an item, to depart from a particular performance or design requirement of a contract, specification, or referenced document, for a specific number of units or specific period of time.

Waiver. A written authorization granted after contract award to accept a configuration item or other designated item which, during production or after having been submitted for inspection, is found to depart from specified requirements, but nevertheless is considered suitable for use "as is" or after repair by an approved method.

Request for Deviation. The formal document submitted by the contractor to the Government for the purpose of requesting departure from a specific performance or design requirement of a contract, specification, or referenced document.

Request for Waiver. The formal document submitted by the contractor to the Government for the purpose of requesting acceptance of designated nonconforming supplies or services.

Latent defect. One which cannot be ascertained from a reasonable inspection; not readily discernible.

Nonvoluntary recoupment. A recoupment which the contractor is legally and contractually obligated to provide; recompense that the Government can demand from the contractor.

Patent defect. One which is ascertainable from a reasonable inspection at time of acceptance.

Voluntary recoupment. Recompense provided voluntarily by the contractor for defects deemed to be contractor•caused. (The Government cannot demand reimbursement for patent defects discovered after acceptance, because acceptance is conclusive except for latent defects, fraud, gross mistake, warranted items, and the like.)

46.102•90 Consideration of quality in contractual decision•making.

The Government shall consider the use of:

(a) Contractual means for encouraging excellence in the conduct of contractor•responsible quality efforts;

(b) Incentive fee arrangements for achieving quality goals;

(c) Reduced Government surveillance when contractor's quality performance so indicates; and

(d) Other noncontractual motivation techniques.

46.103 Contracting office responsibilities.

(b) Contracting personnel shall incorporate quality assurance requirements communicated to them by the local quality assurance personnel in solicitations and contracts. In the event a change to any of these requirements is determined to be in the best interest of the Government, contracting personnel will coordinate with the quality element before changing the requirements. Justification for such a change shall be documented in the official contract file or be clearly prescribed in coordinated local procedures. For example, a local procedure may specify that the contracting element can unilaterally change the place of inspection from destination to source, whereas source inspection cannot be changed to destination inspection without referring the matter to the quality element for coordination.

(c) With few exceptions, the activity responsible for technical requirements (e.g., specifications, drawings, and standards) is the applicable military component. The quality/technical element at the DLA buying activity, or the functional expert within the Commodity Business Unit (CBU) (or similar structure), is responsible for receiving these requirements from the Services and transmitting or preparing applicable inspection instructions to the DSC contracting officer for inclusion in contracts.

(90) [RESERVED]

(91) Contract Data Package Recommendation/Deficiency Report (DD Form 1716).

(1) Chiefs of contracting offices will designate a single control point with the responsibility to receive, analyze, maintain control, and assure timely resolution of recommended changes to Contract Data Package(s) (CDPs).

(2) Recommended improvements/reported deficiencies in CDPs are usually submitted on DD Form 1716, Contract Data Package Recommendation/Deficiency Report, but may be received via messages or letter, which are to be processed as though they were submitted on a DD Form 1716.

(3)(i) DD Forms 1716 will be logged in by the control point. The log will contain, as a minimum, the following information:

(A) Date logged in;

(B) Control number assigned by submitting activity;

(C) Contracting officer assigned;

(D) Submitting activity;

(E) Originator's required suspense;

(F) Category of CDP problem;

(G) Date required actions completed;

(H) Date logged out.

(ii) The control point will establish a suspense date based on the priority noted in box 5, DD Form 1716.

(iii) The DD Form 1716 will be forwarded for evaluation to the contracting officer having cognizance over the affected contract.

(4) (i) The contracting officer will refer the DD Form 1716 to other technical areas if additional expertise is required. The contracting officer is also responsible for coordination with the technical operations element if contact is required with Service users, engineering support activities (ESAs), or specification preparing activities.

(ii) If it is determined that the recommended improvement/reported deficiency is significant, and delivery and payment have not been completed, action will be taken to modify the current contract. If the recommended improvement/ reported deficiency is insignificant, action will be taken only on future contracts.

(iii) When requested by the submitter of the DD Form 1716, the contracting officer will furnish a reply which states the action to be taken or the rationale for no action. When actions cannot be completed by the suspense date established in accordance with subparagraph (3)(ii) above, the contracting officer will use a DLA Form 65•R (Notification Form), or equivalent, to notify both the submitter and the control point of the revised completion date.

(iv) When all appropriate actions have been completed, the contracting officer will return the completed DD Form 1716 and any necessary documentation to the control point.

(5) The control point will review the completed DD Form 1716 package to determine if all required actions have been completed and if the corrective action developed, or justification for continuing existing requirements, is appropriate. If the response is determined to be appropriate, the log will be so annotated; if additional actions are required, the package, with rationale for additional required actions, will be returned to the contracting officer.

(6) As a means of identifying trends in recommended improvements/reported deficiencies, the control point will review the log on a quarterly basis. Trend data will be forwarded to the contracting office's policy, plans, and/or programs element in order to assist management in focusing on those areas where procedures have not been followed, contract deficiencies have been noted, or repetitive situations have occurred which necessitate further investigation.

SUBPART 46.2 • CONTRACT QUALITY REQUIREMENTS

46.202–*4* Higher•level contract quality requirements.

(b)(90) When the contracting officer, in consultation with the Quality Assurance Specialist (QAS), has determined that use of higher-level quality requirements is warranted, the contracting officer shall give contractors the option to implement a documented quality system based on the appropriate International Organization for Standardization (ISO9000), American National Standards Institute (ANSI) or American Society for Quality Control (ASQC) Q9000 standard, or a system that meets other recognized industry (but non-ISO/ANSI/ASQC) standards, and that meets the Government's requirement. The system shall not have previously been determined by the Government to be insufficient for its purposes. In order to provide this option to suppliers contractually, FAR 52.246-11, Higher-Level Contract Quality Requirement (Government Specification), shall be used. The contracting officer shall include FAR 52.246-2, Inspection of Supplies-Fixed Price, whenever FAR 52.246-11 is used. The blank to be filled in at subparagraph (b) of the provision shall

generally contain the following, or substantially equivalent, language: "ISO 9002 or ANSI/ASQC 092, unless otherwise specified, at the election of the contractor (contractor must indicate its preference for a particular standard(s)))." The contracting officer shall recognize quality systems that satisfy the needs of the individual procurements, whether they are modeled on military, commercial, national, or international quality system standards. Some contractors may have third party certification of their quality systems, which the private sector devised to administer the ISO 9000 series standards. However, third party certification is not required. Certification information may be provided as documentation and evidence to support the system the contractor proposes.

(91) The "unless otherwise specified" wording permits not only the use of 9001 or some other applicable standard, but also the relatively infrequent use of ISO9003, at the recommendation of the QAS, or situations where use of a commercial standard is encouraged, but ISO 9002 is considered too stringent. In the event the contractor is able to meet other recognized industry (but not ISO/ANSI/ASQC) standards, these may also be indicated in the blank space of this subparagraph. Because use of the ISO/ANSI/ASQC standards already provide some flexibility with regard to quality systems, industry standards apart from those formalized in the ISO 9000/Q9000 series should be rarely used.

(92) If after consultation with the QAS, the contracting officer determines that higher-level quality requirements are required, the contracting officer may make a determination to reduce or tailor the requirements of ISO 9001 and 9002 if appropriate. ISO 9000 standards should be the framework against which inapplicable aspects may be excluded when tailoring the requirement.

(93) The contracting officer is encouraged to modify existing contracts to permit use of the appropriate ISO 9000/Q9000 standard instead of MIL-I-45208A and MIL-Q-9858, which have been eliminated from the active section of the Department of Defense Index of Specifications and Standards (DoDISS), if the contractor and Government mutually agree to the change. This will ordinarily be accomplished at no cost to either party. The contracting officer is cautioned not to use ISO 9003 in place of a MIL-I-45208A system, since these are not equivalent systems. (The latter is more stringent as a stand-alone document.) Use of ISO 9003/Q9003 is only appropriate where conformance to requirements is to be assured solely at final inspection and testing.

(94) Any quality system proposed by the contractor shall provide for the Government's ability to audit and validate its capabilities to ensure the safety of the items and satisfaction of the customers. Additionally, during any pre- or post-award conference, the contracting officer shall stress that the quality system proposed shall be based on ISO 9000 or ANSI/ASQC 9000 standards, or a system that meets other recognized industry standards. It shall be made clear that the contractor retains quality responsibility for the supplies or services furnished under the contract and their conformance to the contract requirements.

(95) It may be appropriate to evaluate the contractor's proposed quality system in the context of the technical evaluation portion of a best-value source selection. If evaluating a quality system is part of the technical evaluation, then quality assurance personnel should perform the evaluation of quality as the subject matter experts in ISO (or similar validated and/or certified systems).

46.202–***4***-90 Manufacturing process controls and in•process inspections.

(1) Except for conditions cited immediately below, the clause at 52.246•9001, Manufacturing Process Controls and In-Process Inspections, shall be used in solicitations that require ***higher-level contract quality*** requirements, when a need exists to strengthen manufacturing process controls and in•process inspections to assure the integrity of the product.

(2) The clause at 52.246•9001 shall be used in all clothing and textile (C&T) solicitations that require ***higher-level contract quality requirements in accordance with FAR 46.202-4. The clause at FAR 52.246-11, Higher-Level Contract Quality Requirement (Government Specification) and the clause at 52.246-9001*** shall be used in C&T solicitations for Government-furnished material (***GFM), and shall flow down to the finisher when Contractor-furnished material is a solicitation requirement.*** C&T solicitations for GFM shall contain coverage to ensure that ***higher-level contract quality requirements*** and the clause at 52.246-9001 are applicable to the finisher in the event a converter is awarded the prime contract.

SUBPART 46.3 • CONTRACT CLAUSES

46.390 Certificate of quality compliance (COQC).

(a[A187]) The contracting officer shall insert the clause at 52.246•9000, Certificate of Quality Compliance, in all solicitations and ***awards*** for safety•critical items; except[f188] when acquiring items identified as "critical safety items (CSIs)" (see 11.302-91). Solicitations and awards for CSIs must include the ***clauses*** prescribed at 11.304-90(a)-(c); the clause at 52.246-9000 must be considered for use when acquiring CSIs if award is made to a source other than an approved source cited in the acquisition identification description (AID). The contracting officer shall also include the clause in other solicitations and contracts for supplies which meet both of the following conditions:

(1) The material being solicited is required to be produced in accordance with a product specification, drawing, or standard which is designated in the procurement item description (PID).

(2) The Engineering Support Activity, Specification Preparing Activity, and/or Center quality/technical activity have recommended to the contracting officer that objective quality evidence in the form of a specific COQC is needed to ensure that the material offered by the supplier meets all contract and specification requirements. (This recommendation may be accomplished in an automated manner, via the Contract Technical Data File (CTDF) field, "COQC"; or the Center Quality element may otherwise inform the contracting officer that a COQC is required for the particular item.)

(b) The clause may be used regardless of the location (source or destination) at which Government contract quality assurance actions are to be performed. In the case of destination•inspected material, the certificate (or a copy) must accompany the shipment. For source-inspected material, the original certificate must be available for inspection by the Government at the contractor's facility at the time the material is presented for acceptance. A copy may (but need not) accompany the shipment.

46.391 Measuring and test equipment.

The contracting officer shall insert the clause at 52.246•9003, Measuring and Test Equipment, in solicitations and contracts which contain the COQC and which call for inspection at source. This clause may also be used independently of the COQC clause.

46.392 Product verification testing (PVT).

The contracting officer shall insert the clause at 52.246•9004, Product Verification Testing (PVT), in solicitations and contracts which contain the COQC clause and which call for inspection at source. This clause may also be used independently of the COQC clause.

SUBPART 46.4 • GOVERNMENT CONTRACT QUALITY ASSURANCE

46.402 Government contract quality assurance at source.

(g) See 46.403 below.

(h[A189]) Government contract quality assurance actions shall be performed at source for supplies having a critical application. Exceptions to this policy shall generally be made for off-the-shelf items, or in those situations where previous acquisition or quality history based on objective evidence permits us to anticipate the receipt of fully-acceptable supplies. In these cases, a determination may be made to perform Government contract quality assurance actions at destination. *(However, when the items being acquired have a critical application and award is made to an offeror of surplus material, Government source inspection is mandatory under all circumstances.)* Objective evidence of good quality history includes such indicators as laboratory testing results from Government-owned or -contracted labs; previous acquisition experience of a sufficient volume/period, during which there were no reported product defects/first article failures/recurring waiver requests; prior quality certification under a Qualified Products List or Qualified Manufacturer List program; and the like. This determination shall be documented in contractor history files by item. When source inspection is still required for a critical application item, and the item is acquired from a sole source that will not permit quality assurance at source, the matter should be negotiated on a case-by-case basis to provide adequate consideration to the Government for the added cost of performance of the necessary technical quality assurance at destination, at a designated Government/commercial laboratory, or at the using activity. Conversely, if the supplier insists on quality assurance at

source for *non-critical* or noncomplex items which are normally assigned for quality assurance at destination, or for those critical application items that are exceptions to the source inspection requirement, this matter should be negotiated with adequate consideration flowing to the Government, on a case-by-case basis for the added cost of performance of unnecessary Government quality assurance at source.

(90) In addition to the circumstances cited in FAR 46.402, contract quality assurance at source may also be necessary when there are requirements for technical inspection; e.g., first article inspection, in•process inspection, and/or requirements for special testing or detailed inspection. Contracts should be assigned for contract quality assurance at destination if verification as to type and kind, quantity, and condition is sufficient.

46.402•90 Acquiring quality assurance support on contracts awarded to contractors located overseas.

When the solicitation designates quality assurance at source and the award is anticipated to be made to a contractor located overseas, the contracting officer will obtain a commitment from the cognizant overseas DCMA component or host nation Government quality assurance authority prior to the award of the contract to perform the requested contract administration services (CAS). Contracting activities are authorized to deviate from this requirement when acquisition history provides confidence that adequate technical/quality CAS for a specific contract commodity is available in an applicable overseas geographical area.

46.403 Government contract quality assurance at destination.

(a) Prior to designating that Government contract quality assurance actions will be performed at destination, the contracting officer shall determine that the••

(90) Depot or receiving activity has the technical ability to perform quality assurance;

(91) Necessary technical data, specifications, blueprints, etc., are available at the receiving point or will be furnished the receiving activity prior to receipt of the supplies; and

(92) Equipment required to perform quality assurance is available at the receiving point.

(b) Acquisition of items for direct shipment overseas may be assigned for contract quality assurance at destination using the Fast Payment procedure in FAR Subpart 13.***4*** (DFARS Subpart 213.***4***) if there are no requirements for technical inspection. Other purchases for direct shipment overseas shall be assigned for quality assurance at source, unless the contracting officer determines that the provisions of FAR 46.403 (b) are met. When items acquired for direct shipment overseas are shipped through freight consolidation points with contract quality assurance at destination, the ultimate overseas consignee shall be the place of performance of contract quality assurance. The solicitation and the contract shall clearly designate the overseas consignee as the destination and shall provide supplementary guidance as to transshipment point and "mark for" information. Requests for DD Form 250, Material Inspection and Receiving Report, or other evidence of receipt of material shall be addressed to the ultimate overseas consignee, and not to the freight consolidation point.

46.407 Nonconforming supplies or services.

(c)(1) The offer of nonconforming material to the Government should be the exception, and contractors should be discouraged from submitting requests for waivers/deviations (hereinafter sometimes referred to as waivers) in all cases where the contractor is at fault in producing the nonconforming supplies. Contracting officers should emphasize to the contractor that the latter is responsible for the control of product quality and for offering to the Government for acceptance only that material which conforms to contractual requirements. When evaluation of technical requirements indicates a specification change is required or would be beneficial to the Government, contracting officers shall take action through appropriate channels with the activity responsible for technical requirements to change the requirements in question, rather than waive them. Caution and good judgment must be exercised by the total Government team involved in the waiver evaluation process to ensure that technical requirements are not degraded during any attempt to assist the contractor in solving its problems with schedule compliance or with fulfilling the valid technical requirements contained in the contract. See subparagraph (f)(90), below.

(90) See definitions at 46.101 and DFARS 246.407(1). The contracting element shall control all contractor requests for waivers and deviations by maintaining a register and recording the following information: type of waiver or deviation (critical, major, or minor); brief description of the requested waiver/deviation; contract number; contractor's name; item identification (NSN and noun nomenclature); specification/technical data; date the request was received; center/service element(s) in the evaluation loop; date resolved; action taken; consideration obtained; specification change made; and any pertinent or commodity•oriented data desired. The data shall be used to report in accordance with the Management Information System Glossary (RCS DLA(M)26(C)MIN). Unless the specification clearly defines major and minor characteristics, all test characteristic nonconformances submitted as waiver requests shall be classified as major nonconformances and processed as such. When several minor nonconformances are submitted for a single item, a determination will be made as to whether the cumulative effect is a major nonconformance.

(91) The contracting officer shall ascertain whether the contractor's request for waiver was forwarded through the ACO and includes the ACO's recommendations for approval or disapproval. The contracting officer must have the ACO's comments and recommendations, in order to evaluate properly a request for waiver. Conversely, the ACO must be fully apprised of the request for waiver to ensure that the contractor has taken action to correct and prevent recurrence of the conditions causing the nonconformance. Therefore, requests for waiver submitted directly to the contracting officer shall be returned to the contractor for resubmission through the ACO, except in those situations where time is an essential element. In such cases, the ACO's recommendations will be obtained by the most expeditious means available. The contracting officer shall refer the request for waiver to the quality and supply elements of the Center, or the CBU, for evaluation and recommendations. In addition to those criteria listed at FAR 46.407(c)(1), the following factors shall be considered in making a decision to accept or reject he waiver request:

(A) Suitability of the item for use "as is," or the practicability and cost of rework or repair. For a major nonconformance, this determination must be made by the activity responsible for technical requirements and obtained in writing.

(B) Previous request(s) for waiver(s) from the same contractor.

(C) Previous request(s) of the same nonconforming characteristics from the same contractor and/or other contractors.

(D) The supply status of the item and the effect that disapproval of the request for waiver/deviation will have on the delivery schedule.

(92) The contracting officer shall submit each accept decision on critical and major nonconformances for approval by the chief of the contracting office. The contractor will not be notified until the chief of the contracting office has made the decision to approve or disapprove the waiver request.

(d) Contracting officers shall make a conscious decision on each DLA contract whether CAO authority to accept minor nonconformances will be withheld. Contracts to new contractors, contracts for new or significantly•changed items or sensitive items (i.e., those with very high visibility), or those cases where previous experience with a contractor warrants that all minor nonconformances be submitted to the contracting office shall receive high consideration. If CAO authority is withheld, the letter of delegation sent to the CAO will clearly indicate such. All contractor requests for waiver of minor nonconformances forwarded to the contracting office shall require approval by the chief of the contracting office.

(d)(90) Contracting officers need to recognize that situations may occur where contractors have a single line producing items which may be supplied as spare parts procured under DLA contracts or further processed by the manufacturer and incorporated into major systems or subsystems procured by the military services. In many of these instances, Material Review Board (MRB) activity is authorized for use in the military service contracts. If CAO authority for approval of minor nonconformances is withheld on DLA contracts in these situations, the Centers and CAOs should work together to resolve any issues concerning how to handle material which may have been subjected to previous MRB activity in the in•process area.

(e) All nonconformance information for decisions on waiver requests made by the Center and any waiver or MRB intelligence provided by the CAO, when authority has not been withheld by the contracting office, shall be included in the contractor's performance record.

(f) (90) No waivers or deviations from design requirements are to be permitted without a commitment to verify the validity of the technical data for the item (e.g., the military or federal specification, engineering drawings, etc.) with the appropriate engineering support activity, and to change any such requirement found to be erroneous, outdated, or unduly restrictive, prior to any future procurements of the item. The only exception authorized is to satisfy requisitions under "readiness" situations and then for direct shipment only (i.e., Direct Vendor Delivery), not for stock. The Lead Standardization Activity

(LSA) will be furnished copies of all approved waivers and deviations from military or federal specifications. The LSA will assure that the specification is revised to reflect the product changes allowed by the waiver/deviation. Minor waivers/deviations resulting from errors in manufacturing or from a contractor's inability to meet valid technical requirements are to be granted only under exceptional circumstances, when such waivers are in the best interests of the Government (e.g., when backorders warrant urgent delivery), and never on a repetitive basis. Major/critical nonconformance waiver requests for the sole benefit of the contractor shall not be granted. (This waiver paragraph does not apply to off•specification fuel that can be blended at the depot to be made acceptable.)

(91) The hardware centers, and ***DSCP***'s medical and clothing and textile commodities, are strongly encouraged to use the calculation provided below as a baseline, or starting point, in determining the adequacy of the contractor's offer of consideration for those rare instances in which waivers or deviations are granted and memorialized via contract modification. These costs are taken from the DLA•DORO Report, Cost of Nonconforming Supplies Update (1994). At the time the study was originally conducted several years ago, the overall DLA average cost associated with a product quality deficiency report, or PQDR, amounted to $501 in administrative costs plus 3.55 percent of the contract value for holding costs. Today, the DLA average administrative cost is $868; holding cost percentages have been separately established by Center, as follows (***DSCP*** Subsistence and ***DESC*** are not included):

DSCC	=5.64%	(or 0.0564)
DSCC (DESC)	=8.13%	(or 0.0813)
DSCR	=5.14%	(or 0.0514)
DSCP (Former DISC)	=12.81%	(or 0.1281)
DSCP (C&T)	=0.07%	(or 0.0007)
DSCP (Med)	=1.47%	(0.0147)

(i) Calculation: Amount of consideration = $868 + [H x proposed contract value].

Where • $868 represents the total administrative costs to the Government; H represents the Center average holding cost proportion of the overall contract cost, expressed as a decimal, rather than as a percentage.

Step One: Multiply H for the individual Center by the contract dollar amount of the supplies covered by the waiver or deviation. This is the total holding (variable) cost component for nonconforming supplies.

Step Two: Add $868 (the fixed, or administrative, cost to the Government of dealing with nonconformances) to the result of step one. This is the total amount of consideration which should be used as a guide in determining the adequacy of the contractor's final offer of compensation for the waiver or deviation.

(ii) It is important to note that, if the contracting officer chooses to use this guidance, but is unable to obtain agreement with the contractor on a reasonable (vice a token) consideration amount, the Government is not obligated to accept a lesser amount merely for the sake of reaching that agreement and restoring the contractor to a "conforming" or satisfactory status. In such situations (and assuming the proper notification has been made in writing to the contractor), it may be preferable to leave the contract in a nonconforming status than to modify it for an insignificant amount, or at no cost to the contractor. Either course of action, modifying the contract or refusing to restore the contractor to a satisfactory status in the event of its failure to make a good•faith offer of adequate consideration, will still preserve the Government's right to maintain a record of the deficiency, and to consider future business with the contractor in light of this poor performance. Concern about the possibility of failure to reach agreement with the contractor should, therefore, not affect the contracting officer's decision to use this means of determining the adequacy of the contractor's offer.

(92) [Subparagraphs (f)(92) through (f)(95) do not apply to contracts containing express warranty provisions.] Nothing in this section shall be construed to require the contractor to make restitution to the Government for patent nonconformances discovered after Government inspection and acceptance in accordance with FAR clause 52.246•2, Inspection of Supplies • Fixed Price, or any other standard inspection clause. Nevertheless, in each instance of a contractor•caused, post•acceptance nonconformance, the contracting office that defective product or service, and request repair or replacement. This does not prohibit local procedures which allow for the quality element to discuss quality and technical issues with contractors in the investigation of contractor•caused defective material prior to transmittal of the case to the contracting officer for formal notification to the contractor. After the formal notification, the contractor must decide how to respond to the request. This response (to which the contracting officer must agree as being in the best interest of the Government) may take the form of an offer of monetary restitution (including offset against other contracts), in lieu of repair or replacement in kind.

(93) If the contractor fails to respond to the notice of nonconformance, follow•up letters should be sent, as necessary. If the contractor also refuses to acknowledge the follow•ups, the contracting officer has other options, including assigning the contractor to the Contractor Alert List or ensuring that a preaward survey is performed on the contractor prior to award of any future contract. (Furthermore, whether or not the Government is provided consideration, the fact of that poor performance should still be considered in best•value decisions.)

(94) When workload constraints preclude following up on every initial post•acceptance nonconformance notification, priority should be placed where: the nonconformance is major or critical; the number or dollar amount of the items potentially affected is high; and/or the contractor has a history of tendering defective supplies to the Government.

(95) The contracting officer cannot "hold out" for a specific amount of money when the contractor volunteers a refund or contractual offset in lieu of repair or replacement. He or she may, though, determine whether the amount offered is a realistic alternative to the other ways in which the contractor could rectify the problem. If the refund amount is less than the contract price of the nonconforming items for which it is offered, it may or may not be characterized as a full voluntary refund, because it may only be a partial mitigation of damages. That is, it may not represent the full value of the Government's loss. On the other hand, where the contractor decides that repair is the appropriate form of recoupment, and such repair is less expensive to the contractor than replacement or monetary reimbursement of the full contractual price of the defective items, the Government may nevertheless have been fully compensated for the value of its loss. The contracting officer must determine whether the method of recompense provided is full mitigation for loss; that determination will affect the reporting of the recoupment. See subparagraph (96)(iv), below:

(96) At any time, the Centers should be able to ascertain the number and dollar value of all reported contractor•caused item nonconformances and their disposition. The Agency overall should be provided information on dollar totals associated with these nonconformances and with the corrective actions taken. Therefore, beginning with the third quarter of FY 95, all contracting activities exclusive of ***DESC*** shall compile and report to ***J-3312*** on a quarterly basis, no later than 30 days after the end of a fiscal quarter, and cumulatively. Additionally, up to eleven previous quarters should also be reported. That is, there should eventually be twelve separate quarterly records (three complete fiscal years' worth of data) and one overall total reported in this fashion; the earliest quarter should drop off with each new reporting cycle. If there are remaining unresolved nonconformances from such a "retired" quarter, they should be written off, unless they are the subject of litigation, or a resolution is imminent. The totals requested below should be provided for all reported contractor•caused nonconformances able to be identified by contract by fiscal quarter in which notice of the nonconformance is received by the contracting officer (via PQDR or other means), rather than by contract year. Aggregated totals for collections will be maintained by quarter according to the date the nonconformance is received by the contracting officer, regardless of the date of receipt of the reimbursement. For example, if the contracting officer receives a PQDR for resolution in the second quarter of FY95 on a 1992 contract, the record of the nonconformance will be established in FY95, second quarter. If collections against that nonconformance are received in installments, the first one in the third quarter of that fiscal year and the next in FY 96, these reimbursements will both be reported against the FY 95 second quarter total. Obviously, in order to do this, the contract identity of the records comprising the total of the nonconformances for any quarter will have to be maintained at the Center; collections will need to be "credited" against the appropriate complaint. However, only totals need be reported to ***J-3312***, as indicated below. A sample report is provided at 90.14.

(i) For the immediately preceding fiscal quarter, up to eleven previous fiscal quarters, and cumulatively, of the total number of validated complaints for which the Government should seek recompense (i.e., nonvoluntary and voluntary recoupments), except for items covered by warranty or fraudulently•tendered items covered under the Counterfeit Material/Unauthorized Product Substitution (CM/UPS) program, the contracting activity should report:

(A) total dollar value [see (iv), below];
(B) total dollars demanded/requested;
(C) total dollars recouped.

(ii) For the immediately preceding fiscal quarter, up to eleven previous fiscal quarters, and cumulatively, of the total number of defects discovered after acceptance that are covered by express warranty, the contracting activity should report:

(A) total dollar value [see (iv), below];
(B) total dollar demanded;
(C) total dollars recouped.

(iii) For the immediately preceding fiscal quarter, up to eleven previous fiscal quarters, and cumulatively, of the total dollars recouped, categories (i) and (ii), the contracting activity should report:

(A) total dollars • monetary reimbursement (including, where used, contract offsets; this may also include repairs to defective items that have been retained by the Government, to the extent these can be quantified. See (f)(95), above, and (IV), below):

(B) total dollars • replacements.

(iv) In order to establish a record of nonconformance against which a voluntary or nonvoluntary recoupment can be applied, the contracting officer must make an initial evaluation of the extent of the Government's loss. In so doing, he/she will likely use the contract price of the defective items as the amount of that loss. However, this may or may not ultimately be determined the correct amount to be collected from a nonconforming contractor. If, either as a result of independent research or in response to a contractor's offer of consideration for less than the contract price, the contracting officer finds that the Government's loss would be satisfied by a lesser amount than originally indicated, the contracting officer should revise the total for nonconformance and the total requested/demanded ((A) and (B) in (i) and (ii), above) downward to what he/she considers a realistic and appropriate amount. On the other hand, total dollars recouped ((C) in (i) and (ii), above) must exactly reflect what has been collected "in cash or in kind." If the amount the contractor offers is less than the contract price but is considered adequate restitution for the nonconformance, the total for the nonconformance and the amount demanded/requested should be identical to the amount received. If the contractor's offer is less than the contract price and the contracting officer does not consider it adequate compensation for the Government's loss, the total for the nonconformance and the total demanded/requested, whether or not these are revised downward from the original record, should not be made equivalent to the contractor's inadequate recompense.

(90) No part of section 46.407 pertains to the deliberate intent on the part of the contractor to provide off•specification product, or otherwise to make a fraudulent tender to the Government. When quality assurance or other personnel discover evidence indicating that the contractor deliberately failed to honor its contractual undertaking, all cognizant parties, including the administrative contracting officer, should confer with PLFA Fraud counsel in accordance with DLAR 5500.10, Combating Fraud in DLA Operations. In line with this policy, recoveries for fraud should continue to be reported as collections by the Office of General Counsel; however, they should not be included in the recoupment reporting scheme set forth in (f)(96), above.

46.470•1 Planning.

(90) The planning necessary to determine a "tailored" approach to Government contract quality assurance actions shall include, but not be limited to, consideration of the following:

(1) Possible effect of failure on health or safety of personnel, or on associated or related equipment;

(2) Tactical, strategic, or technical importance;

(3) Complexity, and the need for required reliability;

(4) Pertinence, completeness, and reliability of the contractor's quality records;

(5) Previous quality history of the contractor; and

(6) Unit cost.

SUBPART 46.5 • ACCEPTANCE

46.503 Place of acceptance.

When a contract provides for Government contract quality assurance at source, the place of manufacture (if different from the prime contractor) will be designated for each contract line or subline item. This is necessary to provide for automatic distribution of contract documents to QARs cognizant of plant locations other than the prime contractor.

SUBPART 46.7 • WARRANTIES

46.790 Record of warranty actions.

When warranty actions have been initiated under contracts containing warranty clauses in accordance with FAR Subpart 46.7 (DFARS Subpart 246.7), it is essential all DSCs maintain a record of these warranty actions. This record is necessary to help determine the usefulness of the warranty clause versus the cost of administering the warranty actions. The record will be maintained in a central location on a fiscal•year basis. No more than two prior fiscal years' records will be retained. The record shall contain as a minimum the following information:

(a) Date and reason warranty was exercised;

(b) Contract number;

(c) Contractor;

(d) Dollar value of material covered by warranty;

(e) Disposition of material or other consideration obtained; and

(f) Date warranty action completed.

PART 47

TRANSPORTATION

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SUBPART 47.3 TRANSPORTATION IN SUPPLY CONTRACTS

47.305-1 Solicitation requirements.

(c)(90)[f191] Compliance with European Union (EU) Restrictions Involving Non-Manufactured Wood Packaging (NMWP) and Pallets

The following requirement must be included in all solicitations and awards where wooden pallets and containers may be used to ship materiel to U.S. forces and for Foreign Military Sales customers in Europe, in order to comply with the Emergency Measure adopted by the Commission of the European Communities (CEC) that became effective on October 1, 2001. Membership in the CEC includes Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, Ireland, The Netherlands, Portugal, Spain, Sweden and the United Kingdom. This requirement includes all shipments moving through the Container Consolidation Points at the Defense Distribution Depots in Susquehanna, PA and San Joaquin, CA, the Container Freight Station in Norfolk, VA***, the Army Prepositioned Ship (APS 3) Upload Site in Charleston, SC (DODAAC: W81X89 and W81YUK), the Marine Corps Blount Island Command in Jacksonville, FL 32226-3404,*** and the aerial ports of embarkation at Dover Air Force Base, DE; Travis Air Force Base, CA; Naval Air Station, Norfolk, VA; and Charleston Air Force Base, SC to the affected countries. ***The Non-Manufactured Wood Packaging Material (NMWPM) web page contains the latest information on EU restrictions and related requirements, and is a valuable source of information. This web page can be accessed at http://www.dscc.dla.mil/Offices/Packaging/NMWPMnotice.html. When future changes of a minor technical or administrative nature are posted to this website, an e-mail will be sent to the PROCLTR Distribution List; and this DLAD coverage will be revised accordingly.***

The requirement may be added by incorporation into local palletization clauses, palletization sheets, packaging requirements, or the SAMMS/CTDF, as appropriate. At such time when the requirement is incorporated into MIL-STD-2073-1, its inclusion in local palletization clauses, packaging requirements, etc. will no longer be necessary for solicitations and awards that include MIL-STD-2073-1. Buying activities must continue to ensure this requirement is incorporated in solicitations and awards that do not include MIL-STD-2073-1 where wooden pallets and containers may be used to ship materiel to U.S. forces and Foreign Military Sales customers.

"All wooden pallets and wood containers produced entirely or in part of non-manufactured softwood species shall be constructed from Heat Treated (HT to 56 degrees Centigrade for 30 minutes) coniferous material and certified accordingly by an accredited agency recognized by the American Lumber ***Standard Committee, Incorporated*** (ALSC) in accordance with the latest revision of ALSC Non-manufactured Wood Packing Policy, and Non-manufactured Wood Packing Enforcement Regulations ***(see URL: http://www.alsc.org/.)*** All wooden pallets and containers produced entirely of non-manufactured hardwood species shall be identified by a permanent marking of ***"NC-US,"*** 1.25 inches or greater in height, accompanied by the CAGE code of the ***pallet/container*** manufacturer and the month and year of the contract. On pallets, the marking shall be applied to the stringer or block on ***diagonally*** opposite sides of the pallet and be contrasting and clearly visible. On containers, the marking shall be applied on a side other than the top or bottom, contrasting and clearly visible."

47.305•3 F.O.B. origin solicitations.

(9***0***) When the solicitation includes the requirement for minimum size of shipments or guaranteed maximum shipping weights (and dimensions, if applicable) and an award is made f.o.b. origin, insert the clause at 52.247•9000, Guaranteed maximum shipping weights or dimensions, in solicitations and contracts (see 14.408•1(96)).

(9***1***) Solicitation Provision (Port handling and ocean costs in bid evaluation). Port handling and ocean charges available at time of issuance of solicitation shall be published in solicitations for the acquisition of supplies for overseas shipment. The provision set forth at 52.247•9001, advising that these charges are tentative and not necessarily those that will be used in the evaluation, shall also be included in the solicitation, just below any charges published. This provision will preclude the need for extension of opening dates or cancellation of solicitations and will still permit award to that bidder who is, in fact, low at time of bid opening as a result of any change in charges after issuance of the solicitation.

47.305•3 F.O.B. origin solicitations. (DEVIATION)

(a)(4)(ii) ***Defense Energy Support Center (DESC)*** is authorized to use ***DESC*** provisions 5452.247•9F12, Offers of Multiple Crude Oils (NOV 89) (DEVIATION) and 5452.247•9F13, Evaluation of F.O.B. Origin and Destination offers (APR 90) (DEVIATION) in lieu of FAR provision 52.247•46 when purchasing crude oil for the Strategic Petroleum Reserve (SPR) program.

47.305-4[A192] ***F.o.b. destination solicitations***

(a) Automated Business Systems Modernization(BSM) simplified acquisitions shall use the following clauses:
(1) Overseas and Navy ship direct vendor delivery (DVD) shall use the clause at 52.247-9006.
(2) CONUS DVD shall use the provision at 52.247-9007.
(3) Foreign Military Sales shall use the clauses at 52.247-9008 or provision 52.247-9009 as applicable.
(4) Shipments to depots shall use the provision at 52.247-9010.

47.305-7(b)(90) Quantity analysis, direct delivery, and reduction of crosshauling and backhauling.

DLAD 15.304(c)(90) contains a requirement to include a transportation evaluation factor in integrated logistics management arrangements where proposals are likely to include contractor arranged transportation outside the continental United States.

PART 48

VALUE ENGINEERING

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SUBPART 48.1 POLICIES AND PROCEDURES

48.1***01*** General.

Policies and procedures for using and administering Value Engineering Change
Proposals are contained in Parts 48 and 52.248•1, 2, and 3, Value Engineering of the FAR. For DLA, all contracts $25,000 or more shall contain a Value Engineering (VE) Incentive clause. The VE incentive clause may be included in contracts less than $25,000 if the contracting officer or the VE Program Manager believes there is a potential savings or benefit to the Government.

PART 49

TERMINATION OF CONTRACTS

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SUBPART 49.1 • GENERAL PRINCIPLES

49.101 Authorities and responsibilities.

(b) Notwithstanding a change in requirements, a contract is not to be terminated for convenience (except at no cost to the Government as provided in FAR 49.402•4(c)) if the contractor is in unexcusable default and the Government has a legal right to terminate such contract for default.

(c) The undelivered balance of $5000 is to be used as a guideline by the contracting officer when other cost evaluation measures are not available. When Termination Decision Model (TDM) data indicate that a termination (whole or partial) would be cost effective, such information shall be considered, along with other relevant information, in making a sound termination decision by the contracting officer. Accordingly, unless termination is clearly not in the Government's best interest, all contract due•ins with positive potential savings shall be considered for cancellation/reduction regardless of the dollar value when workload permits.

SUBPART 49.4 • TERMINATION FOR DEFAULT

49.402 Termination of fixed price contracts for default.

49.402•3 Procedure for default.

(90) Procedure for default of delivery orders against Federal Supply Schedule contracts. Ordering offices shall furnish to the GSA Contracting Center responsible for the particular commodity the details concerning all material instances of unsatisfactory performance by the contractor, whether or not properly adjusted and settled. Ordering offices also shall report, as may be directed by the Federal Supply Service (FSS), all purchases made against the account of a contractor placed in default by that Service.

49.402•6 Repurchase against contractor's account.

(b) The defaulted contractor shall not be solicited for the repurchase and award shall not be made to the defaulted contractor when the authority for the repurchase is the Default clause, unless the contracting officer determines that there are overriding concerns in the public interest which dictate solicitation of, or award to, the defaulted contractor of the repurchase quantity. When the defaulted contractor submits the low, acceptable offer at a price not higher than the defaulted contract price, the contracting officer shall make a public interest determination if the defaulted contractor is determined to be responsible on the repurchase action. Public interest determinations shall state the contracting officer's reasons for solicitation of, or award to, the defaulted contractor for the repurchase quantity. In such cases, the contracting officer must determine that the defaulted contractor has taken corrective action and is responsible. Authority for approval of all such public interest determinations is delegated, without redelegation authority to the chief of the contracting office at the DSCs (the Executive Director for Procurement at DSCR may further delegate to the Deputy Executive Director for Procurement and the Chief, Base Support Division without power of redelegation) and to:

(1) Commanders of DCMDs and Commander, DCMAI.
(2) ***Commander, Defense Distribution Center***.
(3) Commander, Defense Reutilization and Marketing Service.
(4) ***Headquarters Complex Commanded, DLA Administrative Support Center***.
(5) Administrator, Defense National Stockpile Center.
(7) Commander, Television•Audio Support Activity.

In the event that the low offeror is the defaulted small business or another small business and the contracting officer cannot find that small business responsible, the matter shall be referred to DLA, Executive Director, ***Acquisition, Technical, and Supply Directorate*** , prior to any referral to SBA for a Certificate of Competency.

(90) Consideration of administrative costs of reprocurement after termination for default. Contracting officers may insert a clause substantially the same as at 52.249•9000, Administrative costs of reprocurement after termination for default, in solicitations and contracts. Inclusion of this clause will place contractors on notice that, subsequent to reprocurement after termination for default, the Government reserves the right to assess specific administrative costs and make written demand for these costs in addition to other costs as addressed in FAR 49.402•6(c) and FAR 49.402•7(b).

PART 50

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SUBPART 50.1 • GENERAL

50.105 Records.

(1)(iii)(a) Records required by DFARS 250.305•70 and 250.306•70 shall be forwarded to the General Counsel, DLA, which shall maintain them as required by DFARS 250.105(1)(iii).

SUBPART 50.2 • DELEGATION OF AND LIMITATIONS ON EXERCISE OF AUTHORITY

50.201 Delegation of authority.

(b)(90) Authority to approve actions under FAR Subpart 50.4, Residual powers, and DFARS Subpart 250.4 obligating $50,000 or less has been delegated to the General Counsel and Deputy General Counsel, DLA.

50.201•70 Delegations.

(b) Defense Agencies.

(1)(A) Authority to approve requests to obligate the Government in the amount of $50,000 or less and authority to disapprove proposed actions in any amount under the Act and the Executive Order, has been delegated to the General Counsel and Deputy General Counsel, DLA.

(1)(B) The following authority has been delegated to HCAs. This authority may be redelegated only to a staff official reporting directly to the HCA. Two copies of any redelegation shall be furnished to the General Counsel, DLA, one copy of which will be transmitted to the Under Secretary of Defense (Acquisition and Technology) (USD(A&T)).

(a) Authority to deny any request for contractual adjustment under the Act and Executive Order.

(b) Subject to the limitations in FAR 50.203, authority to approve, authorize, and direct an appropriate action, and to make all determinations and findings which are necessary or appropriate, in the examples of mistakes and informal commitment described in FAR 50.302•2 and 50.302•3, including, when necessary thereto, authority to modify, release, rescind, or cancel obligations of any sort and to extend delivery and performance dates.

SUBPART 50.3 • CONTRACT ADJUSTMENTS

50.305 Processing cases.

(b) The contracting office responsible for processing a contractor's request for contractual adjustment shall be responsible for establishing liaison and joint action with other Military Departments and other departments and agencies of the Government, except that the General Counsel, DLA, shall have such responsibility after any case is forwarded for further processing.

50.306 Disposition.

50.306•70 Record of disposition.

(1) In addition to the documents required to be submitted to the General Counsel, DLA, by DFARS 250.306(70)(a) and (b), when a contracting office denies a request, a copy of the letter of explanation to the contractor shall also be submitted.

PART 51[f193]

USE OF GOVERNMENT SOURCES BY CONTRACTORS

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51.100 Scope of subpart.

For DLA, "Government source of supply" includes items in DLA inventories and on existing DLA contracts. (For DLA-managed items, this includes items coded with Acquisition Advice Codes D (centrally managed, stocked, and issued); H (direct vendor delivery, non-stocked items); and, Z (numeric stockage objective (NSO) items).

51.101 Policy.

(a)(4) A class deviation permits DLA contracting officers to authorize DLA contractors access to DLA-managed items under other-than cost-reimbursement contracts.

51.102 Authorization to use Government supply sources.

(a)(i) A class deviation to FAR Part 51.101(a) permits DLA contractors to access DLA sources of supply when such use is specifically authorized in their DLA contracts. This access will integrate advantageous pricing and/or delivery terms into DLA's new business arrangements.

(a)(ii) This deviation shall not apply to commodities where contractor access to discounted or favorable pricing is prohibited by law, such as pharmaceuticals.

(e)(4) Contractor access to DLA sources of supply is limited to DLA-managed National Stock Numbered (NSN) or Part Numbered (P/N) items provided to DoD customers that are specifically authorized under the DLA contract. Supplies accessed under this authority may only be used in the performance of the contract that authorizes the access. The contract should specify any ceiling quantities that may apply to an item. Authorization must be limited to stocked items or items available under existing DLA contracts. DLA contractors will be authorized access to DLA sources of supply for NSN(s) or P/N(s) only when the contracting officer can clearly demonstrate a benefit to the Government as outlined in FAR 51.102(a). The rationale supporting this decision will be coordinated with the managing Inventory Control Point (ICP), documented in writing for each NSN/P/N, signed by the contracting officer, approved by the procuring ICP Director of Contracting, and included in the contract file.

(f)(1)(a)(i) The authorizing ICP shall ensure contractors order only DLA-managed items as authorized in the contract, including, as a minimum, that supplies sold are used only in the performance of authorized contracts and, any benefit from this use is passed on to the Government.

(f)(1)(a)(ii) To demonstrate the benefits of permitting contractor access to Government sources of supply, the price of each item obtained from a Government source of supply should be the Government price charged to the contractor plus a handling fee determined fair and reasonable by the contracting officer. Items contractors order must be reconciled against items authorized in their contracts. Periodic reconciliation of the quantities DLA sold to the contractor with the quantities of those same items the contractor supplied to DoD customers, or holds under surge responsibilities, under the authorizing contract will provide the visibility needed to monitor contractor's usage and trigger appropriate action for improper use. In the case of improper use, the contracting officer shall determine the appropriate corrective action.

(b) The contract shall include language requiring the contractor to ensure that, as the contract nears completion, no purchases are made that would result in Government supply source items remaining with the contactor after contract completion. The contracting officer should also monitor performance to ensure this is not occurring. Special provisions must be made for Surge items.

51.103 Ordering from Government supply sources.

(d) When contractor use of a DLA-managed supply sources is determined to be the best value, considering price, delivery and other factors, contract language should hold the contractor responsible to meet the delivery requirements whether or not Government supply sources are used. Failure to meet the contract delivery requirements is a contractor caused delay.

PART 52

SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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SUBPART 52.1 • INSTRUCTIONS FOR USING PROVISIONS AND CLAUSES

52.101 Using Part 52.

(b) Numbering.

(2) Provisions or clauses that supplement FAR and DFARS.

(ii) Only those provisions and clauses in this directive that are codified are preceded by an assigned CFR chapter number.

(B) See 1.301•91(c).

(f) Dates. Provisions and clauses in this directive that were formerly in the Defense Logistics Procurement Regulation (DLPR) bear the DLPR date when the provision or clause was transferred verbatim to this directive or when only editorial changes were made. Where only editorial changes were made to clauses or provisions in this edition, the date was not changed.

52.102 Incorporating provisions and clauses.

(b)(90) The following Web address shall be inserted in the spaces provided for this purpose in the provision at FAR 52.252-1, Solicitation Provisions Incorporated by Reference, and the clause at FAR 52.252-2, Clauses Incorporated by Reference: http://www.dla.mil/j-3/j-336/icps.htm. (This page can also be reached by accessing the J-3311 Web page at http://www.dla.mil/j-3/j-336/logisticspolicy/procurementlinks2.htm and selecting "Go to FAR/DFARS & Local Clauses."

(91) The Web page referenced above will provide links to all provisions and clauses (FAR, DFARS, DLAD, and local) that are incorporated by reference in DLA solicitations and awards. J-3311 shall maintain the Web page and the DLAD provisions and clauses. Buying activities shall maintain their local provisions and clauses.

(92) Buying activities shall also ensure that quality assurance provisions (QAPs), contract data requirements lists (CDRLs), and other similar contract requirements can be accessed electronically and are incorporated by reference. If the electronic address where these documents can be accessed is other than the Web page referenced above, that address shall also be identified in FAR 52.252-1 and 52.252-2.

(93) Archive databases of provisions, clauses, and other contract requirements that are incorporated by reference and have been superseded within the last three years (or longer period, if determined appropriate by the buying activity) shall also be maintained and made accessible electronically. The archive database shall identify a point of contact who can provide older documents that are not available in the archive database. J-3311 and the buying activities shall maintain the DLAD and local archives, respectively.

(94) Buying activities may identify reasonable circumstances when incorporation in full text is appropriate, such as the following:

(i) For approximately the first six months after a significant new policy is issued (e.g., Central Contractor Registration);
(ii) When incorporation by reference is not practical, effective, or efficient (e.g., when a provision or clause is almost entirely composed of fill-ins);
(iii) When noncompliance with contract terms is significantly reduced by incorporation in full text; or
(iv) When incorporation in full text is more suitable to the nature of the business segment (e.g., for commodities subject to voluminous technical requirements that change frequently).

* * * * *

SUBPART 52.2 • TEXTS OF PROVISIONS AND CLAUSES

52.200 Scope of subpart.

This subpart sets forth the texts of all DLAD provisions and clauses, and for each provision and clause, gives a cross•reference to the location in the DLAD that prescribes its use.

52.208•9000 Price adjustment on Federal Prison Industries, Inc. (FPI) contracts/orders.

As prescribed in 8.604(c)(90)(i), insert the following clause:

PRICE ADJUSTMENT ON FEDERAL PRISON INDUSTRIES, INC. (FPI) CONTRACTS/ORDERS (DEC 1991) • DLAD

The unit price in this contract/order is subject to later adjustment if necessary to incorporate the results of agreement between the Commissioner of FPI and the Executive Director, ***Acquisition, Technical, and Supply Directorate*** , HQ DLA, or their authorized representatives. The arbitration provision of Section 4124 of Title 18, United States Code, shall not be exercised except in the case of a disagreement on the part of the Commissioner, FPI and the Executive Director, Acquisition, Technical, and Supply Directorate , HQ DLA.

(End of clause)

52.208-9001 [A207]***Acquisition of Federal Prison Industries Items.***

As prescribed in 8.602(a)(i)(90), insert the following provision:

ACQUISITION OF FEDERAL PRISON INDUSTRIES ITEMS (JUNE 2002) – DLAD

For items *listed on the* ***Federal Prison Industries (FPI)*** *Schedule of Products Made in Federal Penal and Correctional Institutions,* ***issuance of this solicitation will constitute market research. Price, quality, and delivery will be evaluated both as part of the contracting officer's award decision and as the comparability determination required by Defense Federal Acquisition Regulation Supplement (DFARS) 208.602.*** *The award evaluation and comparability determination will be conducted using the award criteria contained in this solicitation.* ***FPI will receive an order*** *to fulfill this requirement* ***if its*** *offer is* ***comparable*** *to* ***those from private-sector sources. By signing an award resulting from this solicitation, the contracting officer signifies that a comparability determination has been made.***

(End of Provision)

52.211•9000 ***Government*** surplus material.

As prescribed in 11.30***4-91(a)***, insert the following clause:

GOVERNMENT[A208] SURPLUS MATERIAL ***(APR 2002)*** – DLAD
(Previous versions of this clause are considered obsolete.)

(a) ***Definition.***

"Surplus material," as used in this clause, means new, unused material that was purchased and accepted by the U.S. Government and subsequently sold by the Defense Reutilization and Marketing Service (DRMS), by contractors authorized by DRMS, or through another Federal Government surplus program. The terms "surplus" and "Government surplus" are used interchangeably in this clause.

(b) The Offeror agrees to complete this clause and provide supporting documentation as necessary to demonstrate that the surplus material being offered was previously owned by the Government and meets solicitation requirements. The Offeror must provide this information and any supporting documentation on or before the date that quotes/offers are due; or within the timeframe specified by the Contracting Officer, if additional documentation is requested after submission of the offer. Failure to provide the requested information and supporting documentation within the timeframe requested may result in rejection of the offer. Unless the solicitation states otherwise, Offerors of surplus material are authorized to open packages, inspect material, and reseal packages. Each time this is done, the Offeror's authorized representative or inspector must sign the packages where they were resealed and annotate the date of inspection.

(c) With respect to the surplus ***material*** being offered, the Offeror represents that:

(1) The ***material is new,*** unused, and ***not of such age or so deteriorated as to impair its usefulness or safety. Yes __ No __ The material conforms to the technical requirements cited in the solicitation (e.***

g., Contractor and Government Entity (CAGE) code and part number, specification, etc.). Yes __ No __ The material conforms to the revision letter/number, if any is cited. Yes __ No __ Unknown__ If no, the revision offered does not affect form, fit, function, or interface. Yes __ No __ Unknown__ The material was manufactured by:

_____ _____

(Name) *(Address)*

(2) ***The Offeror currently possesses the material. Yes __ No __ If no, the Offeror must attach or forward to the Contracting Officer an explanation as to how the offered quantities will be secured. If yes, the Offeror purchased the material*** from ***a*** Government selling agency or other source. ***Yes __ No __ If yes, provide the information below:***

Government Selling Agency ***Contract Number*** ***Contract Date (Month, Year)***

_____ _____ _____

Other Source ***Address*** ***Date Acquired*** ***(Month/Year)***

_____ _____ _____

(3) The ***material has*** been altered *or* modified. ***Yes __ No __*** If ***yes, the Offeror must*** attach ***or forward to the Contracting Officer*** a complete description of the ***alterations or modifications.***

(4) The ***material has been reconditioned. Yes __ No __ If yes, (i) the price offered includes the cost of reconditioning/refurbishment. Yes __ No __; and (ii) the Offeror must attach or forward to the Contracting Officer a complete description of any work done or to be done, including the components to be replaced and the applicable rebuild standard. The material contains cure-dated components. Yes __ No __ If yes, the price includes replacement of cure-dated components. Yes __ No __***

(5) ***The material has*** data plates attached. ***Yes __ No __ If yes***, the Offeror ***must state below*** all information contained thereon, ***or forward a copy or facsimile of the data plate to the Contracting Officer.***

---

(6) The offered material ***is*** in ***its*** original package. ***Yes __ No __*** (***If yes***, the Offeror ***has*** stated below all original markings and data cited on the package; ***or has attached or forwarded to the Contracting Officer*** a copy or facsimile of ***original*** package markings.)

Contract Number ***NSN*** ***Cage Code***

_____ _____ _____

Part Number ***Other Markings/Data***

_____ _____

(7) The Offeror has supplied this same material (National Stock Number) to the Government before. Yes __ No __ If yes, (i) the material being offered is from the same original Government contract number as that provided previously. Yes __ No __; and (ii) state below the Government Agency and contract number under which the material was previously provided:

Agency ***Contract Number***

_____ _____

(8) The material is manufacturered in accordance with a specification or drawing. Yes __ No __ If yes, (i) the specification/drawing is in the possession of the Offeror. Yes __ No __; and (ii) the Offeror has stated the applicable information below, or forwarded a copy or facsimile to the Contracting Officer. Yes __ No __

Specification/Drawing Number ***Revision (if any)*** ***Date***

_____ _____ _____

(9) The material has been inspected for correct part number and for absence of corrosion or any obvious defects. Yes __ No __ If yes, (i) Material has been re-preserved. Yes __ No __; (ii) Material has been repackaged. Yes __ No __; (iii) Percentage of material that has been inspected is _____% and/or number of items inspected is _____; and (iv) a written report was prepared. Yes __ No __ If yes, the Offeror has attached it or forwarded it to the Contracting Officer. Yes__ No__

(d) The Offeror agrees that in the event of award and notwithstanding the provisions of the solicitation, inspection and acceptance of the surplus ***material*** will be performed at ***source*** or destination subject to all applicable provisions for ***source*** or destination inspection.

(e) The Offeror has attached or forwarded to the Contracting Officer one of the following, to demonstrate that the material being offered was previously owned by the Government (Offeror check which one applies):

___ ***For national or local sales, conducted by sealed bid, spot bid or auction methods, a solicitation/Invitation For Bid and corresponding DRMS Form 1427, Notice of Award, Statement and Release Document.***

___ ***For DRMS Commercial Venture (CV) Sales, the shipment receipt/delivery pass document and invoices/receipts used by the original purchaser to resell the material.***

___ ***For DRMS Recycling Control Point (RCP) term sales, the statement of account or billing document.***

___ ***For property sold under the exchange or sale regulation, conducted by sealed bid, auction or retail methods, a solicitation/Invitation for Bid and corresponding DRMS Form 1427.***

___ ***When the above documents are not available, or if they do not identify the specific NSN being acquired, a copy or facsimile of all original package markings and data, including NSN, Commercial and Government Entity (CAGE) code and part number, and original contract number. (This information has already been provided in paragraph (c)(6) of this clause. Yes __ No __.)***

___ ***When none of the above are available, other information to demonstrate that the offered material was previously owned by the Government. Describe and/or attach.***

(f) This clause only applies to offers of Government surplus material. Offers of commercial surplus, manufacturer's overruns, residual inventory resulting from terminated Government contracts, and any other material that meets the technical requirements in the solicitation but was not previously owned by the Government will be evaluated in accordance with the provision at 52.217-9002.

(g) Offers of critical safety items must comply with the additional requirements in 52.211-9005.

(h) If requested by the Contracting Officer, the Offeror shall furnish sample units, in the number specified, to the Contracting Officer or to another location specified by the Contracting Officer, within 10 days after the Contracting Officer's request. The samples will be furnished at no cost to the Government. All such samples not destroyed in evaluation will be returned at the Offeror's expense. The samples will be evaluated for form, fit, and function with subassembly, assembly, or equipment with which the items are to be used. End items furnished under any contract award to the Offeror furnishing the samples can include the returned samples, and all acceptable end items will have a configuration identical to the samples. If specific tests of the samples' performance are made by the Government, the Offeror will be furnished the results of such tests prior to a contract being entered into. In addition to any other inspection examinations and tests required by the contract, the performance of the end items will be required to be as good as that of the samples submitted insofar as specific performance tests have been made by the Government and the results thereof furnished to the Offeror.

(i) In the event of award, the Contractor will be responsible for providing material that is in full compliance with all requirements in the contract or order, whether or not the Contractor has possession of applicable drawings or specifications, and despite the fact that the Government is unable to conduct in-process inspection. The Contractor's responsibility to perform is not diminished by compliance with the requirement to demonstrate that the offered material was previously owned by the Government. The material to be furnished must meet the requirements of the current contract or order, whether or not the material met Government requirements in existence at the time the material was initially manufactured or sold to the Government. The Government has the right to cancel any resulting purchase order or terminate any resulting contract for default if unacceptable material is tendered.

(j) If higher level quality requirements apply to the material being acquired, those requirements do not apply to surplus material furnished under this contract.

(End of clause)

52.211•9001 Market Acceptance.

As prescribed in 11.***103(a)***, insert the following provision:

MARKET ACCEPTANCE (FEB 1996) • DLAD

The Offeror shall provide with its offer the following information to establish that the offer meets the market acceptance criteria in the requirements document: [the Contracting Officer shall insert the specific documentation requirements].

(End of provision)

Alternate I (FEB 1996) • DLAD. The contracting officer may substitute the following paragraph for the basic provision to obtain documentation after offers are received:

The Government reserves the right to request information to establish that the offer meets the market acceptance criteria in the requirements document.

52.211•9002 Priority rating.

As prescribed in 11.604(90), insert the following clause:

PRIORITY RATING (***MAR 2000***) • DLAD

This contract is assigned a priority rating under the Defense Priorities and Allocations System (DPAS) regulations (15 CFR 700) which requires contractors to utilize ***the*** assigned rating in obtaining the products, materials, and supplies needed to fill their contracts. In the event the contractor is unable to obtain the necessary products, materials, and supplies to complete the contract, the contractor shall immediately advise ***the Defense Contract mangement Agency*** DCM***A*** or the appropriate DSC ***DPAS*** officer through the ***cognizant Administrative Contracting Officer*** or ***Procuring*** Contracting officer. The ***DPAS*** officer or the ***DCMA plant representative*** will provide necessary assistance or provide the necessary instructions to complete DoC ITA Form 999, Request for Special Priorities Assistance. This form will be processed through appropriate channels to the **DoC who *will review*** and take action to make the needed supplies available to the applicant ***when deemed appropriate***.

(End of clause)

52.211-9003 Conditions for Evaluation of Offers of *Government* Surplus Material.

As prescribed in 11.30*4-91(a), insert* the following provision:

CONDITIONS FOR EVALUATION OF OFFERS OF *GOVERNMENT* SURPLUS MATERIAL
(APR 2002) - DLAD

(a) *Definition.*

"Surplus material," as used in this provision, has the same meaning as in the clause at 52.211-9000, Government Surplus Material.

(b) The Agency will evaluate *an* offer of surplus material when the Contracting Officer determines the *O*fferor is otherwise in line for award, after adding the cost of evaluation ($200 for internal evaluation and, if applicable, an additional $500 for *each* Engineering Support Activity (ESA) evaluation, plus any additional fees required for special testing and/or inspection).

(c) When an offer is for a quantity less than the solicited quantity, the contracting officer will consider the $500 cost of issuing and administering more than one award. The contracting officer will also consider the anticipated impact on the unit price of the remaining quantity, to determine the total cost to the Government.

(End of provision)

52.211-9004 Priority rating for various long-term contracts.

As prescribed in 11.604(90), insert the following clause in prime vendor, corporate, and other long term contracts:

PRIORITY RATINMG FOR VARIOUS LONG-TERM CONTRACTS (MARCH 2000)- DLAD

This contract is assigned a priority rating under the Defense Priorities and Allocations Systems (DPAS) regulation (15 CFR 700) which requires contractors to utilize the assigned rating in obtaining the products, materials, and supplies needed to fill their contracts. Because this contract does not have a specificed delivery date, the basic contract is not rated; however, orders placed against it that include a delivery date are considered rated orders as of the date of receipt by the supplier. In the event the contractor is unable to obtain the necessary products, materials, and supplies to complete the contract, the contractor shall immediately advise the Defense Contract Management Agency (DCMA) representative or the appropriate Defense Supply Center DPAS officer through the cognizant Administrative Contracting Officer or procuring contracting officer. The DPAS officer or the DCMA plant representative will provide necessary assistance or the necessary instructions to complete Department of Commerce (DoC) BXA Form 999, Request for Special

priorities Assitance. This form will be processed through appropriate channels to the DoC who will review and take action to make the needed supplies supplies available to the applicant when deemed appropriate.

(End of provision)

52.211-9005[f209] ***Conditions for evaluation and acceptance of offers for critical safety items.***

As prescribed in 11.304-90(a), insert the following clause:

CONDITIONS FOR EVALUATION AND ACCEPTANCE OF OFFERS FOR CRITICAL SAFETY ITEMS
(***APR***[A210] 200***2***) - DLAD

(a) Definitions.

"Actual manufacturer" means an individual, activity, or organization that performs the physical fabrication processes that produce the deliverable part or other items of supply for the Government. The actual manufacturer must produce the part in-house. The actual manufacturer may or may not be the design control activity.

"Approved source" means a prime contractor or the actual manufacturer(s) cited in the acquisition identification description (AID). It does not include design control activities with no manufacturing capability.

"Critical safety item" (CSI) means a part, assembly, installation, or production system with one or more critical characteristics that, if not conforming to the design data or quality requirements, would result in an unsafe condition that could cause loss of, or serious damage to, the end item or major components, loss of control, or serious injury or death to personnel.

"Design control activity" means a contractor or Government activity having responsibility for the design of a given part, and for the preparation and currency of engineering drawings and other technical data for that part. The design control activity may or may not be the actual manufacturer.

"Exact product" and "alternate product" are defined in the provision at DLAD 52.217-9002, Conditions for Evaluation and Acceptance of Offers for Part Numbered Items.

"Prime contractor" means a contractor having responsibility for design control and/or delivery of a system/equipment such as aircraft, engines, ships, tanks, vehicles, guns and missiles, ground communications and electronics systems, and test equipment.

"Rebranding" means remarking, re-labeling, repackaging, or otherwise obscuring the marking of the approved source cited in the AID (i.e., the prime contractor or actual manufacturer).

(b) The item being acquired is a critical safety item (CSI). Given their vital importance and the catastrophic consequences that can result if they fail, procurement of these items requires the highest standards of oversight and verification.

(c[A211]***)*** This ***clause*** applies only to offers of "exact product." Offers of "alternate product" will be evaluated in accordance with the clause [f212]at DLAD 52.217-9002. ***Offerors of Government surplus material must comply with the requirements in the clause at DLAD 52.211-9000 in addition to this clause, and surplus offers will be evaluated in accordance with the provision at DLAD 52.211-9003.***

(d[A213]***)*** If the Offeror is the prospective awardee and is not currently an approved source cited in the acquisition identification description (AID) on the schedule page of this solicitation, the Offeror will be requested by the Contracting Officer to provide documented evidence prior to award sufficient to establish that the item being offered is (or will be) the exact item cited in the AID and is (or will be) manufactured by an approved source cited in the AID***, modified (if necessary) to conform to any additional requirements set forth in the AID,*** and is (or will be) manufactured by ***or under the direction of*** an approved source cited in the AID. Additionally, if the Offeror ***manufactures*** the offered item for an approved source cited in the AID, evidence of approval and acceptance by the approved source will be required. Evidence must include the following at a minimum***, plus whatever additional evidence the Contracting Officer determines necessary to sufficiently establish the identity of the item and its manufacturing source***:

(1) If offered item(s) are "not in stock" or "not yet manufactured" --

(i) A copy of Offeror's Request for Quotation to approved source cited in AID; and

(ii[A214]***)*** ***An original, hard copy of quotation received by Offeror from approved source cited in AID; or other verifiable documentation of quotation. (If Offeror is unable to provide this documentation to the Contracting Officer prior to award, it must be provided to the Quality Assurance Representative (QAR) for examination at time of source inspection.)***

(iii[A215]***) For offers of surplus material, a completed 52.211-9000 with supporting documentation.***

(2) If offered item(s) are "shipped" or "in stock" --

(i) A copy of invoice on approved source's letterhead. (Invoice must identify exact item cited in AID and a quantity sufficient to satisfy the solicitation requirement.); or

(ii) A copy of packing slip which accompanied shipment from approved source to Offeror. (Packing slip must identify exact item cited in AID and a quantity sufficient to satisfy the solicitation requirement***; or***

(iii) For offers of surplus material, a completed 52.211-9000 with supporting documentation; and

(iv) Inventory control records to establish that items Offeror proposes to furnish under current order are still in Offeror's stock. (This documentation is mandatory and must be provided to Quality Assurance Representative (QAR) for examination at time of source inspection. Documentation may be provided to Contracting Officer prior to award, at Offeror's discretion.)

(3) If Offeror is an authorized dealer/distributor, or manufactures the item for an approved source --

(i) An authorized dealer/distributorship agreement, licensee agreement, or other type of agreement. (The agreement must specifically identify the exact item, or otherwise ensure that the Offeror is authorized by the approved source to manufacture or distribute the exact item being acquired. If the agreement covers a general product line or is otherwise not product-specific, the Offeror must also furnish additional documentation to address the exact item being acquired (see above).); or

(ii) Letter from an approved source cited in the AID, specifically identifying Offeror as authorized to distribute or manufacture the exact item cited in the AID for that approved source; or

(iii) Other verifiable information (e.g., listing of authorized dealers on official Web page of an approved source) to establish the Offeror's authority to manufacturer or distribute the exact item cited in the AID for an approved source cited in the AID.

(4) When the AID specifies a revision number --

(i) Documentation establishing that the offered item was (or will be) made in accordance with the revision cited in the AID. (This requirement is considered to have been met when documentation provided by Offeror to satisfy other portions of this ***clause or solicitation*** already establishes that offered item was (or will be) made to the revision cited in the AID); or

(ii) Documentation identifying the revision offered and the differences between the revision offered and the revision cited in the AID.

(e) By the submission of this offer, the Offeror represents that --

(1) The item(s) to be provided to the Government --

(i) Is (or will be) in full compliance with all requirements specified in the solicitation; and

(ii) Is not (or will not be) --

(A) A factory second;
(B) Changed, mutilated, or rebranded;
(C) A manufacturer's overrun;
(D) A rejected item; or
(E) Government surplus material (unless Offeror has complied with clause at DLAD 52.211-9000, Government Surplus Material).

(2) In the event of item failure, Offeror will have access to, and will provide to the Government upon request, all information necessary to trace the item back through the manufacturing process.

(3) Any documentation provided by Offeror will correspond to the exact item(s) that will be furnished to the Government; or Offeror will obtain updated documentation and provide it to the Government (if, for example, Offeror sells item(s) to another Buyer before award or before tender for acceptance).

(f) Failure to provide adequate documentation within the timeframe requested by the Contracting Officer may result in rejection of the offer.

(End of clause)

52.211-9006[A216] Changes in contractor status, item acquired, and/or manufacturing process/facility – critical safety items.

As prescribed in 11.304-90(b), insert the following clause:

CHANGES IN CONTRACTOR STATUS, ITEM ACQUIRED, AND/OR MANUFACTURING PROCESS/FACILITY --
CRITICAL SAFETY ITEMS (***[July]*** 200***2***) - DLAD

(a) If any changes occur in the Contractor's business status or relationship with the approved source(s) after award of this contract (such as, for example, inability to obtain manufacturing process information; or changes in status as authorized dealer/distributor, or in terms of licensing arrangement), the Contractor shall immediately provide notification and documentation of the changes to the ***Administrative*** Contracting Officer ***(ACO)***.

(b) The Contractor shall immediately provide to the ***Administrative*** Contracting Officer ***(ACO)*** notification (and documentation, if available) of any of the following changes the Contractor becomes aware of:

(1) Later revisions to drawings, specifications or standards that differ from the revision cited in the acquisition identification description (AID) in the contract;
(2) Changes in the manufacturing process;
(3) A change in the approved source's manufacturing location; or
(4) A transfer of manufacturing facilities by the approved source since last manufacture.

(End of clause)

52.211-9007[A217] Withholding of Materiel Review Board (MRB) authority.

As prescribed in 11.304-90(c), insert the following clause:

WITHHOLDING OF MATERIEL REVIEW BOARD (MRB) AUTHORITY -- CRITICAL SAFETY ITEMS
(***[July]*** 200***2***) -- DLAD

The item being acquired is a critical safety item. Notwithstanding any other term or condition included in this contract/agreement, Materiel Review Board (MRB) authority is hereby withheld. ***(This clause does not apply to sources that have explicit authority to retain MRB authority, which are identified on the DSCR Technical Oversight Office (TOO) Web site at http://www.dscr.dla.mil/vg/CriticalPartReview.htm.)***

(End of clause)

52.211-9008 Bar Coding[f218] ***(Applicable to DSCC, DSCP and DSCR only)***

As prescribed in 11.290, insert a clause substantially as follows:

BAR CODING REQUIREMENTS FOR DIRECT VENDOR DELIVERY (DVD) SHIPMENTS (DEC 2001) - DLAD

(a) This bar coding requirement is applicable only to shipment of material to a location other than a DLA Distribution Depot (i.e., direct vendor delivery (DVD)).

(b) In addition to other marking requirements in this contract, the following separate lines of bar coded data, with Human Readable Interpretation (HRI) printed directly below the element, shall be provided:

(1) Document number and suffix.
(2) National Stock Number (NSN) (in absence of the NSN, the CAGE and Part Number).
(3) ICP Routing Identifier Code (RIC), Unit of Issue, quantity, followed by an "A" and eight zeros.

(c) These bar code markings shall either be placed on or printed on labels affixed to either the DD Form 250/250c or the commercial packing list. If used on DD Form 250/250c, it should be in blocks 15, 16,17, etc. In either case, these documents shall be furnished in Packing List Envelopes affixed to the outside of the shipping container.

(d) The bar code symbology shall be Code 3 of 9 (Code 39) in accordance with AIM BC1.

NOTES: In bar code element 1 above, the Document Number consists of a 14-character (15 characters when a suffix is included) alphanumeric code. It may be listed on a contract/award as the Requisition Number, Transportation Control Number (TCN), etc.

In bar code element 2 above, the NSN will appear as a 13-digit code without the dashes.

In bar code element 3 above:

The RIC for each procuring activity is as follows:

S9C - Defense Supply Center Columbus - Construction
S9E - Defense Supply Center Columbus - Electronics
S9G - Defense Supply Center Richmond
S9I - Defense Supply Center Philadelphia – General and Industrial
S9T - Defense Supply Center Philadelphia - Clothing and Textiles
S9M - Defense Supply Center Philadelphia – Medical Materiel
S9P - Defense Supply Center Philadelphia – Perishable Subsistence
S9S - Defense Supply Center Philadelphia – Semi-perishable Subsistence

The appropriate unit of issue (U/I) will appear as a two digit alpha character.

The quantity will appear as a five-position number, including zero fillers on the left.

The above will be followed by an "A" and eight zeros, (i.e. "A00000000")

NO SPACES SHALL SEPARATE THE INDIVIDUAL DATA ELEMENTS WITHIN EACH LINE.

A copy of AIM BC1 is available from:

AIM USA
634 Alpha Drive
Pittsburgh, PA 15238-2802
(412) 963-8588

(End of Clause)

52.211-9009 [A219] *Non-Acceptability of Government Surplus Material.*

As prescribed in 11.304-91(b), insert the following provision:

NON-ACCEPTABILITY OF GOVERNMENT SURPLUS MATERIAL
(APR 2002) - DLAD

(a) Definition.

"Surplus material," as used in this clause, means new, unused material that was purchased and accepted by the U.S. Government and subsequently sold by the Defense Reutilization and Marketing Service (DRMS), by contractors authorized by DRMS, or through another Federal Government surplus program. The terms "surplus" and "Government surplus" are used interchangeably in this clause.

(b) The Government has determined that offers of surplus material will not be considered for this acquisition.

(End of provision)

52.212-9000 Changes – Military Readiness

As prescribed in 12.302(b)(3)(91)), insert the following clause:

CHANGES – MILITARY READINESS (Mar 2001) - DLAD

The commercial changes clause at FAR 52.212-4(c) is applicable to this contract in lieu of the changes clause at FAR 52.243-1. However, in the event of a Contingency Operation or a Humanitarian or Peace Keeping Operation, as defined below, the contracting officer may, by written order, change 1) the method of shipment or packing, and 2) the place of delivery. If any such change causes an increase in the cost of, or the time required for performance, the contracting officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract. The contractor must assert its right to an adjustment within 30 days from the date of receipt of the modification.

"Contingency operation" means a military operation that-
(i) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or
(ii) Results in the call or order to, or retention on, active duty of members of the uniformed services under 10 U.S.C. 688, 12301(a), 12302, 12304, 12305, or 12406, chapter 15 of U.S.C., or any other provision of law during a war or during an national emergency declared by the President or Congress (10 U.S.C. 101(a)(13)).

"Humanitarian or peacekeeping operation" means a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of peacekeeping operation under Chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing. (10 U.S.C. 2302 (8) and 41 U.S.C. 259(d)(2)(B)).

(End of Clause)

52.213•9000 Quantity break.

As prescribed in 13.101(a)(1)(90), insert a provision substantially as follows:

QUANTITY BREAK (JULY 1999) • DLAD

If a larger quantity is obtainable at no additional total price due to a minimum order quantity/value or any other reason, the offeror agrees to record below the maximum quantity of the product cited in this RFQ which can be furnished for such total price, along with the lower unit price for such increased quantity. If yet lower unit prices are available for greater quantities, offerors are requested to enter the lower unit prices and quantity ranges to which such prices will apply. The Government may elect to accept such alternate quantity quotations not exceeding ***$100,000*** without further solicitation or discussion:

Quantity Range	Unit Price
_____	_____
_____	_____
_____	_____

(End of provision)

52.213•9001 Evaluation factor for source inspection.

As prescribed in 13.106-90(a), 14.201•8(a)(90), and ***15.304(c)(94),*** insert the following provision:

EVALUATION FACTOR FOR SOURCE INSPECTION (***MAY 1999***) • DLAD

This solicitation contemplates an award based on destination inspection. However, source inspection will be required for those offerors to whom formal notification thereof has been issued prior to the closing/ opening date for receipt of offers under this solicitation ***and allowed for offerors who make their offers contingent on source inspection.*** Accordingly, an evaluation factor of ***$250*** will be added to the offeror's quoted price, for each source inspection required, for purposes of determining the most advantageous offer received, price and other factors considered. Nothing in this provision affects the right of the Government to perform or waive source inspection on any resultant order/contract.

(End of provision)

52.213•9002 Indefinite Delivery Purchase Order (IDPO) Agreement.

As prescribed in ***13.390-5(a)(2)***, insert a provision in solicitations substantially as follows:

INDEFINITE DELIVERY PURCHASE ORDER (IDPO) AGREEMENT (***MAR 1999***) • DLAD

(a) The prospective contractor _____ agrees _____ does not agree that, if an order is placed for the solicited quantity, the Government may place additional orders for the item(s) covered by this Request for Quotations, at the same price quoted for the solicited quantity, for any order issued, within a quantity range of _____ to _____ units, within (insert time period) from the date of that purchase order, under the same terms and conditions as that purchase order. Such orders will be issued no more frequently than _____ times per quarter. The aggregate total dollar value of orders issued shall not exceed the simplified acquisition threshold ***or $5,000,000 for acquisitions conducted under FAR Subpart 13.5.*** In no event shall the Government be obligated to place subsequent orders under this agreement. The initial purchase order will contain the terms and conditions of this agreement, including this provision, and subsequent orders will cite the initial purchase order number. The contractor agrees to advise the contracting officer in writing at any point in time it determines that it cannot accept subsequent orders under this agreement.

(b) Numbering. The uniform procurement instrument identification numbering (PIIN) system will be used. The initial purchase order and subsequent orders will be distinguished by a "D" in the ninth position and a "5" in the tenth position of the PIIN. The initial purchase order will be numbered with sub•PIIN 0001. Subsequent orders will be serially numbered with sub•PIIN numbers 0002 through 9999.

(Note: Failure to agree to this provision will not affect an award decision for the solicited quantity.)

(End of provision)

52.213•9003 Indefinite Delivery Purchase Order (IDPO) Contract.

As prescribed in ***13.390-5(b)(2)(i)***, insert a clause in solicitations substantially as follows:

INDEFINITE DELIVERY PURCHASE ORDER (IDPO) CONTRACT (***MAR 1999***) • DLAD

(a) The contractor _____ agrees _____ does not agree that performance under this purchase order, by furnishing the supplies specified in this purchase order (the minimum quantity), commits the contractor to provide the same supplies, in the quantity range and under the conditions specified herein. The Government may place such additional orders for the supplies specified in this purchase order at the purchase order price within a quantity range of _____ to _____ units, within (insert time period) from the date of the purchase order, under the same terms and conditions as the purchase order. Such orders will be issued no more frequently than times per quarter. The aggregate total dollar value of orders issued shall not exceed the simplified acquisition threshold ***or $5,000,000 for acquisitions conducted under FAR subpart 13.5.*** In no event shall the Government be obligated to place subsequent orders under this contract. The purchase order contains the terms and conditions of this contract and subsequent orders will cite the purchase order number.

(b) Numbering. The uniform procurement instrument identification numbering (PIIN) system will be used. The purchase order and subsequent orders will be distinguished by a "D" in the ninth position, and a "5" in the tenth position of the PIIN. The initial purchase order will be numbered with sub•PIIN number 0001. Subsequent orders will be serially numbered with sub•PIIN numbers 0002 through 9999.

(Note: Failure to agree to this clause _____ will _____ will not affect an award decision for the solicited quantity.)

(End of clause)

52.213-9004 Offeror representations, certifications, and fill-in information--electronic commerce.

As prescribed in 13.101(b)(2)(90), insert the following provision in all solicitations below the simplified acquisition threshold issued using electronic means, **except for those accomplished through the PD2 and Event Manager components of Business Systems Modernization**.

OFFEROR REPRESENTATIONS, CERTIFICATIONS, AND FILL-IN INFORMATION-- ELECTRONIC COMMERCE
(Jul 2003) -- DLAD

(a) Offerors are required to provide the following socioeconomic and other data in a coded, rather than a fill-in, format. This provision consolidates, to the maximum extent practicable, **most of the** applicable representations and certifications (other than those provided on an annual basis) and fill-in portions of clauses and provisions from the Federal Acquisition Regulation (FAR), the Defense FAR Supplement (DFARS), and the DLA Acquisition Directive (DLAD).

(b) This provision constitutes a recordation of the representations, certifications, and other data requirements contained in the individual provisions incorporated herein by reference via the citation(s) at each numbered paragraph. It is not intended to supersede those provisions, except that the requirement for marking certain boxes or otherwise entering information individually into these cited provisions is hereby replaced by the requirement to complete this provision 52.213-9004. The offeror is reminded that all provisions incorporated herein by reference remain binding in their entirety. Any penalties for misrepresentation contained in the referenced provisions (e.g., penalties for misrepresentation of business status under FAR 52.219-1, paragraph (d)(2)**)** still apply. Furthermore, additional information required by the individual provisions to be provided "at the time of" or "with" the offer must be transmitted elsewhere in your response or sent/faxed under separate cover (as appropriate) concurrently with your transmitting this transaction to the Government.

(c) The offeror may electronically access the full text of each referenced provision at, or through links provided at: ***http://www.dla.mil/j-3/j-336/icps.htm*** . The offeror may also request that the contracting officer provide the hard-copy full text of any DLAD or local provision(s) referenced below.

(d) The following provision segments, identified, where necessary, to a specific line item number(s), ***shall*** be completed by the offeror.

01. FAR 52.204-3, Taxpayer Identification [also, FAR 52.212-3, Offeror Representations and Certifications - Commercial Items (paragraph (b)), when used for commercial items].

01A Enter one of the following: TIN (without dashes); or the appropriate code from the list below; or state other basis why TIN is not required._____.

BA = TIN has been applied for.

TIN is not required because:

FO = Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S., and does not have an office or place of business or a fiscal paying agent in the U.S.

FG = Offeror is an agency or instrumentality of a foreign government.

GT = Offeror is an agency or instrumentality of the Federal government.

01B Select one code from the following list that identifies the offeror's type of organization. If other than those listed, provide identification: _____.

PM = Corporate entity (not tax-exempt).

OE = Corporate entity (tax-exempt).

SP = Sole proprietorship.

PA = Partnership.

GE = Government entity (Federal, State, or local).

FG = Foreign government.

WE = International organization per 26 CFR 1.6049-4.

01C If offeror is owned or controlled by a common parent, enter Common Parent Name. (Enter "NA" if not applicable.) .

01D If offeror is owned or controlled by a common parent, enter Common Parent TIN (without dashes). (Enter "NA" if not applicable.) .

02. FAR 52.209-1, Qualification Requirements. (Applies only to an acquisition subject to a qualification requirement. When qualification applies, 02A and at least one of the items from 02B through 02F must contain an entry other than "NA.")

02A Enter the individual line item number for which qualification information is applicable. Enter "ALL" if, and only if, the responses to 02B through 02F are the same for all line items in your offer. Enter "NA" if the solicitation does not contain a qualification requirement. (NOTE: If information is being provided for individual line item numbers, segments 02A through 02F should be repeated as many times as necessary)_____.

02B Enter Manufacturer's Name or CAGE code. (Enter "NA" if clause not applicable.)
_____.

02C Enter Source Name or CAGE code. (Enter "NA" if clause not applicable.)
_____.

02D Enter Item Name. (Enter "NA," if clause not applicable.)
_____. .

02E Enter Service Identification. (Enter “NA” if clause not applicable, or “NK” if service identification is not known).
_____.

02F Enter Test Number. (Enter "NA" if clause not applicable, or "NK" if test number is not known.)
_____.

03. FAR 52.211-5, Material Requirements.

03A Enter the individual line item number for which the offeror proposes to furnish "other than new" (used) material; or reconditioned/remanufactured material; or unused former Government Surplus

property. Enter "ALL" if, and only if, the response to 03B is the same for all line items in your offer. Enter "NA" here and in 03B if the provision is not applicable. (NOTE: If information is being provided for individual line item numbers, segments 03A and 03B should be repeated as many times as necessary.)
_____.

03B Select one of the following codes to describe the material the offeror intends to furnish:_____. If any code other than "NA" is entered, the offeror shall provide a list under separate cover describing such material in accordance with paragraphs (c) or (d) of the cited clause.

ON = Other than new (used)

RI = Reconditioned/Remanufactured Item

SU = New, Unused Government Surplus (If surplus material is offered, offeror must also complete the representation in clause 52.211-9000, *Government* Surplus Material *(Apr 2002)*.
NA = Not applicable

04. FAR 52.219-1, ***Small Business Program Representations/Type of Business***

04a The offeror certifies as part of his offer that it is a _____ business type. (Select only one code from the list below.)

B = Small Business ***Concern*** (Use this code if your firm is a small business concern, as defined in FAR 52.219-1, paragraph (c), ***and no other code below applies.)***

C = Nonprofit Institution. (Use this code if you are a business entity organized and operated exclusively for charitable or scientific purposes, and you are exempt from Federal income taxation under Section 501 of the Internal Revenue Code, as described in FAR 31.701.)

E = Educational Institution. (Use this code if you are an institution of higher education (i.e., college or university) other than a historically black college or university or minority institution.)

F = Historically Black College or University (HBCU). (Use this code if you are a historically black college or university, as defined in FAR 2.101.)

G = JWOD Participating Nonprofit Agency. (Use this code if you are a nonprofit agency-serving people who are blind, or those with other severe disabilities, as defined in FAR 8.701.)

P = Minority Institution. (Use this code if you are a minority institution, other than a historically black college or university, as defined in FAR 2.101.)

X = Intragovernmental. (Use this code if you are a Federal Agency, Government corporation, or other Government agency, such as Federal Prison Industries (UNICOR).)

M = Small Disadvantaged Business ***Concern*** (Use this code if your firm is a small disadvantaged business concern, as defined in FAR 52.219-1(b)(2)).

W = Woman-owned Small Business ***Concern*** (Use this code if your firm is a woman-owned small business ***concern***, as defined in FAR 52.219-1, paragraph (c).)

T = Veteran-Owned Small Business Concern (Use this code if your firm is a veteran-owned small business concern, as defined in FAR 52.219-1, paragraph (c), and code R does not apply.)

R = Service-Disabled Veteran-Owned Small Business Concern (Use this code if your firm is a service-disabled veteran-owned small business concern, as defined in FAR 52.219-1, paragraph (c).)

U = Woman-Owned Small Disadvantaged Business Concern (Use this code if your firm is a both a woman-owned small business and a small disadvantaged business.) See citations for definitions at codes M and W, above.

K = Small Disadvantaged, Service-Disabled Veteran-Owned Small Business Concern (Use this code if your firm is both a small disadvantaged business and a service-disabled veteran-owned small business.) See citations for definitions at codes M and R, above.

L = Small Disadvantaged, Other Veteran-Owned Small Business Concern (Use this code if your firm is both a small disadvantaged business and a veteran-owned small business (but not a service-disabled veteran-owned small business).) See citations for definitions at codes M and T, above.

N = Woman-Owned, Service-Disabled Veteran-Owned Small Business Concern (Use this code if your firm is both a woman-owned small business and a service-disabled veteran-owned small business.) See citations for definitions at codes W and R, above.

V = Woman-Owned, Other Veteran-Owned Small Business Concern (Use this code if your firm is both a woman-owned small business and a veteran-owned small business (but not a service-disabled veteran-owned small business).) See citations for definitions at codes W and T, above.

Y = Woman-Owned, Small Disadvantaged, Service-Disabled Veteran-Owned Small Business Concern (Use this code if your firm is a woman-owned small business, a small disadvantaged business, and a service-disabled veteran-owned small business.) See citations for definitions at codes W, M, and R, above.

Z = Woman-Owned, Small Disadvantaged, Other Veteran-Owned Small Business Concern (Use this code if your firm is a woman-owned small business, a small disadvantaged business, and a veteran-owned small business (but not a service-disabled veteran-owned small business).) See citations for definitions at codes W, M, and T, above.

A = Large Business (Use this code if your firm is not included in any of

the above categories.)

04B HUBZone Small Business Concern. Enter "Y" to represent that your firm is a HUBZone small business concern whose name appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and as described in paragraph (c) of FAR 52.219-3 (Notice of Total HUBZone Set-Aside). Otherwise, enter "N." _____.___

04C The offeror makes the following representation regarding its joint venture status:_____. If any code other than "NA" is entered, the offeror shall provide under separate cover a list of the names of participating HUBZone small business concerns.

JV = "Y" is entered in 04B, the offeror is a joint venture that complies with the requirements of 13 CFR Part 126, and the offeror's representation provided by entry of the "Y" in 04B is accurate for the HUBZone small business concern(s) participating in the joint venture. [Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.]

JN = "Y" is entered in 04B, but the offeror is not a joint venture within the requirements of 13 CFR Part 126.

NA = Not applicable. (Use this code if "N" has been entered in 04B.)

04D If 04A, above, contains a code other than "M," "U," "K," "L," "Y," or "Z," insert "NA" on the blank line. If 04A contains any of these codes, the offeror shall identify the category on which its small disadvantaged business status is based:_____. (Applies to offers exceeding $25,000.)

BA = Black American.

HA = Hispanic American.

AI = Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

AP = Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

SC = Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

SD = Small disadvantaged individual/concern, based on other than one of the preceding.

NA = Not applicable (04A contains a "B," "W," "T," "R,", "N," or "V").

05. FAR 52.222-22, Previous Contracts and Compliance Reports (Applies to offers exceeding $10,000 when FAR 52.222-26 applies.)

05A (Completion of segment 05A also serves as the offeror's representation that it will obtain, prior to subcontract awards, representations signed by proposed subcontractors indicating submission of required compliance reports.) Select one code from the following list that identifies the offeror's submission of required compliance reports:_____.

Y4 = Has participated in a previous contract subject to applicable Equal Opportunity coverage, and filed all required compliance reports.

Y5 = Has participated in a previous contract subject to applicable Equal Opportunity coverage, and has not filed all required compliance reports.

N4 = Has not participated in a previous contract requiring compliance reports.

NA = Not applicable.

06. FAR 52.222-25, Affirmative Action Compliance. (Applies to offers exceeding $10,000 when FAR 52.222-26 applies.)

06A The offeror represents as part of its offer that (select one code from the following list):_____.

Y6 = The offeror has developed and has on file required affirmative action programs.

N6 = The offeror has not developed and does not have on file required affirmative action programs.

NH = The offeror has not had previous contracts subject to the written affirmative action program requirements.

NA = Not applicable.

07. FAR 52.223-3, Hazardous Material Identification and Material Safety Data; DFARS 252.223-7001, Hazard Warning Labels; DLAD 52.223-9000, Material Safety Data Sheets and Hazard Warning Labels. (Completion of segment 07 serves as the offeror's representation that it will submit for each item as required prior to award, a Material Safety Data Sheet (MSDS) prepared in accordance with paragraph (a)(2) of the cited DLAD clause and a copy of the Hazard Warning Label, in accordance with referenced Hazard Communication Standard, Federal Standard, and any other requirement contained in the cited clauses.)

07A Enter the individual line item number for which the labeling/MSDS requirements described above apply. Enter "ALL" if, and only if, the response to 07B is the same for all line items in your offer. Enter "NA" if the provisions are not applicable. (NOTE: If information is being provided for individual line item numbers, segments 07A and 07B should be repeated as many times as necessary.) _____.

07B Select the code that indicates whether hazardous material(s) will be supplied:_____. If code Y7 is entered, in addition to the MSDS(s) and Hazard Warning Label(s), the offeror must provide under separate cover a list, in accordance with paragraph (b) of the cited FAR clause, of hazardous materials intended to be furnished. Also on that list, the offeror shall indicate the statute in accordance with which each such hazardous material will be labeled. (See paragraph (c) of the cited DFARS clause.)

Y7 = The offeror proposes to furnish hazardous material.
N7 = Hazardous material will not be furnished.

08. DFARS 252.225-7000, Buy American Act - Balance of Payments Program Certificate (applies only if the contract amount is expected to exceed $2,500 and DFARS 252.225-7001 is included in the solicitation); and DFARS 252.225-7035, Buy American Act - North American Free Trade Agreement Implementation Act - Balance of Payments Program Certificate. (Applies only if the contract amount is expected to exceed $25,000 and DFARS 252.225-7036 or its Alternate I is included in the solicitation.) [Either or both of these clauses may serve as the basis for this requirement.]

08A Select one of the following: .

Y8 = The offeror certifies that each end product is a domestic end product, and that components of unknown origin are considered to have been mined, produced, or manufactured outside the United

States or a qualifying country.

N8 = The offeror certifies that not all end products are domestic end products, and further certifies the identification of every non-domestic end product and its country of origin as provided in paragraphs 09 and 10, below.

NA= Not applicable.

09. DFARS 252.225-7000, Buy American Act - Balance of Payments Program Certificate. (Applies only if the contract amount is expected to exceed $2,500 and DFARS 252.225-7001 is included in the solicitation.)

09A Enter the individual line item number of any end product that is not a domestic end product. Enter "ALL" if, and only if, the responses to 09B and 09C are the same for all line items in your offer. Enter "NA" if the response to 08A is coded "Y8," or if the provision is not applicable. (NOTE: If information is being provided for individual line item numbers, segments 09A through 09C should be repeated as many times as necessary.)

09B The offeror certifies that the end product identified in 09A, above, is a (select one code from the list below): .

QE = Qualifying Country End Product.
NQ = Non-qualifying Country End Product.
NA = Not applicable. (Insert "NA" if the response to 09A is coded "NA," or if the provision is otherwise inapplicable.)

09C The offeror certifies that the country of origin of the end product identified in 09A, above, is as follows. (Select one of the codes below for a Qualifying Country end product; enter the name of a nonqualifying country; otherwise, enter "NA" if the response to 09A is coded "NA," or if the provision is otherwise inapplicable.)_____.

AS = Australia
BE = Belgium
CA = Canada
DA = Denmark
EG = Egypt
GE = Federal Republic Germany
FR = France
GR = Greece
IS = Israel
IT = Italy
LU = Luxembourg
NL = Netherlands
NO = Norway
PO = Portugal
SP = Spain
TU = Turkey
UK = United Kingdom of Great Britain and Northern Ireland
AU = Austria
FI = Finland
SW = Sweden
SZ = Switzerland

10. DFARS 252.225-7035, Buy American Act - North American Free Trade Agreement Implementation Act - Balance of Payments Program Certificate. (Applies only if the contract amount is expected to exceed $25,000 and DFARS 252.225-7036 or its Alternate I is included in the solicitation.)

10A Enter the individual line item number of any end product that is not a domestic end product. Enter "ALL" if, and only if, the responses to 10B and 10C are the same for all line items in your offer. Enter "NA" if the response to 08A is coded "Y8," or if the provision is not applicable. (NOTE: If information is being provided for individual line item numbers, segments 10A through 10C should be repeated as many times as necessary.) .

10B The offeror certifies that the end product identified in 10A, above, is a (select one code from the list below): .

QE = Is a qualifying Country (except Canada) End Product.
NE = Is a NAFTA Country End Product (applies to acquisitions from Canada for $25,000 or more, and from Mexico for $***56,190*** or more).
NN = Is an other Non-NAFTA Country End Product.
NA = Not applicable (Insert "NA" if the response to 10A is coded "NA," or if the provision is otherwise inapplicable.)

10C The offeror certifies that the country of origin of the end product identified in 10A, above, is as follows. (Select one of the codes below for a Qualifying Country, U.S.-made, or NAFTA end product; enter the name of a nonqualifying country; otherwise, enter "NA" if the response to 10A is coded "NA," or if the provision is otherwise inapplicable.)
_____.

AS = Australia
BE = Belgium
CA = Canada
DA = Denmark
EG = Egypt
GE = Federal Republic Germany
FR = France
GR = Greece
IS = Israel
IT = Italy
LU = Luxembourg
MX = Mexico
NL = Netherlands
NO = Norway
PO = Portugal
SP = Spain
TU = Turkey
UK = United Kingdom of Britain and Northern Ireland
AU = Austria
FI = Finland
SW =Sweden
SZ = Switzerland

11.[A220] DLAD 52.217-9002, Conditions for Evaluation and Acceptance of Offers for Part Numbered Items. (In addition to providing the information required in 12A, 12B, 12C, 13A, 13B, 13C, 13D, and 13E, below, the offeror shall provide the manufacturer's name and part number in the appropriate segment of this transaction. ***"Exact product," "alternate product," "superceding part number" and "previously-approved product" are defined in 52.217-9002.***)

11A Enter the individual line item number for which the offeror intends to provide the exact product (including manufacturer's name, cage code and part number) referred to in the ***acquisition identification*** description (***A***ID) of this solicitation. Enter "ALL" if the exact product(s) as specified in the solicitation will be provided for all line items in your offer. Enter "NONE" if only alternate products ***to the products referred to in the AID of this solicitation*** will be provided for all line items. Enter "NA" if the solicitation does not pertain to part-numbered items. (NOTE: If information is being provided for individual line item numbers, segments 12A, 12B and 12C should be repeated as many times as necessary.)_____.

11B If 11A contains an entry other than “None” or “NA”, enter the CAGE Code which pertains to the exact AID part number being offered. Enter “NA” if the solicitation does not pertain to part-numbered items. Enter “None” if an alternate product ***to the product referred to in the AID of this solicitation*** is being offered._____

11C If 11A contains an entry other than “None” or “NA”, enter the exact ***A***ID part number which pertains to the item being offered. Enter “NA” if the solicitation does not pertain to part-numbered items. Enter “None” if an alternate product ***to the product referred to in the AID of this solicitation*** is being offered._____.

12. DLAD 52.217-9002, Conditions for Evaluation and Acceptance of Offers for Part Numbered Items. (***See instructions in parentheses at 11.*** above.)

12A Enter the individual line item number for which the offeror intends to provide an alternate product to the product referred to in ***the AID*** of this solicitation. Enter "ALL" if alternate products to the product referred to in ***the AID*** will be provided for all line items in your offer. Enter "NONE" if only the exact product(s) will be provided for all line items. Enter "NA" if the solicitation does not pertain to part-numbered items. (NOTE: If information is being provided for individual line item numbers, segments 13A through 13E should be repeated as many times as necessary.) _____.

12B If 12A contains an entry other than "NONE" or "NA", and if the alternate product specified has been previously furnished to the Government or otherwise evaluated and approved, enter the contract or solicitation number under which it was furnished or approved. If the alternate product has been previously approved outside of a solicitation/contract process, enter the name of the approving authority. Enter "NF" if the alternate product has not previously been furnished and approved. Enter “NONE” if the exact product is being offered. Enter "NA" if the solicitation does not pertain to part-numbered items. _____.

12C If 12A contains an entry other than "NONE" or "NA," enter the CAGE code which pertains to the part number being offered. Enter “NONE” if the exact product is being offered. Enter "NA" if the solicitation does not pertain to part-numbered items. _____.

12D If 12A contains an entry other than “NONE” or “NA”, enter the part number which pertains to the item being offered. Enter “NONE” if the exact product is being offered. Enter “NA” if the solicitation does not pertain to part-numbered items. _____.

12E If 12A contains an entry other than “NONE” or “NA”, enter “AB” if you are offering an alternate product that has not been previously approved ***(this includes a previously reverse-engineered product that is not currently cited in the AID)***, “PA” if this is a previously approved alternate product, or “SN” if this is a part number that supersedes the part number cited in ***the AID*** of the solicitation. Enter “NONE” if the exact product is being offered. Enter “NA” if the solicitation does not pertain to part-numbered items _____.

NOTE: For each alternate ***product to the product referred to in the AID of this solicitation,*** the offeror must ***furnish the*** drawings, specifications, and other data required by ***52.217-9002***. In addition, for items that have previously been reverse-engineered ***but are not currently cited in the AID***, the offeror must provide with this offer the data package and other requirements established in paragraph (***c)(2***) of ***52.217-9002***.

13[f221]. DLAD 52.233-9001, Disputes: Agreement to Use Alternative Disputes Resolution (ADR).

13A. Select one of the following codes to indicate the offeror’s position regarding the acceptability of this ADR clause:_____(enter code here).
.....
..... A = The offeror accepts the clause
..... B = The offeror opts out of this clause and does not desire to negotiate alternate wording

14[A222]. ***FAR 52.222-18 Certification Regarding Knowledge of Child Labor for Listed End Products.***

14A. Select one of the following codes to indicate the offeror’s furnishing of any end product listed at http://www.dol.gov/ilab/regs/eo13126/main.htm :_____.

“Y15” The offeror will not supply any end product from the list provided above, that was mined, produced, or manufactured in a corresponding country as listed for that end product.

“M15” The offeror may supply an end product from the list provided above. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture such end product. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(End of provision)

52.213-9005 SRweb Quoting Information

[A223]

As prescribed in DLAD 13.106-1(90), insert the following provision in solicitations:

SRweb Quoting Information (Sep 02) - DLAD

(a) SOLICITATIONS ON SRWEB: This provision applies to all Requests for Quotations (RFQs) that are posted on SRweb (Solicitation and Response web).

(b) SUBMISSION OF QUOTES: Quotes, and any revisions, must be submitted electronically on SRweb at www.dla.mil/bsmweb ***prior to the solicitation return date and time for all Requests for Quotations (RFQs) posted on SRweb. Quotes received by other means, such as fax, email, or US mail, will not be considered for award.***

(c) RETURN DATE AND TIME: If no time is specified in the solicitation, the time for receipt of quotes is 5:00 P.M. Eastern Time on the Return date.

(d) HOW INTERRUPTIONS AFFECT RETURN TIME AND DATE: If an emergency or unanticipated event interrupts normal Government processes so that quotes cannot be submitted on SRweb at the close of a solicitation, the return date/time will be extended. Notice of the extension will be provided on the SRweb home page. A vendor’s inability to submit a quote caused by failure of a vendor’s hardware, software, Internet Service Provider, or the World Wide Web itself, is not cause for extension of a solicitation.

(e) LATE QUOTES: Quoting is not available on SRweb after the solicitation return date/time; therefore, “late” quotes will not be considered for award.

(f) QUOTE REVISIONS: Quotes may be revised on SRweb prior to the solicitation return date/time by using the SRweb submitted quote search and clicking the edit button. Quote revisions will overlay previously submitted quotes on the same solicitation in the Government database.

(g) REQUOTE ON SOLICITATION AMENDMENTS: When a solicitation is amended, any vendor who previously submitted a quote will receive an email notification that the solicitation has been amended. In order to be considered for award the vendor must requote on the solicitation amendment. Quotes submitted prior to the amendment will not be considered for award.

(h) QUOTE WITHDRAWAL: Quotes may be withdrawn prior to the return date/time by using the SRweb "submitted quote" search and clicking the "delete quote" button. After the return date/time has passed, vendors must contact the buyer to withdraw their quote(s).

(i) FAST AWARD SOLICITATIONS: A Fast Award icon on the SRweb "search results" screen identifies Fast Award Solicitations. These solicitations may be awarded prior to the solicitation return date/time. Commencing at 5:00 P.M. seven calendar [A224]*days after the issue date, and continuing every day thereafter at 5:00 P.M. until the return date, all quotes will be evaluated by DLA's automated evaluation program (OEweb) for an early award. Therefore, quotes should be submitted as soon as possible on Fast Award Solicitations. NOTE: Award will not be made prior to the return date/time on solicitations that have not been designated as Fast Award Solicitations without a documented urgency.*

(j) AUCTION SOLICITATIONS: A gavel icon on the SRweb "search results" screen identifies Auction Solicitations. Prices and other factors that could affect price evaluation (inspection and acceptance point, surplus, Buy American) are publicly displayed for all bids without exception (note: large business quotes above $2500 are not displayed on auction solicitations set-aside for small business). Bidders remain anonymous and have the opportunity to lower their quotes up until the auction closes (the return date/time) in the hope of receiving the award. For additional help on auctions solicitations, refer to the SRweb User's Guide located on left sidebar under SRweb links titled "help".

(End of Provision)

52.213-9006 OEweb Evaluation Information

[A225]

As prescribed in DLAD 13.106-2(b)(91), insert the following provision in solicitations:

OEweb Evaluation Information (Feb 03[A226]*) - DLAD*

(a) AUTOMATED EVALUATION: All solicitations beginning with "SPE" are candidates for award under DLA's automated evaluation program called OEweb (Offer Evaluation web). The program uses price logic and other automated filters to make fully automated and buyer assisted automated awards $100,000 or less. A purchase order beginning with "SPE" denotes an order issued by the automated evaluation program.

The automated evaluation only considers "qualified quotes" for award. Qualified quotes are in exact compliance with the solicitation requirements (bid type equal to "bid without exception"), and are submitted on SRweb. "Qualified quotes" must be all or none.

(1) The following are not, by themselves, considered exceptions to the solicitation requirements and will not make a quote ineligible for an award:
(i) Quoting delivery different than the required delivery days;
(ii) Quoting origin inspection on solicitations requiring destination inspection;
(iii) Quoting a superceding or previously approved part on an item described by manufacturer's CAGE and part number;
(iv) Quoting other than a domestic end product on an unrestricted solicitation;
(v) Quoting a hazardous item; and
(vi) Quoting a surplus item.

(2) The following are considered exceptions to the solicitation requirements and will make a quote ineligible for an automated award:
(i) Quoting an alternate product or otherwise taking exception to the solicitation's item description;
(ii) Exceptions to packaging requirements;
(iii) Exceptions to FOB terms;
(iv) Quoting destination inspection on a solicitation requiring origin inspection;
(v) Exceptions to required quantity.

(b) AUTOMATED EVALUATION FACTORS: The automated evaluation program evaluates all qualified quotes and does not consider quantity price breaks. Price evaluation factors are added to the total quoted price in the following instances:

(1) $250 for quoting origin inspection when the Government's requirement is for destination inspection (see DLAD 52.213-9001);

(2) $200 for quoting surplus material on non-critical items; $700 for quoting surplus material on critical items (see DLAD 52.211-9003);

(3) The Buy American Act (BAA) places restrictions on the purchase of supplies that are not domestic end products. As such, vendor offers may be subject to the application of a 50% price evaluation factor. Offerors should consult the appropriate clause in Section I of this solicitation for applicability. Note that the BAA does not apply to any procurement whose total value is less than or equal to $2500;

(4) A delivery evaluation factor (DEF), if specified in any DEF provision/clause in this solicitation.

(c) TIE QUOTES: If prices are tied, qualified quotes offering a domestic end product will receive the award over a quote offering a non-qualifying country end product. If domestic end product quotes are still tied, small businesses are selected over large businesses. If prices are tied on small business quotes offering domestic end products, the automated evaluation program selects the qualified quote with the shortest delivery. (If a quote contains different deliveries for multiple line items the automated evaluation program uses the average of the delivery periods.) If prices and delivery are tied, the automated evaluation program uses the first quote in as the tiebreaker.

(d) MANUAL EVALUATION: If there are no qualified quotes, or the automated evaluation program is unable to make an award, the requirement will be evaluated and awarded manually (denoted by an "SPM" in the first three positions of the purchase order procurement identification number).

(e) MANUAL EVALUATION FACTORS: If the requirement is evaluated manually, price, delivery, and past performance will be considered. Delivery evaluation factors (DEF) and automated best value scores (ABVS) may be used, if specified in other solicitation provisions.

(f) ALTERNATE PRODUCTS: For part numbered items, offers of alternate product will not be evaluated for the current procurement. Instead, offerors should submit requests for evaluation of alternate products for future procurements as specified in 52.217-9002 (Section L).

(End of Provision)

52.214•9001 Schedule••firm fixed price & fixed price with economic price adjustment.
As prescribed in 14.201•2(b)(90) and ***15.204•2(b)(90)***, insert the following or similar provision:

SCHEDULE • FIRM FIXED PRICE & FIXED PRICE WITH ECONOMIC PRICE ADJUSTMENT (JULY 1996) • DLAD

For the following items, the base unit price (before any economic price adjustment (EPA)), is comprised of two portions:

(1) a portion subject to adjustment under the EPA clause of this contract, plus

(2) the (remaining) firm fixed price portion (for which separate pricing is permitted for option periods) pursuant to the clause of this contract entitled, "OPTION TO EXTEND THE TERM OF THE CONTRACT • SEPARATE FIRM FIXED PRICE & FIXED PRICE WITH ECONOMIC PRICE ADJUSTMENT PORTIONS".

Clin _____

Firm fixed priced portion	$_____
Portion subject to EPA	+_____
Total base period unit price (sum of two)	$_____

[Note]

(End of provision)

[Note: When circumstances warrant, e.g., a substantial number of items is involved, the contracting officer may elect to repeat this clin price buildup in the schedule to incorporate the firm fixed price portion of each option period price, in lieu of adding the table to paragraph (c)(2) of the clause at 52.217•9001 to record this information].

52.214•9002 Trade discounts.

As prescribed in 14.201•5(c)(90) and ***15.204•5(c)(90)***, a provision substantially as follows may be inserted:

TRADE DISCOUNTS (JUN 1983) • DLAD

Trade discounts offered will be considered in evaluating offers for award. Offerors who desire to do so may quote customary terms of discount for prompt payment in addition to any trade or special discount available to the Government, provided such discounts are stated separately in their offers. Unless such trade or special discounts offered are separately stated, the offeror agrees that, when the discount offered exceeds 2 percent, the entire discount will be considered as a trade or special discount which will not be treated as a discount for prompt payment and will be considered in evaluating offers for award.

(End of provision)

52.214•9003 Right to apply f.o.b. origin offer.

As prescribed in 14.201•5(c)(91), a provision substantially the same as follows may be inserted in invitations for bids:

RIGHT TO APPLY F.O.B. ORIGIN OFFER (OCT 1982) • DLAD

Unless otherwise specified by the bidder, the Government may apply an f.o.b. origin offer against any f.o.b. origin item or subitem for the same product or supplies.

(End of provision)

52.214•9004 Subcontracting to other industrial preparedness planned producers.

As prescribed in 14.201•3(90) and 15.204-3[f227], insert the following clause:

SUBCONTRACTING TO OTHER INDUSTRIAL PREPAREDNESS PLANNED PRODUCERS (APR 1985) • DLAD

(a) This contract is being awarded under the authority of FAR 6.302•3 (10 U.S.C. 2304(c)(3)) for the purpose of maintaining vital facilities or suppliers in business or making them available in the event of a national emergency. Accordingly, competition is being limited for the current acquisition to those offerors with whom industrial preparedness agreements exist, or who agree to enter into industrial preparedness agreements under the Department of Defense Industrial Preparedness Program.

(b) The contractor agrees that it will not subcontract manufacturing of the deliverable end product under this contract to other firms which themselves are industrial preparedness producers for the end product. This does not preclude subcontracting for components for which subcontractors have entered into separate industrial preparedness agreements with the Department of Defense.

(End of clause)

52.215•9001 Evaluation factor for preaward survey.

As prescribed in 13.106-90(b), 14.201•8(a)(91), and ***15.304(c)(95),*** insert the following provision:

EVALUATION FACTOR FOR PREAWARD SURVEY (MARCH 1994) • DLAD

(a) Although a majority of awards are made without the necessity of conducting a preaward survey (PAS) of the proposed awardee, such a survey may be required to be conducted of those offerors listed in (1) through (5) below as follows. Firms or individuals that have:

(1) Been listed on the GSA List of Parties Excluded from Federal Procurement Programs within the past * from the date of solicitation opening or closing; or

(2) Undergone reorganization under bankruptcy laws within the past * from the date of solicitation opening or closing, or are currently undergoing such reorganization; or

(3) Been included on the Defense Logistics Agency (DLA) Contractor Alert List (CAL), or are otherwise known to the contracting officer to have a poor or marginal performance history; or

(4) Within the past * received a negative PAS for an item within the same Federal Supply Class (FSC) as the item of supply, or for the same or similar service required under this solicitation; or

(5) Failed to liquidate indebtedness to DLA, to the following extent:
** .

(b) As a consequence of the Government's cost incurrence associated with conducting a PAS, for purposes of determining the present responsibility of any offeror described in (a)(1) through (5) above and to ascertain the most advantageous offer received, price and other factors considered, the amount of $369, which is the average amount of the direct costs of performing the PAS, shall be added as an evaluation factor to such offeror's total offered price.

(c) Nothing in this provision affects the right of the Government to perform or not to perform a preaward survey on any offeror.

* Insert applicable time period in accordance with ***15.304(c)(95)(A), (B) and (D).***

** Insert the extent of indebtedness that applies in accordance with ***15.304(c)(95)(E).***

(End of provision)

52.215•9002 Socioeconomic proposal.

As prescribed in ***15.304(c)(4)(B***), insert the following or similar provision:

SOCIOECONOMIC PROPOSAL (MAR 1996) • DLAD

In addition to any subcontracting plan required by the clause 52.219•9:

(i) Provide a description of the efforts your company will make to assure that small, small disadvantaged, and women•owned small business concerns will have equal opportunity to compete for subcontracts under any resulting contract. Describe your current and planned proposed range of services, supplies, and any other support that will be provided to you by small, small disadvantaged, and women•owned small business concerns. Include specific names of subcontractors to the extent they are known.

(ii) Describe any future plans your company has for developing additional subcontracting opportunities for small, small disadvantaged and women•owned small business concerns during the contract period.

(iii) Specify what proportion of your proposal, as a percentage of dollars, will be subcontracted to small, small disadvantaged and women•owned small businesses.

(iv) Specify what type of performance data you will accumulate and provide to the Contracting Officer regarding your support of small, small disadvantaged and women•owned small businesses during the period of contract performance. Provide the name and title of the individual principally responsible for ensuring company support to such firms.

(End of provision)

52.215•9003 Socioeconomic support evaluation.

As prescribed in ***15.304(c)(4)(B)***, insert the following or similar provision:

SOCIOECONOMIC EVALUATION (OCT 1996) • DLAD

The Socioeconomic Proposal provided by the offeror under 52.215•9002 will be evaluated on a comparative basis among all offerors. An offeror that proposes a higher percentage, complexity level, and variety of participation by small, small disadvantaged and women•owned small businesses combined, generally will receive a higher rating on this factor. An offeror's efforts to develop additional opportunities for small, small disadvantaged and women•owned small businesses will also be comparatively evaluated with the proposals of other offerors. Offerors' proposals for socioeconomic support will be made a part of any resulting contract for use in determining how well the contractor has adhered to its socioeconomic plan. This plan will be monitored by the cognizant Defense Contract Management Agency's small business office as a means of assisting the contracting officer in determining how well the contractor has in fact performed. This determination will then be used as a consideration prior to option exercise and future source selection decisions. Performance on prior contracts in subcontracting with and assisting small, small disadvantaged, and women-owned small businesses will be part of past performance evaluation.

(End of provision)

52.215-9004 Javits-Wagner-O'Day Act Entity Proposal.

As prescribed in 15.304(c)(91)(ii), insert the following or similar provision:

JAVITS-WAGNER-O'DAY ACT ENTITY PROPOSAL (DEC 1997) - DLAD

(a) Provide a description of the efforts your company will make to assure that Javits-Wagner-O'Day Act (JWOD) qualified nonprofit agencies for the blind or other severely disabled will have equal opportunity to compete for subcontracts under any resulting contract. Describe your current and proposed range of services, supplies, and any other support that will be provided to you by JWOD concerns. Include specific names of such subcontractors, to the extent they are known.

(b) Describe any future plans your company has for developing additional subcontracting possibilities for JWOD entities, or ways in which these entities could be partnered with other businesses and agencies in opportunities to diversify revenue production, during the contract period.

(c) Specify what proportion of your proposal, as a percentage of dollars, will be subcontracted to JWOD entities.

(d) You shall be required to submit periodic progress reports (no less frequently than annually) to the contracting officer regarding your subcontracting efforts relative to JWOD entities. Specify what type of performance data you will accumulate and provide to the contracting officer regarding your support of JWOD entities during the period of contract performance. Provide the name and title of the individual principally responsible for ensuring company support to such entities (generally, this is the individual responsible for subcontracting with small, small disadvantaged, and women-owned small businesses).

(End of provision)

52.215-9005 Javits-Wagner-O'Day Act Entity Support Evaluation.

As prescribed in 15.304(c)(91)(ii), insert the following or a similar provision:

JAVITS-WAGNER-O'DAY ACT ENTITY SUPPORT EVALUATION (DEC 1997) - DLAD

The Javits-Wagner-O'Day Act (JWOD) Entity Proposal provided by the offeror under 52.215-9004 will be evaluated on a comparative basis among all offerors. An offeror that proposes or demonstrates a higher percentage, complexity level, and variety of participation by JWOD qualified nonprofit agencies for the blind or other severely disabled as subcontractors beyond those items for which JWOD entities are the mandatory source generally will receive a higher rating on this factor during the source selection process. Offerors' proposals for such support will be made a part of any resulting contract for use in determining how well the contractor has adhered to its plan. This plan will be monitored by the cognizant Defense Contract Management Agency activity as a means of assisting the contracting officer in determining how well the contractor has in fact performed. This determination will be one factor used in the placement of orders against multiple-award contracts and/or the exercise of options in the contract's follow-on years (as applicable). Performance on prior contracts in subcontracting with and assisting JWOD entities will be used as an element of past performance evaluation in subsequent source selection decisions.

(End of provision)

52.215-9006 Javits-Wagner-O'Day Act Entity Support - Contractor Reporting.

As prescribed in 15.304(c)(91)(iii), insert the following clause:

JAVITS-WAGNER-O'DAY ACT ENTITY SUPPORT - CONTRACTOR REPORTING (DEC 1997) - DLAD

The contractor shall submit periodic progress reports (no less frequently than annually) to the contracting officer regarding the contractor's subcontracting efforts relative to JWOD entities. There is no standard or prescribed format for this requirement; however, performance data accumulated and reported by the contractor must be as specified in its offer.

(End of clause)

52.216-9000[f228] *Implementation of FAR 52.216-2 Economic Price Adjustment--Standard Supplies.*

Pursuant to 16.203-4(a)(90), insert a clause that is substantially the same as the following clause:

IMPLEMENTATION OF FAR 52.216-2 ECONOMIC PRICE ADJUSTMENT - STANDARD SUPPLIES (JAN 2002) - DLAD

(a) Economic price adjustment (EPA) pursuant to the clause of this contract entitled ECONOMIC PRICE ADJUSTMENT–STANDARD SUPPLIES (FAR 52.216-2), shall be determined as implemented herein.

(b) EPA is limited to changes in the established price for the Contract Line Item Number (CLIN) listed below. The offeror shall report the item name, its part number and current established price (as defined in paragraph (a) of the aforementioned EPA clause), its unit of measure and FOB location, shall identify the name, source and date of the document containing such price, and shall attach to its offer, a copy of the pages from such document identifying the item and its price:

_____(Note1)

(c) In the event the price cited in (b) is an established market price which the contracting officer determines consistently and substantially fails to reflect market conditions, the contracting officer may modify the contract to specify use of an appropriate substitute market price, effective on the date such market price specified in the contract begins to consistently and substantially fail to reflect market conditions.

(d) The Contractor shall include with the final invoice, a statement that the Contractor has not experienced a decrease in the unit price for the item listed herein, or a statement that it has given notice of all such decreases in compliance with the EPA clause.

(End of clause)

Note 1: The contracting officer shall list the CLIN to be subject to EPA, provide for offeror fill-in of its item name, part number, current cost, unit of measure and FOB location for such item, and for the name, source and date of the document containing such price.

52.216-9001[f229] *Implementation of FAR 52.216-3 Economic Price Adjustment--Semistandard Supplies.*

Pursuant to 16.203-4(b)(90), insert a clause that is substantially the same as the following clause:

IMPLEMENTATION OF FAR 52.216-3 ECONOMIC PRICE ADJUSTMENT - SEMISTANDARD SUPPLIES (JAN 2002) - DLAD

(a) Economic price adjustment (EPA) pursuant to the clause of this contract entitled ECONOMIC PRICE ADJUSTMENT–SEMISTANDARD SUPPLIES (FAR 52.216-3), shall be determined as implemented herein.

(b) EPA is limited to changes in the established price for the Contract Line Item Number (CLIN) listed below. The offeror shall report the item name, its part number and current established price (as defined in paragraph (a) of the aforementioned EPA clause), its unit of measure and FOB location, shall identify the name, source and date of the document containing such price, and shall attach to its offer, a copy of the pages from such document identifying the item and its price:

---------- (Note1)

(c) In the event the price cited in (b) is an established market price which the contracting officer determines consistently and substantially fails to reflect market conditions, the contracting officer may modify the contract to specify use of an appropriate substitute market price, effective on the date such market price specified in the contract begins to consistently and substantially fail to reflect market conditions.

(d) The Contractor shall include with the final invoice, a statement that the Contractor has not experienced a decrease in the unit price for the item listed herein, or a statement that it has given notice of all such decreases in compliance with the EPA clause.

(End of clause)

Note 1: The contracting officer shall list the CLIN to be subject to EPA, provide for offeror fill-in of its item name, part number, current cost, unit of measure and FOB location for such item, and for the name, source and date of the document containing such price.

52.216-9002[f230] *Implementation of FAR 52.216-4 Economic Price Adjustment--Labor and Material.*

Pursuant to 16.203-4(c)(90), insert a clause that is substantially the same as the following clause:

IMPLEMENTATION OF FAR 52.216-4 ECONOMIC PRICE ADJUSTMENT - LABOR AND MATERIAL (JAN 2002) - DLAD

(a) Economic price adjustment (EPA) pursuant to the clause of this contract entitled ECONOMIC PRICE ADJUSTMENT–LABOR AND MATERIAL (FAR 52.216-4), shall be determined as implemented herein.

(b) EPA is limited to changes in the contractor's cost relative to the labor category or item of material and the related Contract Line Item Number (CLIN)) listed below. The offeror shall list its current cost per unit of labor and/or materials for such item, shall identify the name, source and date of the document containing such cost, and shall attach to its offer, a copy of the pages from such document identifying the item and its cost:

(Note1)

(c) EPA for the specified cost element relative to each Contract Line Item Number (CLIN) shall be calculated as follows:

(Note2)

(d) The Contractor shall include with the final invoice, a statement that the Contractor has not experienced a decrease in the unit price for the item listed herein, or a statement that it has given notice of all such decreases in compliance with the EPA clause.

(End of clause)

Note 1: For the item to be subject to price adjustment, the contracting officer shall list the CLIN, the specific labor category or item of raw material, purchased part, etc. to be subject to EPA, provide for offeror fill-in of its current cost and unit of measure for such category/item, and for the name, source and date of the document containing such cost.

Note 2: The contracting officer shall identify the quantity and cost (or the dollar percentage) of the item listed in paragraph (b) that is included in CLIN price, along with an explicit description of how an increase, and how a decrease, in such item cost shall be used in calculating any EPA to the CLIN unit price. A sample calculation may be included if deemed beneficial.

52.217•9000 Data pricing, evaluation, and award.

As prescribed in 17.7692, insert the following provision:

EVALUATION AND AWARD (OCT 1982) • DLAD

(a) If the offeror does not indicate a charge for data, the Government will consider and the offeror agrees that the data charge is included in the price of the end item. The Government reserves the right to waive one or more data CLINs in evaluating each offer and in awarding the contract, as the best interests of the Government may require. Each offer will be evaluated on the basis of only those data CLINs required

of that offeror.

(b) Separate awards will not be made for data CLINs.

(End of provision)

52.217•9001 Option to extend the term of the contract • separate firm fixed price & fixed price with economic price adjustment portions.

Pursuant to 17.203(d), insert the following or similar clause:

OPTION TO EXTEND THE TERM OF THE CONTRACT • SEPARATE FIRM FIXED PRICE & FIXED PRICE WITH ECONOMIC PRICE ADJUSTMENT PORTIONS (JULY 1996) DLAD

(a) The Government may extend the term of this contract by written notice to the contractor no later than ____ days prior to the expiration of the contract; provided, that the Government shall give the contractor a preliminary written notice of its intent to extend at least ____ days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option provision. Each exercise of this option, if any, will extend the term of this contract by [number of months, weeks, etc]. The total duration of this contract, including the exercise of any options under this clause, shall not exceed [number of months, weeks, etc].

(c) The offeror agrees to furnish during the option period those items cited in the schedule that are subject to economic price adjustment (EPA), at unit prices made up of two portions:

(1) a portion applicable to the purchase costs of the specific material subject to the EPA, at the dollar value per unit in the award, modified by any adjustment under the EPA of this clause contract, and

(2) the (remaining) firm fixed price portion of the price for the same contract line item, using the applicable amount for each option period [Note] .

(End of Clause)

(Note) Insert herein either:

(1) the words "using the applicable amount cited in the schedule", or (when the contracting officer decides that circumstances warrant, e.g., the award will cover only one or several items),

(2) the additional wording and table quoted below, or similar wording (in lieu of using the provision at 52.214•9001 not only for the basic performance period, but also to identify in the schedule, the firm fixed price portion of the price for each option line item).

"as follows:

ITEM NUMBER	OPTION PERIOD 1	OPTION PERIOD 2	OPTION PERIOD 3	OPTION PERIOD 4"

52.217•9002[A231] Conditions for Evaluation and Acceptance of Offers for Part Numbered Items.

As prescribed in 17.7501(b)(3), insert the following provision:

CONDITIONS FOR EVALUATION AND ACCEPTANCE OF OFFERS FOR PART NUMBERED ITEMS
(***[July] 2002***) • DLAD

(a) The product described ***in the acquisition identification description (AID) of this solicitation*** is that product which the Government has determined to be acceptable. All ***O***fferors ***shall*** indicate below***, or through an alternative means in an electronic quoting system,*** whether they are offering ***an*** "exact product***," an*** "alternate product" ***(which includes a "previously reverse-engineered product"), a "superceding part number," or a "previously-approved product;" and shall*** furnish the data required for whichever is applicable. ***(To determine which type of product to indicate, Offerors must refer to the criteria in subparagraphs (b)-(e) of this provision, respectively.) Any product offered must be either a product cited in the AID; or be physically, mechanically, electrically, and functionally interchangeable with a product cited in the AID, including additional requirements referred to in the AID, if any.***

- Exact Product – Appli***es*** to CLIN(s)***:*** . . . . . .
- Alternate***/Previously Reverse-Engineered*** Product – Appli***es*** to CLIN(s)***:***
- ***Superceding Part Number – Applies to CLIN(s): . . . . . .***
- ***Previously-Approved Product – Applies to CLIN(s): . . . . . .***

(b) ***"Exact product."***

(1) "Exact product" means a product described by the name of an approved source and its corresponding part number, as currently cited in the AID; modified (if necessary) to conform to any additional requirements set forth in the AID; and manufactured by, or under the direction of, that approved source. If an Offeror indicates that an "exact product" is being offered, the Offeror must meet one of the descriptions in subparagraphs (i)-(iv) below. (Any Offeror not meeting one of these descriptions is not considered to be offering "exact product;" even though the item may be manufactured in accordance with the drawings and/or specifications of an approved source currently cited in the AID.)

(i) An approved source currently cited in the AID offering its corresponding part number as cited in the AID;

(ii) A dealer/distributor offering the product of an approved source that meets the description in subparagraph (i) above;

(iii) A manufacturer who (A) produces the offered item under the direction of an approved source currently cited in the AID; and (B) has authorization from that approved source to manufacture the item, identify it as that approved source's name and part number, and sell the item directly to the Government. If requested by the Contracting Officer, the Offeror/Contractor must provide documentation to demonstrate such authorization.

(iv) A dealer/distributor offering the product of a manufacturer that meets the description in subparagraph (iii) above. If requested by the Contracting Officer, the Offeror/Contractor must provide documentation that demonstrates such authorization.

(2) When the AID identifies the item being acquired as a critical safety item (CSI), offers of exact product will be evaluated in accordance with 52.211-9005.

(c) ***"Alternate product."***

(1) The Offeror must indicate that an "alternate product" is being offered if the Offeror is any one of the following:

(i) An Offeror who (A) manufactures the item for an approved source currently cited in the AID; and (B) does not have authorization from that approved source to manufacture the item, identify it as the approved source part number, and sell the item directly to the Government;

(ii) A dealer/distributor offering the product of a manufacturer that meets the description in subparagraph (i) above;

(iii) An Offeror of a previously reverse-engineered product that is not currently cited in the AID; or

(iv) Any other Offeror who does not meet the criteria in subparagraphs (b)(1), (d), or (e) of this provision.

(2) If an alternate product is offered, the *Offeror shall* furnish with its offer legible copies of all drawings, specifications, or other data necessary to clearly describe the characteristics and features of the alternate product being offered. Data submitted *shall* cover design, materials, performance, function, interchangeability, inspection and/or testing criteria, and other characteristics of the offered product. *If* the offered product is to be manufactured in accordance *with data* the *Offeror* has obtained from elsewhere within the Government, the *Offeror* shall either furnish the detailed *data specified* in *this paragraph, or* supply a description of the data package in its possession; i.e., basic data document and revision, the date the data was obtained and from whom (Government agency/activity). If the *Offeror* does not furnish the detailed data with its offer, the *Contracting Officer* will be unable to begin evaluation of the offered product until such time as the detailed data can be obtained from the Government agency/ activity possessing the data. *If the alternate product is a previously reverse-engineered product, the Offeror shall provide: traceability documentation to establish that the offered item represents the item specified in the AID (i.e., invoice from an approved source or submission of samples having markings of an approved source); number of samples that were examined; the process/logic used; raw data (measurements, lab reports, test results) used to prepare drawings or specifications for the offered item; any additional evidence that indicates the reverse-engineered item will function properly in the end item; and any evidence that life cycle/reliability considerations have been analyzed._*

(3) In addition, the Offeror may be required to furnish data describing the "exact product" cited in the AID. The data required from the Offeror depends on the level of technical data describing the exact product, if any, available to the Government. The possible levels of technical data the Government may have and the corresponding data submission requirements for Offerors are identified in subparagraphs (a)-(d) below. For the item(s) being acquired under this solicitation, the level of data in the Government's possession and the corresponding requirements for data submission are identified in the AID; or, if not specified in the AID, are as follows: [buyer insert (a), (b), (c), or (d), as applicable, if AID does not identify]. (If the level of data in the Government's possession and Offeror requirements for data submission are not identified in either the AID or in this subparagraph (c)(3), then subparagraph (a) below applies.)

(a) No data: This Agency has no data available for evaluating the acceptability of alternate products offered. In addition to the data required in subparagraph (c)(2) of this provision, the Offeror must furnish drawings and other data covering the design, materials, etc., of the exact product cited in the AID, sufficient to establish that the Offeror's product is equal to the product cited in the AID.

(b) Adequate proprietary (i.e., limited rights) data: This Agency possesses adequate drawings and/or specifications for the exact product as cited in the AID, but such data are proprietary (i.e., limited rights) and shall be used only for evaluation purposes. The Offeror must furnish the data required in subparagraph (c)(2) of this provision, but is not required to submit data on the exact product.

(c) Inadequate data: This Agency does not have adequate data available for evaluating the acceptability of alternate products offered. In addition to the data required in subparagraph (c)(2) of this provision, the Offeror must furnish drawings and other data covering the design, materials, etc., of the exact product cited in the AID, sufficient to establish that the Offeror's product is equal to the product cited in the AID.

(d) Adequate catalog data: This is a commercial off•the•shelf item. Adequate catalog data are available at the contracting office to evaluate alternate offers. In addition to the data required in subparagraph (c)(2) of this provision, the Offeror must furnish with its offer a commercially-acceptable cross reference list; or legible copies of all drawings, specifications or other data necessary to clearly describe the characteristics and features of the alternate product being offered, sufficient to establish that the Offeror's product is equal to the product cited in the AID. The Offeror is not required to submit data on the exact product.

(3) Except for indefinite delivery purchase orders (IDPOs), if this solicitation is automated (i.e., if the solicitation number begins with SPE; or begins with SP0 and contains "T" or "U" in the ninth position of the procurement instrument identification number (PIIN)), the Contracting Officer will not evaluate offers of alternate product (which includes offers of previously reverse-engineered product) for the current procurement. Instead, the Offeror shall submit a request to the location below for evaluation of the alternate product's technical acceptability for future procurements of the same item. The request for evaluation shall cite the National Stock Number (NSN) of the exact product and, as identified in this provision, include the applicable level of technical data on the alternate and exact products. All offers of alternate product will be handled in accordance with DLAD 17.7501(b)(4)._

(i) For solicitation numbers beginning with SPE7 or SPE9; or beginning with SP0 and containing "T" or "U" in the ninth position of the PIIN:

Defense Supply Center Columbus
Directorate of Procurement
Alternate Offer Monitor, DSCC-PCA
3990 East Broad Street
Columbus, OH 43216-5000

(ii) For solicitation numbers beginning with SPE4; or beginning with SP0 and containing "T" or "U" in the ninth position of the PIIN:

Defense Supply Center Richmond
Office of the Competition Advocate
ATTN: DSCR-DU
8000 Jefferson Davis Highway
Richmond, VA 23297-5100

(iii) For solicitation numbers beginning with SPE5; or beginning with SP0 and containing "T" or "U" in the ninth position of the PIIN:

Defense Supply Center Philadelphia
Office of the Competition Advocate/General & Industrial
DSCP-PI
700 Robbins Avenue
Philadelphia, PA 19111-5096-

(d) *"Superceding part number."*

(1) The Offeror must indicate that a "superceding part number" is being offered if the offered item otherwise qualifies as an "exact product," except that the part number cited in the AID has been superceded. The Offeror may be requested to furnish data, or provide confirmation through some other means, sufficient to establish that there are no changes in the configuration of the part. However, if such data *are* unavailable, the *Offeror may be required to* furnish technical data as required in paragraph (c) for "alternate products." *(If such data indicate there have been changes in the configuration of the part, the offered item must be identified as an "alternate product.")*

*(2) For solicitation numbers beginning with SPE, any data to be furnished with an offer of a "superceding part number" should be mailed to the buyer at the procuring activity address on the solicitation. (Uploading the information with the quotation, or including it in the "Remarks" section, will make the offer a "bid with exception," causing it not to be evaluated.)_*

(e) *"Previously-approved product."*

(1) If the product offered has previously been furnished to the Government or otherwise previously evaluated and approved, *the Offeror shall* indicate in the space provided below*, or through an alternative*

means in an electronic quoting system, the contract and/or solicitation number under which the product was furnished or approved.
CLIN NR (s)_____have been previously furnished or evaluated and approved under contract/solicitation number _____.
(2) If the product was furnished or evaluated and approved by a contracting activity different from the one issuing this ***solicitation, Offerors*** are advised that ***the Contracting Officer*** may not have access to records of another activity or other information sufficient to reasonably determine the offered product's acceptability. Therefore, ***in order to ensure that adequate data is available for evaluation, Offerors may elect to furnish with their offer*** the information requested by ***sub***paragraph ***(b) or (c) of this provision***, whichever is applicable for the offered ***product***. ***Offerors are advised that if the additional data is not furnished, the Government may not be able to evaluate the offer. (For solicitation numbers beginning with SPE, the information should be mailed to the buyer at the procuring activity address on the solicitation. Uploading the information with the quotation, or including it in the "Remarks" section, will make the offer a "bid with exception," causing it not to be evaluated.)_***

(f) ***For all types of offers ("exact product," "alternate product," "superceding part number," or "previously-approved product"), O***fferor***s shall provide the Contractor and Government Entity (CAGE) Code of the manufacturer and the*** part number being offered ***for each item in the solicitation***.

(g) Failure to furnish adequate data and/or information as prescribed in ***sub***paragraph (b), (c), ***(d)*** or (e) ***of this provision*** (when required ***for the current procurement***) within ***10 business days or less, or as otherwise required by the Contracting Officer or elsewhere in this solicitation, may*** preclude consideration of the offer. ***For automated procurements, it is the responsibility of the Offeror when offering a "superceding part number" or a "previously-approved part number" to ensure that supporting documentation arrives at the contracting activity within 2 business days after the data is requested, or the offer may not be considered.*** The Agency will make every effort to determine, prior to award, the acceptability of the products offered which meet the dollar savings threshold shown below, and/or which have a reasonable chance to receive an award based on price offered. Generally, the Agency will not evaluate alternate offers not meeting the dollar threshold. The savings potential is based on the cost of evaluation ($200.00 if only a local technical evaluation is involved, plus an additional $1,200.00 for each required Engineering Support Activity evaluation). If the Agency determines that an evaluation cannot be completed before the expected contract award date due to urgent requirements for the item, alternate offer***s*** will not be considered for the ***current*** procurement. Instead, they will be evaluated for technical acceptability for future procurements ***of*** the same item***,*** if adequate data is submitted and savings potentials are expected, as stipulated above. For alternate offers not evaluated, the ***O***fferor's complete technical data package will be returned.

(h) If ***O***fferors desire to restrict the Government's use of data submitted for evaluation, the data must bear the appropriate legends as prescribed by FAR 52.215•***1(e)***. In the event an award is made to an ***O***fferor submitting data without the appropriate legend, the Government will have unlimited rights to its use as defined in DFARS 252.227•7013.

(i) ***It is the Government that determines if the documentation or other evidence furnished by an Offeror is adequate to satisfy the requirements in this provision. If the Contracting Officer requests evidence from a Contractor who received an award resulting from this solicitation, and the Contracting Officer subsequently finds the evidence to be unacceptable, the award may be cancelled.***

(End of provision)

52.217•9003 Manufacturing or production information.

As prescribed in 17.7302(f), a provision substantially as follows shall be inserted in negotiated solicitations:

MANUFACTURING OR PRODUCTION INFORMATION (FEB 1996) DLAD

If offers are submitted which fail to provide the actual manufacturing/production source(s) for the item(s) offered, or, if such information is provided but restricted from disclosure (by the inclusion of the FAR 52.215•12 legend or any other proprietary or confidentiality restriction) such offers may be rejected as technically unacceptable. This provision does not apply to commercial items.

(End of provision)

52.217•9004 Reopener Clause • Cost of Specified Direct Materials/Other Direct Cost Item.

The following clause, or as modified, may be used as prescribed in 17.9205:

REOPENER CLAUSE • COST [Note 1] • SPECIFIED [Note 2] ITEM (JAN 1995) • DLAD

(a) At the time the price for this contract was established, the amount of costs anticipated in the performance of this contract could not be established with any reasonable certainty, due to [Note 3] .

(b) To achieve an award in the face of this uncertainty, it was agreed that:

(1) The contract prices for the contract line item numbers (CLINs) designated in (4) below were based in part on [Note 4] ,

(2) The direct cost shown in (1) above was used in determining the amounts identified in (4) below attributable to this contingency, which were included in the contract prices for such CLINs, and which amounts serve as the basis for any price adjustments under this clause.

(3) Within 30 days from [Note 5] , the Contractor shall submit, using SF form 1411, its calculations of the revised CLIN prices identified in (4) below,

(4) Pending such submission, the following contingent amounts for direct costs plus associated indirect costs and profit for the item identified in paragraph (a) were incorporated into the contract unit prices at time of award (basic and any options) for this item:

CLIN #	Amount for Item in CLIN Unit Prices
_____	$ [Note 6]
_____	$ [Note 6]
_____	$ [Note 6]

(c) The Contractor warrants that the CLIN unit prices do not include any other allowance applicable to the cost of the item except as stated in subparagraph (b)(4) above.

(d) Subject to any restrictions of this clause, the price of this contract is subject to adjustment, calculated as exemplified below, at any time during contract performance that the weighted average unit price the Contractor will pay/has paid for the total amount of the item required in the performance of this contract differs from the amount identified in subparagraph (b)(1) above:

(1) Assume:

Weighted average item price/unit included in contract award prices (basic + any options)	= $1.450000
Actual average item price/unit	= $1.305000
Item total amount in CLIN 0001A	= $0.200000
Item total amount in CLIN 0001B	= $0.210000

(2) Calculate actual item unit price reduction:
($1.450000 • $1.305000) = $0.145000

(3) Calculate percent reduction:
($0.145000/$1.450000) = 10.000000%

(4) Calculate reduction in CLIN unit prices:
CLIN 0001A (10.000000% x $0.200000) = $0.020000
CLIN 0001B (10.000000% x $0.210000) = $0.021000

Note: Numbers in all calculations and results shall be rounded off (if 4 or less) or up (if 5 or more) after the sixth decimal place as shown above.

(e) The Contractor shall obtain the Contracting Officer's approval in writing prior to the award on other than a competitive basis of any subcontract or purchase order for any portion of the contract requirements for the item, based on its submission to the Contracting Officer of:

(1) Cost or pricing data (FAR 15.***401***), and a Certificate of Current Cost or Pricing Data (FAR 15.***406-2***) submitted by the prospective Subcontractor and Contractor, unless ***excepted*** pursuant to FAR 15.***403-1***.

(2) The Contractor's analysis of the Subcontractor's proposal,

(3) A memorandum detailing the principal elements, considerations, and results of negotiations of a tentative price with the prospective Subcontractor,

(4) A request for approval of the planned subcontract award.

(f) Promptly upon initial placement and any subsequent revision of subcontracts/purchase orders for the item requirements of this contract, the Contractor shall furnish a copy of such documents to the Contracting Officer, along with its calculation of any initial (downward only) or subsequent (upward or downward) price adjustment required by this clause and any other data required by the Contracting Officer to verify the item cost.

(g) Any initial price adjustment (downward only) is subject to further adjustment (upward or downward) pursuant to paragraph (f) in the event of changes in the total weighted average price actually paid by the Contractor for the quantity of the item required in the performance of this contract, except that in no event shall a weighted average item unit cost exceeding that cited in paragraph (a) be utilized in adjustments pursuant to this clause.

(h) Promptly upon contract completion, the Contractor shall furnish the Contracting Officer a copy of vendor invoices covering the total amount of the item utilized in the performance of this contract, any contract price recalculation required by this clause, and any other data required by the Contracting Officer to verify the final weighted average actual item cost under this contract.

(i) Should the Contractor fail to submit any information required by this clause or if there is no agreement on any adjustment hereunder, the Contracting Officer may make a unilateral determination and modify the contract accordingly. Failure to agree with such change in the contract price shall be resolved in accordance with the Disputes clause of this contract.

(j) The Contractor shall include a statement on the final invoice that all price reductions required by this clause are reflected in the cumulative amount invoiced under this contract.

(End of Clause)

Note 1: The clause as shown is designed to ultimately allow for a downward only adjustment, normally from the Contractor's proposed cost. As such, the word "DECREASE" would be in the clause title. In the event no restriction is to be placed on the direction of the ultimate adjustment, the following changes are required to the clause:

(1) Title••insert "ADJUSTMENT" vice "DECREASE"

(2) Paragraph (f)••delete "(downward only)"

(3) Paragraph (g)••delete "(downward only)" and balance of sentence beginning with "except that."

Note 2: Complete the title with "DIRECT MATERIALS" or "OTHER DIRECT COST" as applicable.

Note 3: Describe the contingency which caused use of the reopener clause, explain why it occurred, and why it can't be resolved before contract award. For example:

(1) The anticipated delay until November ***200***_ in the Contractor's submission of cost data proposal and evaluation of a planned noncompetitive subcontract for the injector assembly;

(2) The unwillingness of the peanut butter suppliers to furnish firm quotes for deliveries beyond the current 90 day period due to uncertainties in the cost of peanuts arising from the unprecedented drought conditions and resulting shortfall in the peanut crop experienced last year; or,

(3) The potential for a substantial change in the Government's total requirements under this indefinite delivery contract, which determines the incremental premium amount the Contractor must pay for product liability insurance.

Note 4: Enter a description of the item or service to be provided, its unit price and terms, define it for purposes of this clause as "the item," and include a reference as appropriate to allow identification of the source of the price (e.g., the Contractor's request for quote number or purchase order number and date). Sample wording corresponding to the examples in Note 3 are:

(1) A $4.2 million "not to exceed" budgetary estimate, F.O.B. origin, provided in a 14 March 199 response (reference RFQ 1475885) from the sole source supplier of the injector assembly (hereafter referred to as "the item");

(2) An estimated $1.75 per lb cost based on firm 90•day only quotes averaging $1.4500 per lb, F.O.B. origin, submitted in January ***200***_ by three suppliers RFQ #7979•9101) of peanut butter in 55 gallon drums (hereafter referred to as "the item");

(3) An annual premium of $5.00 per unit for product liability insurance (hereafter referred to as "the Item") from the Contractor's current insurance policy (#895545•501), which is subject to a reduction to $4.75 per unit after the first two million deliveries, and $4.25 after sales of four million units.

(Since a vendor name may be considered to be confidential by the Contractor, it should not be incorporated into a reopener clause or otherwise included in the contract.)

Note 5: Insert an appropriate description of the date for determining when submission of the reopener proposal is required, such as "contract award."

Note 6: Enter the total dollar value/CLIN unit price subject to downward adjustment. These amounts should be reached through preaward discussions/negotiations and agreement with the contractor on how this amount was calculated. It is suggested a schedule of calculations as exemplified below be prepared for each affected CLIN, signed by both parties, and included as an attachment to the price negotiation memorandum.

Absent such agreement, calculations supporting the Contracting Officer's interpretation of negotiations should be incorporated. Since such information may be considered confidential by the Contractor, the details should not be incorporated into a reopener clause or otherwise included in the contract:

Contract Price Calculations (CLIN #):

	FY ***200***	FY ***200***
Purchase Cost/Unit of the Item (a)	$ _____	$ _____
Quantity of Item/Unit of CLIN (b)	_____	_____
Item Cost/Unit of CLIN (a x b)	$ _____	$ _____
Material Overhead (% / %)	_____	_____
Subtotals	$ _____	$ _____
G & A (% / %)	_____	_____
Subtotals	$ _____	$ _____
Subtotals	$ _____	$ _____
Profit (% / %)	_____	_____
Cost of Money • Material (% / %)	_____	_____
Cost of Money • G & A (% / %)	_____	_____
Subtotals (each contractor FY)	$ _____	$ _____
Total Price/Unit of CLIN (Assumes CLIN overlaps two Fys)	$ _____	

52.217•9005 Reopener clause • pending indirect rates proposal.

The following clause, or as modified, may be used as prescribed in 17.9205:

REOPENER CLAUSE • PENDING INDIRECT RATES PROPOSAL (JAN l995) • DLAD

(a) At the time the price for this contract was established, agreement could not be reached on indirect expense rates due to [Note 1] . However, agreement was reached that [Note 2] of the contract price is subject to adjustment in accordance with the provisions of this clause.

(b) Within 30 days from [Note 3] , the Contractor shall submit an indirect cost rate proposal to the cognizant administrative contracting officer. Simultaneously, the Contractor shall submit a supplemental proposal to the procuring Contracting Officer for purposes of adjusting the contract price and option price, whether or not such option has been exercised. The supplemental proposal shall (1) use the methodology, direct costs, and profit indicated in paragraph (a), (2) be supported by cost or pricing data (FAR 15.***401***), and a Certificate of Current Cost or Pricing Data (FAR 15.***406-2***), and (3) include the effect of accounting system changes and contract modifications which may impact the amount of the adjustment. In no event will an upward adjustment result in a finalized contract price which exceeds $.

(c) If determined necessary by the Contracting Officer, the Contractor agrees to commence negotiations concerning the amount of the adjustment within 30 days after receipt of the supplemental proposal by the Government.

(d) Should the Contractor fail to submit the information in paragraph (b), or should there be no agreement as to the amount of the price adjustment contemplated by this clause, then the Contracting Officer may make a unilateral determination and modify the contract accordingly. Failure to agree with such change in the contract price shall be resolved in accordance with the Disputes clause of this contract.

(e) The Contractor warrants that the contract price does not include any other allowance for the indirect rate contingency except as shown above.

(f) Should information after award indicate the amount developed in paragraph (a) may vary significantly from the finalized price, the contract price shall be adjusted downward or upward, subject to the ceiling in paragraph (b), through negotiation.

(End of Clause)

Note 1: Enter a description of why the reopener clause was included in the contract, such as:

(1) Delay in the Contractor's submission of its revised forward pricing rate proposal for fiscal year 200_;

(2) Delay in agreement on rates for this contract, which represents a substantial portion of the Contractor's business base for fiscal year 200_;

(3) Delay in completion of the mandatory IR&D/B&P advance agreement with the Contractor or agreement on the Contractor's corporate allocation for fiscal year ***200***_, and a determination of its impact on projected indirect expense rates; or,

(4) The absence of agreement on the impact on projected indirect expense results of a pending review of the Contractor's corporate allocation for fiscal year ***200***__.

Note 2: Enter the total dollar value subject to downward adjustment. This amount should be reached through discussion and agreement with the Contractor on how this amount was calculated. It is suggested a schedule of calculations as exemplified below be prepared, signed by both parties, and included as an attachment to the price negotiation memorandum. Absent such agreement, calculations supporting the Contracting Officer's interpretation of negotiations should be incorporated. Since such information may be considered confidential by the Contractor, the details should not be incorporated into a reopener clause or otherwise included in the contract:

	FY *200_*	FY *200_*
Indirect Expense Rate Calculations:		
Materials Overhead Pool (a)	$ _____	$ _____
Materials Base (b)	_____	_____
Materials Overhead %	_____	_____
Labor Overhead Pool (c)	_____	_____
Direct Labor Hours Base (d)	_____	_____
Labor Overhead %	_____	_____
Other Direct Costs (e)	_____	_____
G & A Expenses Pool	_____	_____
Total Cost Input Base (a+b+c+d+e)	_____	_____
G&A Expenses %	_____	_____

Contract Price Calculations (CLIN):

	FY *200_*	FY *200_*	
Direct Materials	$ _____	$ _____	
Other Direct Costs	_____	_____	
Material Overhead (% / %)	_____	_____	
Direct Labor Hours (hrs / hrs)		_____	_____
Direct Labor Costs	_____	_____	
Labor Overhead (% / % of D.L. Hrs)	_____	_____	
Subtotals	$ _____	$ _____	
G & A (% / %)	_____	_____	
Subtotals	$ _____	$ _____	
Profit (% / %)	_____	_____	
Cost of Money • Material (% / %)	_____	_____	
Cost of Money • G & A (% / %)		_____	_____
Subtotals (each contractor FY)	$ _____	$ _____	

Total Price $ _____

Note 3: Insert an appropriate description of the date for determining when submission of the reopener proposal is required, such as (1) contract award or (2) establishment of the revised forward pricing rate agreement.

(End of Clause)

52.217-9006 Limitations on Use of Surge and Sustainment (S&S) Investments.
As prescribed in 17.9308(a), insert the following clause in solicitations and contracts.

Limitations on Surge and Sustainment (S&S) Investments (July 1999) - DLAD

The contractor shall limit investment in surge and sustainment (S&S) materials or other S&S capabilities paid for through DLA's industrial preparedness funds in the following ways:
(a) These investments can only be made to meet S&S requirements in support of [f232] ***major theatre warfare or smaller scale contingencies). They cannot be made to meet spikes in peacetime demand, nor to meet peacetime level quantities supplied during a contingency.***

(b) Investments shall not be made when substitute items or alternate manufacturing processes are available.
(c) Investments must be the most cost-effective means of ensuring S&S capability.
(d) Investments shall be made only for raw materials and partially finished parts needed to provide long lead-time items in shorter time frames. Investments in finished parts or in support of items with short lead-times cannot be made.
(e) Only when the level of DLA and MILSVC (when MILSVC customer base is limited) assets related to the specific customer base served under the contract, and commercial inventories and production capacities in the contractor's supplier base are insufficient to meet both peacetime and S&S requirements, should S&S investments in materials be made.
(f) Investments shall not be made for MILSVC-managed items.
(g) S&S investments made shall not be used as safety stock (i.e., to meet peacetime spikes in demand).
(h) The contractor shall not access S&S investments for any purpose other than to support the contingencies indicated in paragraph (a)[f233]***, unless such access has been authorized by the Contracting Officer in writing. Offerors/contractors shall describe any desired access to the S&S investments and consideration offered to the government for this access in their S&S proposals/S&S capability reports. However, written approval from the contracting officer must be provided prior to implementing any proposed access.***

(End of clause)

52.219-9001 [A234]***Set-Asides of Acquisitions*** *of* ***Items*** *Listed in the Schedule of Products Made in Federal Penal and Correctional Institutions.*

As prescribed in 19.502-1(b)(90), insert the following provision:

SET-ASIDES OF ACQUISITIONS *OF* ***ITEMS*** *LISTED IN THE SCHEDULE OF PRODUCTS MADE IN FEDERAL PENAL AND CORRECTIONAL INSTITUTIONS* ***(JUNE 2002) – DLAD***

For items *listed on the Schedule of Products Made in Federal Penal and Correctional Institutions,* ***when a comparability determination leads to a competitive acquisition, set-asides may be used. However, notwithstanding the inclusion of any set-aside provision or clause in this solicitation, FPI shall also be permitted to compete for, and could receive award of, the acquisition.***

(End of provision)

52.219-9002 DLA Mentoring Business Agreements (MBA) Program.

As prescribed in 19.***9007***, insert a provision substantially as follows:

DLA MENTORING BUSINESS AGREEMENTS (MBA) PROGRAM ***(DEC 1997***) DLAD

(a) The offeror is invited to participate in a program whereby small, ***s***mall ***d***isadvantaged, ***and women-owned s***mall ***b***usinesses are afforded the opportunity (through ***the offeror's provision of developmental*** assistance ***in its capacity as*** prime contractor) to participate in the DLA procurement process. (The offeror may ***alternatively*** propose to mentor a Javits-Wagner-O'Day ***(JWOD) Act***-qualified nonprofit agency.) ***In order to participate, the offeror shall submit a proposal outlining the assistance already rendered or to be provided to the protege, as well as the kinds of value-added activity the offeror might expect to receive, in return, from the mentored entity. The offeror-mentor may propose to provide the benefit of its managerial expertise, technical capabilities, market knowledge, etc.; the protege will be expected to provide a specialized service or product, or, potentially, admission into its own market. Participation is entirely voluntary.***

(b) The Government will evaluate the offeror's ***proposal*** for participation in the DLA MBA Program on a comparative basis among all offerors, rather than ***via*** establish***ment of*** an "acceptable" standard. ***The factor is an independent element in the overall award decision;*** the offeror who ***proposes or demonstrates*** the most comprehensive plan for tutoring a protege will receive the highest rating for this evaluation factor ***during the source selection process***. The evaluation will assess the offeror's willingness to assist ***such*** entities in receiving better market shares, ***improving their processes, and generally contributing to their viability*** under long-term contract***ing arrangements.***

(***c) The proposal submitted by the successful offeror will be incorporated into its contract with DLA. The successful offeror will be expected to incorporate the salient points of the evaluated proposal into a written agreement (the MBA) with a protege selected by the offeror. The offeror's performance under the proposal will be monitored by the contracting officer and cognizant small business specialists (from the buying activity and/or the Defense Contract Management Agency) during the contract period. This performance will be one factor used to determine placement of orders against multiple-award contracts and/or exercise of options in the contract's follow-on years (as applicable). It will also be used as an independent evaluation factor, and as an element of past performance evaluation, in subsequent source selection decisions.***

(End of Provision)

52.219-9003 DLA Mentoring Business Agreements (MBA) Performance.

As prescribed in 19.***9007,*** insert a clause substantially as follows:

DLA MENTORING BUSINESS AGREEMENTS (MBA) PERFORMANCE ***(DEC 1997)*** DLAD

(a) The contractor's proposed MBA plan shall become part of this contract upon award. ***The contractor is hereby obligated, as part of its contractual undertaking, to enter into a written, binding mentoring business agreement with a protege based on and reflective of this plan.*** Performance under the MBA plan ***shall*** be evaluated by the contracting officer, and may become a consideration prior to option exercise ***for the follow-on years of long-term contracts.*** MBA plan implementation may also become ***an independent evaluation factor and/or part of the overall*** past performance ***evaluation factor*** in future source-selection decisions.

(b) The contractor-***mentor*** and ***its protege(s***) shall meet semi-annually with ***the*** DLA contracting officer ***and the small business specialist(s) from the buying activity and/or the DCMA component*** to review progress/ ***accomplishments*** under applicable MBA ***proposals. The contractor is also required to submit periodic progress reports (no less frequently than annually) to the contracting officer regarding proposal fulfillment. Any MBA with a protege that has voluntarily been submitted to the Government shall be compared by the contracting officer to the contractor's proposed plan, hereby incorporated into this contract, to ensure that it adequately reflects the mentor's obligations expressed therein.***

(End of clause)

52.219-9004 Small Business Program Representations

As prescribed in 19.***307***(90), insert the following provision:

SMALL BUSINESS PROGRAM REPRESENTATIONS (JUL 1999) - DLAD

(a) In order to facilitate the use of electronic commerce/electronic data interchange while fulfilling the requirements of the small business program, certain socioeconomic information must be provided in a coded, rather than a fill-in format. Because EC/EDI transactions are often reformatted in transmission, the use of these codes will prevent misinterpretation within the system. The recording of unique codes instead of the traditional "x-in-the-box" form of information entry may also preclude potential mistakes in socioeconomic program reporting.

(b) In order to record the representations and certifications contained in FAR provision 52.219-1, Small Business Program Representations, and in accordance with the definitions found therein, the offeror represents and certifies as a part of its offer that it is a _____business type. (The offeror shall select the one code from the following listing which represents the offeror's business type.) The offeror's recording of its business type herein by means of an alpha code replaces the marking of the appropriate boxes in FAR 52.219-1, paragraph (b). The penalties for misrepresentation of business status still apply; see FAR 52.219-1, paragraph (d)(2).

Code B=Small Business. Enter code B if your firm is a small business concern, as defined in FAR 52.219-1, paragraph (c).

Code M=Small Disadvantaged Business. Enter code M if your firm is a small disadvantaged business concern, as defined in ***FAR 52.219-23***, paragraph (a).

Code U=Woman-Owned Small Disadvantaged Business. Enter code U if your firm is a woman-owned business, as defined in FAR 52.219-1, paragraph (c), and a small disadvantaged business, as defined in ***FAR 52.219-23***, paragraph (a).

Code W=Woman-Owned Small Business. Enter Code W if your firm is a woman-owned small business, as defined in FAR 52.219-1, paragraph (***c***).

Code A=Large business. Enter code A if your firm is not included in any of the above categories.

(End of Provision)

52.219-9005[A235] ***Combined Set-Aside Instructions.***

As prescribed in 19.508(90)(a), insert the following clause:

COMBINED SET-ASIDE INSTRUCTIONS (JUN 2002) – DLAD

This solicitation is restricted to small business concerns. All small businesses are encouraged to submit quotes; however, award will be made in the following order of set-aside precedence: (1) very small business concerns (FAR 52.219-5, Alternate II); then, if no qualified quote is received from a very small business concern at a fair market price, (2) HUBZone small business concerns (FAR 52.219-3); then, if no qualified quote is received from a HUBZone at a fair market price, (3) small business concerns (FAR 52.219-6).

Only those firms headquartered in the following Small Business Administration (SBA) districts are eligible for consideration as very small business concerns under this acquisition: Columbus, OH for solicitation numbers beginning with SPE7 or SPE9; Philadelphia, PA for solicitation numbers beginning with SPE5, SPE3, SPE2, or SPE1.

The FAR clauses contained herein (except paragraphs (b) of 52.219-3 and 52.219-5, Alternate II) apply to the solicitation. Only the FAR clause matching the awardee's Small Business Program and Type representation applies to the award.

(End of clause)

52.219-9006 Combined Set-Aside Instructions (Alternate I).

As prescribed in 19.508(90)(b), insert the following clause:

COMBINED SET-ASIDE INSTRUCTIONS (ALTERNATE I) (JUN 2002) - DLAD

This solicitation is restricted to small business concerns. All small businesses are encouraged to submit quotes; however, award will be made in the following order of set-aside precedence: (1) very small business concerns (FAR 52.219-5); then, if no qualified quote is received from a very small business concern at a fair market price, (2) HUBZone small business concerns (FAR 52.219-3); then, if no qualified quote is received from a HUBZone at a fair market price, (3) small business concerns (FAR 52.219-6).

Only those firms headquartered in the following Small Business Administration (SBA) districts are eligible for consideration as very small business concerns under this acquisition: Columbus, OH for solicitation numbers beginning with SPE7 or SPE9; Philadelphia, PA for solicitation numbers beginning with SPE5, SPE3, SPE2, or SPE1.

The FAR clauses contained herein (except paragraphs (b) of 52.219-3 and 52.219-5) apply to the solicitation. Only the FAR clause matching the awardee's Small Business Program and Type representation applies to the award.

(End of clause)

52.219-9007 Combined Set-Aside Instructions (Alternate II).

As prescribed in 19.508(90)(c), insert the following clause:

COMBINED SET-ASIDE INSTRUCTIONS (ALTERNATE II) (JUN 2002) – DLAD

This solicitation is restricted to small business concerns. All small businesses are encouraged to submit quotes; however, award will be made in the following order of set-aside precedence: (1) very small business concerns (FAR 52.219-5, Alternate I): then, if no qualified quote is received from a very small business concern at a fair market price, (2) HUBZone small business concerns (FAR 52.219-3): then, if no qualified quote is received from a HUBZone at a fair market price, (3) small business concerns (FAR 52.219-6 Alternate I).

Only those firms headquartered in the following Small Business Administration (SBA) districts are eligible for consideration as very small business concerns under this acquisition: Columbus, OH for solicitation numbers beginning with SPE7 or SPE9; Philadelphia, PA for solicitation numbers beginning with SPE5, SPE3, SPE2, or SPE1.

The FAR clauses contained herein (except paragraphs (b) of 52.219-3 and 52.219-5, Alternate I) apply to the solicitation. Only the FAR clause matching the awardee's Small Business Program and Type representation

applies to the award.

(End of clause)

52.219-9008 HUBZone Set-Aside Instructions.

As prescribed in 19.508(90)(d), insert the following clause:

HUBZone SET-ASIDE INSTRUCTIONS (JUN 2002) – DLAD

This solicitation is restricted to small business concerns. All small businesses are encouraged to submit quotes; however, award will be made in the following order of set-aside precedence: (1) HUBZone small business concerns (FAR 52.219-3); then, if no qualified quote is received from a HUBZone at a fair market price, (2) small business concerns (FAR 52.219-6). The FAR clauses contained herein (except paragraph (b) of 52.219-3) apply to the solicitation. Only the FAR clause matching the awardee's Small Business Program and Type representation applies to the award.

(End of clause)

52.219-9009 HUBZone Set-Aside Instructions (Alternate I).

As prescribed in 19.508(90)(e), insert the following clause:

HUBZone SET-ASIDE INSTRUCTIONS (ALTERHATE I) (JUN 2002) – DLAD

This solicitation is restricted to small business concerns. All small businesses are encouraged to submit quotes; however, award will be made in the following order of set-aside precedence: (1) HUBZone small business concerns (FAR 52.219-3); then, if no qualified quote is received from a HUBZone at a fair market price, (2) small business concerns (FAR 52.219-6 Alternate I). The FAR clauses contained herein (except paragraph (b) of 52.219-3) apply to the solicitation. Only the FAR clause matching the awardee's Small Business Program and Type representation applies to the award.

(End of clause)

52.219-9010 Very Small Business Set-Aside Instructions.

As prescribed in 19.508(90)(f), insert the following clause:

VERY SMALL BUSINESS SET-ASIDE INSTRUCTIONS (JUN 2002) - DLAD

This solicitation is restricted to small business concerns. All small businesses are encouraged to submit quotes; however, award will be made in the following order of set-aside precedence: (1) very small business concerns (FAR 52.219-5, Alternate II); then, if no qualified quote is received from a very small business concern at a fair market price, (2) small business concerns (FAR 52.219-6).

Only those firms headquartered in the following Small Business Administration (SBA) district are eligible for consideration as very small business concerns under this acquisition: Columbus, OH for solicitation numbers beginning with SPE7 or SPE9; Philadelphia, PA for solicitation numbers beginning with SPE5, SPE3, SPE2, or SPE1.

The FAR clauses contained herein (except paragraph (b) of 52.219-5, Alternate II) apply to the solicitation. Only the FAR clause matching the awardee's Small Business Program and Type representation applies to the award.

(End of clause)

52.219-9011 Very Small Business Set-Aside Instructions (Alternate I).

As prescribed in 19.508(90)(g), insert the following clause:

VERY SMALL BUSINESS SET-ASIDE INSTRUCTIONS (ALTERNATE I) (JUN 2002) – DLAD

This solicitation is restricted to small business concerns. All small businesses are encouraged to submit quotes; however, award will be made in the following order of set-aside precedence: (1) very small business concerns (FAR 52.219-5); then, if no qualified quote is received from a very small business concern at a fair market price, (2) small business concerns (FAR 52.219-6).

Only those firms headquartered in the following Small Business Administration (SBA) district are eligible for consideration as very small business concerns under this acquisition: Columbus, OH for solicitation numbers beginning with SPE7 or SPE9; Philadelphia, PA for solicitation numbers beginning with SPE5, SPE3, SPE2, or SPE1.

The FAR clauses contained herein (except paragraph (b) of 52.219-5) apply to the solicitation. Only the FAR clause matching the awardee's Small Business Program and Type representation applies to the award.

(End of clause)

52.219-9012 Very Small Business Set-Aside Instructions (Alternate II).

As prescribed in 19.508(90)(h), insert the following clause:

VERY SMALL BUSINESS SET-ASIDE INSTRUCTIONS (ALTERNATE II) (JUN 2002) – DLAD

This solicitation is restricted to small business concerns. All small businesses are encouraged to submit quotes; however, award will be made in the following order of set-aside precedence: (1) very small business concerns (FAR 52.219-5, Alternate I); then, if no qualified quote is received from a very small business concern at a fair market price, (2) small business concerns (FAR 52.219-6 Alternate I).

Only those firms headquartered in the following Small Business Administration (SBA) districts are eligible for consideration as very small business concerns under this acquisition: Columbus, OH for solicitation numbers beginning with SPE7 or SPE9; Philadelphia, PA for solicitation numbers beginning with SPE5, SPE3, SPE2, or SPE1.

The FAR clauses contained herein (except paragraph (b) of 52.219-5, Alternate I) apply to the solicitation. Only the FAR clause matching the awardee's Small Business Program and Type representation applies to the

award.

(End of clause)

52.222•9000 Davis•Bacon Act • price adjustment.

As prescribed in 22.103•5, the following clause shall be included in contracts for Installation support and maintenance and repair containing option or multiyear provisions:

DAVIS•BACON ACT • PRICE ADJUSTMENT (NOV 1985) • DLAD

(a) The Contractor warrants that the prices set forth in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The minimum prevailing wage determination, including fringe benefits applied to this contract by operation of law or an amendment to the Davis•Bacon Act of March 1931, as amended (40 U.S.C. 267A), current at the beginning of each renewal option period or program year, shall apply to any renewal of this contract.

(c) When, as a result of an increased or decreased wage determination, the Contractor increases or decreases wages or fringe benefits of employees working on this contract to comply therewith, the contract price or contract unit price labor rates will be adjusted to reflect such increases or decreases. Any such adjustments will be limited to increases or decreases in wages or fringe benefits as described above, and the concomitant increases or decreases in social security and unemployment taxes and workmen's compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profits.

(d) The Contractor shall notify the Contracting Officer of any increases claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. In the case of any decrease under this clause, the Contractor shall promptly notify the Contracting Officer of such decrease but nothing herein shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any other relevant data in support thereof, which may reasonably be required by the Contracting Officer. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. Pending agreement on, or determination of, any such adjustment and its effective date, the Contractor shall continue performance.

(e) The Contracting Officer or authorized representative shall, until the expiration of 3 years after final payment under the contract have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of provision)

52.223•9000 Material Safety Data Sheets and Hazard Warning Labels.

As prescribed in 23.303, insert the following clause:

MATERIAL SAFETY DATA SHEETS AND HAZARD WARNING LABELS (MAR 1992)• DLAD

(a)(1) This clause is to be used in conjunction with FAR clause 52.223•3, Hazardous Material Identification and Material Safety Data, and DFARS clause 252.223•7001, Hazard Warning Labels. Material Safety Data Sheets (MSDSs) and Hazard Warning Labels (HWLs) shall be required to be submitted by the apparently successful offeror prior to contract award. Notwithstanding paragraph 4. ***of the latest Federal Standard (FED•STD) 313***, the contractor shall submit MSDSs and accompanying HWLs to the contracting office, rather than directly to the Defense Supply Center Richmond (DSCR). This will satisfy the FED•STD requirement on the part of the contractor.

(2) The MSDS must cite the solicitation number and the applicable CAGE code of the manufacturer, the part number, and, where so identified, the National Stock Number (NSN).

(End of clause)

52.225•9000 Reserved.

52.225•9001 Reserved

52.225-9002[A236] ***FMS Shipping Instructions***

As prescribed in 25.7302-90, insert a clause substantially as follows:

FMS SHIPPING INSTRUCTIONS (June 1998) - DLAD

The Contractor shall contact the transportation officer (TO) at the contracting activity that awarded this contract or placed the order against the contract, unless contract administration responsibilities were assigned to an office other than contracting activity that awarded the contract, for shipping instructions prior to shipment. For contracts administered by the Defense Contract Management Agency (DCMA), the Contractor must submit a DD 1659, application for U.S. Government Shipping Documentation/ Instructions, to the transportation office for shipping instructions 18 days prior to shipment.

(End of clause)

52.229•9000 Kentucky Sales and Use Tax exemption.

As prescribed in 29.490(c), insert the following clause in solicitations:

KENTUCKY SALES AND USE TAX EXEMPTION (DEC 1984) • DLAD

Contracts awarded under this solicitation are exempt from the Kentucky Sales and Use Tax per Kentucky tax exemption _____. No amounts for this tax should be included in bids/offers.

(End of clause)

52.233-9000 Agency protests.

As prescribed in DLAD 33.106 (c) a provision substantially as follows shall be inserted in all solicitations:

AGENCY PROTESTS (SEP 1999) - DLAD

Companies protesting this procurement may file a protest 1) with the contracting officer, 2) with the General Accounting Office, or 3) pursuant to Executive Order No. 12979, with the ***Agency*** for a decision ***by the Activity's Chief of the Contracting Office***. Protests filed with the ***agency*** should clearly state that they are an "Agency Level Protest under Executive Order No. 12979." (Note: ***DLA procedures for Agency Level Protests filed under Executive Order No. 12979*** allow for a higher level decision on the ***initial protest than would occur with a protest to the contracting officer; this process*** is not ***an appellate*** review of a contracting officer's decision on a protest previously filed with the contracting officer). Absent a clear indication of the intent to file an agency level protest, protests will be presumed to be protests to the contracting officer.

(End of provision)

52.233-9001 Disputes: Agreement to Use Alternative Dispute Resolution (ADR).

As prescribed in 33.214, insert the following provision:

DISPUTES: AGREEMENT TO USE ALTERNATIVE DISPUTE RESOLUTION (JUN 2001) - DLAD

(a) The parties agree to negotiate with each other to try to resolve any disputes that may arise. If unassisted negotiations are unsuccessful, the parties will use alternative dispute resolution (ADR) techniques to try to resolve the dispute. Litigation will only be considered as a last resort when ADR is unsuccessful or has been documented by the party rejecting ADR to be inappropriate for resolving the dispute.

(b) Before either party determines ADR inappropriate, that party must discuss the use of ADR with the other party. The documentation rejecting ADR must be signed by an official authorized to bind the contractor (see FAR 52.233-1), or, for the Agency, by the contracting officer, and approved at a level above the contracting officer after consultation with the ADR Specialist and with legal counsel (see DLA Directive 5145.1). Contractor personnel are also encouraged to include the ADR Specialist in their discussions with the contracting officer before determining ADR to be inappropriate.

(c) If you wish to opt out of this clause, check here [ ]. Alternate wording may be negotiated with the contracting officer.

(End of provision)

52.239-9000[A237] – Y2K COMPLIANCE NOTICE– DLAD

As prescribed in 39.106(a)(92), insert the following in solicitations and contracts._

Y2K COMPLIANCE NOTICE (**Jun**-2002) *(DLAD 52.239-9000)*

The contractor shall ensure that all items***/products*** delivered under ***this*** contract (or order) ***that*** contain embedded microchips with a clock mechanism, timing device, or control device ***and are*** required to perform date/time processing involving dates subsequent to December 31, 1999, shall be Year 2000 (Y2K) compliant.

"Y2K Compliant" means to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first century, and the years 1999 and 2000, and leap year calculations, to the extent that other Information Technology (IT) and non-IT items being acquired properly exchange date/time data with it.

The Government reserves the right to test delivered items for Y2K compliance.

(End of Clause)

52.246•9000 Certificate of quality compliance.

As prescribed in 46.390, insert the following clause:

CERTIFICATE OF QUALITY COMPLIANCE (DEC 1994) • DLAD

The Contractor shall prepare and furnish a Certificate of Quality Compliance (COQC) for all supplies delivered under this contract. If the supplies delivered under this contract are from more than one manufacturing lot, a separate COQC shall be prepared and furnished for each manufacturing lot represented by, manufactured or produced under a product specification, original equipment manufacturer (OEM)/ manufacturer's part number, commercial, industry or military standard, or drawings, or other technical data.

(a) This Certificate shall contain the following:

(1) The Contractor's name, address, and commercial and Government entity (CAGE) code number (if assigned), the contract/order number, the applicable specification, drawing, or standard (including revision/ amendment and date), identification of the specific supplies manufactured or produced (including National Stock Number, nomenclature, type, grade, and class, if applicable); for metal products, the COQC shall include the alloy designation and condition (finish and temper), if applicable. If the contractor is not a manufacturer, the Certificate shall include the name, address and CAGE Code (if assigned) for each of the entities through which the supplies or materials, components, subassemblies, assemblies or parts passed, so that traceability to the manufacturer will be readily discernible therefrom.

(2) The identification of each parameter for which the contract, specification, drawing, or standard required inspection or testing;

(3) The identification of the specific requirement for each of the parameters in (2), above, for the particular material being produced and covered by the certificate;

(4) The actual results of inspections or tests conducted by the contractor to demonstrate conformance with each of the specific requirements of (3), above;

(5) The marking requirement for the material and the source of this requirement (contract and specification or standard); and

(6) A statement, signed by an authorized contractor representative responsible for quality assurance, that (i) the lot has been produced, sampled, tested, and inspected, and marked in accordance with all contract and specification requirements; and (ii) the material complies with all of the contract and specification requirements.

(b) For contracts assigned for Government inspection at source, the Contractor shall have the completed certificate available for review by the Government representative when the material is presented for acceptance by the Government. In the case of destination•inspected material, the Contractor shall attach a copy of the completed certificate to the packing list sent with each shipment to each shipping point designated in the contract. For source inspected material, a copy may (but need not) accompany the shipment. If the Contractor offering the material to the Government is not the manufacturer of the material, the Contractor is responsible for obtaining a certified test report from the manufacturer, including it as part of this COQC, and for demonstrating that the specific material being offered under this certificate is covered by the certified test report.

(c) Unless otherwise specified by the contract, the Contractor shall be responsible for retaining the certificate for a period of 4 years. When requested by the Contracting Officer, the Contractor shall make the certificate available for review by the Government at any time during the period the certificate is required to be retained.

(End of clause)

52.246-9001 Manufacturing process controls and in process inspections.

As prescribed in 46.202-4-90, insert the following clause:

MANUFACTURING PROCESS CONTROLS AND IN-PROCESS INSPECTIONS
(Jun 1998) - DLAD

This clause supplements (Process Control) ***guidance*** of the ***ISO (ANSI/ASQ) 9000 Series standard, or equivalent standards with process controls***, and is applicable when the contract requires a ***higher-level quality system*** in accordance with ***FAR 46.202-4.***

MANUFACTURING PROCESS CONTROLS AND IN-PROCESS INSPECTIONS

The Contractor shall:

(a) Ensure that all manufacturing operations are carried out under controlled conditions which will adequately assure that product characteristics and criteria specified by contract are achieved and maintained in the produced item. Controlled conditions include documented process control and in•process inspection procedures, adequate methods for identifying and handling material, and adequate production equipment and working environments.

(b) As a minimum, perform inspections (examinations and/or tests) during manufacturing on those product characteristics which cannot be inspected at a later stage, and ensure that process controls are implemented and effective.

(1) Manufacturing processes shall be evaluated to determine which process characteristics have an effect on the quality of the produced item. These manufacturing processes shall be identified and requirements for their control shall be specified in written process control procedures.

(2) When in•process inspection of material is not practical, control by monitoring processing methods, equipment, and personnel shall be provided. Both in•process inspection and process monitoring shall be provided when control is inadequate without both.

(3) Prompt corrective action shall be taken when noncompliance or out of control conditions occur.

(c) Clearly identify each in•process inspection and process control point at appropriate locations in the manufacturing operation.

(d) Prepare clear, complete, and current written procedures for:

(1) Each in•process inspection. Identify: the type, frequency, and amount (sampling plan/100 percent) of inspection; product characteristics to be inspected; criteria for approving and rejecting product; the record for documenting inspection results; and the method for identifying the inspection status of approved and rejected product.

(2) Each process control. Identify: the criteria, frequency, and records used verifying control of the process.

(3) Assessing the adequacy of in•process inspections and process controls. The Contractor's quality organization shall assure by periodic surveillance that procedures are followed and are effective. Records of this surveillance will be maintained.

(e) Make the documented inspection system available for review by the Government Quality Assurance Representative prior to the initiation of production and throughout the life of the contract. The Government is under no obligation to perform verification inspection or to accept product produced under the contract until the Government has received acceptable written procedures, and has been afforded the opportunity to evaluate the inspection system. Acceptance of the Contractor's inspection system by the Government does not bind the Government to accept any nonconforming supplies that may be produced by the Contractor. Periodic evaluations of the system may be made by the Government throughout the life of the contract.

(End of clause)

52.246•9003 Measuring and test equipment.

As prescribed in 46.391, insert the following clause:

MEASURING AND TEST EQUIPMENT (***Jun 1998***) • DLAD

Notwithstanding any other clause to the contrary, and/or in addition thereto, the contractor shall ensure that the gauges and other measuring and testing equipment, used in determining whether the supplies presented to the Government for acceptance under this contract fully conform to specified technical requirements, are calibrated in accordance with ***ISO 10012-1 or ANSI/NCLS Z540-1.***

(End of clause)

52.246•9004 Product verification testing.

As prescribed in 46.392, insert the following clause:

PRODUCT VERIFICATION TESTING ***(Jun 1998***) • DLAD

(a) References: The applicable documents are the issues of Federal Acquisition Regulation (FAR) clause 52.246-2, “Inspection of Supplies—Fixed Price,” ***and ANSI/ASQC Z1.4-1993, Sampling Plan and Tables for Inspection by Attributes***, which are in effect on the date of solicitation for awards resulting from Invitation for Bids and the date of award for all other contractual actions. These documents form the basis for the Government’s right to perform product verification testing (PVT) of this product. FAR 52.246-2 is hereby incorporated by reference into the contract if not otherwise called out in the purchase document.

(b) The contractor is responsible for ensuring that supplies are manufactured, produced, and subjected to all tests required by applicable material specifications/drawings specified in the purchase description of the contract. Notwithstanding any other clause to the contrary, and/or in addition thereto, the Government reserves the right to conduct PVT to ascertain if any or all requirements of the purchase identification description contained elsewhere herein are met prior to final acceptance.

(c) On any given contract, the Government may require PVT through a government designated testing laboratory on the contract or production lot at government expense. Testing will consist of chemical and/or mechanical/dimensional conformance tests as the Government deems necessary. When material under the contract is designated by the Contracting Officer/Administrative Officer for each test, the government inspector will select a random sample from the contract or production lot, and send the samples to a designated laboratory for testing. Where origin inspection is specified, the contractor agrees to make available, at the Government•s request, at the manufacturing facility, subcontracting facility, and/or final point of inspection, the quantity selected by the contract administrative office quality assurance representative to verify that the entire lot tendered meets the requirements of the contract. The Government shall be permitted to select such samples at random from the production lot tendered for acceptance.

(d) [This subparagraph pertains only to contracts and bilateral purchase orders.]

(1) The PVT samples will be sent, by the Government at government expense, to a government-designated testing laboratory for product verification. The Government will notify the contractor of the results of the testing within 15 working days of receipt of the samples by the Government. If the Government fails to act within the period set forth herein for notification, the contracting officer shall, upon timely written request, equitably adjust, under the Changes clause of this contract, the delivery or performance dates and/or the contract price and any other contractual terms affected by the delay. The Government is not required to accept/reject the supplies tendered until after receipt of the PVT test results.

The Government shall have the option to require the contractor to screen the entire lot tendered for any defects noted by the PVT testing. Any defects found shall be corrected before retendering the lot for acceptance by the Government. Further, the Government may subject this lot to additional PVT testing. If the Government disapproves the lot tendered for acceptance because of a failure to pass the PVT, the contractor shall be deemed to have failed to make delivery within the meaning of the Default clause of this contract. In such case, the Government reserves all rights to remedies to which it is otherwise entitled by law, regulation, or this contract.

(e) [This subparagraph pertains only to unilateral purchase orders.]

(1) The PVT samples will be sent by the Government and at government expense, to a government-designated testing laboratory for product verification. The Government will notify the contractor of the results of the testing within 15 days after receipt of the samples. If the Government fails to act within the specified time period set forth herein for notification, the contacting officer shall, upon timely written request **from the contractor**, incorporate FAR clause 52.243-1, “Changes Fixed-Price”, into the purchase order, and equitably adjust the delivery or performance date and/or the price and any other terms affected by the delay. The Government is not required to accept/reject the supplies tendered until after the PVT test results.

(2) The Government shall have the option to require the contractor to screen the entire lot tendered for any defects noted by the PVT. Any defects so found shall be corrected before retendering the lot for acceptance by the Government. Further, the Government may subject this lot to additional PVT. If the Government disapproves the lot tendered for acceptance because of a failure to pass the PVT, the Government has the right to reject the entire offer, thereby releasing the parties from further obligations under the purchase order.

52.247•9000 Guaranteed maximum shipping weights or dimensions.

As prescribed in 47.305(91), insert the following clauses:

GUARANTEED MAXIMUM SHIPPING WEIGHTS OR DIMENSIONS (DEC 1985) • DLAD

Note to Administrative Contracting Officer. This award has been made on the basis of guaranteed maximum shipping weights or dimensions, and/or minimum size of shipments as specified. Take action in accordance with DLAM 8105.1, Contract Administration Manual, section 47•5, if it becomes evident that the guaranteed maximum shipping weights or dimensions will be exceeded, or if the contractor tenders delivery of less than the minimum size shipment specified, in order that action may be taken to adjust the contract price.

(End of clause)

52.247•9001 Port handling and ocean costs in bid evaluation.

As prescribed in 47.305(92), insert the following provision:

PORT HANDLING AND OCEAN COSTS IN OFFER EVALUATION (APR 1985) • DLAD

The above tentative port handling and ocean freight charges are set forth for the information of offerors. In evaluating offers received in response to this solicitation, the Government will utilize those charges which are on file as of the date of bid opening, or closing time specified for receipt of port handling and ocean freight charges actually used in evaluation, if substituted for any listed above, will be furnished interested offerors upon request.

(End of provision)

52.247•9003 Reserved.

52.247•9004 Reserved.

52.247•9005 Reserved.

52.247-9006[A238] ***FOB Destination Price Quoting Instructions -- Overseas DVD and Navy Ships.***

As prescribed in DLAD 47.305-4, insert the following clause in solicitations and contracts:

FOB Destination Price Quoting Instructions -- Overseas DVD and Navy Ships (JUL 02) - DLAD

Note: This clause does not apply when the SIG (signal code) found in Section F - Additional Delivery Info is J, K, L, or M; use instructions in clause 52.247-9001 instead.

Offerors shall include the cost of transportation in their price quotes. This clause identifies the Continental United States (CONUS) location (i.e., destination) to use for price quoting purposes. This clause does not modify or supercede any shipping instructions specified elsewhere in the solicitation. The successful offeror (i.e., awardee) must contact the transportation office of the contract administration office prior to shipment for confirmation of actual delivery location.

The location (i.e., destination) to use for price quoting purposes only, in order of precedence (first to last), is as follows:

(a) Use the CONUS Break Bulk Point (BBP) or Container Consolidation Point (CCP) if one is identified in Section F - Additional Delivery Info. If one is not identified,

(b) Use the complete (i.e., contains street, city, state) CONUS shipping address, if one is identified in Section F - Delivery Information Ship To. If one is not identified,

(c) Use the following APO/FPO information in Section F - Delivery Information Ship To.
(1) If the APO/FPO is AA or AE, anticipate delivery to New Cumberland, PA. 17070; Dover, DE. 19902; or Norfolk, VA 23511.
(2) If the APO/FPO is AP, anticipate delivery to Travis AFB, CA. 94535, Tracy, CA. 95376; or San Diego CA. 92136.

(d) If none of the above exists, access the TAC 1 (parcel post address) from the Defense Automatic Addressing Center Inquiry (DAASINQ) website at https://day2k1.daas.dla.mil/dodaac. Perform a Department of Defense Activity Addressing Code (DoDAAC) query using the following as the DoDAAC:
(1) First 6 digits of the Transportation Control Number (TCN), if signal code (SIG) in Section F – Additional Delivery Info is other thanJ, K, L, or M.
(2) Supplementary address (SUPP ADD) in Section F – Additional Delivery Info, if SIG is J, K, L, or M.
If the TAC 1 is a complete CONUS shipping address, use this address. If the TAC 1 contains an APO/FPO, use the destination specified in (c)(1) or(c)(2) above.

(End of clause)

52.247-9007 FOB Destination Price Quoting Instructions -- CONUS DVD

As prescribed in DLAD 47.305-4, insert the following provision in solicitations:

FOB Destination Price Quoting Instructions -- CONUS DVD (JUL 02) - DLAD

Offerors shall include the cost of transportation in their price quotes. This clause identifies the location (i.e. destination) to use for price quoting purposes. This clause does not modify or supercede any shipping instructions specified elsewhere in the solicitation.

The location to use for price quoting purposes only, in order of precedence (first to last), is as follows:

(a) Use the CONUS break bulk point (BBP) in Section F Additional Delivery Info if one is identified. If CONUS BBP is not identified,

(b) Use the Ship To address in Section F Delivery Information.

(End of provision)

52.247-9008 FOB Destination Price Quoting Instructions -- FMS

As prescribed in DLAD 47.305-4, insert the following clause in solicitations and contracts:

FOB Destination Price Quoting Instructions -- FMS (JUL 02) - DLAD

Note: Do not use the "ship to" address (i.e., ultimate consignee) identified in Section F - Delivery Information, or an outside CONUS (OCONUS) break bulk point (BBP) if one is specified in Section F - Additional Delivery Info, for price quoting purposes. Instead, use the below procedures for price quoting purposes.

Offerors shall include the cost of transportation in their price quotes. This clause identifies the Continental United States (CONUS) location (i.e., destination) to use for price quoting purposes. This clause does not modify or supercede any shipping instructions specified elsewhere in the solicitation. The successful offeror (i.e., awardee) must contact the transportation office of the procuring activity office prior to shipment for confirmation of actual delivery location.

The location (i.e., destination) to use for price quoting purposes only, in order of preference (first to last), is as follows:

(a) CONUS break bulk point (BBP), if one is specified in Section F- Additional Delivery Info.

(b) Anywhere within a 100-mile radius of the freight forwarder address specified in Section F- Additional Delivery Info.

(End of clause)

52.247-9009 FOB Destination Price Quoting Instructions -- Canadian FMS

As *prescribed in DLAD 47.305-4, insert the following clause in solicitations:*

FOB Destination Price Quoting Instructions -- Canadian FMS (JUL 02) - DLAD

This requirement is for a Canadian Foreign Military Sales Customer. Offerors shall include the cost of transportation in their price quotes. The location (i.e., destination) to use for price quoting purposes is the ship to address (i.e., ultimate consignee) identified in Section F-Delivery Information.

(End of provision)

52.247-9010 FOB Destination Price Quoting Instructions – Shipment to Depot

As prescribed in DLAD 47.305-4, insert the following clause in solicitations:

FOB Destination Price Quoting Instructions -- Shipment to Depot (JUL 02) - DLAD

Offerors shall include the cost of transportation in their price quotes. This clause identifies the location (i.e. destination) to use for price quoting purposes. This clause does not modify or supercede any shipping instructions specified elsewhere in the solicitation.

(a) When the Section F Delivery Information Ship To is a Continental United States (CONUS) location, use the Ship To address.

(b) When the Section F Delivery Information Ship To is an outside CONUS (OCONUS) location, use:

(1) New Cumberland, PA. 17070 for European depots (Defense Depots Germerscheime, Germany and Sigonelli, Italy)
(2) Tracy, CA. 95376 for Pacific depots (Defense Depots Sasebo, Japan and Yokosuka, Japan)

(End of provision)

52.249•9000 Administrative costs of reprocurement after default.

As prescribed in 49.402•6(90), insert the following clause:

ADMINISTRATIVE COSTS OF REPROCUREMENT AFTER DEFAULT (MAY 1988) • DLAD

If this contract is terminated in whole or in part for default pursuant to the clause included herein entitled "Default," and the supplies or services covered by the contract so terminated are repurchased by the Government, the Government will incur administrative costs in such repurchases. The Contractor and the Government expressly agree that, in addition to any excess costs of repurchase, as provided in paragraph (b) of the "Default" clause of the contract, or any other damages resulting from such default, the Contractor shall pay, and the Government shall accept, the sum of [insert administrative cost figure] as payment in full for the administrative costs of such repurchase. ***This assessment of damages for administrative costs shall*** apply for any termination for default following which the Government repurchases the terminated supplies or services, regardless of whether any other damages are incurred and/or assessed.

(End of clause)

PART 53

FORMS

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SUBPART 53.2 • PRESCRIPTION OF FORMS

53.201 Federal acquisition system.

53.201•91 Request for Review and Approval of Contract/Solicitation Action (DLA Form 677).

(a) General. DLA Form 677 shall be used as prescribed in 1.690•6. Requests for presolicitation/prenegotiation/postaward contract action review/approval shall be addressed to HQ DLA, ATTN: ***J-3313***.

(b) General instructions for preparation of DLA Form 677. Instructions for block entries are as follows:

Block No.	Title and/or Instructions
ALL	Fill in or "X" only those blocks pertinent to the action requested.
1/1a	Insert the subparagraph (letter/number) of 1.690•6 that is applicable. Place an "X" in the appropriate block. If any action presolicitation/prenegotiation or postaward contract) requiring review is being resubmitted, prepare a new DLA Form 677 and indicate in the remarks block that the contract is being resubmitted.
2/2a	Insert the date of expiration of the bid or proposal, or the date by which existing contract terms required exercise of the option. If the date entered allows less than 10 working days from date of dispatch of the request (as entered in block 18a), the request is to be considered a request for expedited review, and block 2a is to be completed. The reason for requiring expedited review is to be given in block 16, e.g., explain why an extension of the bid/proposal cannot be

obtained or should not be requested. If the date entered allows 10 days or more, but an expedited review is desired, the same procedures should be followed.

3.....Describe the type of contract briefly to identify the terms governing quantity, price, and delivery, e.g., Firm Fixed•Price (FFP), Requirements•Fixed•Price with EPA (Rqmts•FP w/EPA).

4/4a/4b/4c.....If more than one CLIN is applicable because of different F.O.B. points, cite total quantity and give the unit price range. If both F.O.B. origin and F.O.B. destination prices are applicable, give the total quantity applicable to each with the applicable prices/price ranges. When services are described, include the location of performance and the period during which services will be performed.

5/5a/5b.....Check the applicable block. IOMs requesting establishment of requirements contracts are to be considered as PRs. Requests for contracting action by a Military Service on other than the prescribed MIPR form are to be considered as MIPRs. The receipt dates desired in 5a and 5b are: (a) for PRs the date of receipt by the Contracting function; (b) for MIPRs the date of receipt in the Center.

6a/6b/6c.....Self•explanatory.

7/7a/8.....Self•explanatory.

9/9a/9b.....If the action proposed is on a definite quantity, firm fixed•price basis, check "actual. "For all other types, check "estimated." The total dollar value to be entered is that shown on the face of the proposed contract as the total amount, or total estimated amount of the action. If the action is a modification, only the amount, actual or estimated, of the modification is to be entered. Estimates should represent the amount the Government expects to pay, i.e., the maximum objective or Government Estimate. Under 9b, give the fixed•dollar amount for which funds have been committed.

10/10a.....If Government facilities are to be provided under the contract, check the facilities block. If facilities are being furnished rent free, insert "Rent Free" and the dollar value of the facilities. If facilities are being furnished on a rental basis, give the anticipated dollar amount of rental based on the proposed contract delivery schedule and insert "Rental." If material is to be furnished, check the material block. If the material is being furnished by the bailment method, give the total estimated value of the material included in the total contract price and insert bailment.

11.....Self•explanatory.

12.....Cite FAR paragraph number covering the exception.

13.....If an option extends the period of a service or indefinite delivery type contract without change in the amount of work covered, insert the maximum option period.

14a.....Insert the number of firms initially solicited and those firms to which solicitations were sent as the result of individual requests.

14b.....Self•explanatory.

14c.....Reflect the number of firms still in the competitive range.

15/15a/15b/15c....Self•explanatory.
15d.....The percentage relationship of the proposed price to the immediately preceding contract award price will be shown in block 15d.
.....If there was a price adjustment based upon an EPA provision to the previous contract award price used

for the price comparison in block 15d, both the contract award price and the latest EPA price should be indicated in the Remarks section.

16/17/17a/
18/18a.....Self•explanatory.

19.....Enclosure blocks to the DLA Form 677 have been prechecked. See the list of attachments in 1.690•7. Provide a chronology of significant events which have occurred during the course of the acquisition to date. It should begin with the date the purchase request was received in contracting, and list dates of subsequent events impacting the procurement cycle. DLA Form 678 may be used as a guide to identify subjects for the chronology. Delays must be indicated and the causes documented. Documentation for each event should be limited to no more than two typed lines.

General.....1. Should the space allotted on the DLA Form 677 be insufficient, the additional information shall be included on a plain sheet of paper identified as Page No. 2, etc., to DLA Form 677, Contract No. (as shown under block 8). The total number of pages shall be shown in the space provided at the bottom of DLA Form 677.

.....2. The reverse of DLA Form 677 will be used both for replies to requests for solicitation, prenegotiation and preaward approvals (section I) and to return contract files submitted as requested for postaward review (section II).

53.201•92 Contract File Content List (DLA Form 678).

(a) General. DLA Form 678 shall be used as prescribed in 1.690•7(g).

(b) General instructions for preparation and use of DLA Form 678. The blocks shall be "X'd" and/or filled in as appropriate.

(1) Filing instructions.

(i) Contract file sections shall be identified by inclusion of a divider annotated with the section identification and title, e.g., "Section A Planning and Solicitation." Sections A and B shall be filed on the left side of the file folder with section A on the bottom. Sections C and D shall be filed on the right side of the file folder with section C on the bottom.

(ii) The lowest numbered TAB within each section shall be placed at the bottom of that section. When multiple documents are present under a numbered TAB, e.g., correspondence, memoranda, they shall be filed chronologically with the most recent document on top.

(iii) It is impossible to enumerate all of the factors or conditions which may require specific documentation over and above that normally required. Therefore, as circumstances dictate, contracting officers shall describe, under the appropriate "blank" TAB Nos., e.g., Nos. 15•17; 30•32, such documentation as may be peculiar to the acquisition involved and file same in the analogous contract file section, e.g., TAB 31, Certificate of Competency.

(2) Contract documentation.

(i) The documents identified on DLA Form 678 are those which are normally required to support a sealed bid/negotiated acquisition, other than a small purchase. The file sections provided establish the logical acquisition cycle sequence of documentation. The completed file will constitute a complete chronological history of the transaction and permit ready reconstruction of the actions taken in processing the acquisition.

(ii) The following sections discuss those elements of contract documentation which merit special attention.

(3) Section A • planning and solicitation.

(i) TAB No. 1 PR/MIPR. The file must reflect the manner and extent to which the needs of the requiring activity have been met. It is essential, therefore, that in addition to the basic purchase authority, any changes and justifications be included under this TAB. In the case of amendments, the basis for change must be evidenced, e.g., in those instances where items on the purchase request have been completely lined out or quantities changed, indication must be made of the identity or authority of the individual or activity which requested/authorized the change. In other instances where contracts have been issued calling for something other than that specified on the PR/MIPR, explanation must be included as to the authority/approval for the change and from whom received. Memoranda must adequately identify individuals referred to in memoranda (e.g., statements such as "this was discussed with and concurred in by Mr. Smith in the Supply function" are inadequate). An individual's full name, title, or position, and the individual's relationship to the subject matter of the memorandum must be clearly established; this is of particular importance should postaward questions arise. Requirements shall be revalidated in those instances where excessive time has elapsed between the issuance of the purchase request and consummation of the contract (see 1.693).

(ii) TAB No. 2 specification/drawing. These documents in many instances either dictate source selection or indicate to the contracting officer the extent of possible competition. Any change either prior or subsequent to solicitation may affect final source selection. When such changes are effected, documentation supporting the change must be included in the file indicating as a minimum: the basis and authority for initiating specification/drawing change; coordination received from appropriate technical personnel; and approval/concurrence of the requiring activity. When specification/drawing changes are initiated/confirmed by the requiring agency on a PR/MIPR amendment, the documentation should be included in TAB No. 1 with an annotation in TAB No. 2 identifying the amendment number.

(iii) TAB No. 3 acquisition plan/amendments. The acquisition plan will include, as a minimum, the information included in 90.1101. The use of preprinted forms for this purpose is acceptable.

(iv) TAB No. 6 non•personal services determination. A statement by the contracting officer that the services proposed for acquisition have been determined to be non•personal in nature is not by itself sufficient to meet the requirements of FAR 37.103(a). Such determination must include the reasons and all of the facts which were deemed to substantiate the nonpersonal aspect of the services. Examples of criteria for characterizing services as non•personal rather than personal are set forth in FAR 37.104(d).

(v) TAB No. 7 Department of Labor (DOL) Wage Determinations. DOL wage determinations are normally effective for a period of 120 days after issuance and must be in effect at the time of solicitation and at the time of award. When it is necessary to obtain extensions on determinations in order to carry them through the period until award is to be made, the documentation authorizing such extension by the DOL must be

included under this TAB. A copy of the request and any enclosures sent to DOL shall be included.

(vi) TAB No. 8 small business set•aside determination. The determination required under FAR 19.5 must be accurate and complete insofar as the reason given for not having a small business set•aside. Statements such as "a set•aside was not considered because of insufficient quantity" must be supported. The information included in this determination must accurately reflect the consideration given to compliance with FAR 19.5; the information included therein imposes, in turn, a responsibility to make a realistic evaluation of requirements and a current review of possible sources to substantiate the information used in determining the proposed acquisition method.

(vii) TAB No. 11 source list. The list of sources initially solicited and those to whom solicitations were subsequently issued as a result of requests are to be included; in the latter case, the date requested solicitation was issued will be indicated.

(viii) TAB No. 14 solicitation and amendments. The contract file must include the solicitation document and any amendments thereto. Amendments must accurately reflect their issuance dates. In case of oral solicitations, the requirements of FAR 15.402(f) must be satisfied.

(4) Section B • Preaward support data.

(i) TAB No. 18 abstract of offers. Include on the abstract any conditions of the offers which are related to their evaluation; if lengthy, the "Remarks" column shall be annotated with information indicating the location in the offer of the condition, e.g., "See page _____ of the proposal for exception to specification."

(ii) TAB No. 19 packaging/transportation/freight rate data. Inclusion of transportation/freight rate data, are essential in determining the manner in which transportation costs were applied in arriving at the evaluated prices. Files must also include sufficient information to substantiate that packaging costs are equitable.

(iii) TAB No. 20 cost/pricing data. All cost or pricing data received from the offeror in support of its proposal shall be included under this TAB. If any data should be included in correspondence dealing with other matters which are pertinent to the final contract, e.g., delivery schedule, contract clauses, etc., the original correspondence will be filed under this TAB and a cross•reference (or copy of such correspondence) placed in TAB No. 44.

(iv) TAB No. 21 audit report/waiver/field pricing report. When field pricing support is requested from the cognizant contract Management Agency activity pursuant to FAR 15.***404-2(a)***, the report obtained, together with any attached assist reports shall be included under this TAB.

(v) TAB No. 25 certificate of current cost or pricing data. Often a contractor will provide a certificate of current cost or pricing data at the close of the negotiation session and will subsequently confirm, by letter, details of the agreements reached. In some instances, the confirming letter will include data which, although previously discussed and accepted, have not previously been presented in writing. In such cases, the certificate of current cost or pricing data presented at the close of negotiations becomes invalid; a new certificate must be obtained to reflect the contractor's last data submission upon which the final price agreement was concluded.

(vi) TAB No. 29 bid/offer evaluation worksheets, computer run. ***(***Include documentation pertinent to source selection.)

(vii) TAB No. 30. This tab will be used to incorporate, when applicable, information received from a cognizant ACO relative to the acceptability of the contractor's disclosure statement when the firm has indicated submission of same.

(5) Section C • Other support data.

(i) TAB No. 34 unsuccessful bid/proposal. Include the notification to the offerors (either that already issued or that proposed to be issued) that bids/offers were unacceptable and the reasons therefor.

(ii) TAB No. 36 determination of late/bid proposal. All actions taken in accordance with the procedures prescribed under FAR 14.304 and 15.412 shall be included under this TAB.

53.201•93 Request for Waiver of Preaward Contract Review and Approval
(DLA Form 1694).

DLA Form 1694 shall be used as prescribed in 1.690•8.

53.204 Administrative matters.

53.204•70 DD Form 350, Individual Contracting Action Report.

(b) Part B of the DD Form 350.

Block B4, Completion Date. When preparing a template (see 4.670•6(b)(4)(i)) use this item to enter the expiration date.

Block B5A, Contractor Identification Number. This block is for reporting the Contractor’s nine position DUNS number according to DFARS 253.204-70(b)(5)(ii)(A).

Block B5B, Commercial and Government Entity (CAGE) Code. The additional reporting requirement at Subpart 90.9, Updating Small Disadvantaged Business Status and Women•Owned Business Status in the DD Form 350 CAGE File, applies when the small disadvantaged business status or women•owned business status is incorrect in DCARS.

Block B7, Type of Obligation. For DLA contracting offices, the DCARS will generate Code 3 to indicate a template record whenever an IDC is being reported pursuant to 4.670•6(b)(4)(i), or when a template record is being created for a blanket purchase agreement (BPA) or Federal Supply Schedule.

Block B12C, System or Equipment Code. ***Enter*** the three position DLA Weapons or System code from the Purchase Request trailer or other source. If not known or the item in B12A is not part of a listed weapon or system, enter "000." DCARS will convert these data into the DoD codes for DoD reporting purposes.

(c) Part C of DD Form 350.

Block C2, Reason Not Synopsized. Enter Code A, Urgency, only when Item C9, Authority for Other Than Full & Open Competition, is coded 2A and Item C8, Solicitation Procedures is coded N, Other Than Full and Open Competition.

Block C7, Number of Offers Received. Offers, for the purpose of completing C7, shall only be offers from responsible contractors capable of satisfying Government requirements. If an offer is an alternate offer and is rejected, or if award must be made before evaluation can be completed, the alternate offer is not to be counted.

(d) Part D of DD Form 350.

The DFARS requires blocks D2, D3, D5, D7, and D8 be blank under certain circumstances. If the contracting officer completes any of these items in one of those circumstances, the DCARS will convert the entry to a blank and pass the record to DoD in the required format. Block D4E, Premium Percent. DLA contracting offices may enter "000" for this item when D4B is coded A or B and D4C is Coded A. The DCARS will convert the record passed to DoD into the required format.

Block D5, Ethnic Group. For DLA, if the Small Disadvantaged Business Concern Representation, (see DFARS 252.219•7000), indicates the offeror is claiming eligibility in the Minority Small Business and Capital Ownership Development Program, Section 8(a) of the Small Business Act, then the ethnic group must also be completed and the appropriate code entered. This item must be completed for all awards made to a small disadvantaged business.

(e) Part E of DD Form 350.

Block E9 may be entered in Part E of the DD Form 350 in the margins or on the reverse side for manual reports. DCARS will provide for these items on the input screen.

(5) Block E9, National Stock Number. Enter the 13 position National Stock Number (NSN) or Local Stock Number (LSN) which defines the item of supply. Do not enter dashes, slants, or similar punctuation marks and do not show spaces between numbers or letters in the stock number. Leave blank when acquiring services (position 1 of B12A is alpha). If more than one NSN or LSN is the subject of this action, enter the stock number of the predominant item as determined by dollar value. If no stock number applies, enter the FSC shown in B12A followed by the word "NONE" without spaces between the two (e.g., "8905NONE").

(g) Special instructions for DD Forms 350 on actions of $25,000 or less under the Small Business Competitiveness Demonstration Program.

(2)(i) Block B5A, Contractor Identification Number. Enter the Contractor's nine position DUNS number.

53.204•71 DD Form 1057, Monthly Contracting Summary of Actions $25,000 or Less.

(d) When local procedures combine two or more actions into a single award or modification, it may be necessary to split the action into two or more lines in parts B through F. Any portion with a dollar value of more than $25,000 shall be reported on DD Form 350. These procedures will permit accurate reporting of set•asides and other actions which would either not be reported or reported with an incorrect dollar value if reported as a single action. Examples include but are not limited to the following:

(i) One part of the action was unrestricted while the other part involved one or more socioeconomic programs such as set•asides; or

(ii) One part of the action involved Foreign Military Sales and the remainder did not.

53.205 Publicizing contract actions.

53.205•90 Contract Announcement (DLA Form 1693).

DLA Form 1693 shall be used as prescribed in 5.303.

53.213 Small purchase and other simplified purchase procedures.

53.213-90 Blanket Purchase Agreement Delivery Ticket (DLA Form 470).
This form may be used when supplies or services are acquired by means of a BPA.

(a) General. The DLA Form 470 is a cut sheet form and is designed to be used by the vendor as an acknowledgment of a call, notice of shipment, packing list, and invoice. This form eliminates the need for preparation, by the contractor, of separate forms for these purposes. Also, Government personnel requiring information on these forms will receive it on a standard format.

(b) Procedure. A supply of the forms may be provided by the contracting office to each contractor who has entered into a BPA with the Center. Upon the placing of a call, the contractor may be required to complete the BPA delivery ticket based on information contained in the written or oral call in accordance with detailed instructions to be provided by the contracting office.

(c) General instructions for preparation of DLA Form 470. After the placing of each call, complete the call, complete the form in accordance with the general instructions below, and any specific instructions you may receive with the placing of the call. Entries should be typed.

(1) Block 11. This is the date the supplies are to reach destination, not the date of shipment. Convert the number of delivery days the Government offered to an actual date. For example, if the Government offered a 30•day delivery and received the oral or written call on 1 October, enter 10/31/YY as the required date.

(2) Block 12. This is the date the supplies are to be shipped, not delivered.

(3) Blocks 13 through 19. Information for these blocks will be furnished by the contracting office at the time of the call. Enter the name and address of the consignee in block 15.

(4) Blocks 21 through 23. Entries in these blocks will be made at the time of shipment. Enter actual date shipped or delivered. No partial shipments to a particular destination may be made. If more than one shipment is made against a call, prepare two copies of this form for shipment. Copies of the shipping documents may be attached as an alternative to completing blocks 21 and 22.

(5) When using the form as an ACKNOWLEDGMENT OF CALL. Place a check mark on "*" copies of the form in the box "ACKNOWLEDGMENT OF CALL" (block 9).

(6) When using this form as a NOTICE OF SHIPMENT. Place a check mark in the box "PACKING LIST" (block 9) on "*" copies of the form in the box "NOTICE OF SHIPMENT" (block 9).

(7) When using the form as a PACKING LIST. Place a check mark in the box "PACKING LIST" (block 9) on "*" copies of the reproduced form for each consignee. Be sure blocks 21 through 23 have been completed, as applicable, on the forms used. Send "*" copies to each consignee by placing copies inside the container or in an envelope attached to the exterior of the container.

(8) When using this form as an INVOICE. At the end of the billing period, fill in "*" copies of the reproduced form which includes the shipment data for all destinations of that call as follows:

(i) Place a mark in the box marked INVOICE (block 9) of each copy of the form.

(ii) Sign and date blocks 24 and 25 of the top copy only of the form. If the BPA under which this call was issued does not provide for the fast payment procedure, the top copy must contain the signature and date (blocks 27A and 27B) of the authorized Government representative receiving and/or accepting for the Government.

"*" The number required shall be in accordance with the needs of the contracting office.

53.213-91 Shipping Instruction (DLA Form 1224). This form is used against automated
simplified acquisitions.

53.213•92 Request for Quotation (DLA Form 1231). This form is used against automated simplified acquisitions.

53.219 Small business and small disadvantaged business concerns.

53.219•90 Referral of Small Business for Certificate of Competency (CoC) Consideration (DLA Form 1756).

(a) DLA Form 1756 may be used to provide information for CoC referrals as required by FAR 19.602•1, DFARS 219.602•1 and DLAD 19.602•1.

(b) General instructions for preparation of DLA Form 1756:

(1) The name, size status, and total dollar value of the next low offeror should be identified, however, referrals shall not urge a conclusion based upon the size status of the second low offeror.

(2) The remaining blocks of the form are self•explanatory.

PART 90

SUPPLEMENTAL PROCEDURES

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[A244]
See guidance in DLAI 4140.67, ***i.e.,***(http://www.dlaps.hq.dla.mil/dlai/i4140.67.htm)
DLA Replenishment Parts Purchase or Borrow (RPPOB) Program

SUBPART 90.2 - TRAINING

90.201 Granting credit for course requirements fulfilled by alternate methods.

90.201-1 Scope and delegations.

These procedures apply to all acquisition work force members at DLA activities subject to the DLAD (see 1.103). The Heads of contracting activities have the authority to evaluate experience, education, or alternate training completed and to determine if it fulfills the requirements of mandatory DoD contracting courses. This authority may be delegated, without power of redelegation to those officials authorized to select, appoint, and terminate the appointment of contracting officers by 1.603-1(90).

90.201-2 Procedures and documentation.

Applications for credit by alternate methods will be made on the DD Form 2518, Fulfillment of DoD Mandatory Training Requirement, as outlined in DoD 5000.52-M. A copy of each DD Form 2518 along with a statement of the alternate method determined to be equivalent will be forwarded to ***J-3313*** for reporting purposes.

90.202 Waivers.

90.202-1 Definition.

A waiver is defined as exempting someone from taking a course without certifying that the person has gained knowledge from experience, formal education or other training. Fulfillment of requirements by alternate

methods shall not be considered or used as a "waiver" of requirements.

90.202-2 Policy and procedures for requesting waivers.

Acquisition personnel will normally fulfill mandatory training requirements by course completion or alternate methods, therefore, waivers are discouraged. Requests for waivers will be forwarded to ***J-3313*** for evaluation and processing.

SUBPART 90.3 - SELECTION OF CONTRACTS TO BE TERMINATED FOR CONVENIENCE IN EVENT OF UNEXPECTED DECELERATION

90.301 Policy.

Terminations for convenience will be based on individual decisions resulting from a comparison of costs for termination and excess position of items versus the need for release of obligated funds for higher priority use.

90.302 Responsibilities.

The decision to terminate a contract for the convenience of the Government is the joint responsibility of the commodity manager and the contracting officer at the cognizant DSC. In those cases where the contract resulted from a MIPR, the decision to terminate for convenience is the responsibility of the MIPR initiator; however, the contracting officer, upon request, must inform the initiator of all elements which have any bearing on the status of the contract.

90.303 Procedures.

90.303-1 General procedures.

Upon receipt of a request for a cutback in contract quantities from the cognizant commodity manager, the following information will be utilized in selecting the contract for termination:

(a) Ascertain all current contracts for items involved.

(i) Determine the undelivered portion of each contract.

(ii) Consider supplies in transit (f.o.b. destination contract) as deliveries, unless the contract is delinquent and a notice to terminate for default has been sent to the contractor.

(iii) Determine what deliveries, if any, are delinquent.

(iv) Determine whether the delinquency is excusable or inexcusable.

(v) Contract quantities scheduled for direct delivery to users are not subject to termination action unless specifically so designated.

(b) If delinquency is considered inexcusable, terminate for default where appropriate.

(c) Where termination for default is not appropriate or where additional quantities remain to be cut back after termination for default, proceed in the selection of contracts to be terminated for convenience.

(1) First choice should be where contractors are agreeable to total or partial termination (voluntary or no cost settlement).

(2) Consider the following factors.

(i) Contracts involving contractors' commercial item.

(ii) Contracts awarded as rated orders.

(iii) Contracts for mandatory acquisition.

(iv) Contracts most recently awarded and those providing for longest production lead time where production has not progressed to an appreciable degree.

(v) Contracts awarded at the highest price and work down pricewise.

(vi) Partial termination of all contracts where two or more contractors are involved in lieu of total termination of a few.

(d) The dollar amount of potential settlement claims should be estimated with the assistance of DCMA. Consider:

(1) Unit price of undelivered items.

(2) Raw material on hand and/or on order.

(3) Components on hand or on order.

(4) Work in process.

(5) Unamortized start up costs.

(6) Percentage of completion.

(7) Current commercial value and saleability of the item involved.

(8) Disposal actions required, taking into consideration recoupment through sales of items to be disposed.

90.303-2 Operation procedures.

(a) The Supply function or the MIPR initiator will advise the Contracting function to cancel an item by quantities and consignee. The Supply function or the MIPR initiator will be required to indicate all open purchase requests and/or contracts when requesting information upon which to base a termination decision or when requesting cancellation by item and consignee.

(b) Contracting and Production, using procedures in 90.303, will determine what portion of each open contract should be terminated.

(c) If the Contracting function's decision indicates that the Supply function's original request should be revised, the decision will be coordinated with the Supply function. The final authority for deciding whether or not to terminate, when substantial claims are involved, is the Center Commander.

(d) Upon completion of above actions, the Contracting function will issue the termination notice with a copy to DCMA for termination settlement action.

SUBPART 90.4 - RECOVERY AND UTILIZATION OF PRECIOUS METALS (SILVER, GOLD, PLATINUM, PALLADIUM, RHODIUM, IRIDIUM) FROM SCRAP MATERIALS

90.401 General.

DoD has assigned DLA the mission to reclaim precious metals from precious metal bearing scrap and waste materials, and to make available reclaimed precious metals as Government-furnished property in acquisition of items containing precious metals. This section implements DoD Directive 4160.22, Recovery and Utilization of Precious Metals, (as revised) which establishes DoD policy governing the management of the recovery and the use of precious metals derived from precious metal bearing scrap and waste materials generated by all elements of DoD worldwide. DLA is assigned the responsibility for managing the overall program and has designated the DRMS, Battle Creek, Michigan, as the activity charged with the responsibility for managing the retrieval and refining of precious metals. Defense Supply Center ***Philadelphia*** (DSCP) has been assigned the supply management function for precious metals.

90.402 Policy.

(a) All DLA elements generating precious metal bearing scrap and waste materials shall establish and monitor an internal program to assure the economical reclamation of precious metals, consistent with the overall DoD policy of effecting maximum use of excess property to meet DoD needs.

(b) Recovered precious metals, after refinement, will be made available to DoD elements for their use as Government-furnished property to reduce new acquisition costs.

90.403 Responsibilities.

Commanders of each DLA field activity are responsible for the following:

(a) Reporting precious metal bearing scrap and waste materials to the DRMS Manager for disposition and shipment to destination upon notification by the DRMS Manager.

(b) Using the refined precious metals maintained in storage by the DSCP Precious Metals Inventory Manager, as GFP, whenever feasible, for contracts requiring precious metals bearing materials.

90.404 Procedures.

(a) Prior to soliciting offers for awards of contracts requiring precious metals, contact the DSCP Precious Metals Inventory Manager, DSCP-Y, indicating the item, quantity, and grade of precious metal required for the acquisition. The precious metals are identified as follows:

NSN	Nomenclature	Unit of Issue
9660-00-042-7768	Platinum granules.....	Troy ounce.
9660-00-151-4050	Platinum sponge.....	Troy ounce.
9660-00-042-7733	Gold bullion/granules.....	Troy ounce.
9660-00-042-7765	Palladium granulations.....	Troy ounce.
9660-01-039-0320	Palladium sponge.....	Troy ounce.
9660-00-106-9432	Silver bullion/granules.....	Troy ounce.
9660-01-010-2625	Rhodium.....	Troy ounce.
9660-01-011-1937	Iridium sponge.....	Troy ounce.
9660-01-039-0313	Ruthenium sponge.....	Troy ounce.

If the required amount is available, forward a letter or TWX to DSCP-Y, requesting that the required quantity be reserved to cover the acquisition including the estimated delivery schedule.

(b) When a contract is awarded, a Military Standard Requisitioning and Issue Procedure (MILSTRIP) requisition is to be submitted to DSCP-Y. The requisition must cite full Troy ounces (partial ounces shall be rounded off to the nearest whole ounce). Exception data are to be cited. The exception data are: the exact "ship to" address (the Department of Defense Activity Address Directory (DoDAAD) sometimes cites post office boxes or is not always accurate); the contract number on which the precious metals are committed for use (this is necessary for control and audit purposes); the end item application, the NSN, the part number, or any other identifying data which is necessary in order that the precious metal may be recovered from the item when it reaches the end of its life cycle; and a contact point with phone number at the requisitioning activity (this
is required in case it is necessary to resolve any problems).

(c) Transportation charges are included in the unit price. Transportation is usually accomplished by premium method (armored van); therefore, multiple requisitions to the same destination should be consolidated whenever possible. Delivery normally will be accomplished within 3 weeks after receipt of the requisition by the DSCP Inventory Manager.

SUBPART 90.5 - CONTRACT REVIEW PROCEDURES

90.501 Checklists.

The following contract review checklists have been developed for use as guides by DLA contracting officers and buyers in their individual contract reviews. The checklists may be modified to suit the needs of the contracting activity. Standard DLA-wide forms are not prescribed in order to permit development of local checklists.

(a) Contract review checklist - supplies/services.

CONTRACTOR: _____
CONTRACT NO.: _____ DOLLAR VALUE: $_____
BRIEF DESCRIPTION OF SUPPLIES OR SERVICES
QUANTITY UNIT PRICE EXTENSION
$ $

1. Does the Center/Activity have the authority to purchase this item? (DFARS 208.70) YES NO N/A

TAB NO. 1 PR/MIPR

2. In file? (53.201-92(b)(3)(i))

3. Are amendments approved by appropriate authority and are they attached? (53.201-92(b)(3)(i))

4. Option quantity included? (FAR 17.202)

TAB NO. 2 SPECIFICATION/DRAWING

5. Is the purchase description prepared in accordance with FAR 11.000?

TAB NO. 3 ACQUISITION PLAN/AMENDMENTS (FAR/DFARS/DLAD 7.1)

6. Is information sufficient to support proposed method of acquisition (Sealed Bid - Competitive Proposals)? (FAR 6.401)

7. Was the acquisition plan approved at a level above the buyer in accordance with DLAD 7.102(91)?

8. Were market surveys and market research performed in accordance with DLAD 7.102(90)?

9. Is required delivery schedule realistic?

10. If option proposed, authorized/appropriate? (FAR 17.202)

11[f245]. ***Does the acquisition plan define S&S requirements (items, quantities, delivery terms), ensure S&S capability is developed, and include S&S testing in accordance with 7.104(b)(91) and 17.9303(c)? Does the acquisition plan provide all the information required in 90.1101(b)(18) regarding S&S?***

TAB NO. 4 JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION:

12. Was contracting without providing for full and open competition justified? (FAR 6.303-1)

TAB NO. 5 DETERMINATION & FINDINGS

13. Was a justification for use of option prepared? (FAR 17.205(a))

14. If option is not to be evaluated, was a determination approved at a level above the contracting officer? (FAR 17.206(b))

15. If for full and open competition after exclusion of sources, was a D&F prepared? (FAR 6.202(b)(1))

TAB NO. 6 NONPERSONAL SERVICES DETERMINATION

16. If nonpersonal services involved, was determination issued? (53.201-92(b)(3)(iv))

TAB NO. 7 DOL WAGE DETERMINATION

17. Was a wage determination requested? YES NO N/A
(DLAD 53.201-92 (b)(3)(v))

18. If wage determination obtained, is it current or does file contain documentation authorizing extension?

TAB NO. 8 SMALL BUSINESS SET-ASIDE DETERMINATION

19. Does information provided support the determination? (FAR 19.501(c)/DLAD 53.201-92(b)(3)(vi))

20. Is withdrawal/modification of the initial set-aside determination explained? (FAR 19.506(c))

TAB NO. 9 BUY AMERICAN ACT

21. If applicable, has a nonavailability determination been prepared and approved pursuant to DFARS 225.102/DLAD 25.102?

TAB NO. 11 SOURCE LIST

22. List includes those initially solicited and those added as a result of requests, with dates for the latter? (53.201-92(b)(3)(vii))

23. Is the list excessively long? (FAR 14.205-4(a))

24. Is list annotated as to "no bids" received?
(FAR/DLAD 14.205-2)

TAB NO. 12 PRESOLICITATION NOTICE

25. Should preinvitation notice (FAR 14.205-4(c))
or presolicitation notice (FAR 15.201(c)(5)) have been used?

26. Should draft RFP ((FAR?DLAD 15.201(c)(6)) have been used?

TAB NO. 13 SYNOPSIS

27. Copy of transmittal in file?

28. In proper format? (FAR 5.207/DFARS 205.207)

29. No synopsis; justification adequate? (FAR 5.202)

30. Was adequate time allowed? (FAR 5.203)

TAB NO.14 SOLICITATION & AMENDMENTS

31. Was solicitation issued in a timely manner?

32. Do solicitation provisions reflect PR/MIPR
requirements?

33. If oral solicitation, does file contain
justification for its use? (FAR 15.***203***(f))

34. Bidding time/RFP response time adequate?
(FAR 5.203 and 14.202-1)

35. Format in accordance with FAR 14.201-1(IFB)
or 15.***204***-1(RFP)?

36. Were amendments sent to all originally solicited?
(FAR 14.208/15.***206***)

37. Were amendments properly dated? YES NO N/A
(DLAD 53.201-92 (b)(3)(viii)

38. Are solicitation clauses and provisions
current/complete? (FAR 14.201-6/15.***209***)

39. Does solicitation include evaluation factors?
(15.612-90(a)/15.***304***)

40. Does the solicitation address S&S requirements, capability, and testing as outlined in the Acquisition Plan (90.501(a)12.)?

TAB NO. 18 ABSTRACT OF OFFERS

41. Abstract of bids/proposals: (FAR 14.403)

(1) Signed and dated?
(2) All bids/offers entered properly?
(3) Exceptions noted? (53.201-92(b)(4)(i))

TAB NO. 19 PACKAGING/TRANSPORTATION/FREIGHT RATE DATA

42. Packaging/transportation/freight rate data obtained
and determined to be adequate? (53.201-92(b)(4)(ii))

TAB NO. 20 COST/PRICING DATA

43. Were cost or pricing data requested in the
solicitation? (FAR 15.***403-5***)

44. When cost or pricing data are required, has the
contracting officer obtained the Certificate of Current
Cost or Pricing Data? (FAR 15.***406-2***)

45. ***If*** cost or pricing data are not required but the ***information other than cost or pricing needed to*** has to help establish price reasonableness or cost realism? (FAR 15.***404-3***)

46. If cost or pricing data submitted, is it in file?

47. If cost or pricing data were required, has the contracting officer indicated the extent to which he/she has relied on the data and recognized as inaccurate, incomplete or non-current any cost or pricing data submitted? (FAR 15.***406-3(a)(6***)

48. If cost or pricing data were or were not requested, does the file provide the exception used and basis for it? (FAR 15.***406-3(a)(5)***)

TAB NO. 21 AUDIT REPORT/WAIVER/FIELD PRICING REPORT

49. Was field pricing support obtained (DCAA audit; DCAA pricing/technical report)? ***FAR 15.404-2 and DFARS 215.404-2)***)

50. If ***so, does the file contain all pricing support information? FAR 15.406-2(b)(2))***

51. Was independent price analysis performed by the cost/price analysis element? (15.***404-1(a)(90)***)

TAB NO. 22 PRICE/COST ANALYSIS

52. If sole bid received, is the file documented to reflect actions taken and rationale used to determine the reasonableness of prices? (14.408-2(90))

53. Was weighted guidelines analysis prepared? (FAR 15.***404-4(c)(2***)/ DFARS 215.***404-71***

54. If prior contracts were used in the price analysis, were the price reasonableness determinations of those contracts stated? (FAR/***DLAD 15.404-1(b)(2)(ii)***) YES NO N/A

55. Were realistic negotiation objectives established? (15.***406-1***)

TAB NO. 23 PRENEGOTIATION BRIEFING MEMO

56. Was prenegotiation briefing presented to appropriate authority prior to negotiations? (15.***406-1(b)(91)***)

57. Does prenegotiation briefing memorandum clearly establish basis for negotiating position?

58. Does it include all of the required elements? (15.***406-1(b)(92)***)

59. Was basis for decision to negotiate, or decision to accept the initial offer without discussion, documented? (FAR 15.***306(a)(3***) and DLAD 15.***406-1***(b)(92)

60. Is prenegotiation briefing memorandum signed and dated?

61. Was a comparative schedule (spread sheet) prepared as required by 15.***406-1***(b)(9***2***)(4)?

62. If negotiation objectives were changed or exceeded, was prenegotiation briefing authority notified? (15.***406-1(b)94***)

TAB NO. 24 PRICE NEGOTIATION MEMO

63. Were negotiations conducted on an individual cost element basis?

64. Was option quantity considered in negotiations? (DLAD 15.***403-4(a)(1)(i)(90) and 15.403-4(b)(90)(i)***)

65. Was rent-free use of Government property considered in the negotiations?

66. Was authority obtained for rent-free use from cognizant administrative contracting officer?

67. Was appropriate contract type selected?

68. Was common cutoff date for negotiations established with all offerors? (FAR 15.***307(b)***)

69. Does price negotiation memorandum (PNM) format conform with FAR 15.***406-3***(a)/DFARS 215.***406-3***(a)/DLAD 15.***406-3***(a))?

70. Does the PNM clearly and conclusively support price reasonableness determination? (DLAD 15.***406-3(a)(ii***))

71. Is statement of same included in the PNM?

72. Is the PNM signed and dated?

73. ***Does the PNM document any negotiated changes to the S&S provisions (including those related to handling surge investments at the end of the contract), document (where it occurs) inability to obtain S&S capability and alternative plans as required in 17.9304(g)(3), and include a finding that any surge investments proposed are the most cost effective solutions?***

TAB NO. 25 CERTIFICATE OF COST OR PRICING DATA YES NO N/A

74. Was certificate of current cost or pricing data obtained? (FAR 15.***406-2***)

75. Were option requirements included?

TAB NO. 27 PREAWARD SURVEY/WAIVER

76. Was preaward survey conducted or a document executed by the contracting officer to not request PAS? (FAR 9.106 and DLAD 9.106-1)

TAB NO. 28 EEO CLEARANCE

77. If the preaward survey report recommendation is not followed, has the case been reviewed and concurred in by the Chief of the Contracting Office? (DLAD 9.105-2(b))

78. If $1 million or more, was the equal employment opportunity clearance report obtained? (FAR 22.805(a))

TAB NO. 29 BID/OFFER EVALUATION

79. Was evaluation conducted in accordance with solicitation criteria? (FAR 15.***305***(a))

80. Was price considered where technical evaluation is required? (FAR 15.***304(c)(i***))

TAB NO. 30 CAS COVERAGE

81. Is this a CAS-covered contract? (FAR 30.201-1)

82. If a Disclosure Statement is required, did the contractor:

(1) Submit same?
(2) Execute a certificate of monetary exemption?
(3) Execute certificate of interim exemption?
(4) Execute a certificate of previously submitted disclosure statement?

TAB NO. 34 UNSUCCESSFUL BIDS/PROPOSALS

83. Nonresponsive determinations reviewed and concurred? (FAR 9.105-2)

84. Nonresponsibility determination in file? (FAR 9.105-2(a))

85. Unsuccessful bids/proposals included in the file?

86. Were unsuccessful bidders/offerors notified promptly? (DLAD 14.409-1(b)/FAR 15.***503***)

87. If small business determined to be nonresponsible, was a certificate of competency obtained? If not, why not? (FAR 19.6)

TAB NO. 35 MISTAKE IN BID/PROPOSAL

88. Does the file contain the administrative determination required by FAR 14.407-3(e)/DFARS 214.407-3(e)?

89. Concurrence by counsel obtained? (FAR 14.407-3(f))

TAB NO. 36 DETERMINATION OF LATE BID/PROPOSAL YES NO N/A

90. Disposition of late bids/proposals adequately documented? (FAR 14.304-3 and FAR 15.***208***)

TAB NO. 37 CONTRACT ANNOUNCEMENT

91. Was the $5 million Contract Announcement forwarded? (FAR 5.303 /DFARS 205.303/DLAD 5.303)

TAB NO. 38 INDIVIDUAL CONTRACT ACTION REPORT

92. Is DD Form 350, Individual Contracting Action Report, in the file? (DFARS 204.670-3)

TAB NO. 39 LOCAL CONTRACT REVIEW COMMENTS

93. Have all local CRO comments been addressed prior to forwarding for HQ DLA review? (DLAD 1.690-7(b))

SECTION C - OTHER SUPPORT DATA

94. Was a subcontracting plan for Small and Small Disadvantaged Business concerns obtained and approved, if required? (FAR 19.702)

95. If a plan was not obtained, was a determination made that subcontracting possibilities do not exist? (FAR 19.705-2(c))

96. If royalty payments involved, did General Counsel, HQ DLA concur? (FAR 27.204-1(b)/DLAD 27.000-90)

97. Should this item be referred to the Competition Advocate?

98. Is the contractor on the "Parties Excluded from Procurement Programs?" (FAR 9.405(b))

99. If a warranty provision contemplated, were the criteria of FAR 46.7 considered?

100. If provision for progress payments contemplated, is it appropriate? (FAR 32.501)

101. Were negotiations conducted with all responsible offerors within a competitive range? (FAR 15.***306(d)***)

102. Were offerors notified of any changes in the Government's requirements? (FAR 15.***2***06)

103. Were acknowledgments of changed requirements confirmed in writing by offerors? (FAR 14.303 and 15.411)

104. Were proposals marked with the date and time of receipt? (FAR 15.***207***(a))

105. Were requirements revalidated per DLAD 1.693?

106. ***Were the documentations required in DLAD 17.9307 included in the contract file?***

TAB NO. 43 AWARD/CONTRACT AND CORRESPONDENCE

107[f246]. ***If the contract authorizes use of Government supply sources, are mechanisms in place to monitor appropriate usage? (DLAD 51.102(f)(1))***

108. Was proper award document utilized (SF 26 - SF 33 - SF 1449)? (FAR 15.414)

109. Does contract agree in all respects with contractor's bid/proposal?

109. If single signature document, does it reflect contractor's letter/message amendments? YES NO N/A

110. Is arithmetic correct? (Extensions and totals)

111. Is contract being awarded within bid/proposal acceptance period? (FAR 14.408-1(a)/52.215-***16***(e))

112. ***Does the contract file contain the approvals required in 17.9304(b)(7)(vi)(A) and 52. 217-9006 for any exceptions taken?***

113. Adequately funded? (FAR 32.702)

REMARKS:_____
_____

(b) Contract review checklist - construction.

CONTRACTOR_____ DOLLAR VALUE$_____
CONTRACT NUMBER_____ PROJECT_____
LOCATION_____

1. Does the contract meet the criteria for a construction YES NO N/A contract? (FAR 36.102)

2. Have funds been approved under provisions of the annual Military Construction Appropriation Act? Is any other funding source appropriate?

3. Were sealed bidding procedures used? (FAR 36.103(a))

4. Were specifications prepared in accordance with FAR Part 11? (FAR 36.202)

5. Was an Independent Government Estimate prepared?

a. Was it prepared in as much detail as though the Government were competing for award? (FAR 36.203(a))

b. Was it marked FOUO prior to bid opening and was it filed with the other bids? Was the FOUO designation removed after bid opening? (DFARS 236.203(c))

c. Was the Government estimate recorded on the Abstract of Bids?

6. Did the advance notice and/or solicitation indicate the estimated price range of the procurement? (FAR 36.204)

7. Was a liquidated damages clause included in the contract? (DFARS 236.206)

8. Is a firm fixed-price contract anticipated? (FAR 36.207)

9. Were appropriate arrangements made for prospective offerors to inspect the work site and to have the opportunity to examine data? Was a record kept of the identities and affiliations of those who inspected the work site? Did the solicitation contain a site inspection provision?

10. Was a presolicitation notice issued? (FAR 36.302)

11. Was the presolicitation notice synopsized? (FAR 5.204)

12. Was a wage determination issued? Did the specifications include same? (FAR 36.303(c)(1))

13. Was SF 308, Request for Determination and Response to Request, used to request an installation or individual wage determination? YES NO N/A

14. Are modifications to the DOL determination time-date stamped?

15. If an amendment to the wage rate was issued, were procedures for amending the solicitation followed?

16. Was adequate time allowed between issuing and opening the solicitation? (FAR 36.303(a))

17. Did the solicitation contain all the information required by FAR 36.303(c)(1) through (10)?

(a) wage determination

(b) clause at FAR 52.236-1, Performance of Work by the Contractor

(c) magnitude of the construction

(d) period of performance

(e) site inspection arrangements

(f) information concerning facilities

(g) information concerning prebid conference

(h) special qualification or experience

(i) reporting requirements

18. Were the clauses prescribed by FAR 36.501 through 36.521, and DFARS 236.570 included, as appropriate?

19. Did the solicitation specify the requirement for bonds, the penal sum for each bond, and the deadlines for submitting acceptable bonds? (FAR 28.102-2 and 28.102-3)

20. Was an adequate bid bond submitted with the bid?

21. Are the bid bonds signed by an agent of an approved corporate surety listed in the Treasury circular?

22. Was the original of the bonds submitted with the bid?

23. Are the penal amounts of performance and payment bonds correct? (FAR 28.102-2(a)(1) and (b)(1))

24. Were bid bonds and performance and payment bonds considered in the determination of responsibility?

25. Were performance evaluation reports used in making the determination of responsibility? (DFARS 236.201(c)(2))

26. If prequalification was used, was the approval of the HCA obtained? (DFARS 236.272)

27. If more than one item is subject to statutory cost limitation, is a separate schedule provided. Is the bid unbalanced? (FAR 36.205)

28. Does the notice of award include the information prescribed by FAR 36.304? YES NO N/A

a. Identify the invitation for bids.

b. Identify the contractor's bid.

c. State the award price.

d. Advise contractor that required payment and performance bonds must be promptly executed and returned to the contracting office.

e. Specify the date of commencement of work, or advise that a notice to proceed will be issued.

29. Are the prescribed forms for construction contracts used? (FAR 53.236-1) (See also FAR 53.301-24, 53.301-25, and 53.301-25-A)

a. SF 1417, Pre-Solicitation Notice (Construction Contract)

b. SF 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair)

30. If period of performance is more than one month, are progress payments authorized?

31. Was the clause at DFARS 252.232-***5*** included for progress payments? (***FAR 32.111(a)(5)***)

32. Is a construction warranty clause approved for

usage? (FAR 46.710(e)(1))

33. Does the small or small disadvantaged business concern meet the size standards of FAR 19.102?

34. Is the required insurance clause in the contract? (FAR 28.3, 52.228-5)

35. Are specific affirmative action goals for the geographical area established? If not known, have instructions been requested from ***J-33/DCMA-O***? (FAR 22.804)

36. Has all Government-furnished property been described in detail in the schedule?
37. Has the solicitation been totally set-aside for small business and appropriate clauses included for procurements estimated below $2 million? (DFARS 219.502-2)

38. Have the potential offerors been allowed enough time to submit bids? (i.e., 30 days minimum, or a justification to reduce the bidding time made by the contracting officer) (FAR 14.202-1)

39. If funds are contingent upon the availability of another fiscal year funding, does the solicitation contain the proper clauses pertaining to the Funds Availability? (FAR 32.705-1(a))

40. Has a qualified COR/COTR been assigned?

SUBPART 90.6 - GUIDANCE FOR CONTRACTING OFFICERS' REPRESENTATIVES AND CONTRACTING OFFICERS' TECHNICAL REPRESENTATIVES

90.601 General.

This subpart provides Defense Logistics Agency (DLA) Contracting Officers' Representatives (CORs) and Contracting Officers' Technical Representatives (COTRs) a reference on many of the factors that surround their duties. Included are definitions of key terms, a brief summary of the environment in which the COR/COTR works, responsibilities of each of the participants in the acquisition process, and other information to assist CORs/COTRs in accomplishing their duties successfully. It is important for all to understand that this is only a guide. Recommendations on improving Subpart 90.6 may be provided to ***J-3312***.

90.601-1 Reserved.

90.601-2 Acquisition process in DLA.

The acquisition process in DLA consists of four phases: The requirements determination phase, the specifications/statement of work (SOW) phase, the contracting phase, and the contract administration phase. A brief narrative on these four phases follows. The length of time it takes to complete a project from beginning to end depends on the complexity of the project. In some instances a project can take several years.

(a) Requirements Determination Phase. The requirements determination phase begins with identification of a need. In this phase, boundaries for the project, milestones, and source selection procedures are established. If necessary, the acquisition planning team is formed during this phase to oversee the project. The acquisition planning team normally consists of customer and technical personnel, budget personnel, and a representative from contracting. Soon after this team is formed and funding is provided, the specifications/SOW phase begins.

(b) Specifications/SOW Phase. The second phase is the development of the description of needs. During this phase members of the acquisition planning team draft specifications, purchase descriptions or other similar descriptions, and/or a statement of work. Technical evaluation factors are developed and milestones are updated during this period prior to moving forward to the third phase, contracting.

(c) Contracting Phase. The contracting phase includes preparation of the solicitation, evaluation of offers, contract negotiation (if applicable), and award of the contract.

(d) Contract Administration Phase. This phase begins with award of the contract and includes: delivery of supplies, and/or completion of performance of services; and partial, progress, and final payments to the contractor; all administrative actions; and contract closeout denoting the end of the phase.

90.601-3 The contract.

A Government contract is a document containing the rights and responsibilities of both the Government and the contractor. For ease of reference, most Department of Defense (DoD) contracts are structured as follows:

Section	Title
	Part I The Schedule
A	Solicitation/contract form
B	Supplies or services and prices/***costs***.
C	Description/specifications /***SOW***
D	Packaging and marking
E	Inspection and acceptance
F	Deliveries or performance
G	Contract administration data
H	Special contract requirements
	Part II - Contract Clauses

I Contract clauses.

Part III - List of Documents, Exhibits, and Other Attachments

J List of attachments

Part IV - Representations and Instructions

K Representations, certifications, and other statements of Offerors ***or respondents.***

L Instructions, conditions, and notices to offerors or ***respondents.***

M Evaluation factors for award.

90.602 Specific information concerning CORs and COTRs.

90.602-1 Reserved.

90.602-2 Definitions.

(a) Contracting Officer's Representative (COR). The individual designated in writing by the contracting officer to act as the contracting officer's authorized representative to monitor specific aspects of the contract and take action as authorized in the letter of appointment. The COR, when one is appointed, acts as the point of contact between the contracting officer and the COTR assigned to the contract. COR responsibilities and limitations are established by the contracting officer.

(b) Contracting Officer's Technical Representative (COTR). The individual designated by the contracting officer to act as the contracting officer's authorized representative for technical aspects of the contract. The COTR reports to and assists the COR, when one is appointed, in providing technical oversight of the contractor's performance. COTR responsibilities and limitations are established by the contracting officer. In the event that a COR is not designated and only a COTR is appointed, the COTR shall report directly to the contracting officer.

90.602-3 Designation of the COR/COTR.

(a) The contracting officer may select and designate any Government employee, military or civilian, to act as the contracting officer's authorized representative as a COR/COTR on a contract subject to the authority and limitations outlined in the letter of appointment. In selecting an individual as an authorized representative, the contracting officer shall ensure that the individual possesses qualifications, ***training*** and experience commensurate with the authority which the COR/COTR will exercise. ***All CORs/COTRs shall complete approved training prior to being issued a letter of appointment (see DLAD 1.603-93(a)). Local training coordinators should be consulted for sources of approved COR/COTR training courses.***

(b) A COR/COTR shall be designated by name and position title. In accordance with 1.603-91(a) each designation of a COR/COTR shall be in writing and shall clearly define the scope and limitations of authority. The extent of the authority and limitations of the COR/COTR for each individual contract is determined by the letter of appointment from the contracting officer. Changes in the scope and limitation of authority may be made either by issuing a new designation or by amending the existing designation. When one COR/COTR is appointed for more than one contract, separate designations shall be issued for each contract. A copy of each appointment letter shall be forwarded to the applicable payment office(s) when the COR/COTR is authorized to certify invoices for payment. This copy shall be annotated with the COR/COTR's address and telephone number if this information is not readily apparent in the letter.

(c) A designation of a COR/COTR shall remain in effect through the life of the contract unless revoked by the contracting officer, the contracting officer's successor, or in the event of reassignment of the individual designated.

(d) The contracting officer shall be notified immediately in writing, by the COR's/COTR/s immediate supervisor, if the individual appointed as COR/COTR is transferred, reassigned, will be absent for an extended period, or is otherwise unable to fulfill the responsibilities of the position.

90.602-4 Responsibilities of the COR.

(a) Planning. The individual rights and obligations of both the contractor and the Government should be clearly established by the contract terms. Often the action of one party to the contract affects the other party; therefore, planning is necessary before performance begins to integrate the actions of both parties. For example, if the contract specifies that property or services are to be supplied by the Government, the COR must ensure delivery of such Government-furnished property or services. The Government's responsibility for other actions such as the approval of plans, comments on draft reports, performance of tests and evaluation, and provision of technical information to the contractor requires the Government to share in the responsibility for contract completion. The Government must be responsive and act in a responsible manner. Delays or omissions by Government personnel in performing reviews, giving approvals or disapprovals, or furnishing required information may entitle the contractor to an equitable adjustment as provided for in the contract.

(b) General Responsibilities. Responsibilities of the COR vary with the type of contract and complexity of the acquisition. For a contract of any complexity, the COR has many duties, including: monitoring of progress and performance by the contractor, controlling of Government property and facilities, where necessary, recommending contract modifications and terminations, certifying receipt of supplies/services, and accomplishing other tasks required by the contract or the contracting officer. In fulfilling the responsibilities, the contracting officer shall require the COR to:

(1) Read and maintain a copy of the contract provided by the contracting officer together with contract modifications which may be issued;

(2) Become thoroughly familiar with the terms and conditions of the contract to assure compliance with the provisions contained therein; and

(3) Promptly inform the contracting officer of any delay in the progress of work or any problem encountered that may require a contract modification or other administrative action.

(c) Specific Responsibilities. Each contract must be treated on an individual basis, because it may place responsibilities on the COR unique to that contract. Specific responsibilities that CORs perform on nearly every contract are addressed below, but no list could be all-inclusive. CORs should note specific responsibilities outlined in the COR/COTR letters of appointment and pay particular attention to limitations on their authority.

(d) Monitor Technical Compliance. The COR must ensure that the contractor complies with all technical requirements of the contract, including the submission of required reports or other documentation. In this function the COR shall:

(1) Notify the contracting officer of potential or actual performance problems and recommend remedial action. If verbal notification is given to the contractor, the COR shall follow this up in writing to the contracting officer. COTRs have a corresponding duty to inform CORs.

(2) Assist in meeting the Government's contractual obligations to the contractor. This includes, but is not limited to, arranging to supply Government-furnished equipment, facilities, and services called for in the contract and providing timely Government comment on, or inspection/acceptance of, draft/final contract deliverables if required by the contracting officer or contract. Section E of the contract provides information on inspections and acceptance. In the case of purchase orders, the body of the order contains this information.

(3) Report any instance of suspected conflict of interest or fraud, waste, and abuse to the local Office of General Counsel that supports the contracting officer.

(4) Inform the contracting officer in writing of any needed change in the scope of work in the contract so that a modification may be issued, as appropriate.

(5) Report all unacceptable deliverables. If the work is deemed unsatisfactory, the COR shall report all deficiencies in writing to the contracting officer who will determine what further actions are required.

(6) Report all acceptable deliverables. The COR shall provide written notification to the contracting officer when the contractual requirements have been fulfilled and are technically acceptable. The evaluation of contractor performance may be documented on either a DD Form 250, a letter of acceptance, or the verification of receipt on a commercial invoice. The verification of receipt on the invoice or on the DD Form 250 is the most common form of documenting acceptance. These documents also serve as instruments in making payment. The disbursing office (the office that pays the contractor) will be identified in the contract. A copy of the contract and records of any payment made on the contract will be on file at that disbursing office. Although contractors send invoices directly to the disbursing office, the disbursing office will not make payment without the signature of an individual authorized to certify that the invoice is proper. It is the COR's responsibility to certify that the services/supplies have been received and are acceptable.

(7) Provide technical interpretation of the requirements. As previously discussed, the COR must have a thorough understanding of the requirements of the contract. It may become necessary to provide technical interpretation to the contractor for some portion of the work. The COR is encouraged to call upon other technical personnel to assist COTRs for this purpose. Where there is no appointed COTR, the COR is authorized to provide the assistance to the contractor on technical matters within the scope of the contract. Any technical assistance given to the contractor by the COR/COTR should be documented in the contract file. For significant matters, the information should be provided to the contractor in writing. The COR shall notify the contracting officer immediately whenever the contractor disagrees with or refuses to comply with any technical aspects of the contract as interpreted by the COR. The contracting officer shall provide final resolution in cases of disagreement between the COR/COTR and the contractor.

(8) Request deobligation of excess funds. A contracting officer who is not located at the place of performance may not be aware of contingencies which develop during the life of the contract and may require the deobligation of funds. The COR who is certifying receipt of supplies/services can compare expenditures with funds obligated on the contract. The procedure for requesting the deobligation of funds is to notify the contracting officer by letter that there are excess funds on the contract. Funds can be deobligated from a contract only by a contract modification signed by the contracting officer. The modification will inform the Comptroller that money has been deobligated and, therefore, can be decommitted.

90.602-5 Responsibilities of the COTR.

(a) General Responsibilities. The general responsibilities of the COR and COTR are similar, but the COTR reports to the COR, and the COR reports to the contracting officer, when appointed. The COTR's function is to act as the technical advisor to the COR when appointed. When a COR is not appointed, the COTR reports directly to the contracting officer.

(1) Assure that the COR has an understanding of individual responsibilities and working arrangements. Such discussions are necessary immediately after appointment and are appropriate at any time during the period of contract performance;

(2) Arrange a schedule with the COR to monitor contractual requirements. The contracting officer must be promptly informed of delays in progress of work and of any problem encountered that may require a contract modification or other administrative action;

(3) Become knowledgeable of the duties and functions of the COR; and

(4) Inform the COR of any disagreements with the contractor regarding technical interpretation of the contract.

(b) Specific Responsibilities. The specific responsibilities of the COTR will vary with each contract. COTRs should become familiar with all responsibilities outlined in the COTR letter of appointment and with the limitations on their authority. If authorized by the contracting officer, it is the COR's responsibility to determine when the work is complete and conforms with the technical requirements of the contract. However, the COTR will often be delegated this responsibility when technical expertise is needed. The COTR is not authorized to execute DD Form 250 or any other formal written acceptance unless the COTR has been specifically designated the authority to do so in writing. The COTR may be required to assist the COR with inspections or evaluations required by the contract.

90.602-6 Limitations on the authority of the COR/COTR.

(a) The authority vested in a COR/COTR is subject to the following limitations: The COR/COTR is not empowered to sign any contract, including delivery orders, purchase orders, or communication service authorizations (CSAs), or to modify a contract, or in any way obligate payment of funds by the Government. The CORs/COTRs may not take any action which may have an impact on contract or delivery order schedules, funds, or scope of work. All contractual agreements, commitments or modifications which involve prices, quantities, quality, or delivery schedules shall be made only by the contracting officer.

(b) While the COR/COTR limitations can be simply stated, assuring that the COR/COTR does not exceed the authority granted is much more complex. In the course of performing COR/COTR responsibilities, situations may result in an implied change to the contract which, in turn, may impact the delivery schedule, funds, or other areas outside the authority of the COR/COTR. These examples illustrate that the COR/COTR may exceed the scope of their authority by inaction or improper action. Two examples illustrate this point.

(1) Example 1: A user calls a COR and states that there is an insufficient number of copies of documentation delivered by the contractor. Certainly, it is within the realm of the COR's authority to advise the contractor that the required number of deliverables were not shipped/received. The COR notifies the contractor that additional copies must be provided to satisfy contractual requirements. The contractor delivers the quantity of documentation in accordance with the COR's instructions and submits an invoice for extra copies of the documentation. It is then discovered that the contractor had originally delivered the number of copies required by the contract. The COR's failure to review the contract prior to requesting additional copies has caused the COR to proceed beyond the authorized limitations and created a situation in which the Government may have to pay for the additional goods through ratification of the COR's unauthorized act. Further, the COR could incur a personal liability even though the COR may not have taken action which could be binding on the Government.

(2) Example 2: An individual is designated as COR on a contract for the installation of equipment. The equipment is scheduled for delivery the next month. The COR sets up a COR file and places the file in the filing cabinet after noting the scheduled installation date on the calendar. The installation day arrives, and the contractor, as promised, arrives with the equipment. However, it cannot be installed because the COR did not insure that the Government had done its part by installing an electrical outlet and raised floors. By inaction, the COR has allowed a potential claim to be made for Government-caused delay. In summary, the COR/COTR is not authorized to:

(i) Alter the contract in any way, either directly or by implication;

(ii) Issue instructions to the contractor to start or stop work. Only the contracting officer may do this;

(iii) Order or accept goods or services not expressly required by the contract;

(iv) Render a decision under the Disputes clause;

(v) Authorize delivery or disposition of Government property not authorized by the contract; and

(vi) Discuss acquisition plans or provide any advance information that might give one contractor an advantage over another contractor in forthcoming procurements.

90.603 COR/COTR files.

90.603-1 Contents of the COR/COTR files.

(a) The COR/COTR is required to document all actions taken in regard to the contract. To the extent that contractual documents and correspondence do not explain all actions taken, suitable records must be prepared promptly and placed in the official COR/COTR file. The importance of maintaining complete and orderly files cannot be overemphasized, and it is critical to transfer of responsibility if the COR/COTR is changed during the term of the contract.

(b) As a matter of practice, the COR holding discussions or conducting business with contractors shall prepare Memoranda for Record (MFRs) of meetings, trips, and telephone conversations relating to the contract. Each MFR, other similar records, and correspondence relating to the contract shall cite the contract number. A copy of all actions or correspondence shall be furnished to the contracting officer and all other interested parties having a need to know. Documents that may contain contractor proprietary data or other business-sensitive information should not be released outside the Government without approval of the contracting officer.

(c) Duplicate copies of file documents shall be destroyed as soon as they have served their purpose, but in no event shall such documents be retained for longer than 1 year after acceptance of the final deliverable under the contract.

(d) Records pertinent to unsettled claims for or against the United States, open investigations, cases under litigation, or similar matters shall be preserved until final clearance or settlement of the matters even though retention of these records may exceed a period longer than 6 years and 3 months after final payment.

(e) CORs shall forward any correspondence received from the contractor to the contracting officer.

90.603-2 Required documents.

The following documents are required for the effective performance of COR/COTR functions and to establish the official COR/COTR file. Both the COR and COTR keep separate files of their own.

(a) Contract and modifications thereto;

(b) COR/COTR letter of appointment and any correspondence from the contracting officer which amends the letter of appointment;

(c) For CORs, the names of technical and administrative personnel (e.g., COTRs);

(d) Statement indicating that the COR/COTR has read and understands DLAD 5500.1, Standards of Conduct;

(e) Records of COR/COTR inspections and all receiving and acceptance documents;

(f) Correspondence to and from the contracting officer and the contractor;

(g) Memoranda of phone conversations, meetings, and discussions relating to the contract;

(h) Progress reports;

(i) Inspection and evaluation reports; and

(j) Any other document pertaining to the contract.

90.603-3 Disposition of completed COR/COTR files.

Since the COR/COTR is an authorized representative of the contracting officer, the COR's/COTR's records are a part of the official postaward contract files and shall be forwarded to the contracting officer for retirement with the official contract file upon completion of the contract. Documents which pertain to the contract shall be clearly identified when forwarded to the contracting officer.

SUBPART 90.7 - DAR CASE FORMAT

90.700 Scope of subpart. This subpart prescribes a uniform structure for all cases submitted to the DAR Council for formal consideration.

90.701 Purpose. The case format serves two important functions. First, the prescribed structure for presenting the proposed case provides a very useful and clear exposition of the issues to assist the DAR Council in considering cases in a timely and efficient manner. By clearly setting out how the current regulations are perceived to be inadequate and the specific changes that will remedy the described situation, the case structure minimizes misunderstandings and helps avoid the delay that necessarily results when additional information or clarification is required from the party initiating a case. Second, the mandatory minimal information is necessary to comply with various Federal statutes, Executive Orders, or higher level regulations that require those who propose rules, either initially or by way of revision to existing regulations, to analyze and attempt to mitigate the burdens which the proposed rules may place on the public in general, and small businesses in particular. The case format appropriately places initial responsibility for identifying and considering those burdens on the party proposing that the FAR or DFARS be amended. For these reasons, cases that do not follow the prescribed format will be returned with appropriate guidance to the initiator.

90.702 Case format. Every DAR case recommending an amendment to the FAR or the DFARS will consist of at least two parts: The statement of the case, and the two essential attachments discussed at 90.703-2. The initiator should provide any additional attachments or other documents which would be helpful to a more complete understanding of the issues.

90.703 Case statement. The statement of the case shall be in the form of a memorandum, without signature block, to the Director, DAR Council; be in the format of: I. Problem; II. Recommendation; and III. Discussion, and be forwarded via a cover letter signed by the chief of the contracting office to HQ DLA, ATTN: ***J-3311***.

90.703-1 Problem section. The Problem section should succinctly discuss an existing problem in the procurement process. A simple statement that some part of the FAR or DFARS should be changed, however, is not an adequate description of a problem upon which the DAR Council will act. As the foundation for every DAR case, the statement of the problem should convey as accurately and completely as possible the factual or legal reasons necessitating regulatory revision.

90.703-2 Recommendation section. The Recommendation section consists of two elements: Citation of the specific language to be added, deleted, or revised in the FAR or DFARS (TAB A of the DAR case memorandum), and citation of certain documentation responsive to four collateral requirements mandated by Federal statutes, Executive Orders, and higher level regulations (TAB B of the DAR case memorandum). TAB A shall set forth as much of the pertinent section or paragraph of the FAR or the DFARS as is necessary to show the desired change in context. The language to be added should be enclosed in brackets and any deletions should be shown as lined through. TAB B shall contain the elements described as collateral requirements.

90.703-3 Discussion section. The Discussion section should provide any background information, including prior DAR cases that are relevant to the current issues, which will assist the DAR Council in understanding the problem. This section should also demonstrate clearly how the recommended revisions to the FAR or DFARS will solve the problem identified. While the discussion should be succinct and to the point, if the initiator believes the recommendations may have side effects or disadvantages that are pertinent to the DAR Council's consideration, these should be addressed. Though the FAR and DFARS iterates the policy not "...to stifle the development of new techniques or methods of procurement," cases should not be proposed which cannot be justified in terms of administrative effort or expenditure of Government resources. Accordingly, the Discussion section of the case shall include a justification that considers the full operations of the regulatory process, including HQ DLA review, committee analysis, DAR Council analysis, CAA Council analysis, publication for comment and review of comments, and other applicable steps.

90.704 Deviations. To encourage desirable innovation in procurement methods and techniques, ***the Director, Defense Procurement, on a test basis, has granted approval authority for certain class deviations from the FAR and the DFARS to the Commander, DCMA (the Senior Procurement Executive). This authority does not extend to (1) deviations identified in DFARS 201.402(1)(i); or (2) deviations that have a significant effect beyond the internal operating procedures of your department or agency or have a significant cost or administrative impact on contractors or offerors, including any deviation that tends to diminish any preference accorded small businesses by the FAR or DFARS. This authority does not extend to requirements imposed by statute or directives of other agencies, such as the Small Business Administration and the Department of Labor, that have statutory or executive regulatory authority***.

Requests for approval of a class deviation by the Commander, DCMA shall contain Problem, Recommendation and Discussion sections that adequately demonstrate a need for, and estimate the duration of, the deviation (see 90.703), and be forwarded to HQ DLA, ATTN: ***J-3311***, via a cover letter signed by the chief of the contracting office. In addition, DFARS 201.402(3) prescribes certain specific types of information which must be supplied in support of any requested deviation.

Deviation requests should be written as persuasively as possible. Initiators should address the regulation as it is currently written and specify what needs to be changed to institute or to continue their required practices; describe the peculiarities of their situation that make the deviation necessary; what alternatives have been tried or considered to avoid the deviations; and why the deviation is the best choice. In the case of extension requests, either propose a permanent change or describe efforts made to alleviate the need for the deviation.

SUBPART 90.9 - UPDATING SMALL DISADVANTAGED BUSINESS STATUS AND WOMEN-OWNED BUSINESS STATUS IN THE DD 350

90.901 Reporting requirement.

When entering the DD Form 350 CAGE Code, if either the small disadvantaged business status or the women-owned business status in the DLA Contract Action Reporting System (DCARS) is incorrect, the DCARS CAGE file must be updated before the DD Form 350 can be entered. A completed report format (see 90.902) shall be submitted by mail or facsimile transmission to HQ DLA, ATTN: ***J-3312***. Use of the format is mandatory; variations will be accepted on a case-by-case basis if submitted with a complete justification for the variance. Submissions may be typed or legibly handscribed. All submissions require the signature of the activity Small and Disadvantaged Business Utilization Specialist (SADBUS). Within two working days after the DCARS update is processed, a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code, shall be submitted to the ***Defense Logistics Information Service (DLIS***-FEB).

90.902 Report format.

TO: DEFENSE LOGISTICS AGENCY DATE:
ATTN: ***J-3312***
8725 JOHN J. KINGMAN ROAD
FT. BELVOIR, VA 22060-6221

FROM:

REQUEST THE FOLLOWING CHANGE(S)/ADDITION(S) BE MADE TO THE ***J-3312*** CAGE FILE:

CHANGE_____ ADDITION_____

DISADV N OR L	WOMEN N OR L	MANUFACTURER'S NAME & ADDRESS	CAGE CODE

N = NO L = YES CHANGE = AN EXISTING CAGE RECORD IS TO BE CHANGED AS INDICATED ADDITION = CAGE RECORD IS NOT YET ON THE DLA FILE AS IT WAS RECENTLY ASSIGNED BY J-3 IN RESPONSE TO AN EMERGENCY REQUEST (USED RARELY)

ACTION OFFICE REPRESENTATIVE SIGNATURE_____

ACTIVITY SMALL BUSINESS SPECIALIST SIGNATURE_____

THIS FORM MUST BE RECEIVED IN ***J-3312*** PRIOR TO FILE UPDATES.

SUBPART 90.10 - ADMINISTRATION OF DLAD

90.1001 Administration and explanation.

The administration and explanation of the DLAD is the responsibility of the Executive Director, ***Acquisition, Technical, and Supply Directorate*** , HQ DLA, ***J-33***.

SUBPART 90.11 - ACQUISITION PLANNING

90.1101 [f247]Contents of written acquisition plans. (***P***aragraphs ***are numbered to conform with coverage at*** FAR 7.105 ***and DFARS 207.105***.)

(a) Acquisition background and objectives.

(1) Statement of need. The statement of need shall include:

(i) The nomenclature, a brief nontechnical description, and general statement of use or purpose the acquisition is intended to satisfy.

(ii) Identification of requiring activity.

(iii) A statement as to whether or not the supplies are stocked.

(iv) The technical and contractual history.

(A) The history shall include a description of efforts to*:*

(1) Facilitate the use of commercial items (e.g., removing unnecessarily restrictive features of requirements documents).

(2) Obtain/acquire/develop a complete technical data package free of proprietary rights suitable for full and open competition; or

(3) Have restrictive features of specifications removed; or

(4) Develop a clear, unambiguous statement of work.

(B) Contract performance history for the same or similar supplies or services, e.g., name(s) of contractors(s), type of contracts, dollar value, degree of competition, acquisition authority, award date, unit price, contractor size status, contractor performance history (including delivery and quality performance) and significant problems encountered (customer complaints, nature of protests or Congressional inquiries).

(v) Discussion of previous APEC reviews.

(3) Cost. Provide the estimated dollar value of the acquisition, the quantity proposed to be acquired, and the anticipated unit price.

(4) Capability or performance. Discuss the basis for the decision to use the requirements document(s) being used for this acquisition. Provide a copy of the requirements document(s) to be used. Discuss commercial equivalency. If interim requirements documents descriptions are proposed, provide estimated completion date and any pertinent industry comments to date. Discuss previous problems with requirements document(s) and efforts made to resolve those problems.

(5) Delivery or performance-period requirements. Provide estimates of production lead times. Describe whether supplies or services are required by specified times to support other supplies, services, systems, or program requirements. Describe management considerations of the supplies, as appropriate, e.g., depot capabilities, stock rotational requirements, and shelf life. Describe production surveillance reporting requirements***. If***[A248] ***the acquisition is structured with a base and/or option period of performance greater than one year that includes more than one year's worth of requirements in that base and/or option, describe the results of the analysis required by DLAD 17.104(a) identifying benefits of recommended period of performance length and associated guaranteed minimum quantities (if applicable).***

(b) Plan of action.

(1) Sources.

(i[f249]***)*** Discuss the nature, extent, and results of the market survey and any market research performed or requested in support of the acquisition strategy developed (see also FAR Part 10 and state whether the acquisition will be conducted under FAR Part 12). ***Conduct and report the results of bundling analysis, as appropriate; see sections 7.107 and 10.001.***

(ii) Discuss applicability of socioeconomic requirements, e.g., small business set-asides, 8(a), and minority-owned business, empowerment contracting, and results of discussions with Small and Disadvantaged Business Utilization representatives***, including any conclusions as to whether the proposed action constitutes a bundling, and whether bundling analysis has been or will be conducted***. Also consider use of such sources as Javits-Wagner-O'Day Act- (JWOD-) qualified agencies for the blind or other severely disabled. Discuss any pertinent foreign purchase/sales matters. Discuss applicability of progress payments, economic price adjustments, bid guarantees, or performance bonds.

(2[f250]) Competition.

(i) Discuss alternative supplies, services, systems or programs which could be acquired using full and open competition if use of full and open competition is not planned. If appropriate, discuss the tradeoffs of use of such substitutes in terms of price differences, quality, and acquisition and production lead time. Discuss alternative acquisition strategies hich have been considered or could be used to provide for increased competition.

(90) Describe the Activity Competition Advocate's (see FAR 6.5) actions to date relative to the supplies/services proposed to be acquired including: description of efforts to have restrictive aspects of specifications, technical data, or statements of work revised/deleted; a summary of discussions with the Military Departments, or other requiring activity, and industry relative to alternatives to increase competition. Discuss feasibility of use of full and open competition with exclusion of a source to establish an alternative source or sources (FAR 6.202(a)).

(91) Describe strategies for developing/achieving competition for current and future acquisitions.

(92) Identify sources to be solicited. Discuss efforts/plans for developing or locating additional sources, including discussions with industry, trade associations, use of presolicitation notices, and advance notices in the Commerce Business Daily ***or Federal Business Opportunities ("FedBizOpps").***

(93) Include the Activity Competition Advocate's comments on the plan.

(5) *Budgeting and funding*. Describe the type of funds, stock funds or operations and maintenance funds, which are proposed to be used for the acquisition.

(13) *Logistics considerations*.

(i) Depot, ICP, DCMA, and Military Service Component Impact Statement. As part of acquisition plans, attach copies of Depot, DLA ICP, DCMA, and Military Service component impact statement(s) which address the downstream effects of implementing prime vendor arrangements, direct vendor delivery, vendor managed inventory or any other strategy that affects depots traditional functions, or workload/resources at DLA ICPs, DCMA organizations, or Military Service components.

(A) If possible, this effect should be quantified in terms of the number of NSNs that will no longer be processed by the depots, the amount of storage space that will become available for other uses, and the timeframe over which these items will no longer be shipped to depots (show number of NSNs for each time period). The decision to convert to DVD should be explained as being economically sound for the ICP/ Agency (including quantitative justification), or required as a performance objective of the acquisition and resultant contract, (e.g., because the customers delivery requirements dictate DVD support), or as contributing to Agency success in achieving goals set by Congress, OSD, or other policy-making entities.

(B) Additionally, acquisition plans should list any FSCs or NSNs included in the proposed contracting instrument that are assigned for management by an ICP other than the one executing the contract, and provide documentation that the other DLA Center(s) is aware of the proposed contract coverage, timetable, and inventory drawdown. An explanation of the reasons for including the NSNs in the proposed contract

should be provided (i.e., natural/traditional fit within the industry, allows total logistics support to a particular customer, etc.). Plans should also address whether Center resource managers and union representatives have been apprised of any potential workforce implications. Acquisition plans should address/include plans for accommodating any potential workforce impact (e.g., retraining).

(C) Plans should include an assessment of potential impact to Military Service component(s) and verification that the Service has been apprised of this potential impact.

(ii) Describe requirements for use of, or plans to use, qualified products lists, qualified manufacturers lists, or other qualification requirements (see FAR Subpart 9.2). Provide the number of products/ sources on such lists. Describe plans for qualifying additional products/sources. Discuss methods to be used to determine quality/compliance with requirements, e.g., first article test requirements, production test, in-process surveillance, inspection and acceptance criteria, or any other special test requirement. Discuss alternatives to the above and criteria for waiving same. Describe production surveillance and any production progress reporting requirements. Describe any requirements for certification, licensing, or approval by Government control agencies. Discuss any use of Certificate of Conformance or Certificate of Quality Compliance.

(iii) Explain the nature of patents, copyrights, or proprietary data. Identify plans to acquire rights to data.

(90) Describe phase-out and disposition plans for any current or due-in stocks for supplies being replaced.

(91) Include projected annual requirements, stock levels planned, feasible alternatives to those levels, and acquisition cycle. Describe mobilization requirements, if applicable. (See Subpart 17.93)

(14) *Government-furnished property*. Discuss the rationale for use of any Government-furnished material (GFM).

(15[f251]) ***Contractor use of Government supply sources. For contractor(s) authorized use of DLA-managed supply sources, describe the diversion control mechanism(s) in place to ensure access is limited to authorized items in authorized quantities, and contractor use of DLA supplies is proper. (DLAD 51.102(f)(1).)]***

(16) *Environmental and energy conservation objectives.* Discuss any environmental considerations. Include DLA Form 1664, Record of Determination - Environmental Evaluation, to indicate whether an environmental document is required in accordance with DLAD 1000.22, Environmental Considerations in DLA Actions in the United States. Contracting actions involving significant quantities of toxic and hazardous chemicals, pesticides, radioactive items, fossil fuels, or animal products made from endangered species are not categorically excluded under DLAD 1000.22 and require preparation and submission of an environmental document to accompany the acquisition plan.

(18) *Contract administration.* Plans should include an assessment of potential impact to DCMA workload and identify the milestone date by which DCMA will be apprised of this potential impact (e.g., no need for *quality assurance representatives* (QARs) where there was previous need, no DD250s to be processed for acceptance, etc.). This date should allow DCMA sufficient time to plan for any resource impact._

(19) *Other considerations*.

(B)(1) Explain how the acquisition addresses definition of S&S requirements, the contractor's development of capability to meet S&S requirements, and ability to test (i.e., validate) that S&S capability. Provide the basis for development of the surge and/or sustainment requirements. If surge and/or sustainment requirements are not included, provide basis for their exclusion, and identify the alternative means of obtaining surge and/or sustainment capability. Identify potential need for industrial preparedness funds for S&S solutions, the approach for handling S&S investments at the end of the contract, and whether the surge investments will be considered Government property. If S&S items will be added after award of the contract, address definition of S&S requirements, contractor's assessment of S&S capability, and S&S testing for the added items. Provide all language concerning S&S to be used in soliciting concepts or proposals (i.e., BAA, addendum to BAA, RFP).

90.1102 An illustrative acquisition plan format is provided as follows:

ACQUISITION PLAN

PR/MIPR Number:.....Date Received:.....Buyer:.....

Item Description:.....Delivery Schedule:.....

Quantity:.....Est. Unit Price:.....Est. Total Price:.....

Supply Criticality (Priority):.....
Purchase History

Date	Quantity	Unit Price	Method of Acquisition	Competitive Offers
____	_____	_____	Sealed Bid____ Neg____	No.____$Range_____

Considerations

		100%	Partial	None	Partial	None
Set-Aside:	Small Business	.....	.....	.....	.....	.....
	Small Disadvantaged Business	.....	.....	.....		

Quantity/Period Option: (% or period) Price Escalation: %

Progress Payments: prior buys (Y or N) current buy (Y or N)

First Article Test: _____

Request for Exception Not Required

Cost/Pricing Data: .... Open Contracts:....
Warranty: ....Yes ....No GFP Involved: ....Yes ....No

Proposed Method of Acquisition

a. Sealed Bid .....

b. Negotiation ..... Written .....Oral.....

Rationale for Not Using Sealed Bidding:

/ / Time does not permit solicitation, submission, and evaluation of sealed bids.

/ / Award will be made on a basis of other than price and other price-related factors alone.

/ / It is necessary to conduct discussions with offerors about their offers.

/ / A reasonable expectation of receiving more than one sealed bid does not exist.

Type contract/order contemplated._____ If fixed-price with economic price adjustment, specify EPA clause number/title _____ and (if applicable) index source, number, and name _____.

Market Survey Results

Discuss nature and results of market survey: _____
_____
_____

Market Research

Discuss purpose, nature, extent, involved personnel/offices and results/status and estimated completion date of any market research initiated/to be initiated in support of the instant purchase request or anticipated future requirements (see also FAR and DLAD 10.001 and 11.004):
_____
_____
_____

Provision for Competition

a. Complete, unrestrictive technical data package to be included or referenced in the solicitation. _____ Yes _____ No

b. Full and Open Competition.....

c. Full and Open Competition After Exclusion of Sources .....

d. Other than Full and Open Competition ..... 10 U.S.C.2304(c).....
(Except for acquisitions conducted under category c. above, when the response to a. is "No," the acquisition is other than full and open competition and a justification for other than full and open competition is normally required (see FAR Subpart 6.3). No justification is required for small business set-asides (see 6.203(b)(90)).

Schedule: Date:.....

Issue Solicitation
Open/Close
Solicitation Evaluate/Review
Award
Remarks:
Signature Buyer: ..... Date: .....
Signature Approving Official:..... Date: .....

90.1103 [A252]***Advance Acquisition Planning Template.***

Proposed acquisitions meeting the criteria/thresholds at 7.104-91(a) must be summarized using the Advance Acquisition Planning Template below and submitted electronically to the DLA Supplier Operations Branch (J-3312) for review. Responses to this submission will be provided within 15 calendar days after receipt.

Template questions that do not apply to your activity should be answered as not applicable (N/A). If further detail is required, provide it at the bottom of the template.

All templates ***requiring review/approval at DLA HQ*** *must be approved by the Chief of the Contracting Office and coordinated with the contracting activity's Associate Director of Small Business and Office of Counsel.* ***(The local coordination and approval will be documented by filling in the associated names and dates corresponding to the coordination and approval at the bottom of the template).***

Advance Acquisition Planning Template

Contracting Activity _____ Office of Primary Responsibility _____ Date _____

Name PM/Contracting Officer:_____ Telephone: _____
FAX:_____Email:_____

Solicitation Number / Contract / Initiative
Name:_____

Category ("X" the proper category): Prime Vendor___; Virtual Prime Vendor___; DVD____; Corporate Contract____; Strategic Supplier Alliance____; Electronic Catalog___;

Long Term Contract____; Multi-Year Contract _____; Other_____.

1. Describe the initiative, primary customers, and what is being contracted for:
2. Reason for Initiative:

---

3. Identify any unique aspects of this initiative:

4. Contract Type: _____ Anticipated Award Date: (MM/YY) _____Sol Issuance Date:_____

5. Dollar value if other than LTC: _____. For LTC, complete chart below:

LTC Contract	Base Period	Option Period(s)	Total $ Value
Length			
Estimated Dollar Value			
Guaranteed Minimum Dollar Value			

6. Competition ("X" one): Full & Open____; Other than full & open (cite authority) _____.

7. Describe the performance metrics: what are they; how will they be measured; how often will they be measured; who will measure them; and what is the expected outcome.

8. Has your activity previously purchased the item(s): Yes __No__

9. Acquisition will be conducted using FAR Part 12: Yes___ No____

10. Basis for Commercial/Non-commercial determination: _____

11. Number of NSNs/Part Numbered (PN) Items: _____

12. Are NSNs/PNs: Competitive _____ Non-competitive_____ Some of each _____

13. Number of items previously provided by small business: _____

14. Nomenclature & Quantity:

15. Delivery Requirements:

16. Will any supplies be delivered to stock? Yes _____ No _____

17. Describe market surveys and/or market research conducted and the results:

18. Planned evaluation strategy:

19. What are the logistical benefits of this initiative? (e.g. reduced ALT/PLT; reduced inventory; reduced customer wait time (CWT); increased supply availability; improved readiness; added contractor services such as forecasting, inventory management, quality; reduced manual PRs (touch labor)

20. Describe planned efforts to reduce PLT (e.g. using common-process parts groupings, arranging for access to long-lead time materials/ components, setting PLT reduction goals, etc.)

21. In addition to publicizing the acquisition to the general public (e.g. via FebBizOpps, Internet notice, etc.), describe planned efforts to solicit responses from HUBZones, women-owned small businesses, small disadvantaged businesses, and service-disabled veteran-owned business concerns.

22. Was any portion of this requirement considered for placement in the 8(a) program? If not, why not?

23. Was any portion of this requirement set aside for small businesses? _____

24. If no portion is set aside for small business, why not? _____

25. Describe incentive strategies that will be used to evaluate offers or that encourage prime contractors to establish subcontracting opportunities with small businesses:

---

26. Describe how surge and sustainment (S&S) will be addressed.

---

27. Provide a statement that addresses each of the following concerns, if applicable. If information is not yet available, identify whether these issues will be addressed in the acquisition plan:

a. Potential workload/financial impact at other ICPs, and affected field activities such as DDC.

b. Contract management strategy and workload impact:

c. Quality/engineering/technical issues:

d. Effect on all military services, in addition to the primary customer:

Contracting Activity:

Coordination: _____
Office of Counsel

Coordination: _____ _____
Director of Small Business ***Date***

Approved: _____ _____ ***Chief of the Contracting Office*** ***Date***

Date received in J-3312 (mm/dd/yy) _____

Approved: Yes ____ ***No*** _____ ***HQ DLA/J-3312:*** _____ ***Date:*** _____

SUBPART 90.12 - POSTAWARD PRICE REVIEWS

90.1201 Simplified acquisition price review program.

(a) Defense Supply Centers shall perform a monthly postaward price analysis of 60 line items from separate awards, selected from the total universe of the previous month's central simplified acquisitions (excluding purchases by secondary and tertiary field activities). The review shall be performed by the DSC Cost and Price Analysis Element. The purpose of this program is to identify significant and/or repetitive overpricing and to take corrective action as may be required including feedback on contracting deficiencies noted during the reviews. When an unreasonable price is indicated, appropriate action to resolve the overpricing shall be taken, including action pursuant to Subpart 42.71, if applicable. A review of an item is to be deemed completed only when a determination has been reached that overpricing: (1) did not occur; or, (2) did occur, and a refund has been collected and processed; or, (3) did occur, but all efforts to obtain a refund were unsuccessful, and a decision has been made that no further action is warranted. Other steps, such as initiating action for competitive acquisition of previously sole source items and/or revision of specifications, shall also be accomplished as needed.

(b) A record of postaward price analysis results, including the information necessary to provide summary data contained in the following format, shall be maintained by the Cost and Price Analysis Element.

SIMPLIFIED ACQUISITION POSTAWARD PRICE REVIEW PROGRAM

Defense Supply Center_____

Report for the _____ Period FY ***200*** __

I. Review Reconciliation: Number

A. Beginning Balance Reviews in Process:
B. Reviews Initiated During Quarter:
C. Reviews Completed During Quarter:
D. Ending Balance Reviews in Process:

II. Completed Reviews (from I.C. above): Automated Manual

A. Number Determined Not Overpriced:
B. Number Determined Overpriced:
C. Number for Which Sufficient Price Data Could Not Be Obtained to Make a Determination:

III. Corrective Action (from II.B. above): Number Savings

A. Price Reductions:
B. Refunds:
C. Cancellations-Repurchases:
D. Other (Specify, e.g., action initiated for competitive acquisition, commercial alternate found, action initiated to revise specifications.):

SUBPART 90.13 - STREAMLINED SOLICITATIONS FOR ENERGY CONTRACTS
(DEVIATION)

90.1300 Scope of Subpart.

On 28 June 1990, the then Deputy Assistant Secretary of Defense (Procurement) approved as permanent DLAD coverage the Defense Fuel Supply Center (DFSC***)(now the Defense Energy Support Center, DESC***) deviation request to use streamlined solicitations for petroleum and coal acquisitions. Under the deviation ***DESC*** is permitted to omit a variety of clauses and substitute tailored clauses for other clauses normally required by FAR and DFARS.

90.1301 - FAR clauses/provisions.

52.219-13 Utilization of Women-Owned Small Businesses. (AUG 1986)

The clause is not necessary to the acquisition of petroleum, petroleum-related services or coal because both subcontracting opportunities and the existence of woman-owned business in these commodities are minimal. ***DESC*** has retained the certification clause to document those businesses that are women-owned.

52.222-28 Equal Opportunity Preaward Clearance of Subcontracts (APR 1984)
52.244-1 and Alt. I Subcontracts (Fixed Price Contracts) (APR 1991)

These clauses are not applicable to petroleum, petroleum-related services or coal because contracts are fixed price or fixed price with economic price adjustment and unpriced modifications are not issued.

52.227-1 Authorization and Consent (APR 1984)
52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984)

These clauses are not necessary to the acquisition of petroleum, petroleum-related services, or coal because patent considerations are not involved.

52.229-3 Federal, State, and Local Taxes (JAN 1991)
52.229-4 Federal, State, and Local Taxes (Noncompetitive Contract) (JAN 1991)
52.229-5 Taxes - Contracts Performed in U.S. Possessions or Puerto Rico. (APR 1984)

A substitute ***DESC*** clause was developed to simplify, consolidate and tailor the FAR clauses to petroleum, petroleum related services, and coal. The FAR clauses only address after imposed/after relieved Federal taxes and do not address such circumstances for state and local taxes applicable to ***DESC*** procurement. The FAR clauses also require contract prices inclusive of all applicable Federal, State and local taxes. This is not acceptable to ***DESC*** since some taxes at all levels are excluded from certain fuel products under Government use criteria in the Internal Revenue codes.

52.247-1 Commercial Bill of Lading Notations (APR 1984)

This clause is not necessary because the Government does not require prepayment of freight charges on petroleum or coal shipments.

52.247-54 Diversion of Shipment under F.O.B. Destination Contracts (MAR 1989)

This clause is not necessary to the acquisition of petroleum because this area is covered in other DESC transportation clauses. The portions of this clause covering the use of paid freight bills to evidence delivery do not apply to petroleum shipments. Petroleum product deliveries are evidenced by delivery ticket copies and properly executed DD Forms 250. The portions of the clause limiting truck shipment reimbursement to 70% of the lowest published tariff is inappropriate for petroleum. Equitable adjustments for transportation are accomplished consistent with the methodology used to evaluate transportation.

ADDITIONAL CLAUSES TO BE OMITTED

52.214-6 Explanation to Prospective Bidders (APR 1984)
52.214-9 Failure to Submit Bid (APR 1984)
52.214-3 Amendments to Invitations for Bids (DEC 1989)
52.214-12 Preparation of Bids (APR 1984)
52.227-3 Patent Indemnity (APR 1984)
52.246-23 Limitation of Liability (APR 1984)

These clauses are excluded from ***DESC*** streamlined solicitations because they are superfluous to ***DESC*** contracting or serve no useful purpose. Instructions for submitting amendments are sent with the amendments themselves. Fuel specifications require no explanation. Bid/offer preparations guidance is included in the schedule. Elaborate proposals are not a possibility. Patent and liability limitations are not applicable.

52.214-14 Place of Performance - Sealed Bid (APR 1985)
52.215- ***6*** Place of Performance (APR 1984)

When a bidder or offeror submits a bid or offer, either the offeror tells us where the place of performance is located, or it is of no consequence. As a result, this clause serves no useful purpose in ***DESC*** contracts.

52.246-1 Contractor Inspection Requirements (APR 1984)

This clause was streamlined out of non-petroleum contracts only (coal and services). The subject matter in this clause is covered by other ***DESC*** clauses.

52.247-29 F.O.B. Origin (Jun 1988)
52.247-30 F.O.B. Origin, Contractor's Facility (APR 1984)
52.247-31 F.O.B. Origin, Freight Allowed (JUN 1988)
52.247-32 F.O.B. Freight Prepaid (JUN 1988)
52.247-59 F.O.B. Origin - Carload and Truckload Shipments (APR 1984)

The subject matter of these clauses is contained in DESC special transportation clauses.

52.219-14 Limitations on Subcontracting (JAN 1991)

Domestic bulk petroleum requires small business manufacturers offering on set-aside requirements to refine at least 90% of the offered quantity. This is pursuant to 49 Federal Register 5037, February 9, 1984 (13 C.F.R. 121.2, fn. 4 (1989)). This clause is unnecessary in domestic bulk petroleum contracts.

52.219-15 Notice of Participation by Organizations for the Handicapped (APR 1991)

Handicapped organizations do not supply any products or services acquired by ***DESC***.

90.1302 - DFARS Clauses/Provisions.

252.243-7001 Pricing of Contract Modifications (DEC 1991)

The price of petroleum is based on market-conditions, not cost, thus making this clause unnecessary for ***DESC.***

252.247-7022 Representation of Extent of Transportation by Sea (AUG 1992)

252.247-7023 Transportation of Supplies by Sea (DEC 1991)
252.247-7024 Notification of Transportation of Supplies by Sea (DEC 1991)

These clauses are unnecessary in acquisitions for petroleum, petroleum related services, and coal. Domestic acquisitions rarely, if ever, involve supplies which have been transported from outside the United States by sea. Overseas bunkers, into-plane, and storage also do not involve ocean transportation. Nearly all shipments to overseas posts, camps, and stations take place by land; those few made by water are nearly all within foreign territorial waters and therefore subject to foreign cabotage laws, so that no U.S.-flag vessels are available. Bulk fuels shipments are rarely on other than an f.o.b. origin basis, so that ocean shipment of end items is managed by the Military Sealift Command.

90.1303 ***DESC*** clauses/provisions

The following DESC tailored clauses have been approved for use in the Streamlined solicitations.

52.229-9F***15*** Federal, State and Local Taxes (Deviation)(DESC) (***NOV 93***)
52.246-9F***C3*** Quality Provisions (Coal) (DESC) (***OCT 97***)
52.247-9F***A1*** Delivery Conditions for Tank Cars, Boxcars, Trucks, Transport Trucks, Trucks and Trailers ***Tank Wagons, Pipeline or Lighters*** (DESC) (***NOV 96***)

52.247-9F***H1*** Shipment and Routing (DESC) (NOV 72)

SUBPART 90.14 - RECOUPMENT ACTIVITY REPORTING

90.1400 Sample reporting.

Illustrative recoupment activity reports are provided as follows:

15 April 1995 Report

A. FY95, 1st QTR

1. Recoupments

a. $ _____ nonconformances reported/records established between October & December 1994
b. $ _____ demanded/requested against this amount
c. $ _____ recouped against this amount

2. Express warranties

a. $ _____ nonconformances reported/records established between October & December 1994, for which the warranty period was still in effect
b. $ _____ demanded against this amount
c. $ _____ recouped against this amount

3. Recoupment breakdown (A1c + A2c)

a. $ _____ part of (A1c + A2c) covered by monetary reimbursement
b. $ _____ part of (A1c + A2c) covered by replacements

B. FY95, 2nd QTR

1. Recoupments

a. $ _____ nonconformances reported/records established between January & March 1995
b. $ _____ demanded/requested against this amount
c. $ _____ recouped against this amount

2. Express warranties

a. $ _____ nonconformances reported/records established between January & March 1995, for which the warranty period was still in effect
b. $ _____ demanded against this amount
c. $ _____ recouped against this amount

3. Recoupment breakdown (B1c + B2c)

a. $ _____ part of (B1c + B2c) covered by monetary reimbursement
b. $ _____ part of (B1c + B2c) covered by replacements

CUMULATIVE:

1. Recoupments

a. $ _____ nonconformances reported/records established between Oct 1994 & March 1995 (A1a + B1a)
b. $ _____ demanded/requested against this amount (A1b + B1b)
c. $ _____ recouped against this amount (A1c + B1c)

2. Express warranties

a. $ _____ nonconformances reported/records established between Oct 1994 & March 1995, for which the warranty period was still in effect (A2a + B2a)
b. $ _____ demanded against this amount (A2b + B2b)
c. $ _____ recouped against this amount (A2c + B2c)

3. Recoupment breakdown (A1c + B1c + A2c + B2c)

a. $ _____ part of the overall total recoupment covered by monetary reimbursement (A3a + B3a)
b. $ _____ part of the overall total recoupment covered by replacements (A3b + B3b)

31 July 1995 Report

A. FY95, 1st QTR

1. Recoupments

a. $ _____ nonconformances reported/records established between October & December 1994
b. $ _____ demanded/requested against this amount
c. $ _____ recouped against this amount

2. Express warranties

a. $ _____ nonconformances reported/records established between October & December 1994, for which the warranty period was still in effect
b. $ _____ demanded against this amount
c. $ _____ recouped against this amount

3. Recoupment breakdown (A1c + A2c)

a. $ _____ part of (A1c + A2c) covered by monetary reimbursement
b. $ _____ part of (A1c + A2c) covered by replacements

B. FY95, 2nd QTR

1. Recoupments

a. $ _____ nonconformances reported/records established between January & March 1995
b. $ _____ demanded/requested against this amount
c. $ _____ recouped against this amount

2. Express warranties

a. $ _____ nonconformances reported/records established between January & March 1995, for which the warranty period was still in effect
b. $ _____ demanded against this amount
c. $ _____ recouped against this amount

3. Recoupment breakdown (B1c + B2c)

a. $ _____ part of (B1c + B2c) covered by monetary reimbursement
b. $ _____ part of (B1c + B2c) covered by replacements

C. FY95, 3rd QTR
1. Recoupments

a. $ _____ nonconformances reported/records established between April & June 1995
b. $ _____ demanded/requested against this amount
c. $ _____ recouped against this amount

2. Express warranties

a. $ _____ nonconformances reported/records established between April & June 1995, for which the warranty period was still in effect
b. $ _____ demanded against this amount
c. $ _____ recouped against this amount

3. Recoupment breakdown (C1c + C2c)

a. $ _____ part of (C1c + C2c) covered by monetary reimbursement
b. $ _____ part of (C1c + C2c) covered by replacements

CUMULATIVE:

1. Recoupments

a. $ _____ nonconformances reported/records established between Oct 1994 & June 1995 (A1a + B1a + C1a)
b. $ _____ demanded/requested against this amount (A1b + B1b + C1b)
c. $ _____ recouped against this amount (A1c + B1c + C1c)

2. Express warranties

a. $ _____ nonconformances reported/records established between Oct 1994 & June 1995, for which the warranty period was still in effect (A2a + B2a + C2a)
b. $ _____ demanded against this amount (A2b + B2b + C2b)
c. $ _____ recouped against this amount (A2c + B2c + C2c)

3. Recoupment breakdown (A1c + B1c + C1c + A2c + B2c + C2c)

a. $ _____ part of the overall total recoupment covered by monetary reimbursement (A3a +B3a + C3a)
b. $ _____ part of the overall total recoupment covered by replacements (A3b + B3b + C3b)

Continue in this manner according to the following schedule:

Report Date	Period Covered	Number of Qtrs. (plus cumulative)
31 Oct 95	Oct 94 - Sep 95	4
31 Jan 96	Oct 94 - Dec 95	5
30 Apr 96	Oct 94 - Mar 96	6
31 Jul 96	Oct 94 - Jun 96	7
31 Oct 96	Oct 94 - Sep 96	8
31 Jan 97	Oct 94 - Dec 96	9
30 Apr 97	Oct 94 - Mar 97	10
31 Jul 97	Oct 94 - Jun 97	11
31 Oct 97	Oct 94 - Sep 97	12
31 Jan 98	Jan 95 - Dec 97	12
30 Apr 98	Apr 95 - Mar 98	12

The following is how the 31 Oct 97 report, for example, would look:

31 Oct 1997 Report

A. FY95, 1st QTR

1. Recoupments

a. $ _____ nonconformances reported/records established between October & December 1994
b. $ _____ demanded/requested against this amount
c. $ _____ recouped against this amount

2. Express warranties

a. $ _____ nonconformances reported/records established between October & December 1994, for which the warranty period was still in effect
b. $ _____ demanded against this amount
c. $ _____ recouped against this amount

3. Recoupment breakdown (A1c + A2c)

a. $ _____ part of (A1c + A2c) covered by monetary reimbursement
b. $ _____ part of (A1c + A2c) covered by replacements

B. FY95, 2nd QTR

1. Recoupments

a. $ _____ nonconformances reported/records established between January & March 1995
b. $ _____ demanded/requested against this amount
c. $ _____ recouped against this amount

2. Express warranties

a. $ _____ nonconformances reported/records established between January & March 1995, for which the warranty period was still in effect
b. $ _____ demanded against this amount
c. $ _____ recouped against this amount

3. Recoupment breakdown (B1c + B2c)

a. $ _____ part of (B1c + B2c) covered by monetary reimbursement
b. $ _____ part of (B1c + B2c) covered by replacements

C. FY95, 3rd QTR

1. Recoupments

a. $ _____ nonconformances reported/records established between April & June 1995
b. $ _____ demanded/requested against this amount
c. $ _____ recouped against this amount

2. Express warranties

a. $ _____ nonconformances reported/records established between April & June 1995, for which the warranty period was still in effect
b. $ _____ demanded against this amount
c. $ _____ recouped against this amount

3. Recoupment breakdown (B1c + B2c)

a. $ _____ part of (B1c + B2c) covered by monetary reimbursement
b. $ _____ part of (B1c + B2c) covered by replacements

D. FY95, 4th QTR (Report the same categories of information)

E. FY96, 1st QTR (Report the same categories of information)

*** }
} (The asterisks represent all quarters from FY96, 2nd QTR
*** } through FY97, 3rd QTR.)

L. FY97, 4th QTR

1. Recoupments

a. $ _____ nonconformances reported/records established between July & Sep 1997
b. $ _____ demanded/requested against this amount
c. $ _____ recouped against this amount

2. Express warranties

a. $ _____ nonconformances reported/records established between July & Sep 1997, for which the warranty period was still in effect
b. $ _____ demanded against this amount
c. $ _____ recouped against this amount

3. Recoupment breakdown (L1c + L2c)

a. $ _____ part of (L1c + L2c) covered by monetary reimbursement
b. $ _____ part of (L1c + L2c) covered by replacements

CUMULATIVE:

1. Recoupments

a. $ _____ nonconformances reported/records established between Oct 1994 & Sep 1997 (A1a + B1a + C1a + D1a + E1a + F1a + G1a + H1a + I1a + J1a + K1a +L1a)
b. $ _____ demanded/requested against this amount (A1b + B1b + C1b + D1b + E1b + F1b ...L1b)
c. $ _____ recouped against this amount (A1c + B1c + C1c + D1c + E1c + F1c ... L1c)

2. Express warranties

a. $ _____ nonconformances reported/records established between Oct 1994 & Sep 1997, for which the warranty period was still in effect (A2a + B2a + C2a + D2a + E2a + F2a + G2a + H2a + I2a + J2a + K2a + L2a)
b. $ _____ demanded against this amount (A2b + B2b + C2b + D2b + E2b + F2b ... L2b)
c. $ _____ recouped against this amount (A2c + B2c + C2c + D2c + E2c + F2c ... L2c)

3. Recoupment breakdown (A1c + B1c + C1c + D1c + E1c + F1c + G1c +H1c + I1c + J1c + K1c + L1c + A2c + B2c + C2c + D2c + E2c + F2c +G2c + H2c + I2c + J2c + K2c + L2c)

a. $ _____ part of the overall total recoupment covered by monetary reimbursement (A3a + B3a + C3a + D3a + E3a + F3a ... L3a)

b. $ _____ part of the overall total recoupment covered by replacements
(A3b + B3b + C3b + D3b + E3b + F3b ... L3b)

NOTE: Three dots (...) represent the intervening fiscal quarters, all of which should be reported.

90.1501 Requirement

[A253]

(a) *The Defense Logistics Agency (DLA) Senior Procurement Executive (SPE) has established a structured approach to serve as a model for managing and executing performance based, long term logistical support acquisitions. This process will be implemented by each Inventory Control Point (ICP) for all acquisitions which meet the definition of a Performance Based Logistics (PBL) acquisition (See Appendix A).* ***Those acquisitions requiring review and coordination at headquarters (see 90.1503(b)(i) will be*** *reviewed and approved by the DLA Integrated Acquisition Review Board (I-ARB), chaired by the SPE with representation from J-34 (Readiness and Customer Support Directorate), J-37 (Distribution and Reutilization Policy Directorate), J-38 (Business Management Directorate), J-81 (Deputy Comptroller, Budget and Program Integration Operations), J-6 (Deputy Director, Information Operations/Chief Technology Officer), the ICPs, and the Defense Distribution Center (DDC). Representatives from the DLA Office of General Counsel and Small & Disadvantaged Business Utilization Office are advisors to the I-ARB. The I-ARB has the option to continue the acquisition, modify the strategy, terminate the process, or determine how to proceed into the next phase.* ***The head of contracting activity or field activity Chief of Contracting Office shall establish and chair a similar review board based upon the approval thresholds in 90.1503(b)(i).***

(b) PBL acquisitions are a major contributor to ensure the Agency continues to improve combat support to the warfighter while reducing investment costs in inventory and infrastructure. There are several types of initiatives/contractual arrangements underway within DLA with regard to acquisitions of performance based logistical support – Strategic Supplier Alliances (SSAs), PBL partnerships with the Military Services. These initiatives could take the form of long-term contracts - corporate contracts, Virtual Prime Vendor (VPV), Prime Vendor (PV), etc. These initiatives represent our strategic efforts to transform business practices from managing supplies to managing suppliers and have the potential to greatly reduce costs as well as improve the availability of items DLA provides to its customers. Appendix A provides a description of each initiative.

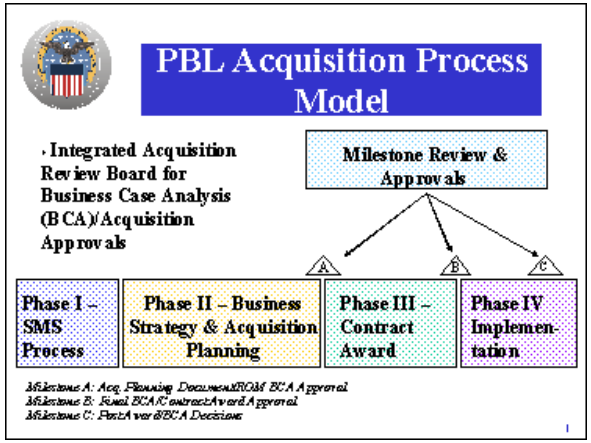
(c) The purpose of this guidance is to integrate current logistical support initiatives into a structured and manageable integrated acquisition process, and to ensure participants involved are aware of and fully understand all aspects of the PBL acquisition process. Given the dollar value, complexity, and importance of these types of contractual arrangements, there is a need to implement a program management approach that integrates business strategies with the acquisition process and enhances the Agency's ability to provide the best support available to its customers.

(1) In addition, this approach incorporates the business case analysis (BCA) into the acquisition process to emphasize its importance as a tool for making sound business decisions in determining appropriate implementing strategies, and streamlines the review and approval process by establishing a single approval for both the business case and the acquisition. Throughout the entire acquisition process, contracting activities will be required to perform a continuous review/updating/assessment of both the BCA and the contract.

(2) In order to ensure successful PBL acquisition implementation and to ensure that the appropriate level of buy-in is obtained from all responsible parties, PBL acquisitions will be developed in an integrated product team (IPT) environment. The team will be efficiently comprised of representatives from both within and outside the organization – Government and Industry (when appropriate). Appendix A provides a definition of an IPT. With a structured and integrated process in place, the centers and DLA can achieve even greater benefits through the sharing of information, lessons learned, best practices, and a multi-functional approach to acquiring PBL support.

90.1502 Acquisition Process and Milestone Review and Approvals.

(a) The acquisition process will consist of four phases: Phase I – Strategic Material Sourcing; Phase II Business Strategy and Acquisition Planning; Phase III – Contract Award Process; and Phase IV – Implementation. A graphic representation of the PBL acquisition process is shown below. This section will discuss each aspect of the overall acquisition process.



(1) Phase I. Selection Process – Strategic Material Sourcing (SMS)

(i) SMS is DLA's umbrella initiative that targets a relatively small subset of the total DLA-managed hardware items based on those NSNs that drive the Agency's business and/or have a potential impact on readiness. SMS encompasses all of the Agency's "shift to commercial practices" initiatives for hardware Class IV and IX items, e.g., SSAs, PV, corporate contracts, and other long-term arrangements. The initiative is based on expanding DLA's successful adoption of commercial practices for energy and troop support items by developing and applying similar corporate strategies and techniques to the hardware commodities. As demonstrated in the commercial marketplace, the SMS process can be applied to any type of commodity.

(ii) This phase starts with identifying potential candidates for a PBL arrangement by conducting a business analysis of NSNs or material using a set of factors such as sales drivers, demand drivers, and potential readiness drivers. Input into this process should be considered from a variety of sources, including industry partners, customers, and weapon systems program managers, as well as other government sources. Once the target population is established, the items may be segmented into the four quadrants of the Material Positioning Matrix or similar technique, based on the relative cost/value and degree of procurement difficulty. Appendix A provides a definition, step-by-step process on developing and implementing SMS strategies, as well as the Material Positioning Matrix. While the current SMS process targets a specific NSN population (445K), the intent of this phase is to apply the methodology to any NSN managed by DLA.

(2) Phase II. Business Strategy and Acquisition Planning

(i) This phase sets the framework for the overall acquisition by establishing a business strategy and enhanced acquisition plan for items identified based on Phase I analysis. Although this is a two-pronged approach, it is envisioned that business strategy and acquisition planning should be an integrated and coordinated process rather than sequential.

(ii) Once the potential items or grouping of items are identified in Phase I, the initiative must be evaluated in terms of economic feasibility. This phase consists of evaluating the abbreviated (initial rough order of magnitude (ROM)) BCA to be used in developing the acquisition strategy. The BCA should be used as a tool to identify certain costs to manage an identified grouping of NSNs, and allow for a determination of alternatives on whether it is in the government's best interest to proceed with a PBL acquisition.

(A) Business Strategy: In determining the business strategy, use the following approach:
(1) Determine appropriate and most effective cross-functional IPT. This involves an IPT structure comprised of appropriate process owners with stakeholder coordination and in some cases – participation, depending upon the size and complexity of the acquisition. The IPT should function as an integrated team throughout the entire acquisition process to ensure all issues, concerns, and needs are appropriately addressed when pursuing the best value solution. IPT members may include, but not be limited to technical specialist, demand planners and supply planners, item managers, quality assurance specialists, contract specialist, legal counsel, contract review and/or pricing analysts, financial analyst, weapon system support managers, supplier relationship managers, and customer representatives to include DLA's customer support representatives and an industry representative when appropriate to the circumstances. Appendix B provides information and guidance on leading and participating in effective and efficient IPTs.

(2) Evaluate and assess the abbreviated BCA data. This includes evaluating the baseline costs, facts, and supporting details among potential business alternatives and documenting the current environment, possible improvements, and an outline of business strategy.

(3) Document the logistical benefits (e.g. reduced administrative lead time, reduced production lead time; reduced inventory; reduced customer wait time; increased supply availability; improved readiness; added contractor services such as forecasting, inventory management, quality; reduced manual purchase requests (PRs) (touch labor)); configuration control management; distribution and transportation services specific to the acquisition and that will be measured and tracked in Phase IV.

(4) Select type of PBL support (corporate contract, PV, VPV, standard long term contract) if applicable, where performance metrics are incorporated that best serves the customer's needs, is consistent with the BCA conclusions, and provides the most effective and improved method of support. A long-term contract may not be a PBL if there are no performance metrics (other than compliance with delivery schedule).

(5) Develop exit strategy for transitioning items and support from contractor managed to DLA managed, if necessary.

(B) Acquisition Planning Approach:

(1) As with the business strategy, acquisition planning should be accomplished by applying the right level of expertise to formulate the strategy. When developing the acquisition plan, the integrated team should develop an approach that is appropriate to satisfying the identified requirement, consistent with sound business practices and based on the degree of risk involved. The team should also establish the managerial approach that will be used to direct and monitor all elements of the acquisition to achieve the goals and objectives established during Phase I and identified in the BCA.

(2) Market Research. Although an initial market investigation may have been conducted during Phase I, it may be necessary to validate those initial assumptions or conclusions and apply them toward a more comprehensive analysis of the market environment. In addition, using the IPT to accomplish market research may add additional value when determining the appropriate strategy to implement. Market research information and web sites are available at http://www.arnet.gov/Library/PreSolicit/presolicit.html.

(3) Sole Source Strategy. During Phase I and subsequent to market research, the IPT may conclude the requirements are available from only one source. This determination should be made as early as possible when considering long term, strategic partnerships, and business relationships using an SSA or corporate contract approach. These types of strategies model commercial best practices, increase value, and enhance support to our customers. When considering an SSA, the following factors should support the decision:

- *The requirement is adequately justified as sole source and will be validated at least annually and before each option exercise.*
- *An agreement, developed jointly between the IPT and the contractor, can be established and documented to clearly outline the aspects of the business relationship to include business rules, functional roles, goals, and milestones.*
- *The customer is fully engaged and supports the elements of the business agreement.*
- *An exit strategy is adequately incorporated into the agreement.*
- *The IPT will prepare a concise, high-level charter to be signed by the Director, DLA and the industry counterpart.*

Whether the acquisition is an SSA, corporate contract or other sole source strategy, IPTs are encouraged to utilize the alpha contracting process as a partnering technique to streamline the procurement process and achieve a reduction in time to award the contract. Appendix A provides a description and information on alpha contracting.

(4) Competitive Strategy. When consolidating requirements that were previously awarded to small business or requirements for which a small business could have competed, consult the contract bundling guidance set forth in DLAD 7.107 to determine whether this could qualify as a bundled acquisition. If so, assess the impact on small business before proceeding with the acquisition. Tailor evaluation factors to allow for offerors to propose different or innovative methods of support to include performance metrics or incentives. A pre-proposal conference may be appropriate to obtain industry input, improvements, and new or alternative approaches to acquiring the requirement.

(5) Performance Based Statement of Objectives (SOO)/Statement of Work (SOW). The IPT will develop a SOO or SOW, depending upon the specific requirement identified in Phase I. Analyze the SOW and additional requirements to determine which contract performance requirements, if any, should be subject to award or incentive fees. Candidates for consideration as incentive/award fee elements should be those that are high-risk processes or a new process improvement not performed traditionally.

(6) Planned Contract Type. Contract types (e.g. firm fixed price, fixed price incentive, fixed price with economic price adjustment) most likely to motivate contractors to perform at optimal levels shall be chosen, with consideration given to risk assessment and reasonable risk-sharing by the Government and the contractor(s). If acquiring commercial items under FAR Part 12, use of incentives is permitted as long as the incentive is based solely on factors other than costs, e.g. performance or delivery.

(7) Method of Contract Performance Management:

(i) Contract Performance Management Plan. There is a need to provide enhanced monitoring of contractor performance and to ensure satisfactory administration of PBL acquisitions. Therefore, the contracting officer, in conjunction with the IPT, should develop a contract performance management plan to delineate responsibilities for specific administration functions. The plan requires coordination within the IPT to include the Customer Support Representatives, the customer, and the Defense Contract Management Agency (DCMA), where appropriate. The plan should describe the method of managing performance (measuring/tracking metrics and incentives) after award, identify specific roles and functions (include specific responsibilities for the contracting officer, COR (if applicable), ordering officer, DCMA, and program manager.

(ii) Performance Review Board. Consider establishing a performance review board. The board should be comprised of appropriate representatives within the ICPs as well as customer representatives such as the fleet, program management offices, DCMA, or Military Services (when in a PBL partnership arrangement). The purpose of the board is to oversee contract performance. This can be done on a periodic basis such as monthly, quarterly, etc., and may also serve as the review/approval forum for award fees, incentives, and disincentives in accordance with the associated plan.

(8) Planned Evaluation Strategy/Negotiation Strategy:

(i) Determine Contract Incentives/Disincentives. To the maximum extent practicable, performance incentives, either positive or negative or both, monetary or non-monetary, shall be incorporated into the contract to encourage contractors to increase efficiency and maximize performance. Appendix B includes information and guidance regarding use of incentives in defense acquisitions.

(ii) Establish Metrics. Ensure the use of measurable performance and supply chain effectiveness standards. Examples include, but are not limited to: quality, fill rate, back orders, logistics response time, contractor processing time, customer wait time, and customer satisfaction. When establishing metrics, ensure the metrics can be directly linked to the performance incentives.

(iii) Milestone A Approval. Upon completion of Phase II, the SPE and the Integrated Acquisition Review Board (I-ARB) will approve the initiation into Phase III of the acquisition process. The I-ARB confirms the acquisition strategy prior to release of the solicitation and approves the abbreviated BCA. The IPT should document major aspects of both the business and acquisition strategy, and request approval to proceed. The Chief of the Contracting Office shall concur with the proposed business and acquisition strategy prior to Milestone A approval.

(iv) Upon receipt of the following supporting documentation, J-3312 will schedule an I-ARB meeting: formal acquisition plan, justification and approval (if applicable), contract performance management plan, source selection plan, incentive plan, abbreviated BCA, and draft solicitation.

(v) One week prior to the scheduled I-ARB, the field activity will submit an advance copy of the Milestone A approval request briefing to J-3312, along with any final documentation not submitted above. The following information, at a minimum, must be addressed for Milestone A approval:

Information Required for I-ARB Milestone A Approval	*Description*
Acquisition overview	*Summary of initiative, scope, customers, estimated value*
Management approach	*What level of management control will you exercise to oversee the entire acquisition process?*
BCA initial findings(to include potential savings)	*The BCA will be developed in accordance with J-38's Draft One Book Chapter entitled "Initiative Management Process"*
Performance metrics, incentives/ disincentives	*The acquisition strategy shall explain the incentive structure, and how it incentivizes the contractor(s) to provide the contracted items to meet or exceed established goals and objectives. If more than one incentive is planned for a contract, the acquisition strategy shall explain how the incentives complement each other and ensure the incentives will not interfere with one another.*
Planned contract approach	*Include Plan of Action & Milestones (POA&M), evaluation strategy, and method of monitoring contract performance*
Small business issues	*Address any impact on small business such as bundling. See DLAD 7.107*
Surge & Sustainment requirements	*See DLAD 7.104*
Exit strategy	*Address transitioning of items and support if appropriate.*
Challenges & issues, risks	
Accomplishments	*Include results of discussions with customers*

(vi) All source selection information shall be marked as "Source Selection Information—See FAR 2.101 and 3.104".

(3) Phase III. Contract Award Process

(i) This phase begins with the issuance of the solicitation, offer evaluation, update of the BCA for comparison of baseline costs with the contractor proposal, and an update of the exit strategy. Once a proposal is reviewed, analyzed, and agreement reached on the various elements of a contractor's final cost/price proposal, a review is conducted to ensure the proposal is consistent with all the SOO/SOW requirements. To complete the BCA process, the cost/price proposal information is incorporated into the document where the results are analyzed and compared to traditional support costs for a determination on the most efficient and effective support.

(ii) Milestone B Approval. The purpose of Milestone B is to approve the final BCA and authorize proceeding to contract award or decide to terminate the process based on the recommendations presented. Prior to making the milestone decision, the I-ARB will consider the results of the analysis to include the comparison of baseline costs with the proposed cost/price, assess any risks, along with an updated exit strategy, associated with the recommended course of action, and review the results of the negotiations.

(iii) Upon receipt of the following documentation, J-3312 will schedule an I-ARB meeting: final BCA documentation; source selection decision memorandum; Technical Evaluation Report.

(iv) One week prior to the scheduled I-ARB, the field activity will submit an advance copy of the Milestone B approval request briefing to J-3312.

(v) The following information, at a minimum, must be addressed for Milestone B approval: Background (Acquisition and BCA); changes since Milestone A approval; updated acquisition POA&M; results of negotiations; final BCA conclusions.

(vi) All source selection information shall be marked as "Source Selection Information—See FAR 2.101 and 3.104".

(4) Phase IV. Implementation

(i) The implementation phase begins upon contract award and requires continuous contract performance monitoring of the methods/measurements developed and stated in the SOW throughout the life of the contract. Monitoring contract performance should be accomplished with the established IPT to ensure all expected outcomes established in the previous phases are appropriately evaluated and addressed. Responsibilities include:

- *Assessment of contractor performance against established, measurable standards incorporated into the contract.*

- *Re-assessment of logistical benefits and costs based on measured/tracked data and analyzed against the documented, baseline decision analysis (BCA).*
- *Validate and update the BCA prior to exercise of each option, upon significant changes during contract performance, and at completion of contract performance.*

(ii) Milestone C Approval. Milestone C approval will be granted prior to exercising each option period and upon significant changes in contract performance. If the change involves the acquisition strategy, it must be approved by the SPE and the I-ARB.

(iii) Upon receipt of the following supporting documentation, J-3312 will schedule an I-ARB meeting: updated BCA; contract award to include modifications and related contractual documents not submitted under previous milestones; incentive/award fee schedule/execution.

(iv) One week prior to the scheduled I-ARB, the field activity will submit an advance copy of Milestone C approval request briefing to J-3312.

(v) The following information, at a minimum, will be addressed for Milestone C approval: Updated BCA findings (to include re-assessed costs and benefits based on abbreviated BCA); assessment of metrics and incentives/disincentives; changes in acquisition since last milestone approval.

90.1503 Integrated Acquisition Review Board

(a) The Integrated Acquisition Review Board is the decision authority to be executed at the milestone review points for all major PBL acquisitions. The reviews associated with each milestone point will typically address business and acquisition strategies, risks, trade-offs, and the assessment of exit criteria as the acquisition progresses through the phases. The reviews are geared to be streamlined and will only require the information specified by the SPE. (See Subpart 7.1; 7.104-90)

(b) Thresholds

(i) The table listed below depicts threshold levels and other criteria for approval at the HQ and field level, including review and coordination requirements.

PBL ACQUISITION REVIEW THRESHOLDS

$Threshold *	Other Criteria	Review/Coordinate	Acquisition & BCA Approval Level
≥ $5M - $20M		Field Activity Level	Chief of the Contracting Office
> $20 - $50M		Field Activity Level	Head of Contracting Activity or designee**
> $50 million		HQ DLA/J-3312	I-ARB
All	DLA/Military Service Partnerships	HQ/DLA J-3312	I-ARB

** Value of base period and option periods.*
*** Delegable to a level above the Chief of the Contracting Office*

(i) The SPE retains the authority to review any high-visibility, special interest acquisition.

(c) Waiver of Integrated Acquisition Review Board Review and Approval Requirements

(i) Waiver of I-ARB review and approval requirements may be requested by the Chief of the Contracting Office, under exceptional circumstances. The request for waiver shall be submitted to the DLA Supplier Operations Branch (J-3312), must include the rationale and justification for the waiver, and should address the minimum requirements under each milestone, to the extent practicable. Waivers are granted by the SPE on a case-by-case basis.

Appendix A

Definitions/Descriptions

Alpha Contracting. An innovative contracting technique, typically used in satisfying sole source requirements, that transfers the acquisition process from a consecutive (and sometimes iterative) process into a more efficient and streamlined concurrent process. From solicitation development, through proposal preparation, to evaluation, negotiation, and award, Alpha contracting relies on a team approach to concurrently develop a requirement through award and implementation. Information on Alpha contracting can be found from a wide variety of sources through the search function of the DoD Acquisition Deskbook, accessible from the OSD AcqWeb homepage or http://www.dau.mil.

Business Case Analysis (BCA). A comparative analysis that presents facts and supporting details among competing business alternatives. The BCA should facilitate a determination whether to implement a PBL type arrangement by comparing the Government's cost of supporting the initiative versus the contractor's cost of supporting the items or material. There are two types – abbreviated (rough order magnitude (ROM)), and final BCA.

Corporate Contract. A long-term contract that aggregates requirements of more than one ICP or Military Service with a single supplier. A corporate contract can support both DLA direct (DLA owns inventory) and/or customer direct (vendor holds inventory). (Note: DLA direct and customer direct are Business Systems Modernization Program terms.)

Customer Wait Time (CWT) – This measures the elapsed time from the issuance of a customer order to the satisfaction of that order.

Integrated Acquisition Review Board (I-ARB). The I-ARB is the decision authority to continue the acquisition, modify the strategy, terminate the process, or determine how to proceed into the next phase of the acquisition. (See Subpart 7.1; 7.104-90)

Integrated Product Team (IPT). Team composed of representatives from appropriate functional disciplines working together to build successful programs, identify and resolve issues, and make sound and timely recommendations to facilitate decision-making. There are three types of IPTs: overarching IPTs (OIPTs) that focus on strategic guidance, program assessment, and issue resolution; working level IPTs (WIPTs) that identify and resolve program issues, determine program status, and seek opportunities for acquisition reform; and program level IPTs that focus on program execution and may include representatives from both government and industry.

Long Term Contracts. A contract in excess of one year (including options) with delivery orders. DLA direct and/or customer direct.

Performance Based Logistics (PBL) acquisition. Acquisitions of material and/or logistics support (such as inventory management, storage, materiel handling, and transportation)(customer direct or DLA direct) where performance is evaluated based on measurable outcomes to ensure improved readiness, availability, or reduced overall costs to the customer and DLA. PBL acquisitions may include long term contracts, prime vendor contracts, virtual prime vendor contracts, and corporate contracts.

Prime Vendor/Virtual Prime Vendor. A long term contract with a commercial distributor, original equipment manufacturer (OEM), or third party logistics provider for integrated logistics support that may include forecasting, inventory management, distribution, engineering support, technical services or other services to support customer needs. Normally includes performance metrics. Customer direct.

Service Partnerships. An arrangement between a Military Service and DLA to award or modify a single performance based logistics contract consisting of both DLA NSNs and Service NSNs.

Strategic Material Sourcing (SMS). SMS is DLA's umbrella initiative that targets a relatively small subset of the total DLA-managed hardware items based on those NSNs that drive the Agency's business and/or have a potential impact on readiness. SMS encompasses all of the Agency's "Shift to Commercial Practices" initiatives for hardware items, e.g., Strategic Supplier Alliances, Corporate Contracts and other long-term agreements. The initiative is based on expanding DLA's successful adoption of commercial practices for energy and troop support items by developing and applying similar corporate strategies and techniques to the hardware commodities. The attached White Paper provides an overview of Strategic Sourcing, which is the commercial sourcing strategy that forms the basis for SMS.

Strategic Supplier Alliances. One of the key tools within the SMS umbrella. They involve long-term partnerships between DLA and major sole source suppliers that establish a collaborative relationship to accomplish a mutually compatible goal. SSAs involve true corporate-wide arrangements that entail identifying process changes beneficial to both parties, aligning purchasing with manufacturing and establishing performance based objectives. The overall goals of the SSA approach are improved availability, reduced customer wait time, reduced inventory, and reduced total price.

Appendix B
Regulation, Guidance, Best Practices, Sample SOWs, and Templates

Federal Acquisition Regulation (FAR). FAR Subpart 37.600 prescribes policies and procedures for the use of performance-based contracting methods.

Defense Federal Acquisition Regulation (DFARS). DFARS Subparts 237.601 and 212.102 permit contracting officers to use FAR Part 12 for performance-based contracts for services under certain circumstances.

The Office of Federal Procurement Policy (OFPP). OFPP's ARNet website -http://www.arnet.gov/Library/PreSolicit/presolicit.html offers a variety of information on performance based service contracting (PBSC) such as guidance on Best Practices for Performance-Based Contracting, Final Edition, October 1998; OFPP Report on the Performance-Based Service Contracting Pilot Project, May 1998; and OFPP Memorandum, Subject: PBSC Checklist. Templates and samples are also available.

Seven Steps to Performance Based Acquisition. This guide, geared to the greater acquisition community (especially program offices), breaks down performance-based service acquisition into seven simple steps.

- *Establish an integrated solutions team*
- *Describe the problem that needs solving*
- *Examine private-sector and public-sector solutions*
- *Develop a performance work statement (PWS) or statement of objectives (SOO)*
- *Decide how to measure and manage performance*
- *Select the right contractor*
- *Manage performance*

Located on the following website, http://oamweb.osec.doc.gov/pbsc/index.html , the guide also includes several links to performance-based acquisition sites which include samples and templates.

U.S. General Services Administration. GSA's portal provides several agency websites which link to a variety of sources of information on performance-based acquisition (includes samples and templates):

http://www.gsa.gov/Portal/content/pubs_content.jsp?contentOID=121260&contentType=1008&cid=null

U.S. Navy. Information on the Navy's Performance Based Logistics' Acquisitions is available at http://extra.navicp.navy.mil/scs/pbl.html. The information contained within this extranet site includes SOWs as well as performance and supply chain metrics.

Deputy Under Secretary of Defense for Logistics and Materiel Readiness. Product Support for the 21st Century: A Program Manager's Guide to Buying Performance. This guide presents a performance-based logistics (PBL) strategy for product support of weapon systems. The guide is a tool for program managers as they design product support strategies for new programs, major modifications, or as they reengineer product support strategies for legacy weapon systems.

The Under Secretary of Defense Acquisition and Technology. Performance Based Services Acquisition Guidebook – January 2001. The Department of Defense (DoD) developed this guidebook as a cooperative effort among the components to help the acquisition team, and any other stakeholder, better understand the basic principles of PBSA and better implement performance based methodologies into service acquisition.

The Under Secretary of Defense. The attached guidance, Guide to Incentive Strategies for Defense Acquisitions – January 2001, amplifies existing policy regarding use of incentives in defense acquisitions.

The Office of the Secretary of Defense (OSD). OSD's Rules of the Road: A Guide for Leading Successful Integrated Product Teams, located on the DoD Acquisition Deskbook website: http://web2.deskbook.osd.mil/

***htmlfiles/DBY_dod.aspis*, is a living document that facilitates organizing, leading, and participating in effective and efficient IPTs.**

PART 90

SUPPLEMENTAL PROCEDURES

SUBPART 90.16 - STRATEGIC SUPPLIER ALLIANCE (SSA)
[A254]

90.1600 Strategic Supplier Alliance Policy
90.1601 Strategic Supplier Alliance Process
90.1602 SSA Definitions

SUBPART 90.16 - STRATEGIC SUPPLIER ALLIANCE (SSA)

90.1600 – Strategic Supplier Alliance Policy

(a) Each supply center will continually review the supplier base for potential strategic supplier alliance candidates. At a minimum, each center will review the supplier business base and nominate new SSA candidates annually. A mandatory review will be conducted in conjunction with the end of the fiscal year and the strategic materiel sourcing program review. Centers may conduct additional reviews and propose SSA candidates at any time.

(b) Each SSA supplier will be assigned a supplier relationship manager (SRM). The SRM resides physically at the lead center and is a permanent member of the Joint Steering Group (JSG). The SRM will manage DLA's overall relationship with the SSA supplier. At the discretion of the lead center, a single SRM may be assigned more than one SSA to manage. Non-SSA lead centers will provide a point of contact for each SSA to the cognizant SRM.

(c) The lead center for each SSA will identify associated CAGE codes. Once an SSA is established, DLA contracting officers, regardless of center, shall obtain coordination on all non-competitive contracting actions associated with SSA CAGE codes with the responsible SRM before award. .

(d) DLA centers may use agreements, contracts, and alliances created and managed by non-DLA activities in SSA efforts.

(e) DLA centers may participate in non-DLA sponsored SSAs.

90.1601 – Strategic Supplier Alliance Process

The strategic supplier alliance process consists of four phases: Need Determination, Infrastructure Development, Implementation, and Monitoring & Measurement. Diagram 1 illustrates the flow of events as DLA activities design and implement strategic supplier alliances with key suppliers.

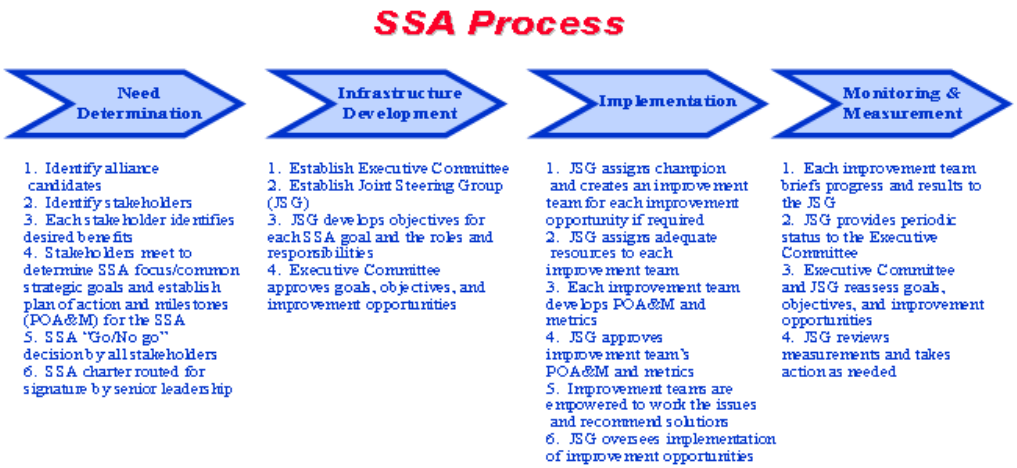


Diagram 1

(a) NEED DETERMINATION

1. Identify alliance candidates

a) All SSA candidates must be suppliers that conduct single-source business with DLA over an extended and defined period. DLA suppliers with competitive and single-source business may be examined for SSA

improvements in accordance with this policy. However, competitively procured items may only become part of the SSA under a separate contract with the supplier after a competitive award.

b) DLA supply centers nominate SSA candidates to HQ DLA. The nominating center creates the SSA nomination package. This information will be used to determine if an SSA presents a value-added opportunity to DLA and as a source document to assign the appropriate SSA lead center. SSA nominating packages include the following information:

(i) Identification of all potential DoD stakeholders in the SSA.
(ii) Nomination of the supplier candidate identified by corporate name and potential CAGE code (include all associated CAGE codes).
(iii) Identification of the industry segmentation of the CAGE(s) and the federal supply class(es) of the single -source NSNs.
(iv) Obligations and annual demand values of single-source business with candidate supplier. The package will use a 3-year business base and identify the contribution of each DLA center to that base.
(v) A list of the single-source NSNs and contract count of the single-source business. The package will use a 3-year business base and identify the contribution of each DLA center to that base.
(vi) A brief description of the business rationale for a SSA with the candidate supplier.
(vii) A recommendation for the most appropriate DLA center to be the lead for this SSA.
(viii) Additional information as needed.

c) The nominating center shall disseminate the SSA nominating package to all DLA center SSA POCs for review and comment:

(i) The DLA center SSA POCs are: (DSCP – P) (DSCC – P) (DSCR – KI)
(ii) Review and comment by the other centers should be completed within 5 business days. Coordination by other centers does not constitute concurrence with the SSA package as proposed. The nominating center will consolidate all comments by other centers and attach them to the SSA nomination package.

d) The nominating center submits the SSA nomination package to HQ DLA J-3312. HQ DLA J-3312 reviews all SSA nomination packages. A determination of approval-to-proceed or disapproval will be made within 5 business days. HQ DLA J-3312 will provide rationale for any disapproval. All approvals will include designation of an "SSA lead center" for the SSA candidate. All centers have 2 business days to concur/non-concur and provide comments to the J-3312 regarding an SSA lead center designation. SSA lead center status may be subsequently reassigned by HQ DLA J-3312 as circumstances dictate. When making the SSA lead center designation, HQ DLA J-3312 will use the following criteria in the decision process to rate each center's potential as the lead:

Element	DSCR / DSCC / DSCP	
Industry Segment (lead)		Yes (+) / No (-)
Business – Obligated (most)		Yes (+) / No (-)
Number of active NSNs (most)		Yes (+) / No (-)
Ability to execute SSA (resources)		Yes (+) / No (-)

e) Once HQ DLA SSA approval-to-proceed has been granted and a lead center established, all centers will be notified of approval by HQ DLA J-3312. The SSA lead center officially initiates contact with the supplier candidate for interest in establishing an SSA. The SSA lead center determines the best strategy to approach a supplier candidate. Format of the approach is at the discretion of the lead center. HQ DLA level contact or support with efforts to communicate with the supplier candidate will be made available to the SSA lead center if requested. Contact with nominated SSA suppliers may be delayed to accommodate stakeholders. SSA initiatives will be added to the DLA SSA Strategic Execution plan when the nominated supplier accepts the invitation to begin establishment of an SSA.

f) Once a supplier candidate agrees to begin SSA discussions, the SSA lead center arranges the initial meeting with the supplier to introduce the SSA concept, if necessary. Initial meetings with the supplier candidate should include SSA education, fact-finding, discovery, and benefit discussions. The initial meeting may include DoD stakeholder representatives and others as determined by the SSA lead center.

2. Identify stakeholders

For purposes of this instruction, the term "stakeholder" refers to DoD government activities only. The SSA candidate is known as the "supplier."

a) The nominating DLA center is responsible for identifying and making contact with all stakeholders to determine potential interest in participation. All DLA centers will be contacted to review inter-agency stakeholder status. DLA customer relationship managers (CRMs) are potential stakeholders. The lead center may also contact the DLA national account managers (NAMs) and the customer account managers (CAMs) for recommendations on non-DLA stakeholders' considerations. If a Military Service elects to participate in an SSA, the NAM is always a stakeholder. Non-DLA stakeholders may include, but are not limited to, the Military Services, multiple activities within a Military Service, DCMA, and other Federal Agencies. Non-DLA stakeholder point(s) of contact (POCs) are pursued on a case-by-case (individual SSA) basis by the lead center.

b) When planning any meeting with the Military Services to discuss strategic issues regarding a specific supplier or DLA's general SSA program, the lead center must coordinate with the other centers and HQ DLA J-3312 by providing the purpose of meeting, proposed date/time/location/duration, and attendee listing. E-mail is acceptable.

c) Additional stakeholders may be added to the SSA effort at any point.

3. Each stakeholder identifies desired benefits

When notified that an SSA effort has been approved-to-proceed and stakeholders have been identified, the lead center will request and coordinate benefit analysis from all stakeholders. Each stakeholder must articulate desired benefits and planning assumptions. The lead center will consolidate stakeholder input.

4. Stakeholders meet to determine SSA focus/common strategic goals and establish plan of action and milestones (POA&M) for the SSA

Once benefit analysis has begun among the stakeholders, the SSA lead center conducts an SSA focus meeting. Ideally, the focus meeting should occur prior to contact with the candidate supplier. Stakeholder participation in SSAs is a GO/NO-GO decision. A GO decision indicates a stakeholder will join DLA in the SSA process. A NO-GO decision indicates the stakeholder will not take part in DLA SSA efforts.

a) The focus meeting must discuss and document the basic goals and objectives of the SSA.

b) The focus meeting must document an overall Plan of Action and Milestones (POA&M).

c) The focus meeting must negotiate and document a GO/NO-GO decision schedule. An affirmative decision (GO) to participate is required by an established decision date.

5. SSA "GO/NO GO" decision by all stakeholders

a) After the focus meeting, all DoD stakeholders will conduct internal coordination concerning the proposed SSA. If no focus meeting is held, stakeholders need only respond to the lead center to register their intentions (GO/NO-GO). DoD stakeholders must respond affirmatively (GO) to the SSA lead center by the established schedule to participate in the SSA. If a DoD stakeholder expresses a NO-GO decision, its status as a stakeholder is dropped from the SSA effort. A "NO-GO" activity may continue unilaterally with the candidate supplier or rejoin the effort at a later time.

b) Once all stakeholders have made a GO/NO-GO decision, the lead center shall develop the overall SSA strategy based upon the benefit analysis and focus meetings. In coordination with stakeholders, the lead center drafts the SSA charter to formalize the relationship. Charters address only the basic tenets of the SSA relationship. Each individual SSA charter is tailored to the supplier as negotiated.

6. SSA charter routed for signature by senior leadership

a) The SSA lead center is responsible for submitting the SSA charter to HQ DLA J-3312 when the final version has been negotiated with the supplier and DoD stakeholders. HQ DLA J-3312 will staff the charter for signature by DLA-D. The SSA lead center will determine what other stakeholder signature(s) are to be included on the charter. The SSA lead center will obtain these DoD stakeholder signature(s), and the supplier signature in the order cited in paragraph b below. The SSA lead center will sponsor any signature ceremonies. SSA supplier signatory level must be at a level equal to or greater than the Director of DLA. The lead center will ensure enough SSA charter copies are available for each signatory to have a charter with original signatures.

b) Sequence of charter signatures:

- *(DLA/Supplier) – DLA-D then the supplier*
- *(Multiple DoD Stakeholders/Supplier) – Various DoD stakeholders, then DLA-D, then the supplier*

c) There may be cases when DLA joins a SSA alliance initiated by a military service. The DLA Director's signature on a Military Service-initiated charter signifies DLA's SSA participation with the supplier.

d) Once signed by all parties, the SSA lead center will distribute charter originals and copies as needed. The SSA charter will remain on file at HQ DLA J-3312. When additional DoD stakeholders join the SSA after the charter has been signed, use an addendum to the SSA charter if no significant changes to the charter are anticipated. Minimum DLA signatory level on SSA charter addendums is the center commander. Create a new charter for significant changes advanced by a new DoD stakeholder and approved at the executive committee level. The SSA lead center is responsible for the creation, coordination, and execution of any modifications or addendums to the existing charter. HQ DLA J-3312 must be notified prior to changes in any SSA charter.

(b) INFRASTRUCTURE DEVELOPEMENT

The SSA lead center is responsible for formally establishing the following SSA team structures with the supplier and stakeholders: executive committee, joint steering group, and improvement teams.

1. Establish Executive Committee

The Executive Committee should be established at the SES/Flag or GS-15/O-6 level. Industry partner (supplier) committee members must be at a commensurate level. For DLA, the executive committee includes Center Commanders and/or Deputies and SSA lead center Directorate Level. HQ DLA, J-33 is a standing member of the executive committee. The HQ DLA J-3312 will be notified of all executive committee meetings and may represent J-33 as needed. Other-than-lead centers may be included at this level. Under routine participation, the executive committee meets one to two times per year. Senior management participation may not always be necessary as experience levels with alliances improve.

2. Establish Joint Steering Group (JSG)

The Joint Steering Group (JSG) will be established initially with stakeholders at the GS-14 level or above. Industry partner (supplier) committee members will be at a commensurate level. For DLA, the JSG includes the cognizant Supplier Relationship Manager (SRM), Supplier Team Leads, and Business Unit Leader. Other-than-lead centers may be included at this level. Agency customer relationship managers (CRMs) identified as stakeholders will be invited to become core members of the JSG. Face-to-face meetings are expected quarterly. Video teleconferences may be utilized as needed throughout the year.

3. JSG develops objectives for each SSA goal and the roles and responsibilities

a) Once the JSG is established, the JSG meets to evaluate and refine the pre-charter focus goals, objectives, and plan of action and milestones (POA&Ms). The JSG will identify initial SSA improvement opportunities and outcomes.

As part of the JSG, the lead center details the SSA execution strategy:

(i) The JSG will develop the SSA execution strategy to a specific plan of action.

(ii) The JSG will determine targets of opportunity (For example: high priority NSNs, pricing methodologies, etc.).

b) The JSG will establish improvement teams for each improvement opportunity as required, and prioritize improvement opportunities.

d) The JSG will establish POA&Ms for each improvement opportunity.

e) The JSG will create and attach metrics to assess performance of the SSA.

f) Based upon the aforementioned JSG items, the SSA lead center is responsible for documenting and updating the SSA execution strategy.

4. Executive committee approves goals, objectives, and improvement opportunities

Once the SSA execution strategy has been developed, the JSG will return to the executive committee for approval. The JSG obtains Executive Committee "buy-in" for each improvement opportunity. Each improvement opportunity with executive committee approval is immediately available for implementation.

(c) IMPLEMENTATION

The SSA lead center will monitor all contract actions related to the SSA. Two criteria must be met to brief the DLA Director that a SSA has been formally implemented:

- A signed and completed SSA charter.

- A new contract or a modification to an existing contract has been awarded to the SSA supplier. The new contract or modification must include performance criteria and improved business practices identified by the alliance members. The contractual award does not have to be a DLA instrument but must include DLA items. In cases where improvements do not result in an immediate contractual action, a decision will be made by HQ DLA, J-3312, that significant result(s) from SSA process improvement(s) have been accomplished.

For SSAs that have already been implemented, a "refocusing" meeting may be necessary when new stakeholders join the effort. The lead center will arrange and host any "refocusing" meetings with existing stakeholders to examine new targets of opportunity brought by the new stakeholder. "Refocusing" meetings will be completed within 30 days of a new stakeholder's declaration of intent to join the SSA. The lead center will determine if a "refocusing" meeting is required and whether the addition of a stakeholder will necessitate change(s) to the SSA charter.

1. JSG assigns champion and creates an improvement team for each improvement opportunity if required

Improvement teams are established (by the JSG) as necessary at the appropriate expertise level. Skill sets of members must be sufficient to work through identified improvement opportunities. Improvement teams may also include CRMs. Improvement team meetings are held as required. Improvement opportunities shall be prioritized by the JSG.

2. JSG assigns adequate resources to each improvement team

If resources are insufficient for all improvement opportunities, the Executive Committee/JSG will dedicate available resources according to the established priority.

3. Each improvement team develops POA&M and metrics

4. JSG approves improvement team's POA&M and metrics

5. Improvement teams are empowered to work the issues and recommend solutions

6. JSG oversees implementation of improvement opportunities

(d) MONITORING AND MEASUREMENT

The SSA lead center will continually ensure the SSA is reviewed and reassessed to determine if changes need to be made to the alliance focus or if additional stakeholders need to be included.

The JSG shall manage (monitor and measure) the performance of the SSA through Supplier Readiness Review metrics. Each DLA SSA corporate contract shall be measured using the following Supplier Readiness Review Metrics:

- Growth: adding items to the contracts within the SSAs
- Delivery based on the requirements of the individual contracts. Metrics should cover stock and DVD as appropriate.
- Quality
- Cost reductions and/or price controls through the partnership
- Back order performance
- PLT reduction
- ALT reduction
- Percent of annual demand for a given supplier covered by the items placed on contract

1. Each improvement team briefs progress and results to the JSG

The Executive Committee will manage all Milestones/POA&Ms set by the JSG and the improvement teams.

If at any time, the supplier disengages from SSA efforts, the SRM will immediately inform HQ DLA and all stakeholders of the supplier's position. A stakeholder's focus meeting may be reconvened, as necessary, to terminate the effort or adjust strategy.

2. JSG provides periodic status to the Executive Committee

Executive Committee meetings are held at the request of the JSG or as requested by the Executive Committee.

3. Executive committee and JSG reassess goals, objectives and improvement opportunities

4. JSG reviews measurements and takes action as needed

90.1602 - SSA Definitions

Executive Committee. *Senior management committee comprised of a member from each stakeholder organization and the supplier. Responsibilities include SSA oversight and review and approval of all SSA activities. This committee exists for the life of the Alliance.*

Charter. *Document stating the commitment of each organization to partner in a Strategic Supplier Alliance and signed by the senior government and corporate executive of each alliance organization.*

Improvement Opportunities. *Targeted problem issues or identified Best Practices that need to be investigated, analyzed and resolved by the Improvement Teams.*

Improvement Team. *A team established by the SSA Joint Steering Group to address a specifically identified improvement opportunity. Membership is from all stakeholder organizations and the supplier and is cross-functional to represent areas which the specific improvement can affect. This team exists for a specific period of time, which is dependent on the scope and resolution of the identified improvement opportunity.*

Goals. *An agreed upon set of outcomes which the SSA works toward achieving.*

Joint Steering Group (JSG). *Day-to-day SSA management committee comprised of members from all stakeholder organizations and the supplier. Responsibilities include focusing the SSA on goals, objectives and improvement opportunities; establishing and managing improvement teams and monitoring overall SSA progress. This committee exists for the life of the Alliance.*

Lead Center. *The DLA supply center assigned to manage the SSA. Lead center status is assigned by HQ DLA J-3312.*

Objectives. *Tasks to be accomplished in order to achieve goals.*

Plan of Action & Milestones (POA&M). *The roadmap developed to chart the course from SSA determination, via development and implementation, through monitoring and measurement.*

Stakeholder. *Those government activities with a declared interest in the SSA business relationship with the supplier; includes all DLA centers, HQ, DLA, DoD activities (Military Services, DCMA, etc.). For purposes of these instructions, those activities that decline participation in the SSA are not stakeholders. The SSA supplier is identified as the "supplier" to differentiate government-internal activities from all-participant activities.*

Strategic Supplier Alliance (SSA). *A DLA/customer/supplier partnership that transcends purchasing transactions to develop strategies and improvement opportunities that facilitate the sharing of information and which combines the*
purchasing power and knowledge of the customer and fully engages the supplier's capabilities to deliver superior value.

Supplier. *For the purposes of SSAs, suppliers are industry partners identified as critical to meeting customer expectations and mission readiness subsequent to a DLA business profile analysis.*

Supplier Relationship Manager (SRM). *A position designated by DLA that manages partnerships with key suppliers and seeks to deliver significant return on investment to the enterprise. This individual serves as the single point of contact and subject matter expert for assigned supplier(s). Additionally, the SRM collaborates across the DLA enterprise to meet customer and supplier expectations.*

SUBPART 90.17[A255]

90.1700 Requirement.
90.1701 Minimizing Berry Amendment Violations.

SUBPART 90.17 DOMESTIC NON-AVAILABILITY DETERMINATIONS

90.1700 Requirement

(a) The Berry Amendment requires designated items be of domestic origin, domestic content, and be manufactured in the United States or its possessions unless an exception applies or unless a determination is made that the product cannot be acquired as and when needed in satisfactory quality and sufficient quantity at U.S. market prices. This general requirement applies to any item of food, clothing, tents, tarpaulins, covers, cotton, and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics, canvas products, or wool, certain items of individual equipment, specialty metals including stainless steel flatware, or hand or measuring tools grown, reprocessed, reused, or produced in the United States or its possessions, unless the Under Secretary for Defense (Acquisition, Technology, & Logistics) (USD(AT&L) grants a domestic non-availability determination (DNAD).

(b) When a contracting activity receives a requirement for an item covered by the Berry Amendment for which no exception exists, a formal DNAD request must be submitted to HQ DLA (J-3312). Contracting activities must first route DNADs through local coordination and review channels. HQ DLA will review the DNAD request, obtain appropriate coordination, and forward it to USD(AT&L) for approval. The contracting activity should submit the DNAD package 4 to 6 months before it is needed. Also, if the domestic non-availability is anticipated to be permanent and no alternatives are possible, the field activity should separately prepare a corresponding FAR case for a permanent waiver request to add the item to FAR 25.104, Nonavailable articles, and include reference to that case in the Determination and Finding document, and the Report and Recommendation of the Contracting Activity. A DNAD package consists of:

(1) Determination and Findings (D&F): This document must concisely focus on the specifics for concluding the item is unavailable domestically. This document must be summary in nature, be no longer than 2 pages, and be prepared with the Times New Roman 13 point font. Further relevant and supporting details must be included in the Report and Recommendation of the Contracting Activity Commander. The D&F must:

(i) Cite the decision maker's authority as specified in the Berry Amendment.

(ii) Identify the articles or items (or class of items, if applicable) being procured and their domestic availability status.

(iii) Discuss current market research results (e.g., market research has not revealed any domestic sources.) A more detailed discussion of the market research efforts and results can be presented in the Report and Recommendation of the Contracting Activity Commander.

(iv) Identify the total quantity (including readiness quantities) to be procured and length of time the waiver is needed (e.g., period of contract performance).

(v) Address the DEPSECDEF requirement that the contracting activity offered the customers alternatives not requiring a Berry Amendment waiver, and the customers' certified responses.

(2) The contracting activity's letter to the requiring activity (and all other branches of the services that use the item) advising: 1) that the required item requires a waiver to the Berry Amendment; and, 2) of alternatives that do not require a waiver under the Berry Amendment.

(3) The requiring activity's written response (and written responses from other branches of the Military services that use that item, as applicable), certifying that the proposed alternatives are unacceptable. The responses must be signed by an individual with the authority to approve use of an alternate item for the service(s).

(4) Report and Recommendation of the Contracting Activity Commander. This document should be signed by the Commander of the Contracting Activity (or individual acting in that capacity). It provides for a more comprehensive and lengthy discussion of the facts than the DNAD. There is no limit on the length of the Report and Recommendation of the Activity Commander. This report should describe in reasonable detail:

(i) The supply and procurement situation; the contractor's commercial practices; any special or unusual circumstances; results of market research conducted and constraints, if any; the reasonable conclusions drawn; exchanges between engineering support activities and customers concerning the possible existence of alternative items that do not require a Berry Amendment waiver. Attach copies of market research related documents and any other records, and letters from contractors that explain why they are unable to either obtain the product domestically or identify the source of their product or components (more relevant for prime vendor procurements), as appropriate.

(ii) Potential political ramifications, Congressional involvement, morale issues, small business concerns, mission failure, troop support issues, etc., as appropriate. The discussion must include a procurement impact statement that describes the outcome if the DNAD is not approved.

(iii) The activity commander must certify, in writing, satisfaction that the customer explored all reasonable alternatives and that such alternatives were unacceptable.

(c) The contracting activity will provide a copy of their Executive Summary to J-3312. A DNAD package will be assembled for the HQ DLA Senior Procurement Executive's (SPE) submission to the USD(AT&L). HQ DLA (J-3312) will staff the DNAD package for coordination with DLA Acquisition Policy Branch (J-3311), and DLA Office of General Counsel (DLA-DG), and DLA Office of Small & Disadvantaged Business Utilization (DLA-DB), and process for SPE signature.

(d) Once the DLA SPE signs the DNAD package, it will be forwarded to USD(AT&L), through the Principal Deputy Under Secretary of Defense (AT&L), the Director, Defense Procurement and Acquisition Policy, and Deputy Under Secretary of Defense (Logistics and Materiel Readiness). USD(AT&L) will approve or disapprove the DNAD request and advise the DLA SPE of the decision. The DLA SPE will then advise the contracting activity of the USD(AT&L) decision.

(e) For each DNAD that is granted, the contracting activity is required to submit an annual report in accordance with DLAD 25.7002-2(b), Exceptions.

90.1701 Minimizing Berry Amendment violations.

(a) DLA contractors are becoming aware of the increased attention and visibility that the Berry Amendment domestic source restrictions are receiving, and of the restrictions imposed by this statue, and the DFARS implementing guidance. This heightened awareness has resulted in a number of contractors notifying DLA of their violation of this statute and requesting DLA grant a "waiver."

(b) Identification of potential violations after contract award presents considerable difficulties for DLA. Once aware of a violation, DLA is presented with the challenge of not accepting the non-conforming end item(s) pending waiver consideration in order to ensure no Anti-Deficiency Act (ADA) violation occurs. This not only can result in delayed delivery to the customer, it also may place the contractor in an untenable financial position. To minimize the impact, the affected contracting activity must quickly analyze the market to verify that no domestic source is available and prepare a DNAD. This DNAD must be fully staffed within both the contracting activity and DLA HQ before submission to USD(AT&L) for approval consideration (numerous OSD offices must also review/ coordinate prior to a USD(AT&L) decision). Additionally, external pressures (e.g., small business status, Congressional interest) are often present in such situations.

(c) The following preaward steps should serve to minimize potential Berry Amendment violations after contract award. While the potential use of the suggestions below may depend on the size and complexity of the procurement, the suggestions provide a guide for your use.

(i) Pre-Proposal Conference: If a Berry Amendment covered item is to be procured and a pre-proposal conference held, the domestic source restrictions of the Berry Amendment should be highlighted to the attendees. This highlights the importance to the attendees, and allows for the correction of misunderstandings (e.g., different from the Buy American Act).

(ii) Full Text Clause Inclusion: The Berry Amendment is implemented by DFARS clause 252.225.7012 (252.225-7014 for specialty metals and 252.225-7015 for hand or measuring tools). Many activities incorporate these clauses by reference which requires the contractor to actively research the content of the clause. While it is the responsibility of the contractor to adequately understand all solicitation requirements, including the contents of 252.225-7012/7014/7015, the statutory background of the clause, the heightened attention compliance with the clause is receiving, and the significant difficulties non-compliance presents makes the clause an ideal candidate for full text inclusion in the solicitation.

(iii) Plain Language: The development and inclusion in solicitations of "plain language" that spells out the Berry Amendment domestic source restrictions is a consideration. However, such language must be used with caution and must have HQ DLA approval. Subtle changes in the wording of the domestic source restrictions could be legally and contractually misinterpreted by the contractor, causing conflict with the exact requirements of the clauses at DFARS 252.225-7012/7014/7015. Any such "plain language" wording would need to have significant legal review to confirm that nothing in the developed wording modifies the requirements of the clauses (as interpreted by GAO cases, etc.) levied upon the contractor. Additionally, the "plain language" should only address the part of the Berry Amendment that applies to the commodity being solicited.

(iv) Mandatory Discussion Item: When negotiated procurements are conducted for Berry Amendment covered items, domestic source restrictions as identified in DFARS 252.225-7012/7014/7015 should be a mandatory discussion item with the contractor. Contractors should be asked to confirm their understanding of the requirement in the documentation submitted with their final proposal revisions or other submitted documentation.

(v) Preaward Surveys: If a preaward survey is required in accordance with FAR 9.106, the contracting activity should consider requesting the survey to also confirm the prospective contractor's ability to trace the origin of materials incorporated into the end product being acquired.

(vi) Evaluation Factor: The contracting activity can consider whether use of an evaluation factor that determines the contractor's ability to verify the source of materials is appropriate. Such a factor would most likely be a technically acceptable/unacceptable rating. Additionally, such a factor should be used judiciously, considering the complexity of the manufacturing process and size of the procurement so as not to unduly burden less "at risk" procurements.

(vii) Additional considerations: The development or use of a formal contractor certification verifying compliance with the requirements of the Berry Amendment is not authorized. The actions highlighted above should provide sufficient contractor awareness and Government assurance of contractor knowledge of Berry Amendment domestic source restrictions.

(d) Post award actions relative to the domestic source restrictions of the Berry Amendment fall into 2 general categories: 1) actions that may be taken to ensure continued contractor compliance during contract performance; and 2) action that should be taken once a potential Berry Amendment violation is detected. Although it is clearly the performing contractor's responsibility to ensure full compliance with all contract requirements, including the Berry Amendment restrictions specified in DFARS 252.225-7012/7014/7015, DLA can take reasonable steps, where appropriate, to validate the contractor's continuing Berry Amendment compliance. Such actions may reduce the potential for violations during performance. Violations detected during performance could result in Government non-acceptance of materials, delaying support to the warfighter, and non-payment to the contractor for the non-conforming items.

(e) Potential actions to ensure continued contractor compliance include:

(i) Berry Amendment compliance should be a discussion item at post award conferences.

(ii) The Defense Contract Management Agency (DMCA) is delegated responsibility to review, approve or disapprove, and maintain surveillance of the contractor's purchasing system per FAR 42.302(a)(50). The contracting activities should consider requesting additional on-going DCMA emphasis of the contractor purchasing system's ability to implement domestic source restrictions, and continuing verification of such through random records audits, etc.

(iii) Prime vendor (PV) contracts present a unique challenge due to the multitude of parts and supplies that are frequently involved. The opportunity for Berry Amendment violations is even greater because of the commerciality of the products provided under these contracts. Contracting activities should consider developing contract provisions that require the PV contractor to periodically assess their suppliers' compliance with Berry Amendment domestic source restrictions. The nature and extent of the provisions would depend upon the particulars (i.e., number of items under contract, length of period of performance, extent that supplies to be provided are subject to Berry Amendment restrictions, etc.). Potential alternatives include periodic (e.g., quarterly) review of a certain percentage of total items under contract. The review could be as straightforward as the PV contractor sending the suppliers a standardized sheet explaining the restrictions of the Berry Amendment and requiring the supplier to notify the prime contractor of any potential violation. The supplier could also be required to acknowledge receipt of the document by signing and returning it to the prime.

(f) Actions taken after contractor notification of a potential Berry Amendment violation:

(i) Verification: Ensure the item in question is subject to the restrictions of the Berry Amendment. Direct the contractor to positively determine the origin of the item in question.

(ii) Suspend Government acceptance: The Government, in accordance with FAR 46.407, should not accept items that have non-domestic content in violation of the Berry Amendment. Continued Government acceptance without the required DNAD could create an ADA violation. The contracting activity should consider the issuance of a stop work order pending resolution of the violation. Allowing the contractor to continue performance after notification of the violation could subject the Government to additional claimed contract costs and further exacerbate the violation.

(iii) Suspend Payment: The contracting activity should ensure Defense Finance and Accounting Service does not issue payment for non-conforming products nor make any new unauthorized progress payments pending resolution.

(iv) Market Research: Determine whether the item in question has a domestic source available.

(v) Substitute Product: For those items where it is subsequently determined a domestic source is not available, contracting activities should coordinate the potential use of an alternate item (e.g., synthetic fiber vs. goat hair) with the technical specification office of primary responsibility.

APPENDIX E

DoD SPARE PARTS BREAKOUT PROGRAM

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PART 1 – GENERAL

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PART 1 – GENERAL

E-101 Applicability.

(a)(i) All DLA DSCs except that DESC and DSCP C&T, Medical and Subsistence will implement only those portions of the DFARS as is feasible in the reduction of noncompetitive parts.

PART 2 - BREAKOUT CODING

E-201.1 Acquisition method codes (AMC)/Acquisition methods suffix codes (AMSC).

(a) A competitive AMC (1 or 2) shall be assigned to a part when a complete technical data package is available, or when there are two or more approved independent manufacturing sources, or when a non manufacturing prime and the actual manufacturer both independently contend for contracts.

(b) When parts are received that are coded AMC 5, care shall be taken to assure that solicitation is accomplished only with the identified prime contractor despite the CAGE identification to the actual manufacturer. These parts should be considered likely candidates for breakout to direct purchase from AMC 5 to AMC 4.

E-202 Assignment of codes.

In the case of parts with an assigned AMSC of U or V, if another source is approved, but a complete technical data package for unrestricted competition is not available, the AMC will be changed to 2 and the AMSC will be changed to AMSC C or R, or other, as appropriate. Only valid combinations of AMC/AMSCs shall be entered into the Contracting Technical Data File (see DFARS exhibit I).

E-203 Improving part status.

(b) Code Suspension Date. A 1 -year code suspense validation date will be assigned to parts with an ASMC or A, H, or Y regardless of the AMC. A3-year suspense date will be assigned to parts having an AMSC of C, U, orV. A 5-year suspense date will be assigned to parts with an AMSC of B, P,or R and parts with an AMC/AMSC of M or 4M. Parts with an assigned AMC/AMSC of 1G, 2G, 1K, 2K, 1M, 2M, 1N, 2N, 1T, or 2T and those with an AMC/AMSC of 1G, 2G, 1K, 2K, 1M, 2M, 1N, 2N, 1T, or 2T and those with an AMSC of L need not be subject to the code suspense validation. Exceptions may be made on a case-by-case basis as necessary. Suspense dates should not be changed merely to update the assigned date but should be made in conjunction with a review or screen based upon an anticipated forecast or immediate buy action. Buys shall not be held up simply to review the part for application of a new suspense date, unless the contracting officer determines that the buy can be held up until the review and any breakout action is completed (see DFARS Appendix E -105 (e)(2)).

PART 3 - IDENTIFICATION, SELECTION, AND SCREENING OF PARTS

E-301 Identification and selection procedures.

E-301.2 Annual buy forecasts.

An annual projection of estimated buy activity prepared quarterly shall be used to initially list parts in descending buy dollar order down to $5,000 reflecting projections for the next 12 months. These projections shall be the basis for selecting items to be screened for possible breakout. Care shall be taken to assure that an item selected in this manner is not redundant with planed or ongoing breakout activity n another program/effort, such as, but not limited to, Value Engineering and Evaluation of Alternate Offers.

E-302 Screening.

(a) When results of a screening action indicate there is no expectation of breakout, consideration should be given, where applicable, to any other ongoing programs that may improve price or lead time. Examples of such other programs include, but are not limited to, Value Engineering and the Competition Advocate Program. A folder shall be maintained for all screened parts to include any pertinent reports, analysis, documents, etc., that relate to the assigned AMC/AMSC (see DFARS Appendix E-302(i)).

E-303 Full Screening procedure.

E-303.2 Data evaluation phase (steps 2 -14).

(c)(4) Prior to expenditure of funds for acquisition of technical data to effect a breakout action, a review of data requirements shall be conducted in accordance with DLAM 4185.14, DLA Technical Data Management Program. When there is any doubt as to acceptability by the cognizant Military Service of data to be acquired to effect the desired AMC/AMSC change, the data shall not be procured by the DSC. Instead, all breakout activity for the part shall be summarized and forwarded to the cognizant Military Service activity with a recommendation f\that they pursue acquisition of the necessary data (see DFARS Appendix E -303.2(c)(4)).

PART 5 - REPORTING SYSTEM

E-502 Reporting procedures.

(c) ICPs shall forward reports to HQ DLA, ATTN: ***DLA Spare parts Breakout program*** *manager (J-33)*, no later that 30 days after the end of each period designated.

[A1]On 8/14/02 DLAD editor archived text at subpart 17.7501(b)(4)(iv) here: (iv) When a potential contractor submits an alternate item for evaluation for which there is no active procurement request, the activity Competition Advocate will determine if the alternate item meets the criteria for evaluation listed for alternate offers in DLAD 17.7501(b)(4)(iii) above. The activity Competition Advocate will provide the status to parties submitting alternate items, and will forward qualifying alternate items to the appropriate technical personnel with the reasons the alternate items should be evaluated. These alternate item evaluations will be tracked according to the time frames set forth in DFARS Appendix E.

[A2]On 7/31/02 DLAD editor updated clause 52.217-9002. The superseded text follows: 52.217•9002 Conditions for Evaluation and Acceptance of Offers for Part Numbered Items.

As prescribed in 17.7501(b)(3), insert the following provision in negotiated acquisitions of replacement parts, components, and assemblies which are identified only by the manufacturer's name, part number, and a brief item description. The provision shall be used verbatim, except that the acronym "CLIN" may be substituted for the word "item" wherever it appears in the provision. When the provision is used, the following shall be inserted in the solicitation after each item description:

"Offer" based on:

Manufacturer's Name.....
Part No. .....

CONDITIONS FOR EVALUATION AND ACCEPTANCE OF OFFERS FOR PART NUMBERED ITEMS (***NOV 1999***) • DLAD

(a) The product described by the manufacturer's name and part number or by the manufacturers name and part number as modified by additional requirements referred to in the procurement identification description (PID) of this solicitation is that product which the Government has determined to be acceptable. All offerors must indicate below whether they are offering the exact product or an alternate product and must furnish the data required for whichever is applicable. Exact product means the identical product described by the manufacturer's name and part number cited in the PID, modified (if necessary) to conform to any additional requirements set forth in the PID, and manufactured by or under the direction of the manufacturer cited in the PID. Any product not meeting these criteria is considered an alternate product even though it may be manufactured in accordance with the drawings and/or specifications of the manufacturer cited in the PID. In either case, any product offered must be either identical to or physically, mechanically, electrically, and functionally interchangeable with the product cited in the PID including additional requirements referred to in the PID, if any.

- o Exact Product • Applicable to CLIN(s).....
- o Alternate Product • Applicable to CLIN(s).....

(b) Exact product. If the exact product is offered, any offeror other than the manufacturer cited in the PID must furnish, when requested by the Contracting Officer, evidence that the product being offered is that product described by the manufacturer's name and part number specified in the PID. Such evidence may be an invoice or other correspondence from the manufacturer cited in the PID or other evidence sufficient to establish the identity of the product and its manufacturing source. In addition, if the product is manufactured for the manufacturer cited in the PID, evidence of approval and acceptance by the manufacturer cited in the PID must also be furnished.

(c) Alternate product. • No Data.

(1) This Agency has no data available for use in the evaluation of the acceptability of alternate products offered. If an alternate product is offered, the offeror must furnish with its offer legible copies of all drawings, specifications, or other data necessary to clearly describe the characteristics and features of the alternate product being offered. Data submitted must cover design, materials, performance, function, interchangeability, inspection and/or testing criteria, and other characteristics of the offered product. In addition, the offeror must furnish drawings and other data covering the design, materials, etc., of the exact product cited in the PID sufficient to enable the Government to determine that the offeror's product is equal to the product cited in the PID.

(2) Notwithstanding the above, when the offered product is to be manufactured in accordance with the data the offeror has obtained from elsewhere within the Government, the offeror shall either furnish the detailed data as specified in paragraph (c)(1) with the offer, or supply a description of the data package in its possession; i.e., basic data document and revision, the date the data was obtained and from whom (Government agency/activity). If the offeror does not furnish the detailed data with its offer, this contracting office will be unable to begin evaluation of the offered product until such time as the detailed data can be obtained from the Government agency/activity possessing the data.

(d) If the product offered has previously been furnished to the Government or otherwise previously evaluated and approved, indicate in the space provided below the contract and/or solicitation number under which the product was furnished or approved. If the product was furnished or evaluated and approved by a contracting activity different from the one issuing this solicitation, then so indicate in the space provided. However, offerors are advised that this contracting office may not have access to records of another activity or other information sufficient to reasonably determine the offered product's acceptability. Therefore, the information requested by paragraph (c) or (e) above, whichever is applicable for the offered product, should be furnished with the offer.

CLIN NR (s)_____have been previously furnished or evaluated and approved under contract/solicitation number _____.

(e) Offers based upon items previously reverse engineered may be considered provided an adequate data package is furnished. Additionally, the offeror must provide: traceability which establishes that the offered item represents the item specified in the PID (i.e., invoiced from an Original Equipment Manufacturer (OEM) or submission of samples having OEM markings), number of samples that were examined, the process/logic used, and raw data (measurements, lab reports, test results) used to prepare drawings or specifications for the offered item. The offeror should also provide any additional evidence that indicates the reverse engineered item will function properly in the end item and any evidence that life cycle/reliability considerations have been analyzed.

(f) Whether the exact or an alternate product is offered, the offeror must insert in the space(s) provided in Section B of the Schedule (under the heading "Offer based on:") the manufacturer's name and part number being offered.

(g) Failure to furnish adequate data and/or information as prescribed in paragraph (b), (c), or (e) above (when required) within a reasonable period of time will preclude consideration of the offer. The Agency will make every effort to determine, prior to award, the acceptability of the products offered which meet the dollar savings threshold shown below, and/or which have a reasonable chance to receive an award based on price offered. Generally, the Agency will not evaluate alternate offers not meeting the dollar threshold. The savings potential is based on the cost of evaluation ($200.00 if only a local technical evaluation is involved, ***plus an additional $1,200.00 for each required*** Engineering Support ***Activity evaluation***). If the Agency determines that an evaluation cannot be completed before the expected contract award date due to urgent requirements for the item, the alternate offer will not be considered for the present procurement, but will still be evaluated for technical acceptability for future procurements for the same item. For alternate offers not evaluated, the offeror’s complete technical data package will be returned.

(h) If offerors desire to restrict the Government's use of data submitted for evaluation, the data must bear the appropriate legends as prescribed by FAR 52.215•12. In the event an award is made to an offeror submitting data without the appropriate legend, the Government will have unlimited rights to its use as defined in DFARS 252.227•7013.

(End of provision)

( ) ALTERNATE I • ADEQUATE PROPRIETARY DATA (JAN 1992)

It has been determined that the Agency has adequate data available for evaluation. Insert the following paragraph (c) in lieu of paragraph (c) of the basic provision:

(c) Alternate Product • Adequate Proprietary Data
The Agency possesses adequate drawings and/or specifications for the exact product as cited in the PID, but such data are proprietary and shall be used only for evaluation purposes. If an alternate product is offered, the offeror must furnish with its offer legible copies of all drawings, specifications or other data necessary to clearly describe the characteristics and features of the alternate product being offered.

Data submitted must cover design, materials, performance, function, interchangeability, inspection and/or testing criteria and other characteristics of the offered product.

( ) ALTERNATE II • INADEQUATE DATA (JAN 1992)

The Agency has determined that it does not have adequate data available for use in the evaluation of the acceptability of alternate products offered. Insert the following paragraph (c) in lieu of paragraph (c) of the basic provision:

(c) Alternate Product • Inadequate Data

(1) The Agency does not have adequate data available for use in the evaluation of the acceptability of alternate products offered. If an alternate product is offered, the offeror must furnish with its offer, legible copies of all drawings, specifications, or other data necessary to clearly describe the characteristics and features of the alternate product being offered. Data submitted must cover design, materials, performance, function, interchangeability, inspection and/or testing criteria and other characteristics of the offered product. In addition, the offeror must furnish drawings and other data covering the design, materials, etc., of the exact product cited in the PID sufficient to enable the Agency to determine that the offeror's product is equal to the product cited in the PID.

(2) Notwithstanding the above, when the offered product is to be manufactured in accordance with data the offeror has obtained from the Government, the offeror shall either furnish the detailed data as specified in paragraph (c)(1) with the offer, or supply a description of the data package in its possession; i.e., basic data document and revision, the date the data was obtained and from whom (Government agency/ activity). If the offeror does not furnish the detailed data with its offer, this contracting office will be unable to begin evaluation of the offered product until such time as the detailed data can be obtained from the Government agency/activity possessing the data.

( ) ALTERNATE (III) • ADEQUATE CATALOG DATA (JAN 1992)

This solicitation is for the purchase of a commercial off•the•shelf item. Insert the following paragraph (c) in lieu of paragraph (c) of the basic provision.

(c) Alternate Product • Adequate Catalog Data

This is a commercial off•the•shelf item. Adequate catalog data are available at the contracting office to evaluate alternate offers. If an alternate product is offered, the offeror must furnish with its offer a commercially acceptable cross reference list or legible copies of all drawings, specifications or other data necessary to clearly describe the characteristics and features of the alternate product being offered to enable the Agency to determine that the offeror's product is equal to the product cited in the PID.

[A3]On 12/27/02 DLAD editor archived subpart 47.305-1(c)(90) IAW PROCLTR 2001-15… 47.305-1 Solicitation requirements.

(c)(90) Compliance with European Union (EU) Restrictions Involving Non-Manufactured Wood Packaging (NMWP) and Pallets

The following requirement must be included in all solicitations and awards where wooden pallets and containers may be used to ship materiel to U.S. forces and for Foreign Military Sales customers in Europe, in order to comply with the Emergency Measure adopted by the Commission of the European Communities (CEC) that becomes effective on October 1, 2001. Membership in the CEC includes Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, Ireland, The Netherlands, Portugal, Spain, Sweden and the United Kingdom. This requirement includes all shipments moving through the Container Consolidation Points at the Defense Distribution Depots in Susquehanna, PA and San Joaquin, CA , ***the Container Freight Station in Norfolk, VA*** and the aerial ports of embarkation at Dover Air Force Base, DE; Travis Air Force Base, CA; Naval Air Station, Norfolk, VA; and Charleston Air Force Base, SC to the affected countries.

The requirement may be added by incorporation into local palletization clauses, palletization sheets, packaging requirements, or the SAMMS/CTDF, as appropriate. At such time when the requirement is incorporated into MIL-STD-2073-1, its inclusion in local palletization clauses, packaging requirements, etc. will no longer be necessary for solicitations and awards that include MIL-STD-2073-1. Buying activities must continue to ensure this requirement is incorporated in solicitations and awards that do not include MIL-STD-2073-1 where wooden pallets and containers may be used to ship materiel to U.S. forces and Foreign Military Sales customers.

"All wooden pallets and wood containers produced ***entirely or in part*** of non-manufactured ***softwood species*** shall be constructed from Heat Treated (HT to 56 degrees Centigrade for 30 minutes) coniferous material and certified ***accordingly*** by an accredited agency recognized by the American Lumber Standards Committee (ALSC) in accordance with Non-manufactured Wood Packing Policy and Non-manufactured Wood Packing Enforcement Regulations both dated May 30, 2001. ***All wooden pallets and containers produced entirely of non-manufactured hardwood species shall be identified by a permanent marking of "NC," 1.25 inches or greater in height, accompanied by the CAGE code of the contracted manufacturer and the month and year of the contract. On pallets, the marking shall be applied to the stringer or block on opposite sides and ends of the pallet and be contrasting and clearly visible. On containers, the marking shall be applied on a side other than the top or bottom, contrasting and clearly visible***."

[A4]On 8/9/02 DLAD editor placed supersed text for subpart 11.302-90(c) at he earliest ref. found in the prefatory comments.

[A5]On 7/30/01 DLAD editor placed subpart 17.7501(b)(3)(i) superseded text: 17.7501 Procurement of parts.

(b)(3) Solicitation Provision.

(i) The provision at 52.217-9002 entitled "Conditions for Evaluation and Acceptance of Offers for Part Numbered Items" may be used in negotiated acquisitions of replacement parts, components, and assemblies which are identified only by the manufacturer's name, part number, and a brief description, ***except that the provision at 52.213-9004, Offeror Representations, Certifications, and Fill-in Information--Electronic Commerce, shall be used instead, and shall incorporate 52.217-9002 by reference, whenever a solicitation below the simplified acquisition threshold is issued via electronic means. (See 13.104(90).) Also use the provision in acquisitions of NSNs identified as "critical safety items (CSIs)" (see 11.302-91); however, for CSIs, the provision at 52.217-9002 applies only to offers of "alternate product," and offers of "exact product" are evaluated in accordance with the clause at 52.211-9005, Conditions for Evaluation and Acceptance of Offers for Critical Safety Items.*** The provision may be used for simplified acquisitions as well as large purchases, provided that the full text of the provision shall be made available to offerors. ***(When 52.213-9004 is used, its inclusion of pertinent fill-in portions of 52.217-9002, and the latter's overall incorporation by reference, shall, along with directions to the offeror on electronic access to, and other availability (including hard copy) of, all applicable guidance, constitute provision in full text.)*** The contracting officer shall include the standard provision, or one of its alternates when appropriate, in the solicitation, based upon information regarding the availability of data for evaluation provided by technical personnel. The provision should not be used in procurements where technical personnel have specifically advised that for the instant procurement alternate products cannot be evaluated, e.g., restricted source or OEM source controlled items, National Institute for Occupational Safety and Health (NIOSH) items for which necessary testing equipment is not reasonably available, etc.

[A6]On 4/17 DLAD editor archived this coverage.
:46.390 Certificate of quality compliance (COQC).

(a) The contracting officer shall insert the clause at 52.246•9000, Certificate of Quality Compliance, in all solicitations and ***awards*** for safety•critical items; ***except when acquiring items identified as "critical safety items (CSIs)" (see 11.302-91). Solicitations and awards for CSIs must include the provision and clauses prescribed at 11.304-90(a)-(c); the clause at 52.246-9000 must be considered for use when acquiring CSIs if award is made to a source other than an approved source cited in the acquisition identification description (AID)***. The contracting officer shall also include the clause in other solicitations and contracts for supplies which meet both of the following conditions:

[A7]Archive: 52.211-9005(d)… ***An original, hard copy of quotation received by Offeror from approved source cited in AID; or other verifiable documentation of quotation. (If Offeror is unable to provide this documentation to the Contracting Officer prior to award, it must be provided to the Quality Assurance Representative (QAR) for examination at time of source inspection.)***

[f8]On 1/25/02 DLAD editor changed subpart 39.106(a)(92) IAW PROCLTR 2002-01 from : "***(92) The contracting officer shall use the definition of Year 2000 Compliant at FAR 39.002 in all solicitations and contracts to describe the Y2K compliance requirement. The definition language should be included in Section C, Description/specification/work statement of the solicitation and contract, and therefore would not require a separate clause to enforce the requirement. "***

[A9]On 7/24/02 DLAD editor updated subpart 11.290 IAW PROCLTR 2002-03. For archival purposes an earlier version of the text provided by the action officer follows: ***SUBPART 11.290 – Bar Coding (Applicable to DSCC, DSCP and DSCR only)***

Insert the clause at 52.211-9008 in solicitations and contracts for material being shipped directly to a military customer rather than a DLA Distribution Depot. The clause may also be used for shipments to DLA Distribution Depots when the depot requires barcoding.

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[f10]On 2/21/02 DLAD editor removed the following text at 12.301(f)(94) & (95) from the DLAD: ***(94) The clause at FAR 52.203-3, Gratuities, as prescribed in FAR 3.202.***

(95) The provision at DFARS 252.209-7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, as prescribed in DFARS 209.104-70(a).

[A11]***(b)(90) The Technical and Quality Specialist in the Business Unit is responsible for determining the circumstances when offers of surplus material will only be evaluated to accommodate unique contingencies. The technical/quality specialist shall provide backup documentation for the contract file in sufficient detail to demonstrate that the restriction is necessary to satisfy the needs of the Government. Justifications may be applied on an individual or class basis. When offers of surplus material will only be evaluated to accommodate unique contingencies, the technical/quality specialist shall ensure that the following statement is included in the Technical Guidance Information (TGI) field: "Due to [insert reason(s), such as "the critical nature" or "need to maintain industrial base"] of [insert description of item(s) (class(es) of items, such as "gears," "Life Support", "Flight Safety Critical Aircraft Parts (FSCAP)", and/or "Individual Repair Parts Ordering Data (IRPOD)"] items, offers of surplus material will only be evaluated to accommodate unique contingencies, such as when the original equipment manufacturer is out of business, the aircraft/system is obsolete (no longer being manufactured), or the sole vendor or approved vendors do not respond." The contracting officer is responsible for including the statement in the PGI field, when applicable, as a notice in the solicitation. For automated solicitations, a statement may be included referring offerors of surplus material to a source of information where complete conditions for evaluation are detailed (e.g., "Offerors of Surplus Material – see EBB Sign On Instructions"). Buying activities shall develop procedures to ensure that documentation received separately from a corresponding automated offer is properly distributed to the buyer for timely evaluation.***

Business units performing the contracting function shall ensure the above statement, when applicable, is included in the solicitation. For automated solicitations, a statement may be included referring offerors of surplus material to a source of information where complete conditions for evaluation are detailed (e.g., "Offerors of Surplus Material – see EBB Sign On Instructions").

When the ***clause*** at FAR 52.211•5 is used ***and offers of surplus materials will be evaluated,*** the clause at 52.211•9000, Surplus Material, ***and the provision at 52.211-9003*** shall also be used. ***When the provision at 52.211-9003 is used, the contracting officer shall include a notice in the solicitation advising that the evaluation criteria stated in 52.211-9003 will apply to all offerors, including offerors of nonsurplus material. (For commercial items, the clauses at FAR 52.211-5 and DLAD 52.211-9000 and the provision at DLAD 52.211-9003 may be used but are not mandatory; however, contracting officers shall ensure material requirements are addressed in a manner appropriate to the circumstances and that the solicitation provides adequate information about how offers of surplus material will be evaluated.)*** DSCs shall establish procedures such that they will evaluate offers of surplus material when the savings meet the savings threshold stated in the provision, and there is a reasonable expectation that the offer of surplus material may be in line for award. In order to avoid the establishment of dual standards, when offers of surplus property are permitted, warranty provisions applied must be applied to all contractors whether manufacturers or dealers and whether or not surplus material is offered. Therefore, a warranty clause as prescribed in FAR Subpart 46.7 or DFARS Subpart 246.7 must also be incorporated in the solicitation whenever the above clauses are used and use of a warranty provision is desired.

[A12] On 4/17/02 DLAD editor added this archival coverage of 11.302-90: ***11.302-90 Use of approved sources.***

(a) Roles of contracting officer and technical/quality specialist. The requiring Military Service provides the data to procure the correct item. The technical/quality specialist is responsible for maintaining the accuracy and currency of the technical/quality requirements and for ensuring that only approved sources are identified in the acquisition identification description (AID). (Detailed policy guidance for technical/quality specialists is provided in the DLA Technical Support Policy and Procedures Deskbook, which is maintained by the Technical and Quality Policy Division, J-334, and can be accessed electronically on the J-334 Web Page at http://www.dla.mil/j-3/j-334 .) Contracting officers are responsible for performing all necessary actions for effective contracting. They must ensure compliance with laws, regulations, and procedures; safeguard Government interests; request and consider advice of appropriate specialists (audit, law, engineering, etc.); and exercise business judgment (see FAR 1.602-2). Contracting officers have a responsibility to ensure that the selected source has the intent and capability to provide the item in compliance with the terms of the contract, including the item description; and they have broad latitude to carry out their duties. However, the contracting officer is not authorized to determine what sources should be approved and cited in the AID. Contracting officers must follow the guidance at 11.302-90(c) to determine when pre-award referral to the technical/quality specialist is required to ensure that a prospective contractor is technically acceptable.

[A13]This was formerly reserved in the DLAD.

[A14]On 6/26/02 DLAD editor added this archival comment of how this clause looked before PROCLTR 02-10: ***52.239-9000 – Y2K COMPLIANCE NOTICE– DLAD***

As prescribed in 39.106(92), insert the following in solicitations and contracts.

Y2K COMPLIANCE NOTICE (Feb 2002) DLAD 52.239-9000

All items delivered under the contract (or order) containing embedded microchips with a clock mechanism, timing device, or control device required to perform date/time processing involving dates subsequent to December 31, 1999, shall be Year 2000 (Y2K) compliant at time of award. Failure to be Y2K compliant at time of award may preclude offers from receiving an award. Offerors shall, in submitting their offers, indicate which line item falls under this requirement and whether each is Y2K compliant.

"Y2K Compliant" means to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first century, and the years 1999 and 2000, and leap year calculations, to the extent that other Information Technology (IT) and non-IT items being acquired properly exchange date/time data with it.

The prime contractor shall ensure their subcontractors' items/products and services provided under this contract are also Y2K compliant. The Government reserves the right to test delivered items for Y2K compliance.

(End of Clause)

[A15]IAW PROCLTR 2002-04 & 2002-01 DLAD editor added this new clause at 52.239-9004 on 1/30/02

[A16]On 8/9/02 DLAD editor archived superseded text for subpart 11.302-90(a)(11) here: ***(11) When award is made, notify the quality assurance specialist (QAS), who will determine if a quality assurance letter of instruction (QALI) is required. If award was made to a dealer/distributor, a QALI is mandatory. Advise the QAS what the QALI for a dealer/distributor should include, as follows:***

[A17]On 8/9/02 DLAD editor archived superseded text for subpart 11.304-90(a) thru(c) here: ***11.304-90 Solicitation provision and contract clauses for critical safety items (CSIs).***

(a) (a) Insert the clause at 52.211-9005, Conditions for Evaluation and Acceptance of Offers for Critical Safety Items, in all solicitations ***and awards*** for critical safety items.

(b) Insert the clause at 52.211-9006, Changes in Contractor Status, Item Acquired, And/Or Manufacturing Process/Facility -- Critical Safety Items, in all solicitations and awards for critical safety items.

(c) Insert the clause at 52.211-9007, Withholding of Materiel Review Board (MRB) Authority -- Critical Safety Items, in all solicitations and awards for critical safety items; except when soliciting or awarding in accordance with a blanket ordering agreement (BOA) that was awarded by a Service/Agency other than DLA.

[A18]On 8/9/02 DLAD editor archived superseded text for clause 52.211-9006 here: ***52.211-9006 Changes in Contractor Status, Item Acquired, And/Or Manufacturing Process/Facility -- Critical Safety Items.***

As prescribed in 11.304-90(b), insert the following clause:

CHANGES IN CONTRACTOR STATUS, ITEM ACQUIRED, AND/OR MANUFACTURING PROCESS/FACILITY -- CRITICAL SAFETY ITEMS (DEC 2001) - DLAD

(a) If any changes occur in the Contractor's business status or relationship with the approved source(s) after award of this contract (such as, for example, inability to obtain manufacturing process information; or changes in status as authorized dealer/distributor, or in terms of licensing arrangement), the Contractor shall immediately provide notification and documentation of the changes to the Contracting Officer.

(b) The Contractor shall immediately provide to the Contracting Officer notification (and documentation, if available) of any of the following changes the Contractor becomes aware of:

(1) Later revisions to drawings, specifications or standards that differ from the revision cited in the acquisition identification description (AID) in the contract;
(2) Changes in the manufacturing process;
(3) A change in the approved source's manufacturing location; or
(4) A transfer of manufacturing facilities by the approved source since last manufacture.

(End of clause)

[A19]On 8/9/02 DLAD editor archived superseded text for clause 52.211-9007 here: ***52.211-9007 Withholding of Materiel Review Board (MRB) authority.***

As prescribed in 11.304-90(c), insert the following clause:

WITHHOLDING OF MATERIEL REVIEW BOARD (MRB) AUTHORITY -- CRITICAL SAFETY ITEMS (DEC 2001) -- DLAD

The item being acquired is a critical safety item. Notwithstanding any other term or condition included in this contract/agreement, Materiel Review Board (MRB) authority is hereby withheld.

(End of clause)

[A20] On 9/19/02 DLAD editor updated this clause 52.213-9005. For archival purposes the previous text is provide below: 52.213-9005(i)- ***A Fast Award icon on the SRweb "search results" screen identifies Fast Award Solicitations. These solicitations may be awarded prior to the solicitation return date/time. Commencing at 5:00 P.M. four business days after the issue date, and continuing every day thereafter at 5:00 P.M. until the return date, all quotes will be evaluated by DLA's automated evaluation program (OEweb) for an early award. Therefore, quotes should be submitted as soon as possible on Fast Award Solicitations. NOTE: Award will not be made prior to the return date/time on solicitations that have not been designated as Fast Award Solicitations without a documented urgency.***

[A21]On 1/29/03 The DLAD editor documented the archival coverage for this subpart below:

7.102 Policy.

(b) A Business Case Analysis, in accordance with MM ***(now J-3)*** Memorandum dated May 15, 1997, subject: DLA Materiel Management (MM) Initiative Management Policy, shall be accomplished coincident with planning for a Shift to Commercial Practices, ***or other shift in method of support.*** The price comparison shall be made on the basis of total estimated costs to the customer, i.e., materiel purchase cost plus the cost recovery markup for logistics support costs charged by DLA, plus an estimate of the customers' own logistics costs (storage, delivery, forecasting, requisitioning or buying, etc.) ***for the expected order quantities of all items available for order under the contract(s), i.e., after exclusion of price and/or delivery outliers***. The analysis, which shall be retained in the resulting contract file, shall demonstrate that the support decision and the resulting purchase decisions will provide added value to our customers (e.g., lower overall costs inclusive of their logistics costs, improved deliveries, and/or enhanced supplier support, etc.).

(90) Market surveys (see FAR 7.101) and market research (see FAR and DLAD PART 10) shall be performed consistent with any local operating procedures.

(91) Written acquisition plans are required for all proposed contract actions other than those ***not expected*** to ***exceed the simplified acquisition threshold.*** Acquisition plans for proposed contract actions not required to be approved by the Acquisition Planning Executive Council (APEC) (see 7.104-***90***) shall, at a minimum, be initiated at the time the purchase request is received by the buyer, prepared substantially in accordance with the illustrative format at 90.1102, and approved at a level above the level of the buyer. The approval level shall be established by the chief of the contracting office. The illustrative format may be modified to suit the needs of the contracting office. A standard DLA•wide form is not prescribed in order to permit development of local forms or formats.

(92) Acquisition plans for proposed contract actions required to be approved by the APEC shall be prepared in accordance with FAR 7.105, DFARS 207.105, and 90.1101 of this directive, except as provided in 7.104•90(h) below in regard to ***DSCP***.

(93) The acquisition plan shall accompany the justification for other than full and open competition (see FAR 6.303, FAR 6.304, and 6.101 and 6.304 of this directive) when it is forwarded to the Activity Competition Advocate. The Activity Competition Advocate shall also be provided a copy of the acquisition plan for those acquisitions for which there is not a history of receipt of more than one offer and price competition is not expected to be received on the acquisition.

(94) The plan shall identify planned cost and delivery metrics and the POC(s) monitoring contract performance.

[A22]On 1/29/03 DLAD editor documented archival coverage for subpart 7.104-90 below:
7.104•90 Acquisition Planning Executive Council (APEC) reviews.

(a) The Executive Director, ***Logistics Policy and Acquisition Management*** is the reviewing official for all acquisitions conducted by any contracting office under the cognizance of DLA. Acquisitions requiring review fall into the categories described under 7.104-90(d), or have a significant impact on Agency workload (e.g., at depots or DLA ICPs). Reviews will be conducted as Acquisition Planning Executive Council (APEC) reviews, requiring either: review of written documents (as described by 7.104-90(c)) only; review of written documents and a briefing; or presentation of a briefing only. For all acquisitions potentially subject to review, DLA contracting offices shall submit advance notification to HQ DLA, ATTN: ***J-335***, including:

(1) A brief narrative summary of the circumstances of the acquisition, including the reason for submission, a description of the effort being contracted for, and an identification of the customer(s), item(s)/nomenclature, delivery parameters, and unique/innovative aspects of the acquisition. The notification shall also include the PR number (if applicable), quantity, solicitation and evaluation methods, J&A authority (if applicable), and type of contract, and the estimated dollar value of the contract, for each base year and each option year, if applicable. Additionally, the summary must identify the cognizant program manager and/or contracting officer, including office symbol(s), telephone and fax number(s) and e-mail address(es).

(2) The following information may be provided if available at the time of notification. Alternatively, a statement should be included that explains that the information is or will be included in the acquisition plan, or is not yet available, or is included in another document already provided to Headquarters DLA, such as a J-3 Initiative document (Business Case), Business Plan, or POM submission.

(i) A statement that the impact on depot workload has been assessed, and that the impacted distribution region(s) have been made aware of this potential impact.

(ii) A statement describing the impact on workload at ICP(s) other than the one managing the program or executing the contract, if applicable, and verification that the affected ICP(s) have

been apprised.

(iii) A statement that the impact on DCMA workload has been assessed, and that DCMA has been made aware of this potential impact.

(iv) A statement confirming that readiness, sustainability, and surge requirements (as described by 17.9300) have been included in the proposed acquisition.

(v) A statement confirming that a transition plan (dealing with such issues as depleting residual assets, maintaining quality, perpetuating engineering design changes, etc.) has been developed when migrating from one support method to another, e.g., depot support to direct vendor delivery.

(vi) A statement that the impact on the Military Service component(s) has been assessed, and that the Service has been made aware of this potential impact.

(3) Within five working days after receipt of the summary, ***J-33*** will advise the contracting office whether the acquisition is subject to a review of written documents only, a review of written documents accompanied by a briefing, or requires only a briefing to the APEC.

(b) The Executive Director, ***Logistics Policy and Acquisition Management*** (***J-33***) is Chairperson of the APEC, and as such, will designate members of the APEC on a case-by-case basis for each procurement subject to APEC review. APEC membership normally consists of (but is not limited to) the following individuals: Executive Director, ***Business Management Office*** (***J-38***), Executive Director, Logistics ***Policy and Acquisition Management*** (***J-33***), Director, ***Business Development and Supply Chain Integration Division (J-381)***, General Counsel (GC), Comptroller (FO), and ***Director, DCMA.***

(c) For ***Acquisition Planning Executive Council*** (APEC) reviews, acquisition plans, reviewed and coordinated by appropriate field functional elements, accompanied by applicable justifications, statements of work, source selection plans and evaluation criteria, and a copy of the proposed solicitation, shall be forwarded by the Chief of the Contracting Office at each DLA contracting activity to the Executive Director, ***LogisticS Policy and Acquisition Management*** (Attn: ***J-335***) for review and approval by the APEC. ***J-338 will review acquisition plans submitted for APEC review jointly with J-335, whenever acquisition plans are required to address S&S capability in accordance with DLAD 7.104(b)(91) and 17.9303.*** The information described at 7.104-90(a)(2) should be provided with the acquisition plan, if not provided previously.

(d) Procurements requiring APEC review include, but are not limited to, actions:

(1) requiring approval by the Senior Procurement Executive (see FAR 6.304, DFARS 206.304(a)(4)(A), and DLAD 6.304(a)(4)(A)(1)(90);

(2) of an innovative or unusual nature, and that have ***a*** significant dollar value or a major impact on industry or government activities, e.g., the initiation of the prime vendor ***and virtual prime vendor*** quick response programs;

(3) which have Congressional, OSD, or White House interest;

(e) Contracting offices may request oral presentation of an acquisition plan to expedite processing, in which case the acquisition plan will be forwarded so as to arrive at HQ DLA (J-335) 5 (five) working days prior to the scheduled briefing. Upon completion of an oral presentation to the APEC, the briefer will be advised of unconditional approval, conditional approval, or disapproval. Unconditional and conditional approvals are authority to proceed with the acquisition. All decisions will be transmitted by letter to the respective office.

(f) Once an acquisition plan is approved by the APEC, no changes may be made in the planned approach without the prior approval of the APEC.

(g) All ***DSCP*** acquisitions subject to APEC review shall be so designated in the DLA Acquisition Planning System (DLA APS). The narrative accompanying plans subject to APEC review and approval shall include the essential information and documentation required by APEC. A summary of each acquisition included in the DLA APS shall be furnished to the Executive Director, ***Logistics Policy and Acquisition Management*** , ATTN: ***J-335***, after approval by the appropriate officials at ***DSCP***. Acquisitions requiring APEC review shall be clearly identified when a summary is submitted. ***J-335*** will contact ***DSCP***-P to schedule APEC reviews.

(i) As other ICPs and procurement offices implement the use of the DLA APS (which is an enhancement of the ***DSCP*** Acquisition Planning System, and currently is available to all contracting offices), the APEC processes described in this paragraph will also apply to their acquisitions.

(h) The Directorate of Contracting, ***DSS*** (DSS-O), is subject to the same APEC procedures as other DLA contracting offices.

[A23]On 3/10./03 DLAD editor updated subpart 11.290 and pre PROCLTR 03-03 archival text follows:

SUBPART 11.290 – Bar Coding (Applicable to DSCC, DSCP and DSCR only)

Insert the clause at 52.211-9008 in solicitations and contracts for material being shipped directly ***to customer and shipments through a port or Container Consolidation Point to a customer (i.e. Direct Vendor Delivery). This does not apply to a stock buy.***

[A24]On 4/9/03 DLAD editor added pre PROCLTR 03-06 Archival coverage for 7.102-90 as follows: 7.102 Policy.

(90) Written acquisition plans are required for all acquisitions expected to exceed the simplified acquisition threshold. This does not apply to orders against contracts when the acquisition plan is adequate to cover all anticipated orders. Acquisition plans shall be prepared in accordance with FAR 7.105, DFARS 207.105, and DLAD 90.1101, and 90.1102, and be approved at a level above the buyer as established by the Chief of the Contracting Office. The format at DLAD 90.1102 may be modified to suit the needs of the contracting office. A standard DLA-wide form is not prescribed in order to permit use of local forms or formats.

7.104-90(d): Waiver of I-ARB review and approval requirements may be requested by the Chief of the Contracting Office, under exceptional circumstances. The request for waiver shall be submitted to the DLA Supplier Operations Branch (J-3312) and must include rationale and justification for the waiver. Waivers are granted by the SPE on a case-by-case basis.

7.104-90(e): When an I-ARB review is required, the Chief of the Contracting Office must submit both hard and electronic copies of the following documents to J-3312 for evaluation: Acquisition plans (see 90.1101) reviewed and coordinated by appropriate field functional elements; source selection plan; incentive plan; justification and approval, as applicable; the solicitation; and an abbreviated (rough order of magnitude (ROM)) business case analysis, if appropriate.

90.1103: All templates submitted to DLA HQ for review must be approved by the Chief of the Contracting Office and coordinated with the contracting activity's Associate Director of Small Business and Office of Counsel.

Upon receipt of the documentation previously listed, J-3312 will schedule an I-ARB meeting. Additionally, the contracting activity must present the I-ARB with a formal briefing. Additional requirements for specified milestone reviews for PBL acquisitions are addressed in 90.1501.

7.104-91(a): An Advance Acquisition Planning Template (formerly the Advance Notice of Initiative for Potential APEC Review) (see 90.1103) should be completed for all proposed acquisitions requiring review/approval at DLA HQ. Proposed acquisitions that meet the criteria and the dollar thresholds identified below must be electronically submitted to J-3312 for review and approval once the contracting activity has sufficient information to complete the template. Excluded from this requirement are those acquisitions identified in paragraph 7.104-90. Once J-3312 reviews the template, the contracting activity will be advised whether they have authority to proceed with the acquisition. All templates submitted to DLA HQ for review must be coordinated with the contracting activity's Director of Small Business and Office of Counsel and be approved by the Chief of the Contracting Office.

90.1503: ***The Defense Logistics Agency (DLA) Senior Procurement Executive (SPE) has established a structured approach to serve as a model for managing and executing performance based, long term logistical support acquisitions. This process will be implemented by each Inventory Control Point (ICP) for all acquisitions which meet the definition of a Performance Based Logistics (PBL) acquisition (See Appendix A). Those acquisitions exceeding the thresholds identified in this subpart will be reviewed and approved by the DLA Integrated Acquisition Review Board (I-ARB), chaired by the SPE with representation from J-34 (Readiness and Customer Support Directorate), J-37 (Distribution and Reutilization Policy Directorate), J-38 (Business Management Directorate), J-81 (Deputy Comptroller, Budget and Program Integration Operations), J-6 (Deputy Director, Information Operations/Chief Technology Officer), the ICPs, and the Defense Distribution Center (DDC). Representatives from the DLA Office of General Counsel and Small & Disadvantaged Business Utilization Office are advisors to the I-ARB. The I-ARB has the option to continue the acquisition, modify the strategy, terminate the process, or determine how to proceed into the next phase. For those acquisitions below the threshold, the head of contracting activity or field activity Chief of Contracting Office shall establish and chair a similar review board based upon the approval thresholds in 90.1503(b)(i).***

[A25]On 6/6/03 DLAD editor updated part 25 coverage to match the FAR rewrite of Part 25 IAW PROCLTR 03-10. Some sections were moved and/or deleted. See the following historical archived coverge prior to PROCLTR 03-10. embedded.

[A26]On 6/23/03 DLAD editor added section 19.807 IAW PROCLTR 03-11. Archival coverage of prior to the updated 19.807 follows:

19.807 Estimating fair market price.

(a) The FMP is intended to reflect award prices attainable to the Government if purchased on a fully competitive basis in the current open market place.

(b) In determining the FMP, the contracting officer, whether using previous buys, a market survey, pricing data, and/or cost or pricing data, would exclude any abnormally priced offers that can be identified. This includes prices which, although reasonable, were found to have been abnormally low or high due to special or non•recurring circumstances, such as a one•time price reduction, premium charge, distress sale, etc. The FMP should normally be derived based on adjusting the lowest (except for repeat purchases • see 19.807(c)(90)) remaining reasonable price consistent with the Government's requirements in the manner specified in FAR and DLAD 19.807(c). No other price differential or adjustment factor shall be used (e.g., for independent government estimate inaccuracies, for differences between fully competitive awards and reservations, for differences between awards to manufacturers and to dealers, etc.).

(c)(90) Establishing an FMP does not mean that the section 8(a) subcontractor will always be able to meet the most recent, lowest, and /or comparable price obtained through full and open competition or sealed bidding.

(91) When there have been recent awards for comparable quantities of the item being purchased, which resulted from "normal competitive conditions," the most recent award shall be the basis upon which FMP is determined. A comparable quantity is not necessarily a similar quantity but must be one to which a logical price comparison can be made with the current quantity. All recent award prices are to be considered in determining if the most recent comparable price is representative of "normal competitive conditions." If the most recent award price is not representative of "normal competitive conditions," the file shall be so documented and the next most recent comparable award price shall be considered as the basis for the FMP determination.

(92) Award of a section 8(a) contract shall not be delayed pending award of a recently issued solicitation which resulted in competitively priced offers, unless there is no reasonable basis for determining FMP other than the pending competitive award price.

(93) When a solicitation for a particular item would generally result in different unit prices for different line items, it may be desirable to develop separate FMPs for each line item. However, it is not permissible to establish a range of FMPs for any item or group of items.

(94) Averaging of previous bid or award prices is prohibited.

(95) Previous section 8(a) award prices may be used to determine the current FMP only when: (a) a suitable previous competitive price is not available; and (b) when the previous FMP was established in accordance with FAR and DLAD guidelines.

(96) A format similar to that in paragraph ***19.807(91)***, below, shall be used to document consideration of all relevant factors affecting price used to adjust the previous award price (base FMP), or the reason the factors were not adjusted.

(97) Once the FMP is established, considering previous award prices and all relevant factors affecting price, it will be the highest price that DLA will pay, except when a revised FMP, established within the FAR/DLAD guidelines, is fully supported and documented by the contracting officer.

(98) Although use of previous competitive award prices is the required method of determining FMP, whenever applicable, nothing in this directive shall preclude consideration of the unique factors of an individual acquisition or the application of another method of determining FMP, as listed in the FAR/DLAD, provided that the file clearly documents the reasonableness of the chosen approach.

[A27]On 7/21/03 DLAD editor updated provision/clause 52.213-9004 subsections 11 thru 14. IAW PROCLTR 03-14. Archived text prior to 03-14 follows:

11. DFARS 252.225-7003, Information for Duty-Free Entry Evaluation.

11A Enter the individual line item number for which duty-free entry information is being provided. Enter "ALL" if, and only if, the responses to 11B through 11E are the same for all line items in your offer. Enter "NA" if the provision is not applicable. (NOTE: If information is being provided for individual line item numbers, segments 11A through 11E should be repeated as many times as necessary.) .

11B Does the offeror propose to furnish either a domestic end product with nonqualifying country components for which the offeror requests duty-free entry, or a foreign end product consisting of end items, components, or material of foreign origin other than those for which duty-free entry is to be accorded? .

Y9 = Yes
N9 = No
NA = Not applicable

11C Are such foreign supplies now in the United States? .

YD = Yes
ND = No
NA = Not Applicable

11D Has the duty on such foreign supplies been paid? .

YP = Yes
NP = No
NA = Not Applicable

11E If the response to 11D is "NP," enter amount included in offer price to cover applicable duty that has not been paid; otherwise, enter 0 (zero); if not applicable, enter "NA": .

[A28]On 7/28/03 DLAD editor updated 90.101 IAW PROCLTR 03-15. Archived text prior to change follows:

SUBPART 90.1 - SALE, LOAN, OR GIFT OF PROPERTY

90.101 Sale, loan, or gift of certain property (10 U.S.C. 4506).

(a) The HCAs and their authorized designees are authorized to sell, give, or lend drawings, manufacturing and other information, and samples of supplies and equipment to be manufactured or furnished, to contractors and private firms which are or may likely be manufacturers and furnishers of supplies and equipment for use under approved production plans, whenever they determine that such action is necessary in the interest of national defense.

(b) Such drawings, manufacturing and other information, and samples of supplies and equipment to be manufactured or furnished shall be sold, given or loaned by appropriate written agreement, reciting the above determination (10 U.S.C. 4506).

(c) The foregoing determination and requirement for a written agreement will not be mandatory in the case of invitations for bids and requests for proposals. Drawings, specifications, and data furnished need not be returned unless otherwise directed by the contracting officer.

(1) In making the determination to request the return of such specifications, drawings, or any other data furnished, the contracting officer should take into consideration the following factors:

(i) The current or probable future need of the Government for the items.

(ii) The residual value of such items.

(iii) Administrative and other expenses incident to handling and storage of such items.

(iv) The probable cost of reproduction of such items in event of future acquisition.

(2) Classified material, as a general rule, will be required to be returned regardless of the criteria established above.

[A29]On 8/21/03 DLAD editor updated subsection 42.7101(90)(2) IAW PROCLTR 03-17. Archived text follows:

42.7101 Solicited refunds.

(90) Overpricing.

(1) Before any recoupment action is taken, the contractor shall be contacted for any explanation of the basis of its price, and whether a pricing error has occurred. A determination shall then be made as to the existence of overpricing.

(2) If it is determined that overpricing has occurred, the contract should be canceled or a price reduction/voluntary refund requested, as applicable. Voluntary refund requests of $25,000 or more shall be approved by the chief of the contracting office (CCO). This approval may be delegated at DSCs to one level below the CCO, and if the amount to be requested does not exceed $50,000, to the chief of the pricing element and to a level no lower than the level above the contracting officer. The Refund requests with supporting rationale should be made in writing to an appropriate contractor official, and should include amounts related to any previous awards by the contracting office for the item for which a voluntary refund is also requested. Awards to other suppliers of the same item should also be reviewed for apparent overpricing, and any appropriate corrective action pursued in accordance with DFARS 242.71 and this subpart. Apparent overpricing on any award made by any other contracting office should be referred thereto for resolution.

[A30]On 10/27/03 DLAD editor added subpart 90.17 IAW PROCLTR 03-18.

[A31]On 10/27/03 DLAD editor updated subpart 25.70 IAW PROCLTR 03-18 and archived 25.7002-2 here. See below for details:

(a) All domestic non-availability determination approval requests made pursuant to ***10 U.S.C. §2533a*** (also known as the Berry Amendment) shall be forwarded from the Activity Commander to the Agency Director for submission to the Under Secretary of Defense (Acquisition Technology and Logistics). Options not exercised at time of award require a separate non-availability determination.

[A32]On 10/30/03 DLAD editor updated section 7.104-91(a) IAW PROCLTR 03-19 and the archived coverage follows:

(a) *An Advance Acquisition Planning Template (formerly the Advance Notice of Initiative for Potential APEC Review) (see 90.1103) should be completed for all proposed acquisitions,* ***including orders placed under Federal Supply Schedules, requiring review/approval at DLA HQ*** *that meet the criteria and the dollar thresholds identified below.* ***Templates*** *must be electronically submitted to J-3312 for review and approval once the contracting activity has sufficient information to complete the template. Excluded from this requirement are those acquisitions identified in paragraph 7.104-90. Once J-3312 reviews the template, the contracting activity will be advised whether they have authority to proceed with the acquisition. All templates* ***submitted to DLA HQ for review*** *must be coordinated with the contracting activity's Director of Small Business and Office of Counsel and be approved by the Chief of the Contracting Office.* ***(Orders under proposed acquisitions for which the maximum anticipated value was included in a previously submitted template with a single all inclusive acquisition plan need not be submitted for approval separately.)***

Contracting Activity	*Total Dollar Value (Base Period and Option periods)*	*Other Criteria*
DSCC, DSCP, DSCR	*> $ 50 million*	
*DESC**	*> $100 million*	
All Other Activities	*> $5 million*	
All Activities	*$1 million or less (See 7.104.90 for bundled acquisitions above $1M)*	*bundled acquisitions*

**** Applies only to proposed acquisitions of natural gas.***

(b) J-3312 will advise the contracting activity within 15 calendar days after receipt of the Advance Acquisition Planning Template if the proposed acquisition is approved or disapproved, or whether an I-ARB is required. Once the proposed acquisition is approved, no significant changes shall be made without prior J-3312 approval.

[A33]"bundled acquisitions" -On 5/12/03 DLAD editor made an editorial change and removed the word “ALL” for other criteria on the chart at 7.104-91(a) IAW instructions from J-3311.

[A34]DLAD editor updated "B. Organizational changes" and the archival text is follows:

B. Organizational Changes.

1. Changes were made throughout the DLAD to reflect the DLA 21 reorganization of Headquarters in accordance with General Order No. 6-00 dated May 31, 2000 viewable at http://www.dla.mil/public_info/GOdla21.asp

and the establishment of the Defense Contract Management Agency (DCMA) according to DepSecDef Memo dated Mar 27, 2000 viewable at http://www.dla.mil/j-3/j-336/logisticspolicy/DCMA%20ltr.pdf . Concurrent with these changes, the Executive Director, Procurement, DLA, was retitled Executive Director, ***Logistics Policy and Acquisition Management*** (J-33).

2. Changes made throughout the DLAD to reflect the redesignations of item 1. above and other organizational vhanges are summarized in the table below:

J-33 Organizational Update Summary

From	To		From	To
DLSC	J-3		DLSC-PO	J-33
DLSC-P	J-33		Defense Automated Printing Service, DAPS	Document Automation and Production Service, DAPS
DLSC-PRS	Disestablished		DLA 21 General orders: http://www.dla.mil/public_info/GOdla21.asp	
DLSC-PRT	J-339		Executive Director, Procurement Management	Executive Director, Logistics Policy and Acquisition Management
DLSC-PPB	J-337		***http://www.dla.mil/public_info/GOonDSS.asp***	
DLSC-PPP	J-336		***DASC www.dla.mil/dss/dapscenter/orgdasc.htm***	***DSS http://www.dla.mil/dss/DSS_Organization.html***
DLSC-POA	J-335		***DASC-CA***	***DSS-OC***
DLSC-PON	J-308		***DASC-C***	***DSS-O***
DCMC	DCMA		DAPSC	Disestablished http://www.dla.mil/dss/whatsnew.htm

Maintained by J-336 webmaster / DLAD editor & viewable at http://www.dla.mil/public_info/GOdla21.asp

Page: 4
[f35]DLAD editor previously made this change. For details about TINA the following is provided. TINA: http://farsite.hill.af.mil/reghtml/changes/fac/fac97_20.htm

Truth in Negotiations Act Threshold (FAR Case 2000-300)
This final rule amends FAR 15.403-4 to increase the threshold for obtaining cost or pricing data from $500,000 to $550,000. This implements the requirements of 10 U.S.C.2306a(a)(7) and 41 U.S.C.254b(a)(7). These statutes require review of the Truth in Negotiations Act threshold every 5 years, starting October 1, 1995.

Dated: October 3, 2000.

Page: 4
[f36] On 9/10/01 DLAD editor deleted DLAD 16.3 IAW action officer's (Greg Ellsworth) instructions: -----Original Message-----

From: **Ellsworth, Gregory**

Sent: Thursday, September 06, 2001 4:12 PM

To: Howerton, Charles

Cc: Baileymuller, Norma

Subject: DLAD Subpart 16.3

Charles -

Please delete DLAD Subpart 16.3, because it is no longer needed. The FAR requirement to which the only coverage in the DLAD subpart refers has been removed from the FAR. Please also remove Subpart 16.3 and 16.306 from the Part 16 Table of Contents.

Greg

16.306 Cost•plus•fixed•fee contracts.

(c) Limitations.

(2) The D&F required by FAR 16.306(c)(2) shall be signed by the contracting officer.

Page: 4

[f37]IAW email from DESC this change was made; -----Original Message-----

From: **Pilz, Kerry [mailto:kpilz@desc.dla.mil]**

Sent: Thursday, September 13, 2001 1:50 PM

To: Howerton, Charles (HQ DLA)

Cc: Baileymuller, Norma (HQ DLA)

Subject: DLAD change for 2.101

Charles,
In DLAD 2.101, Definitions, we need a change to read:

"Chief of the Contracting Office" (CCO) as used in this directive, means for the:
Defense Energy Support Center (DESC): Center Senior Procurement Official (CSPO)

The DLAD currently reads the Director, Alternative Fuels, which is not the case for our CSPO at present.
Thanks,

Page: 4

[f38]On 9/19/01 The DLAD editor repositioned this paragrah to 11.103 because of 9/17/01 email received from Action officer Anne Burleigh .

Page: 5

[f39]These changes are IAW action officers' (Jerry Gilbart) email of 8/14/01.

Page: 5

[f40]These changes are IAW action officers' (Jerry Gilbart) email of 8/14/01.

[A41]On 2/7/03 DLAD editor made this administrative change in response to an 1/30/03 email from DSCR Policy Chief Debra Daniel.

[A42]On 2/10/03 DLAD editor made this administrative change to clause 52.213-9006 and the archival text is provided below:

52.213-9006 OEweb Evaluation Information

As prescribed in DLAD 13.106-2(b)(91), insert the following provision in solicitations:

OEweb Evaluation Information (AUG 02) - DLAD

(a) AUTOMATED EVALUATION: All solicitations beginning with "SPE" are candidates for award under DLA's automated evaluation program called OEweb (Offer Evaluation web). The program uses price logic and other automated filters to make fully automated and buyer assisted automated awards $100,000 or less. A purchase order beginning with "SPE" denotes an order issued by the automated evaluation program.

The automated evaluation only considers "qualified quotes" for award. Qualified quotes are in exact compliance with the solicitation requirements (bid type equal to "bid without exception"), and are submitted on SRweb. "Qualified quotes" must be all or none.

(1) The following are not, by themselves, considered exceptions to the solicitation requirements and will not make a quote ineligible for an automated award:

Page: 8

[f43]On 3/11/02 DLAD editor added this IAW FARS DEV 2002-02

[A44]On 1/16/04 DLAD editor updated this from J-3311 to J-3313 IAW email instructions dated 1/09/04 from Norma Baileymuller.

[A45]On 6/6/03 DLAD editor made an administrative change recommended by J-3313 Action officer (John Farrar).

[A46]On 1/16/04 DLAD editor updated this from J-3311 to J-3313 IAW email instructions dated 1/09/04 from Norma Baileymuller.

[A47]On 10/28/03 DLAD editor made an administrative change to DLAD IAW action officer John Farrar's request from 12352 to 12931. The new EO is linked to actual document.

Page: 26

[f48]On 11/15/01 DLAD editor removed the penultimate sentence IAW Action Officer John Farrar's 11/2/01 email. (e.g., 1.690•6 Contracts/actions requiring HQ DLA clearance.

(a) General. For those activities (Table 1•1) for which the Executive Director, ***Logistics Policy and Acquisition Management*** is the head of the contracting activity (HCA), the actions listed below require the

review and approval of the Executive Director, ***Logistics Policy and Acquisition Management*** /Assistant Executive Director, Policy and Oversight, or other DLA official so delegated. Any action submitted, including those under 1.690•3(b) and (c), shall be accompanied by two copies of DLA Form 677, Request for Review and Approval of Contract/Solicitation Action, signed by the chief of the contracting office. For review purposes, the dollar amount of a contract action shall be either the proposed high objective, maximum estimated, or actual amount of obligation, and shall include the amount of any option whether or not evaluated or exercised at time of award. The amount of any subsequent set•aside quantities to be awarded should not be included in the total dollar value. Actions listed below will be selected pursuant to 1.690•3(b) and (c), and 1.690•7(a).)

[A49]See prefatory comment C 13. - Other Changes.

Page: 31

[f50]On 9/13/01 DLAD editor corrected the DESC reference IAW an email message : -----Original Message-----

From: **Pilz, Kerry [mailto:kpilz@desc.dla.mil]**

Sent: Thursday, September 13, 2001 1:50 PM

To: Howerton, Charles (HQ DLA)

Cc: Baileymuller, Norma (HQ DLA)

Subject: DLAD change for 2.101

Charles,
In DLAD 2.101, Definitions, we need a change to read:

"Chief of the Contracting Office" (CCO) as used in this directive, means
for the:
Defense Energy Support Center (DESC): Center Senior Procurement Official
(CSPO)

The DLAD currently reads the Director, Alternative Fuels, which is not the
case for our CSPO at present.
Thanks,

Page: 35

[f51]On 11/28/01 DLAD editor updated this subpart 3.804 IAW PROCLTR 01-18 From : " All SF LLL and LLL•A (disclosure forms) shall be forwarded to ***J-336*** no later than 20 April and 20 October after each reporting period. Reporting periods shall end on 31 March and 30 September of each year. Negative reports are required."

[A52]On 12/24/02 DLAD editor added subpart 4.2 IAW PERMANENT FAR DEVS 2002-08.

Page: 36

[f53]On 2/26/02 DLAD editor added heading DLAD 4.70 to the table of contents. It was missing in previous versions.

[A54]On 12/26/02 DLAD editor added subpart 5.303(a)(91) IAW permanent FAR DEVS 2002-07.

[A55]On 1/16/04 DLAD editor updated 6.302-2 IAW 1/9/04 email from DSCR & HQ to add the word "both" for clarification.

[A56]On 4/9/03 DLAD editor updated subpart 7.102-90 IAW PROCLTR 03-06

[A57]On 10/30/03 DLAD editor updated section 7.104-91(a) IAW PROCLTR 03-19.

On 4/9/03 DLAD editor updated subpart 7.104-90 & 91 IAW PROCLTR 03-06

On 1/29/03 DFLAD editor updated subpart 7.104-90 from "Acquisition Planning Executive Council (APEC) reviews", and added subpart 7.104-91 IAW PROCLTR 03-01.

[A58]On 4/9/03 DLAD editor updated subpart 7.102-90 IAW PROCLTR 03-06. For archival coverage see prefatory comment #60.

On 1/29/03 DLAD editor updated subpart 7.102 IAW PROCLTR 03-01. To see the previous archival coverage go to prefatory comment #55.

[A59]On 4/9/03 DLAD editor updated 7.104-90(d) & (e) IAW PROCLTR 03-06

On 1/29/03 DLAD editor updated subpart 7.104-90 IAW PROCLTR 2003-01. For archival coverage of this subpart see prefatory comment #55.

[A60]DLAD editor made an administrative change from "Executive Director, Acquisition, Technical, and Supply Directorate" to Deputy Director, Logistics Operations

[A61]On 10/30/03 DLAD editor updated section 7.104-91(a) IAW PROCLTR 03-19. For archived text see prefatory comment # 74.

On 4/9/03 DLAD editor updated subpart 7.104-91(a) IAW PROCLTR 03-06. For archival coverage see prefatory comment #60.

On 1/29/03 DLAD editor added subpart 7.104-91 IAW PROCLTR 2003-01.

Page: 50

[f62]On 8/13/01 DLAD editor added this section from PROCLTR 01-11 dated 8/7/01. See http://www.dla.mil/j-3/j-336/logisticspolicy/procltrs01.htm for details.

[A63]On 5/14/03 DLAD editor added section 8.404-70 IAW PROCLTR 03-09.

Page: 53

[f64]On 8/13/01 the DLAD editor added this section from PROCLTR 01-11.
[A65]On 5/14/03 DLAD editor added section 8.404-70 IAW PROCLTR 03-09.
[A66]On 6/26/02 DLAD editor added subsection 8.602(a) IAW PROCLTR 2002-09. This text contains pen & ink numbering changes made subsequent to posting of PROCLTR 02-09.
[A67]On 12/9/03 DLAD editor added to this subpart IAW PROCLTR 03-21.
Page: 71
[f68]On 8/13/01 the DLAD editor added this section (10.001 (a)(2)(iii), …) from PROCLTR 01-11.
Page: 71
[f69]On 11/15/01 DLAD editor made this change IAW PROCLTR 01-14 and Action officer Anne Burleigh's request.
Page: 72
[f70]On 11/28/01 DLAD editor removed this ref (DLAD 90.1601) IAW action Officer Anne Burleigh's request for editorial corrections to PROCLTR 01-14 which was effective on 8/9/01
[A71]On 8/9/02 DLAD editor added this subpart 10.001(a)(2)(92) (not 93) as mentioned in PROCLTR 2002-09. An email alert was sent out about this update on 6/21/02. However the DLAD was only updated after coordination with the action officer. See prefatory comment #41 for details on PROCLTR 02-09.
[A72]On 12/9/03 DLAD editor added to this subpart IAW PROCLTR 03-21. Additionally, an administravtive change was made to update this site reference to (a)(2)(93) instead of (a)(2)(91) as it appears on the scanned document on the PROCLTR web site..
[A73]On 12/9/03 DLAD editor added subpart 10.002(b)(1)(96) IAW PROCLTR 03-21.
Page: 75
[f74]On 3/7/2003 DLAD editor updated subpart 11.290 (b)& (c) IAW PROCLTR 03-03. See prefatory comment #57 for prior archival text .

On 2/14/02 DLAD editor added this DLAD specific section (i.e., 11.290) IAW PROCLTR 02-03. The action officer is Greg Ellsworth. On 7/24/02 DLAD editor updated subpart 11.290 to match PROCLTR 2002-03. To see the superseded text see prefatory comment #30.
Page: 75
[f75]On 12/13/01 DLAD editor changed subpart 11.3 from `ACQUIRING OTHER THAN NEW MATERIAL, FORMER GOVERNMENT SURPLUS PROPERTY, AND RESIDUAL INVENTORY` to "Acceptable Material" IAW PROCLTR 01-19.
Page: 75
[f76]On 12/13/01 DLAD editor changed subpart 11.302 from `Solicitation provisions and contract clauses` to "Policy" IAW PROCLTR 01-19.
Page: 75
[f77]On 12/13/01 DLAD Editor added this new subpart IAW PROCLTR 10-19.
Page: 75
[f78]On 12/13/01 DLAD editor added this new subpart 11.302-91 IAW PROCLTR 01-20.
Page: 75
[f79]On 12/13/01 DLAD editor added this new subpart 11.304-90 IAW PROCLTR 01-20.
[A80]On 4/30/03 DLAD editor added section 11.402 thru 11.402-91 IAW PROCLTR 03-07.

Page: 77
[f81]On 9/19/01 The DLAD editor repositioned this paragrah to 11.103 because of email received from Action officer Anne Burleigh: -----Original Message-----

From: **Burleigh, Anne**

Sent: Monday, September 17, 2001 3:55 PM

To: Howerton, Charles

Cc: Baileymuller, Norma

Subject: Editorial Change to DLAD

Charles,

I just discovered that a paragraph in the DLAD is in the wrong place. The following paragraph appears at the end of DLAD Subpart 11.3, Acquiring Other Than New Material, Former Government Surplus property, and Residual Inventory:

`(90) When the contracting officer considers it appropriate to obtain documentation to confirm that the market acceptance criteria have been met, in addition to any documentation that may be specified in the requirements document, the contracting office may use the provision at 52.211-9001, Market Acceptance.`

This should be the last paragraph in DLAD section 11.103, Market acceptance. Please make this correction
[A82]On 3/10/03 DLAD editor updated subpart 11.290 IAW PROCLTR 03-03. See prefatory comment #57 for prior archival text.

On 7/24/02 DLAD editor updated this subpart to match PROCLTR 2002-03 and revised editing procedures to avoid the need for this type of subsequent update.
Page: 77
[f83]On 12/13/01 DLAD editor added this new subpart 11.301 "Definitions" IAW PROCLTR 01-19. See DLAD subpart 11 index for historical changes.
[A84]On 4/11/02 DLAD editor added 11.301 "surplus material" definition IAW PROCLTR 2002-06.
[A85]On 4/12/02 DLAD editor added new coverage for DLAD 11.302 IAW PROCLTR 02-06. For historical comparison of this subparts previous wording see prefatory comment # 38 embedded comment.

Page: 78
[f86]On 9/19/01 The DLAD editor repositioned this paragrah to 11.103 because of email received from Action officer Anne Burleigh: -----Original Message-----

From: **Burleigh, Anne**

Sent: Monday, September 17, 2001 3:55 PM

To: Howerton, Charles

Cc: Baileymuller, Norma

Subject: Editorial Change to DLAD

Charles,

I just discovered that a paragraph in the DLAD is in the wrong place. The following paragraph appears at the end of DLAD Subpart 11.3, Acquiring Other Than New Material, Former Government Surplus property, and Residual Inventory:

```
(90) When the contracting officer considers it appropriate to obtain documentation to confirm that the market acceptance criteria have been met, in addition to any documentation that may be specified in the requirements document, the contracting office may use the provision at 52.211-9001, Market Acceptance.
```

This should be the last paragraph in DLAD section 11.103, Market acceptance. Please make this correction
[A87]On 8/9/02 DLAD editor archived superseded text for this subpart 11.302-90(c) at prefatory comment #26. This subpart was changed IAW PROCLTR 02-13. See prefatory comment # 45.
Page: 80
[f88]On 12/13/01 DLAD editor added this new subpart 11.302-91 IAW PROCLTR 01-20. See subpart index for historical changes.
[A89]On 8/9/02 DLAD editor updated subpart 11.302-91(a)(11) IAW PROCLTR 02-13. For superseded text see prefatory comment #45.
Page: 81
[f90]On 12/13/01 DLAD editor updated this subpart 11.302-91(a)(15) IAW 12/11/01 email, subject: FW: PROCLTR 01-20, Mgt. of CSIs, received from action officer Anne Burleigh. This subpart was originally changed by PROCLTR 01-20.
[A91]On 8/9/02 DLAD editor updated subpart 11.304-90(a) thru (d) IAW PROCLTR 02-13. The archived superseded text for subpart 11.304-90(a) thru(c) is at prefatory comment #45.
[A92]On 4/12/02 DLAD editor added 11.304-91 IAW PROCLTR 02-06.
[A93]On 4/30/03 DLAD editor added section 11.402 thru 11.402-91 IAW PROCLTR 03-07.
Page: 87
[f94]On 3/28/02 DLAD editord added subpart 12.204 IAW FARS DEV 2002-03.
Page: 87
[f95]On 11/15/01 DLAD editor re-edited this correction IAW PROCLTR 01-13 & Action officer Anne Burleigh's request.
Page: 87
[f96]On 8/13/01 DLAD editor changed this section 12.102(a)(90)(iv) IAW PROCLTR 01-13
Page: 87
[f97]On 8/13/01 DLAD editor changed this section 12.102(a)(90)(v) IAW PROCLTR 01-13
Page: 88
[f98]On 8/13/01 DLAD editor made this change to 12.102(a)(91) (iii) IAW PROCLTR 01-13
Page: 88
[f99]On 8/15/01 DLAD editor made this change to 12.102 (92) IAW PROCLTR 01-13
Page: 88
[f100]On 8/16/01 DLAD editor made this change to12.102(90)(1)(i) thru (ii)(2)(i) IAW PROCLTR 01-13
Page: 89
[f101]On 8/16/01 DLAD editor made this change to 12.102(90)(3) thru (7), a total of 143 lines, IAW PROCLTR 01-13. See 2001 PROCLTR index at http://www.dla.mil/j-3/j-336/logisticspolicy/procltrs01.htm
Page: 92
[f102]On 3/28/02 DLAD editor added this subpart 12.204 IAW FARS DEV 2002-03.
Page: 92
[f103]On 11/28/01 DLAD editor corrected 12.208(90) IAW action officer Anne Burleigh's request and PROCLTR 01-14 which was effective 8/9/01.
Page: 93
[f104]On 11/28/01 DLAD editor corrected DLAD subpart 12.208 IAW Action officer Anne Burleigh's request & PROCLTR 01-14 which was effective 8/9/01.
Page: 93
[f105]On 11/28/01 DLAD editor removed this ref. (FAR 46.803) IAW action Officer Anne Burleigh's request for editorial corrections to PROCLTR 01-14 which was effective on 8/9/01.
Page: 93
[f106]On 11/28/01 DLAD editor corrected this subpart IAW PROCLTR 01-14.
Page: 93
[f107]On 11/28/01 DLAD editor corrected this subpart IAW PROCLTR 01-14.
Page: 93
[f108]On 11/28/01 DLAD editor corrected this subpart IAW PROCLTR 01-14.
Page: 93
[f109]On 11/28/01, DLAD editor updated this subpart 12.301(f) (92) thru (96) IAW PROCLTR 01-14.
Page: 93

[f110]On 2/22/02 IAW instructions from action officer Anne Burleigh's email of 2/19/01, subject DLAD update, DLAD editor removed 12.301(f) 94 & (95) and marked them as resereved. The coverage previously was: ***(94) The clause at FAR 52.203-3, Gratuities, as prescribed in FAR 3.202.***

(95) The provision at DFARS 252.209-7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, as prescribed in DFARS 209.104-70(a).

Page: 93
[f111]On 12/13/01 DLAD editor added this new section to subpart 12.301(f) 97 thru 99.
Page: 93
[f112]IAW 1/11/02 email instructions from Action officer Anne Burleigh the word provision was replaced with clause.
Page: 94
[f113]On 2/27/02 DLAD editor added #100 to subpart 12.301(f) IAW PROCLTR 2002-04
[A114]On 4/12/02 DLAD editor added #100 IAW PROCLTR 02-06.
Page: 94
[f115]On 11/28/01 DLAD editor added this subpart IAW PROCLTR 01-14.
[A116]On 3/10/03 DLAD editor added subpart 13.003 IAW PROCLTR 03-05.
[A117]On 3/10/03 DLAD editor added subpart 13.201 IAW PROCLTR 03-05.
[A118]On 5/9/03 DLAD editor added this subpart IAW PROCLTR 03-08.
[A119]On 3/10/03 DLAD editor added subpart 13.003(a) IAW PROCLTLR 03-05.
[A120]On 8/16/02 DLAD editor added this subpart 13.106-1(90) IAW PROCLTR 2002-15. See prefatory comment #48.
[A121]On 8/16/02 DLAD editor added this subpart 13.106-2(b)(91) IAW PROCLTR 2002-15. See Prefatory comment #48.
[A122]On 3/10/03 DLAD editor added subpart 13.201(g)(1) IAW PROCLTR 03-05.
[A123]On 5/9/03 the DLAD editor added section 13.270 IAW PROCLTR 03-08.
Page: 106
[f124] For some reason this part of text from 14.201-5 (IV) (91) was omitted. It has now been reinstated by DLAD editor on 7/25/01.
Page: 106
[f125]
[A126]On 7/15/03 DLAD editor added section 15.308 IAW PROCLTR 03-12.
Page: 113
[f127]On 2/1/02 DLAD editor added subpart 15.204-2(b)(90) and (91) IAW PROCLTR 2002-02
Page: 113
[f128]On 6/23/03 DLAD editor updated & added respectively, section 15.204-2(b)(91) & (92) IAW administrative comments from Action Officer Jerry Gilbart (see email dated 6/18/03 for details). For archival text prior to administrative update view PROCLTR 2002-02.

On 2/1/02 DLAD editor added subpart 15.204-2(b)(90) and (91) IAW PROCLTR 2002-02
Page: 113
[f129]DLAD editor corrected this cite on 7/27/01
Page: 114
[f130]On 8/13/01 the DLAD editor added this section (C)(3) from PROCLTR 01-11.
Page: 114
[f131]With the inclusion of 15.304(C)(3) above from PROCLTR 01-11 the display of (C) form (C)(4) has been removed. No other changes to this section were made.
Page: 121
[f132]On 8/13/01 the DLAD editor added this section (a)(5) from PROCLTR 01-11.
[A133]On 7/15/03 DLAD editor added section 15.308 IAW PROCLTR 03-12.
Page: 123
[f134]IAW 8/13/01 email from Jerry Gilbart, the DLAD editor corrected contract threshold references to be in line with TINA. See page 3 of DLAD [i.e., (C) other changes, item #1.
Page: 123
[f135] [f135]IAW 8/13/01 email from Jerry Gilbart, the DLAD editor corrected contract threshold references to be in line with TINA. See page 3 of DLAD [i.e., (C) other changes, item #1
Page: 123
[f136]
Page: 123
[f137] [f137]IAW 8/13/01 email from Jerry Gilbart, the DLAD editor corrected contract threshold references to be in line with TINA. See page 3 of DLAD [i.e., (C) other changes, item #1.
Page: 123
[f138]
Page: 123
[f139]
Page: 124
[f140]ON 10/4/01 DLAD editor corrected 15.404-1(b)(90) from "established ***catalog/market" to "commercial item". IAW action officer Jerry Gilbarts instructions.***

7. Page: 125
[f141]ON 10/4/01 DLAD editor added 15.404-2(d)(9) text IAW action officer Jerry Gilbarts instructions. A requirement was added to 15.404-2(d) for provision to the local cost and price office of a copy of the selected TINA waivers which are to be furnished to J-337.

Page: 130
[f142]On 11/28/01 DLAD editor updated subpart 15.408(l) & (m) IAW PROCLT 01-14 previous coverage stated:

"15.408 Solicitation provisions and contract clauses.

(l) Requirements for cost or pricing data or information other than cost or pricing data. The provision at FAR 52.215-20, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, and the clause at FAR 52.215-21, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data-Modifications, are for inclusion in solicitations expected to result in definite quantity awards exceeding $500,0000, and including long term contracting arrangements where the base period is estimated to exceed $500,000. Further, it should be included in solicitations estimated at lesser value when cost or pricing data or information other than cost or pricing data (uncertified or limited data) is likely to be required (see FAR 15.408(l) and (m). This should include procurements of sole source commercial items. For awards subject to TINA, the provision and the clause provide a means for the offeror or contractor to claim that the offered item is commercial, etc. The provision and clause also include examples of additional supporting information the contracting officer may need to request in order to determine that the price is fair and reasonable. This DLAD coverage constitutes the waiver required by FAR 12.302(c) to use terms or conditions that are inconsistent with customary commercial practices.

(m) Requirements for cost or pricing data or information other than cost or pricing data – Modifications. See paragraph ***(l)*** in this subsection."

Page: 131
[f143]DLAD editor made pen & ink changes after PROCLTR 2002-02 was posted, IAW action officier Jerry Gilbart's 2/14/02 email instructions. See prefatory comment # 33.
Page: 132
[f144]On 2/1/02 DLAD editor changed subpart 16.203-3(92) and (93) IAW PROCLTR 2002-02 from the following :…" (***92***) When the contracting officer determines that ***no existing EPA clause satisfies the need for an EPA,*** a ***new*** EPA clause ***may be developed*** in accordance with FAR 16.203-4, DFARS 216.203-4-70, and this section.

(93) Prior to issuance of a solicitation containing a new ***EPA*** or ***revision to an existing EPA*** clause, ***the contracting officer*** shall submit ***it through the local policy office*** to HQ DLA, ATTN: J-337***, for review and approval, along*** with identification of any options ***and other EPA to be included.*** This approval requirement ***also applies to acquisitions of commercial items. However, it*** does not apply to a minor, incidental revision to correct or update a***n existing (***HQ DLA-approved, locally-developed***)*** EPA clause, provided a copy of the revised clause is furnished to ***J-337*** at the time of decision to include it in the solicitation."
Page: 132
[f145]On 2/1/02 DLAD editor changed subpart 16.203-3(92) and (93) IAW PROCLTR 2002-02 from the following :…" (***92***) When the contracting officer determines that ***no existing EPA clause satisfies the need for an EPA,*** a ***new*** EPA clause ***may be developed*** in accordance with FAR 16.203-4, DFARS 216.203-4-70, and this section.

(93) Prior to issuance of a solicitation containing a new ***EPA*** or ***revision to an existing EPA*** clause, ***the contracting officer*** shall submit ***it through the local policy office*** to HQ DLA, ATTN: J-337***, for review and approval, along*** with identification of any options ***and other EPA to be included.*** This approval requirement ***also applies to acquisitions of commercial items. However, it*** does not apply to a minor, incidental revision to correct or update a***n existing (***HQ DLA-approved, locally-developed***)*** EPA clause, provided a copy of the revised clause is furnished to ***J-337*** at the time of decision to include it in the solicitation."
Page: 132
[f146]On 2/1/02 DLAD editor changed subpart 16.203-4(90) IAW PROCLTR 2002-02 from the following:…." (90) ***When the contracting officer determines that an existing EPA clause is not appropriate, the contracting officer may develop and use another EPA clause in accordance with 16.203-1(a)(90) or (c)(90). Established prices and cost indexes need not reflect changes in the costs or established prices of a specific contractor. The established price or cost index may be derived from sales prices in the marketplace, quotes, or assessments as reported or made available in a consistent manner in a publication, electronic database, or other form, by an independent trade association, Governmental body, or other third party independent of the contractor. More than one established price or cost index may be combined in a formula for economic price adjustment purposes in the absence of an appropriate single price or cost index upon approval pursuant to 16.203-3(91). (DAR Tracking Number 95-D0003, FARS DEV 96-10)"***
Page: 133
[f147]On 2/13/02 DLAD editor made these pen & ink changes IAW instructions by the action officer Jerry Gilbart.
Page: 133
[f148]On 2/1/02 DLAD editor added subpart 16.204-4(92)(a) and (b) IAW PROCLTR 2002-02.
Page: 133
[f149]On 2/1/02 DLAD editor added subpart 16.204-4(92)(a) and (b) IAW PROCLTR 2002-02
Page: 134
[f150]Placement is temporary until Action officer Jerry Gilbart verifies location within DLAD
[A151]On 5/10/02 DLAD editor added subpart 17.104(a) IAW PROCLTR 2002-08.
[A152]On 8/1/02 DLAD editor updated subpart 17.7501 IAW PROCLTR 2002-12 To see superseded text for this subpart 17.7501(b)(3)(i) thru (vi) see prefatory comment #27.
Page: 144
[f153]On 1/13/01 DLAD editor added this new sentence to subpart 17.7501(b)(3)(i) IAW PROCLTR 01-20.
Page: 144
[f154]IAW 1/11/02 email instructions from actio officer Anne Burleigh the word provision was replaced with clause.
Page: 144
[f155] [f155]AW 1/11/02 email instructions from action officer Anne Burleigh the word provision was replaced with clause.
[A156]On 7/31/02 DLAD editor updated subpart 17.7501(b)(4) IAW PROCLTR 2002-12.
[A157]On 7/31/02 DLAD editor updated subpart 17.7501(b)(4)(ii) IAW PROCLTR 2002-12. For superseded text i.e., 17.7501(b)(4)(iv) see prefatory comment # 10.

[A158]On 8/14/02 DLAD editor corrected the omission of subpart 17.7501(b)(4)(vi) when PROCLTR 01-03 text was inserted.
[A159]On 8/9/02 DLAD editor added this IAW PROCLTR 2002-09
[A160]On 8/9/02 DLAD editor added subpart 19.508 & 19.590 IAW PROCLTR 02-14.
[A161]On 6/23/03 DLAD editor updated section 19.807 IAW PROCLTR 03-11.
[A162]On 8/9/02 DLAD editor added subpart 19.201(d)(10(A) thru (d)(10)(90). See prefatory comment # 47.
[A163]On 2/13/03 DLAD editor added subpart 19.201(d)(10(91)(i)&(ii) IAW PROCLTR 03-02. See prefatory comment #56 for a sample of the DD Form 2579.
Page: 164
[f164]On 8/13/01 the DLAD editore added this section 19.202-1 from PRCLTR 01-11
[A165]On 8/9/02 DLAD editor added this subpart 19.502-1 IAW PROCLTR 02-09.
[A166]On 8/9/02 DLAD editor added subpart 19.508 IAW PROCLTR 02-14. See prefatory comment #46.
[A167]On 8/9/02 DLAD editor added this subpart 19.590 IAW PROCLTR 02-14. See prefatory commet # 46.
[A168]On 6/23/03 DLAD editor updated section 19.807 IAW PROCLTR 03-11. To view archival coverage prior to 03-11 see prefatory comment #65.
[A169] On 12/9/03 DLAD editor added subsection 25.103(b)(1)(90) & 25.104 IAW PROCLTR 03-21.

On 6/6/03 DLAD editor updated the entire Part 25 text IAW PROCLTR 03-10. For archival coverage prior to PROCLTR 03-10 see prefatory comment # 64.
[A170]See comment for 25.103
[A171]On 10/27/03 DLAD editor updated subpart 25.70 IAW PROCLTR 03-18. To see previous coverage see prefatory comment #73.
[A172]On 12/9/03 DLAD editor added subsection 25.7002-2(90) IAW PROCLTR 03-21.
[A173]On 12/9/03 DLAD editor added subpart 25.104 IAW PROCLTR 03-21. This comment applies to subpart 25.103 too.
[A174]On 12/9/03 DLAD editor added subpart 25.7002-2(90) IAW PROCLTR 03-21.
[A175]On 10/27/03 DLAD editor updated subpart 25.7002-2(a) IAW PROCLTR 03-18. To see previous coverage for this section see prefatory comment #73.

[A176]On 7/15/03 DLAD editor added these administrative changes to Part 30, 31, 32 & 33 IAW action officer Jerry Gilbarts 6/17/03 email instructions.
Page: 190
[f177]Correction made IAW action officer provided edits of DLAD rev 5. DLAD editor made correction on 7/27/01.
Page: 193
[f178]On 8/30/01 DLAD editor corrected this sentence IAW PROCLTR 01-05 and Action Officer's (Will Latimer) request.
[A179]On 5/14/03 DLAD editor added section 37.105 IAW PROCLTR 03-09.
[A180]On 5/14/03 DLAD editor added section 37.590 thru 37.590-5 105 IAW PROCLTR 03-09.
[A181]On 5/14/03 DLAD editor added section 37.601 IAW PROCLTR 03-09.
[A182]On 5/14/03 DLAD editor added section 37.601 IAW PROCLTR 03-09.
Page: 196
[f183]On 1/25/02 DLAD editor added this IAW PROCLTR 02-01
Page: 196
[f184] On 2/27/02 DLAD editor updated subpart 39.1069a)(92) IAW PROCLTR 2002-04. For the previous comment see prefatory comment #28. On 1/25/02 DLAD editor changed subpart 39.106(a)(92) IAW PROCLTR 2002-01 from : "***(92) The contracting officer shall use the definition of Year 2000 Compliant at FAR 39.002 in all solicitations and contracts to describe the Y2K compliance requirement. The definition language should be included in Section C, Description/specification/work statement of the solicitation and contract, and therefore would not require a separate clause to enforce the requirement. "***
[A185]On 8/21/03 DLAD editor updated section 41.7101(90)(2) & (3) IAW PROCLTR 03-17. See prefatory comment #72 for archived coverage.
[A186]On 8/21/03 DLAD editor updated section 42.7101(90)(2) & (3) IAW PROCLTR 03-17. See prefatory comment #72 for archived coverage.
[A187]On 4/17/02 DLAD editor edited subpart 46.390(a) IAW PROCLTR 02-07. See prefatory comments for archival coverage of this subpart.
Page: 212
[f188]On 12/13/01 DLAD editor added this new sentence to subpart 46.390(a) IAW PROCLTR 01-20.
[A189]On 4/12/02 Dlad editor added this IAW PROCLTR 02-06.
[A190]On 8/9/02 DLAD editor added this IAW PROCLTR 02-11.
Page: 222
[f191]On 12/27/02 DLAD editor updated subpart 47.305-1(c)(90) IAW PROCLTR 2002-17. To view archived coverage view prefatory commet # 22.

On 9/26/01 the DLAD Editor changed DLAD 47.305-1(c)(90) IAW PROCLTR 2001-15, which revised PROCLTR 2001-12. For details about either PROCLTR see http://www.dla.mil/j-3/j-336/logisticspolicy/procltrs01.htm
[A192]On 8/9/02 DLAD editor added this subpart 47.305-4 IAW PROCLTR 02-11.
Page: 228
[f193]On 3/8/02 DLAD editor added this entirely new part 51 to DLAD IAW FARS DEV 2002-02.
[A194]On 8/9/02 DLAD editor added this IAW PROCLTR 02-09
Page: 230
[f195]On 12/13/01 DLAD editor added this new clause to subpart 52.211-9005 thru 9007 IAW PROCLTR 01-20.
[A196]On 4/12/02 DLAD editor added this IAW PROCLTR 02-06.
[A197]On 7/21/03 DLAD editor updated provision 52.213-9004 (aka Big Clause) IAW PROCLTR 03-14. For background on this clause see prefatory comment # 50. To view most recent archival text for this clause/provision see prefatory comment # 67.

On or about Nov 2002 DLAD editor updated this provision/clause IAW PROCLTR 02-16.
[A198]On 8/16/02 DLAD editor added these clauses IAW PROCLTR 2002-15. See prefatory comment #48.
Page: 230
[f199]On 2/1/02 DLAD editor added this clause into the subpart index IAW PROCLTR 2002-02.
Page: 230
[f200]On 2/1/02 DLAD editor added this clause into the subpart index IAW PROCLTR 2002-02
Page: 230
[f201]On 2/1/02 DLAD editor added this clause into the subpart index IAW PROCLTR 2002-02
[A202]On 8/9/02 DLAD editor added this clause IAW PROCLTR 02-09.
[A203]On 8/9/02 DLAD editor added these clause IAW PROCLTR 02-14. See prefatory comment #46.
[A204]On 8/14/03 DLAD editor added this comment. IAW PROCLTR 98-19 this DLAD clause was added.
Page: 231
[f205]On 2/27/02 DLAD editor added PROCLTR 2002-04 into DLAD. This clause was already added by PROCLTR 2002-01. See prefatory comment #34.
[A206]On 8/9/02 DLAD editor added these 5 new BSM clauses IAW PROCLTR 2002-11.
[A207]On 8/9/02 DLAD editor added this clause IAW PROCLTR 02-09.
[A208]On 8/15/02 DLAD editor added this comment for clarification IAW PROCLTR 02-06. See prefatory comment #38 for details and any superseded text.

Page: 234
[f209]On 12/13/01 DLAD editor added 3 new clauses (52.211-9005 thru 9007) IAW PROCLTR 01-20.
[A210]On 4/17/02 DLAD editor edited this clause IAW PROCLTR 02-07.
[A211]On 4/17/02 DLAD editor edited subpart 52.211-9005 (c) IAW PROCLTR 02-07.
Page: 1
[f212] [f212]IAW 1/11/02 email instructions from action officer Anne Burleigh the word provision was replaced with clause.
[A213]On 4/17/02 DLAD editor added subpart 52.211-9005(d) IAW PROCLTR 02-07.
[A214]On 4/17/02 DLAD editor edited 52.211-9005 (d)(1)(ii) IAW PROCLTR 02-07. For archival coverage see prefatory coment# 27.
[A215]On 4/17/02 DLAD editor added 52.211-9005 (d)(1)(iii) IAW PROCLTR 02-07.
[A216]On 8/9/02 DLAD editor updated clause 52.211-9006 IAW PROCLTR 02-13. For archived superseded text see prefatorty comment #45.
[A217]On 8/9/02 DLAD editor updated clause 52.211-9007 IAW PROCLTR 02-13. For superseded text see prefatory comment #45.
Page: 237
[f218]On 2/14/02 DLAD editor added this new clause 52.211-9008 IAW PROCLTR 2002-03.
[A219]On 4/12/02 DLAD editor added this IAW PROCLTR 02-06
[A220]On 7/21/03 DLAD editor updated 52.213-9004 subsection 11 thru 14. Former subsection 11 was deleted entirely and archived at prefatory comment #69. The remaining subsections were renumbered up by 1.

On 12/6/02 DLAD editor updated DLAD provision.clause 52.213-9004 IAW PROCLTR 02-16. For additional details and archival coverage see prefatory comment #50.
Page: 246
[f221]On 7/21/03 DLAD editor updated 52.213-9004 subsection 11 thru 14. Former subsection 11 was deleted entirely and archived at prefatory comment #69. The remaining subsections were renumbered up by 1.

On 9/28/01 DLAD editor added section 52.213-9004(d) 14, IAW PROCLTR 01-16
[A222]On 7/21/03 DLAD editor updated 52.213-9004 subsection 11 thru 14. Former subsection 11 was deleted entirely and archived at prefatory comment #69. The remaining subsections were renumbered up by 1.

On or about Nov 2002 DLAD editor updated 52.213-9004 IAW PROCLTR 02-16.
[A223]On 8/16/02 DLAD editor added this clause IAW PROCLTR 2002-15. See prefatory comment #48.
[A224]On 9/19/02 DLAD editor made a pen & ink change and updated this clause 52.213-9005 to accommodate a change to SRweb software.
[A225]On 8/16/02 DLAD editor added this clause IAW PROCLTR 2002-15. See prefatory comment #48.
[A226]On 2/10/03 DLAD editor updated clause 52.213-9006(a)(1) and redated this clause. For archival text see item #14 of " C. Other Changes."
Page: 247
[f227]IAW instruction from action officer Jerry Gilbart in email dated 7/26/01 subject : Trade Discounts the DLAD editor corrected this on 7/27/01.
Page: 250
[f228]On 2/1/02 DLAD editor added this clause IAW PROCLTR 2002-02
Page: 251
[f229]On 2/1/02 DLAD editor added this clause IAW PROCLTR 2002-02
Page: 251
[f230]On 2/1/02 DLAD editor added this clause IAW PROCLTR 2002-02
[A231]On 7/31/02 DLAD editor updated clause 52.217-9002 IAW PROCLTR 2002-12. To see the superseded text view prefatory comment #17.
Page: 261
[f232]On 11/15/01, IAW PROCLTR 99-09, DLAD editor corrected 52.217-9006(a) & (h), deleted text enclosed in quotes below, e.g., ***(a) These investments can only be made to meet S&S requirements "~~as defined in the Defense Planning Guidance (i.e.,"~~ major theatre warfare or smaller scale contingencies). They cannot be made to meet spikes in peacetime demand, nor to meet peacetime level quantities supplied during a contingency.***
Page: 261
[f233]On 11/15/01 DLAD editor, IAW PROCLTR 99-09 corrected 52.217-9006(h), deleted text enclosed in quotes below as follows: ***(h) The contractor shall not access S&S investments for any purpose other than to support the contingencies "~~defined in the Defense Planning Guidance"~~ indicated in paragraph (a), unless such access has been authorized by the Contracting Officer in writing. Offerors/ contractors shall describe any desired access to the S&S investments and consideration offered to the government for this access in their S&S proposals/S&S capability reports. However, written approval from the contracting officer must be provided prior to implementing any proposed access.***
[A234]On 8/9/02 DLAD editor added this clause IAW PROCLT 02-09.
[A235]On 8/9/02 DLAD editor added clases 52.219-9005 thru 52.219-9012 IAW PROCLTR 02-14.
[A236]On 8/14/03 DLAD editor added this comment. This 1998 DLAD clause was added IAW PROCLTR 98-19
[A237]On 6/26/02 DLAD editor added this updated comment to clause 52.239-9000. For archival text of this clause see prefatory comment # 42.
[A238]On 8/9/02 DLAD editor added new BSM clauses 52.247-9006 thru 52.247-9010 IAW PROCLTR 2002-11. DLA's contract writing system PD2 incorporates these clauses.
[A239]On 7/28/03 DLAD editor updated section 90.101 with entirely new coverage IAW PROCLTR 03-15. See prefatory commet # 70 for archived text.
[A240]On 4/9/03 DLAD editor updated subpart 90.1103 IAW PROCLTR 03-06.

On 1/29/03 DLAD editor added subpart 90.1103 IAW PROCLTR 2003-01.
[A241]On 4/9/03 DLAD editor updated subpart 90.1501 IAW PROCLTR 03-06.

On 1/29/03 DLAD editor added subpart 90.15 IAW PROCLTR 2003-01.
[A242]On 7/16/03 DLAD editor added subpart 90.16 IAW PROCLTR 03-13.
[A243]On 10/27/03 DLAD editor added this new subpart IAW PROCLTR 03-18
[A244]On 7/28/03 DLAD editor updated section 90.101 with entirely new coverage IAW PROCLTR 03-15. See prefatory commet # 70 for archived text.

Page: 283
[f245](Item 11 or 12) This Comment added 11/15/01 after DLAD editor reviewed PROCLTR 99-09 (page 20 of 27) and discovered a slight discrepancy. However, the DLAD editor believes that the minor numbering differences are irrelevant and shall remain unchanged until such time as the Action officer or their designee provides info to the contrary.
Page: 288
[f246]On 3/11/02 DLAD editor added and renumbered subpart 90.501(a) #107 to match content of the new proposed language of FARS DEV 2002-02.
Page: 299
[f247]On 11/28/01 DLAD editor corrected this subpart IAW editorial change from action officer Mary Massaro.
[A248]On 5/10/02 DLAD editor added this to subpart 90.1101(5) IAW PROCLTR 2002-08.
Page: 300
[f249]On 8/30/01 the DLAD editor added 90.1101(b)(1)(i) & (ii) IAW PROCLTR 01-11.
Page: 300
[f250]On 8/30/01 the DLAD editor edited 90.1101 from this point thru but not including 90.1102 IAW PROCLTR 01-11 Additionally, the Action Officer, Mary Massaro, renumbered part 90 to match FAR 7.105. For details see PROCLTR 01-11 at http://www.dla.mil/j-3/j-336/logisticspolicy/procltrs01.htm
Page: 302
[f251]On 3/11/02 DLAD editor added DLAD subpart 90.1101(b)(15) IAW FARS DEV 2002-02. Numbering of FARS DEV differs from that of DLAD coverage, however all content in included. Reconcilliation of numbering by action officers is required.
[A252]On 4/9/03 DLAD editor updated subpart 90.1103 IAW PROCLTR 03-06. For archival coverage see prefatory comment #60.

On 1/29/03 DLAD editor added subpart 90.1103 IAW PROCLTR 2003-01.
[A253]On 4/9/03 DLAD editor updated 90.1501(a) IAW PROCLTR 03-06.

On 1/29/03 DLAD editor added subpart 90.1501 IAW PROCLTR 2003-01.
[A254]On 7/16/03 DLAD editor added subpart 90.16 IAW PROCLTR 03-13.
[A255]On 10/27/03 DLAD editor added this new subpart IAW PROCLTR 03-18.