

# CHAPTER 14 - DEPARTMENT OF THE INTERIOR

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## SUBCHAPTER A - GENERAL

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### PART 1400 [RESERVED]

### PART 1401 - DEPARTMENT OF THE INTERIOR ACQUISITION REGULATION SYSTEM

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#### **Subpart 1401.1 - Purpose, Authority, Issuance**

##### **1401.105-3 Copies.**

Copies of the Department of the Interior Acquisition Regulation (DIAR) and Department-wide internal guidance may be obtained from the Office of Acquisition and Property Management, Office of the Secretary, U.S. Department of the

Interior, 1849 C Street (MS 2607-MIB), NW., Washington, DC 20240. Additional information on DOI may be obtained on the Internet at <http://www.doi.gov/pam>.

## **Subpart 1401.2 - Administration**

### **1401.201 Maintenance of the Federal Acquisition Regulation (FAR).**

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

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

## **Subpart 1401.3 - Agency Acquisition Regulations**

### **1401.301 Policy.**

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

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

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

(c) Regulations and internal guidance under the DIAR System are issued pursuant to the authority of the Secretary of the Interior under 5 U.S.C. 301 and 40 U.S.C. 486(c). This authority has been delegated to the Assistant Secretary - Policy, Management and Budget under Part 209, Chapter 4.1A of the Departmental Manual (209 DM 4.1A).

### **1401.301-70 Definitions.**

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

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

### **1401.301-80 Policy.**

Indian Affairs must use the negotiation authority of the Buy Indian Act, 25 U.S.C. 47 to give preference to Indians whenever using that authority is authorized and feasible. The Buy Indian Act requires that, so far as may be feasible, Indian labor must be employed, and purchases of the products of Indian industry may be made in open market at the discretion of the Secretary of the Interior. This requirement applies notwithstanding any other law and applies to all products of industry, including printing.

[78 FR 34271, June 7, 2013]

### **1401.303 Publication and codification.**

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

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

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

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

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

- (1) Bureau of Indian Affairs - BIA
- (2) Bureau of Reclamation - WBR
- (3) National Business Center - NBC
- (4) Bureau of Land Management - LLM
- (5) U.S. Geological Survey - WGS
- (6) Office of Surface Mining Reclamation & Enforcement - LSM

(7) Minerals Management Service - LMS

(8) National Park Service - FNP

(9) U.S. Fish and Wildlife Service - FWS

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

**1401.304 Agency control and compliance procedures.**

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

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

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

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

- (i) Provisions for centralized issuance of all guidance and instructions using a directives system;
- (ii) Methods for periodic review and updating of all issuances;
- (iii) Distribution processes which ensure timely receipt by all affected contracting offices; and
- (iv) Provisions for maintaining compliance with FAR 1.304.

(b) The Director, PAM, is responsible for evaluating coverage under the DIAR System to determine applicability to other agencies and for recommending coverage to the FAR Secretariat for inclusion in the FAR.

**1401.370 Acquisition Managers' Partnership.**

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

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

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

**Subpart 1401.4 - Deviations from the FAR and DIAR**

**1401.403 Individual deviations.**

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

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

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

**1401.404 Class deviations.**

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

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

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

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

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

**1401.405 Deviations pertaining to treaties and executive agreements.**

(a) The Director, PAM, is responsible for transmitting to the FAR Secretariat the information required in FAR 1.405(d).

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

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

**Subpart 1401.6 - Career Development, Contracting Authority, and Responsibilities**

**1401.601 General.**

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

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

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

**1401.602 Contracting officers.**

**1401.602-1 Authority.**

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

**1401.602-3 Ratification of unauthorized commitments.**

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

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

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

**1401.603 Selection, appointment and termination of appointment.**

**1401.603-1 General.**

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

**1401.603-2 Selection.**

COs, regardless of series or organizational placement, must be certified at a level commensurate with their appointment level, as prescribed in the Department's Federal Acquisition Certification in Contracting (FAC-C) Program Manual. Director, PAM, is the approving authority for all new and reinstated FAC-C certifications. BPCs are authorized to approve renewal FAC-C certifications.

**1401.603-3 Appointment.**

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

**1401.670 Contracting officers' representatives.**

When a CO elects to appoint an individual to act as an authorized representative in the administration of a contract, the CO must notify the contractor of the COR appointment in writing, and provide the name and contact information of the COR.

[76 FR 50141, Aug. 12, 2011]

**1401.670-1 Contract clause.**

Insert the clause at 1452.201-70 in solicitations and contracts under which a COR will be appointed.

[76 FR 50141, Aug. 12, 2011]

## **Subpart 1401.70 - Acquisition Reviews**

### **1401.7000 Scope of subpart.**

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

### **1401.7001 Review and approval of contract actions.**

#### **1401.7001-1 Review and approval by Assistant Secretaries.**

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

#### **1401.7001-2 Legal review by the Office of the Solicitor.**

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

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

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

- (1) Identifying the type and dollar amounts of the actions to be reviewed based on the volume and nature of the contracting office workload;
- (2) Designating the stage(s) in the acquisition process when the review(s) shall be performed;
- (3) Establishing review and approval levels based on the type and dollar amount of the action and the capabilities of the reviewing office;
- (4) Specifying what information is required to review the action, which includes creating a review and approval form and mechanism for following up on the correction of deficiencies noted in the review; and
- (5) Providing for periodic review of procedures and revision as required, to assure necessary controls are maintained.

#### **1401.7001-4 Acquisition performance measurement systems.**

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

- (1) Evaluate the effectiveness and efficiency of bureau and office acquisition systems;
- (2) Assess the adequacy of policies, procedures and regulations governing the acquisition process; and
- (3) Identify and implement changes necessary to improve the systems.

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

#### **1401.7001-5 Acquisition Management Reviews.**

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

## **PART 1402 - DEFINITIONS OF WORDS AND TERMS**

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### **Subpart 1402.1 - Definitions**

#### **1402.101 Definitions.**

As used in this part:

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

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

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

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

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

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

#### **1402.170 Acronyms.**

A&E Architect & Engineering  
ACMIS Acquisition Career Management Information System  
AMP Acquisition Manager's Partnership  
AMR Acquisition Management Review  
AS/PMB Assistant Secretary - Policy, Management and Budget  
BPA Blanket Purchase Agreement  
BPC Bureau Procurement Chief  
CA Competition Advocate  
CAAC Civilian Agency Acquisition Council  
CAS Cost Accounting Standards  
CASB Cost Accounting Standards Board  
CBCA Civilian Board of Contract Appeals  
CCO Chief of the Contracting Office  
CERCLA Comprehensive Environmental Response, Compensation and Liability Act  
CFR Code of Federal Regulations  
CIO Chief Information Officer  
CO Contracting Officer  
COA Certificate of Appointment  
COI Conflicts of Interest  
COR Contracting Officer's Representative  
COTR Contracting Officer's Technical Representative  
DISP Defense Industrial Security Program  
DM Departmental Manual  
DOI Department of the Interior  
DOL Department of Labor  
EC Electronic Commerce  
FAR Federal Acquisition Regulation  
FBMS Financial Business Management System  
FPDS - NG Federal Procurement Data System - Next Generation  
GAO Government Accountability Office  
GIDEP Government-Industry Data Exchange Program  
GPE Government Point of Entry  
GPO Government Printing Office  
GSA General Services Administration  
GSBCA General Services Board of Contract Appeals  
HCA Head of the Contracting Activity  
IT Information Technology  
IPMD Interior Property Management Directives

MBDA Minority Business Development Agency  
OCIO Office of Chief Information Officer  
OIG/IG Office of Inspector General/Inspector General  
OFPP Office of Federal Procurement Policy  
OHA Office of Hearings and Appeals  
OMB Office of Management and Budget  
OS Office of the Secretary  
OSDBU Office of Small and Disadvantaged Business Utilization  
PAM Office of Acquisition and Property Management  
PMO Property Management Officer  
PNM Procurement Negotiation Memorandum  
SAT Simplified Acquisition Threshold  
SBA Small Business Administration  
SBS Small Business Specialist  
SOL Office of the Solicitor  
TFM Treasury Financial Manual  
U.S.C. United States Code  
VECP Value Engineering Change Proposal  
[75 FR 19829, Apr. 15, 2010, as amended at 76 FR 50141, Aug. 12, 2011]

## **PART 1403 - IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

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## **Subpart 1403.1 - Safeguards**

### **1403.101 Standards of conduct.**

#### **1403.101-3 Agency regulations.**

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

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

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

#### **1403.101-70 Technical evaluators and advisors.**

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

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

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

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

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

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

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

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

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

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

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

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



#### **1403.104 Procurement integrity.**

##### **1403.104-2 Applicability.**

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

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

(a) The following classes of persons may be authorized access to contractor bid or proposal information and source selection information to the extent necessary to accomplish their requisite duties and responsibilities with respect to a particular procurement:

- (1) Individuals who generate contract requirements, including program and technical experts involved in the development of statements of work, specifications or similar documents;
- (2) Contracting personnel acting in support of the CO;
- (3) Secretarial, clerical and administrative personnel of the contracting activity directly involved in the procurement;
- (4) Supervisors in the CO's chain of command;
- (5) Attorneys in the SOL;
- (6) OIG contract auditors, and auditors of other agencies such as the Defense Contract Audit Agency (DCAA) and DHHS when requested to perform contract audits by the OIG;
- (7) Engineers and other technical support personnel who provide support to the CO;
- (8) Small Business Technical Advisors and BUDS;
- (9) SBA personnel responsible for reviewing determinations related to set-aside acquisitions, determining the small business status of offerors, processing applications for Certificates of Competency, reviewing subcontracting plans, or awarding contracts under the 8(a) program;
- (10) Personnel in DOL responsible for making eligibility determinations or for processing preaward EEO clearances;
- (11) Personnel who review bid protests in the GAO and the CBCA;
- (12) Personnel serving on technical evaluation boards or source selection evaluation boards;
- (13) Contract clearance personnel;
- (14) Departmental and bureau/office Competition Advocates;
- (15) Personnel in the Congressional liaison offices;
- (16) Agency ethics official and servicing Ethics Counselors;
- (17) Members of Congress and members of their staff. (See also DIAR 1405.403.); and
- (18) Anyone specifically authorized by the CO.

##### **1403.104-7 Violations or possible violations.**

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

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

#### **Subpart 1403.2 - Contractor Gratuities to Government Personnel**

##### **1403.203 Reporting suspected violations of the Gratuities clause.**

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

##### **1403.204 Treatment of violations.**

(a) The CO will provide the contractor with a formal notice that summarizes the events involving the suspected violation and affords the contractor the opportunity to take the action(s) listed under FAR 3.204(b). The notice shall contain a

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

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

### **Subpart 1403.3 - Reports of Suspected Antitrust Violations**

#### **1403.303 Reporting suspected antitrust violations.**

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

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

### **Subpart 1403.4 - Contingent Fees**

#### **1403.405 Misrepresentation or violations of the Covenant Against Contingent Fees.**

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

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

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

### **Subpart 1403.5 - Other Improper Business Practices**

#### **1403.570 Restrictions on contractor advertising.**

##### **1403.570-1 Policy.**

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

##### **1403.570-2 Procedures.**

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

##### **1403.570-3 Contract clause.**

CO's shall include the clause at 1452.203-70, Restriction on Endorsements, in all solicitations, contracts and agreements which are not executed in accordance with FAR Parts 12 or 13.

### **Subpart 1403.6 - Contracts With Government Employees or Organizations Owned or Controlled by Them**

#### **1403.602 Exceptions.**

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

#### **1403.603 Responsibilities of the contracting officer.**

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

## **Subpart 1403.7 - Voiding and Rescinding Contracts**

### **1403.704 Policy.**

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

### **1403.705 Procedures.**

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

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

(c) *Final Agency Decision.* The HCA shall make the final decision on voiding and rescinding contracts in accordance with the requirements of FAR 3.705(e).

## **Subpart 1403.8 - Limitation on the Payment of Funds to Influence Federal Transactions**

### **1403.804 Policy.**

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

### **1403.806 Processing suspected violations.**

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

## **Subpart 1403.10 - Contractor Code of Business Ethics and Conduct**

### **1403.1004 Contract clause.**

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

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

## **PART 1404 - ADMINISTRATIVE MATTERS**

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[1404.402 General.](#) on page 11

[1404.403 Responsibilities of contracting officers.](#) on page 12

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## **Subpart 1404.4 - Safeguarding Classified Information Within Industry**

### **1404.402 General.**

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

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

**1404.403 Responsibilities of contracting officers.**

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

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

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

**Subpart 1404.7 - Contractor Records Retention**

**1404.702 Applicability.**

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

**Subpart 1404.8 - Contract Files**

**1404.802 Contract files.**

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

**1404.804 Closeout of contract files.**

**1404.804-70 Release of claims.**

(a) The CO shall insert the clause at 1452.204-70, Release of Claims, in all construction, architect and engineering, and cost-reimbursement contracts that exceed the SAT. The Release of Claims clause may be inserted in other types of contracts when the CO determines that the release is necessary to protect the interests of the Government.

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

**1404.805 Disposal of contract files.**

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

**Subpart 1404.70 - Deposit of Contract Publications**

**1404.7001 General.**

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

**1404.7002 Policy.**

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

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

**1404.7003 Exceptions.**

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

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

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

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

(d) Journal and magazine articles; or

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

#### **1404.7004 Procedures.**

(a) The CO shall direct the contractor, in the technical instructions, to provide two copies of each publication or report produced under a contract to: U.S. Department of the Interior, Departmental Library, 1849 C Street, NW., MS-2258, Main Interior Bldg., Washington, DC 20240.

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

## **SUBCHAPTER B - COMPETITION AND ACQUISITION PLANNING**

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### **PART 1405 - PUBLICIZING CONTRACT ACTIONS**

[Subpart 1405.2 - Synopses of Proposed Contract Actions](#) on page 13

[1405.202 Exceptions.](#) on page 13

[1405.207 Preparation and transmittal of synopses.](#) on page 13

[Subpart 1405.3 - Synopses of Contract Awards](#) on page 13

[1405.303 Announcement of contract awards.](#) on page 13

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[1405.403 Requests from Members of Congress.](#) on page 14

[1405.404 Release of long-range acquisition estimates.](#) on page 14

[1405.404-1 Release procedures.](#) on page 14

[Subpart 1405.5 - Paid Advertisements](#) on page 14

[1405.502 Authority.](#) on page 14

#### **Subpart 1405.2 - Synopses of Proposed Contract Actions**

##### **1405.202 Exceptions.**

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

##### **1405.207 Preparation and transmittal of synopses.**

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

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

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

#### **Subpart 1405.3 - Synopses of Contract Awards**

##### **1405.303 Announcement of contract awards.**

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

(1) Proposed award date;

(2) Contractor name and address;

(3) Geographical location of contract performance;

(4) Description of the contracted work;

(5) Dollar amount of contract; and

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

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

## **Subpart 1405.4 - Release of Information**

### **1405.403 Requests from Members of Congress.**

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

### **1405.404 Release of long-range acquisition estimates.**

#### **1405.404-1 Release procedures.**

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

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

## **Subpart 1405.5 - Paid Advertisements**

### **1405.502 Authority.**

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

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

## **PART 1406 - COMPETITION REQUIREMENTS**

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[1406.202 Establishing or maintaining alternative sources.](#) on page 14

[Subpart 1406.3 - Other Than Full and Open Competition](#) on page 14

[1406.302 Circumstances permitting other than full and open competition.](#) on page 14

[1406.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.](#) on page

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[1406.302-7 Public interest.](#) on page 14

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[1406.502 Duties and responsibilities.](#) on page 15

## **Subpart 1406.2 - Full and Open Competition After Exclusion of Sources**

### **1406.202 Establishing or maintaining alternative sources.**

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

## **Subpart 1406.3 - Other Than Full and Open Competition**

### **1406.302 Circumstances permitting other than full and open competition.**

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

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

#### **1406.302-7 Public interest.**

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

### **1406.303 Justifications.**

#### **1406.303-70 Additional requirements.**

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

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

(4) Request the CO to conduct a market survey by issuing a synopsis of the proposed contract action (see 1405.207). The initiating office shall evaluate and document all responses to the notice. The CO shall prepare the D&F that only one source can meet the Government's needs based on the evaluation results. The evaluation results shall be included in the justification as required by FAR 6.303-2(a)(8) if it is determined that only one source can meet the Government's needs.

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

**1406.304 Approval of the justification.**

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

**Subpart 1406.5 - Competition Advocates**

**1406.501 Requirement.**

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

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

**1406.502 Duties and responsibilities.**

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

**PART 1407 - ACQUISITION PLANNING**

[Subpart 1407.1 - Acquisition Plans](#) on page 15

[1407.102 Policy](#) on page 15

[Subpart 1407.3 - Contractor Versus Government Performance](#) on page 15

[1407.301 Policy](#) on page 15

[1407.307 Appeals](#) on page 15

**Subpart 1407.1 - Acquisition Plans**

**1407.102 Policy.**

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

**Subpart 1407.3 - Contractor Versus Government Performance**

**1407.301 Policy.**

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

**1407.307 Appeals.**

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

**PART 1408 - REQUIRED SOURCES OF SUPPLIES AND SERVICES**

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[1408.102 Policy](#) on page 15

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[1408.802 Policy](#) on page 16

**Subpart 1408.1 - Excess Personal Property**

**1408.102 Policy.**

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

## **Subpart 1408.8 - Acquisition of Printing and Related Supplies**

### **1408.802 Policy.**

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

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

(c) The DOIPC has been designated as the Department's liaison with the Joint Committee on Printing and GPO. Requirements for printing and related supplies shall be coordinated with the DOIPC or the designated bureau publications liaison officer in accordance with 314 DM 1.

## **PART 1409 - CONTRACTOR QUALIFICATIONS**

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## **Subpart 1409.2 - Qualifications Requirements**

### **1409.202 Policy.**

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

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

### **1409.206 Acquisitions subject to qualification requirements.**

#### **1409.206-1 General.**

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

## **Subpart 1409.4 - Debarment, Suspension, and Ineligibility**

### **1409.403 Definitions.**

As used in this subpart:

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



*Conviction*, for the purposes of this subpart, means:

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

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

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

*Suspending Official* refers to the Director, PAM.

#### **1409.404 Excluded Parties List System (EPLS).**

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

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

#### **1409.405 Effect of listing.**

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

#### **1409.405-1 Continuation of current contracts.**

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

#### **1409.406 Debarment.**

##### **1409.406-1 General.**

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

##### **1409.406-3 Procedures.**

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

(b) *Notice of Proposed Debarment.* Based upon review of the ARM, as appropriate, the Debarring Official shall initiate proposed debarment by taking the actions listed in FAR 9.406-3(c) and advising the contractor of DOI's process for contesting the action.

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

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

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

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

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

Official has expressly requested such recommendations in writing. Following receipt of the findings of fact, the Debarring Official shall complete debarment proceedings and issue a written debarment decision.

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

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

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

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

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

#### **1409.407 Suspension.**

##### **1409.407-1 General.**

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

##### **1409.407-3 Procedures.**

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

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

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

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

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

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

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

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

(d) *Administrative Agreements.* Matters may be resolved through an administrative agreement at any stage of proceedings in resolution of a suspension action where a contractor agrees to appropriate terms. The specific effect of administrative agreements that incorporate terms regarding eligibility for DOI contracting will vary with the terms of the agreements. In

general, such agreements resolve suspension concerns and thereby terminate award ineligibility. An administrative agreement resolving a suspension action may by its terms be an interim agreement. In the event of an agreement, PAM will notify COs of the agreement and its terms.

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

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

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

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

#### **Subpart 1409.5 - Organizational and Consultant Conflicts of Interest**

##### **1409.503 Waiver.**

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

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

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

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

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

##### **1409.506 Procedures.**

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

## **PARTS 1410-1412 [RESERVED]**

## **SUBCHAPTER C - CONTRACTING METHODS AND CONTRACT TYPES**

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### **PART 1413 - SIMPLIFIED ACQUISITION PROCEDURES**

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[1413.202-70 Policy](#) on page 20

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[1413.306 Standard Form 44, Purchase order-invoice-voucher](#) on page 20

#### **Subpart 1413.2 - Micro-Purchase**

##### **1413.201 General.**

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

#### **1413.202-70 Policy.**

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

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

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

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

#### **Subpart 1413.3 - Simplified Acquisition Methods**

##### **1413.305 Imprest fund.**

##### **1413.305-2 Agency responsibilities.**

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

##### **1413.305-4 Procedures.**

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

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

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

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

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

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

### **PART 1414 - SEALED BIDDING**

[Subpart 1414.2 - Solicitation of Bids](#) on page 20

[1414.201 Preparation of invitation for bids.](#) on page 20

[1414.201-70 Alternate bids.](#) on page 20

[Subpart 1414.4 - Opening of Bids and Award of Contract](#) on page 20

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#### **Subpart 1414.2 - Solicitation of Bids**

##### **1414.201 Preparation of invitation for bids.**

##### **1414.201-70 Alternate bids.**

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

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

#### **Subpart 1414.4 - Opening of Bids and Award of Contract**

##### **1414.404 Rejection of bids.**

##### **1414.404-1 Cancellation of invitations after opening.**

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

#### **1414.407 Mistakes in bids.**

##### **1414.407-3 Other mistakes disclosed before award.**

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

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

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

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

##### **1414.407-4 Mistakes after award.**

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

## **PART 1415 - CONTRACTING BY NEGOTIATION**

[Subpart 1415.2 - Solicitation and Receipt of Proposals and Information](#) on page 21

[1415.201 Exchanges with industry before receipt of proposals.](#) on page 21

[1415.207 Handling proposals and information.](#) on page 21

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### **Subpart 1415.2 - Solicitation and Receipt of Proposals and Information**

#### **1415.201 Exchanges with industry before receipt of proposals.**

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

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

#### **1415.207 Handling proposals and information.**

##### **1415.207-70 Department of the Interior proposal and information handling procedures.**

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

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

consider the proposal because it contains information identified as trade secret information or confidential commercial or financial information.

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

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

**1415.207-71 Confidentiality of proposal evaluation.**

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

(b) At the initial meeting of the committee, the CO shall brief all members and advisors on the sensitivity of the evaluation process and the prohibition against unauthorized disclosure of information. At this meeting each member and advisor shall sign a Confidentiality Certificate. During the proposal evaluation process, all proposals, evaluation notes, scoring sheets, and other materials shall be locked in file cabinets or drawers when not in use by committee members and advisors.

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

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

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

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

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

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

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

(e) If outside individuals will be voting members of the evaluation committee or otherwise participate in other than an advisory capacity, then the committee must be constituted as a Federal Advisory Committee in accordance with the Federal Advisory Committee Act (PL 92-463) and 308 DM 2. Since the Secretary must appoint such committees in consultation with the Office of Management and Budget, there should be very few occasions when use of outside individuals as voting members is justified.

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

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

**1415.209 Solicitation provisions and contract clauses.**

**1414.209-70 Examination of records by the Department of the Interior.**

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

**Subpart 1415.3 - Source Selection**

**1415.303 Responsibilities.**

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

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

**1415.305 Proposal evaluation.**

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

**Subpart 1415.4 - Contract Pricing**

**1415.404 Proposal analysis.**

**1415.404-2 Information to support proposal analysis.**

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

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

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

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

**1415.404-4 Profit.**

(a) DOI's policy is to use a structured approach for determining the profit or fee prenegotiation objective in acquisition actions that require cost analysis based on the profit analysis factors in FAR 15.404-4, as implemented and supplemented in this section.

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

[75 FR 19829, Apr. 15, 2010, as amended at 76 FR 50141, Aug. 12, 2011]

**1415.406 Documentation.**

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

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

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

(2) For simplified acquisitions conducted pursuant to FAR Part 13, the documentation requirements of 1413.106 and FAR 13.106 shall be followed.

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

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

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

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

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

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

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

(7) If an audit report was required (FAR 15.404-2), COs shall specifically describe actions taken in response to significant audit findings, including the monetary value and decisions made with regard to any of the audit's questioned costs; i.e., COs shall identify the value of the questioned costs, indicate whether they will allow or disallow them, and provide an explanation for their decisions. For purposes of this section, "significant audit finding" and "questioned cost" are defined as those findings and/or costs cited or questioned in an external audit because of their relationship to unallowable costs claimed, a failure to comply with regulations or the terms of the contract, mathematical errors, and/or the duplication of costs. Questions and/or disagreements between the CO, price analyst (if assigned) and cognizant auditor as to an audit report's interpretation or recommendations regarding "significant audit finding" and/or "questioned costs" shall be clarified or resolved and appropriately documented. If a disagreement cannot be resolved or agreement cannot be reached, the CO shall prepare a written statement in the PNM that discusses the issue(s) in question and supports a final decision on the matter.

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

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

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

## **Subpart 1415.6 - Unsolicited Proposals**

### **1415.606 Agency procedures.**

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

## **PART 1416 - TYPES OF CONTRACTS**

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[1416.203 Fixed-price contracts with economic price adjustment](#), on page 25

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## **Subpart 1416.2 - Fixed-Price Contracts**

### **1416.203 Fixed-price contracts with economic price adjustment.**

#### **1416.203-4 Contract clauses.**

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

## **Subpart 1416.4 - Incentive Contracts**

### **1416.405 Contract clauses.**

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

## **PART 1417 - SPECIAL CONTRACTING METHODS**

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[1417.206 Evaluation.](#) on page 25

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[Subpart 1417.6 - Management and Operating Contracts](#) on page 25

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[1417.605 Award, renewal and extension.](#) on page 26

## **Subpart 1417.2 - Options**

### **1417.203 Solicitations.**

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

### **1417.206 Evaluation.**

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

## **Subpart 1417.4 - Leader Company Contracting**

### **1417.402 Limitations.**

Use of leader company contracting for a product, subject to the limitations in FAR 17.402, shall require advance discussion with the Director, PAM, prior to approval by the HCA. This authority may not be redelegated. Documentation shall include the circumstances requiring such action.

## **Subpart 1417.6 - Management and Operating Contracts**

### **1417.602 Policy.**

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

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

- (1) Reference the statutory authority for the requirement;
- (2) Discuss the relationship between the requirement and the limitations in FAR 17.603;
- (3) Include a copy of the proposed contract schedule and evaluation factors for; and
- (4) If a noncompetitive procurement is proposed, include a copy of the Justification for Other than Full and Open Competition.

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

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

- (1) Operation, maintenance, or support of a Government-owned or controlled special production or testing facility; or
- (2) Any other commercial or industrial service activity which, if performed by a contractor, would result in a management and operating contract as defined under FAR Subpart 17.6.

**1417.605 Award, renewal and extension.**

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

**PART 1418 [RESERVED]****SUBCHAPTER D - SOCIOECONOMIC PROGRAMS**

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**PART 1419 - SMALL BUSINESS PROGRAMS**

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[1419.803 \[Reserved\]](#) on page 27

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**Subpart 1419.1 [Reserved]****Subpart 1419.2 - Policies****1419.201 General policy.**

The Director of the Office of Small Disadvantaged Business Utilization (OSDBU) is responsible for the following:

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

(b) The appointment of Small Business Specialists to ensure compliance with all applicable law, regulation, and policy; and

(c) The negotiation of annual small business and subcontracting goals with the Small Business Administration (SBA). The purpose of these goals is to increase participation of small business and disadvantaged small businesses in contract and subcontract opportunities.

**1419.202 Specific policies.****1419.202-70 Acquisition screening and Small Business Specialist recommendations.**

The Director of the OSDBU is responsible for issuing policy for use of the DI Form 1886 and determining the content of Form DI-1886 "Acquisition Screening and Review Form."

## **Subpart 1419.3 - 1419.4 [Reserved]**

## **Subpart 1419.5 - Set-Asides for Small Business**

### **1419.503 Setting aside a class of acquisitions.**

#### **1419.503-70 Class set-aside for construction acquisitions.**

(a) Acquisitions for construction (as defined in Federal Acquisition Regulation (FAR) 2.101) estimated to cost \$2 million or less must be set-aside on a class basis for exclusive participation by small business or disadvantaged business concerns.

This class set-aside does not apply when:

- (1) The acquisition is procured using simplified acquisition procedures;
- (2) A non-competitive acquisition has been approved under the procedures of FAR 6.3;
- (3) Work is to be performed outside the U.S.; or

(4) The Bureau Procurement Chief determines that adequate competition is not likely to be obtained if the acquisition is restricted to small business concerns.

(b) [Reserved]

## **Subpart 1419.6 - Certificates of Competency and Determinations of Responsibility**

### **1419.602 Procedures.**

#### **1419.602-1 Referral.**

The contracting officer must obtain approval from the Chief of the Contracting Office for all determinations documenting a responsive small business' lack of responsibility prior to submission to the appropriate SBA office. A copy of the determination must be sent to OSDDBU within 5 working days of the approval date of the determination.

## **Subpart 1419.7 - [Reserved]**

## **Subpart 1419.8 - Contracting with the Small Business Administration (The 8(a) Program)**

### **1419.803 [Reserved]**

#### **1419.810 SBA appeals.**

The Assistant Secretary of Policy Management and Budget, without the power of redelegation, is authorized to issue the decision on an SBA appeal of a Contracting Officer's Section 8(a) decision.

## **Subparts 1419.9 - 1419.10 [Reserved]**

## **PARTS 1420-1421 [RESERVED]**

## **PART 1422 - APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**

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#### **Subpart 1422.1 - Basic Labor Policies**

##### **1422.101 Labor relations.**

###### **1422.101-1 General.**

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

###### **1422.101-3 Reporting labor disputes.**

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

###### **1422.101-4 Removal of items from contractors' facilities affected by work stoppages.**

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

##### **1422.103 Overtime.**

###### **1422.103-4 Approvals.**

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

#### **Subpart 1422.3 - Contract Work Hours and Safety Standards Act**

##### **1422.302 Liquidated damages and overtime pay.**

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

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

#### **Subpart 1422.4 - Labor Standards for Contracts Involving Construction**

##### **1422.404 Davis-Bacon Act wage determinations.**

###### **1422.404-6 Modifications of wage determinations.**

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

###### **1422.406-8 Investigations.**

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

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

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

###### **1422.406-9 Withholding from or suspension of contract payments.**

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

###### **1422.406-13 Semiannual enforcement reports.**

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

## **Subpart 1422.6 - Walsh-Healey Public Contracts Act**

### **1422.604 Exemptions.**

#### **1422.604-2 Regulatory exemptions.**

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

## **Subpart 1422.8 - Equal Employment Opportunity**

### **1422.803 Responsibilities.**

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

### **1422.804 Affirmative action programs.**

#### **1422.804-2 Construction.**

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

### **1422.805 Procedures.**

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

### **1422.807 Exemptions.**

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

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

## **Subpart 1422.10 - Service Contract Act of 1965, as Amended**

### **1422.1003 Applicability.**

#### **1422.1003-4 Administrative limitations, variations, tolerances and exemptions.**

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

## **Subpart 1422.13 - Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans**

### **1422.1305 Waivers.**

(a) The Director, PAM is authorized to:

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

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

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

## **Subpart 1422.14 - Employment of Workers with Disabilities**

### **1422.1403 Waivers.**

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

## **PART 1423 [RESERVED]**

## **PART 1424 - PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**

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[1424.102 General](#) on page 30

[1424.103 Procedures](#) on page 30

[1424.104 Contract clauses.](#) on page 30

[Subpart 1424.2 - Freedom of Information Act](#) on page 30

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## **Subpart 1424.1 - Protection of Individual Privacy**

### **1424.102 General.**

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

### **1424.103 Procedures.**

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

### **1424.104 Contract clauses.**

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

## **Subpart 1424.2 - Freedom of Information Act**

### **1424.203 Policy.**

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

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

## **PART 1425 - FOREIGN ACQUISITION**

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[Subpart 1425.10 - Additional Foreign Acquisition Regulations](#) on page 31

[1425.1001 Waiver of right to examination of records.](#) on page 31

### **1425.003 Definitions.**

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

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

## **Subpart 1425.1 - Buy American Act - Supplies**

### **1425.103 Exceptions.**

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

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

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

**1425.105 Determining reasonableness of cost.**

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

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

**Subpart 1425.2 - Buy American Act - Construction Materials**

**1425.202 Exceptions.**

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

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

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

(b) [Reserved]

**1425.206 Noncompliance.**

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

**Subpart 1425.7 - Prohibited Sources**

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

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

**Subpart 1425.10 - Additional Foreign Acquisition Regulations**

**1425.1001 Waiver of right to examination of records.**

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

**PART 1426 - OTHER SOCIOECONOMIC PROGRAMS**

[Subpart 1426.70 - Indian Preference](#) on page 32

[1426.7000 Scope of subpart.](#) on page 32

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## **Subpart 1426.70 - Indian Preference**

### **1426.7000 Scope of subpart.**

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

### **1426.7001 Definitions.**

For purposes of this subpart the following definitions shall apply:

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

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

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

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

*Indian Tribe* means an Indian Tribe, band, nation, or other recognized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

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

### **1426.7002 Statutory requirements.**

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

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

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

### **1426.7003 Applicability and contract clause.**

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

(1) The Bureau of Indian Affairs;

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

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

(b) The CO shall insert the clause at 1452.226-71, Indian Preference Program - Department of the Interior, in all solicitations issued and contracts awarded by a contracting activity which may exceed \$50,000, which contain the clause required by paragraph (a) of this section and where it is determined by the CO, prior to solicitation, that the work under the contract will be performed in whole or in part on or near an Indian reservation(s). The Indian Preference Program clause may also be included in solicitations issued and contracts awarded by a contracting activity which may not exceed \$50,000, but which contain the clause required by paragraph (a) of this section and which, in the opinion of the CO, offer substantial opportunities for Indian employment, training or subcontracting.



**1426.7004 Compliance enforcement.**

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

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

**1426.7005 Tribal preference requirements.**

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

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

**Subpart 1426.71 - Minority Business Reports****1426.7100 Scope of subpart.**

This subpart sets forth reporting requirements established by Executive Order 12432 entitled "Minority Business Enterprise Development" and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as "Superfund."

**1426.7101 Definitions.**

For purposes of this subpart the following definitions shall apply:

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

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

*Minority individual* means a U.S. citizen who has been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of this group without regard to their individual qualities. Such groups include, but are not limited to: Black Americans; Hispanic Americans; Native Americans; Asian-Pacific Americans; and other groups whose members are U.S. citizens and are found to be disadvantaged by the Small Business Administration pursuant to Section 8(d) of the Small Business Act as amended (15 U.S.C. 637(d)), or the Secretary of Commerce.

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

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

**1426.7102 Minority Business Development Agency (MBDA-91) Plan and Reports.****1426.7102-1 Statutory basis.**

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

**1426.7102-2 Requirements.**

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

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

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

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

**1426.7103-1 Statutory basis.**

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

**1426.7103-2 Requirements.**

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

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

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

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

## **SUBCHAPTER E - GENERAL CONTRACTING REQUIREMENTS**

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### **PART 1427 - PATENTS, DATA, AND COPYRIGHTS**

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[1427.201 Patent and copyright infringement liability.](#) on page 34

[1427.201-2 Contract clauses.](#) on page 34

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[1427.306 Licensing background patent rights to third parties.](#) on page 35

#### **Subpart 1427.2 - Patents and Copyrights**

##### **1427.201 Patent and copyright infringement liability.**

##### **1427.201-2 Contract clauses.**

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

##### **1427.202 Royalties.**

##### **1427.202-3 Adjustment of royalties.**

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

### **Subpart 1427.3 - Patent Rights Under Government Contracts.**

#### **1427.303 Contract clauses.**

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

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

(c) Within 30 days after contract award the CO shall forward copies of determinations to use exceptions under FAR 27.303(e)(1) shall be forwarded to the Assistant Solicitor for Acquisitions and Intellectual Property for submission to the Secretary of Commerce and, if required, to the Chief Counsel for Advocacy of the Small Business Administration. The determinations shall include all supporting documentation.

#### **1427.304 Procedures.**

##### **1427.304-1 General.**

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

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

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

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

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

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

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

##### **1427.304-4 Appeals.**

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

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

#### **1427.306 Licensing background patent rights to third parties.**

Any proposed determination to be made to require third party licensing shall be submitted by the HCA through the Assistant Solicitor for Acquisitions and Intellectual Property for signature of the AS/PMB. The contractor may request a

public hearing on the record prior to the above determination. In such cases, the proposed determination and the contractor's request for a hearing shall be referred to OHA. OHA shall conduct public hearings as set forth in 1427.304-1(a)(4) and shall forward its findings and recommendations to the AS/PMB for a final determination. The final determination shall inform the contractor of the right to judicial review within sixty (60) days of the AS/PMB determination.

## **PART 1428 - BONDS AND INSURANCE**

[Subpart 1428.3 - Insurance](#) on page 36

[1428.301 Policy](#), on page 36

[1428.306 Insurance under fixed-price contracts](#), on page 36

[1428.306-70 Insurance for aircraft services contracts](#), on page 36

[1428.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts](#), on page

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[1428.311-1 Contract clause](#), on page 36

[1428.311-2 Agency solicitation provisions and contract clauses](#), on page 36

### **Subpart 1428.3 - Insurance**

#### **1428.301 Policy.**

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

#### **1428.306 Insurance under fixed-price contracts.**

##### **1428.306-70 Insurance for aircraft services contracts.**

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

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

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

###### **1428.311-1 Contract clause.**

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

###### **1428.311-2 Agency solicitation provisions and contract clauses.**

The following DOI clauses shall be used as prescribed:

(a) The CO shall insert the clause at 1452.228-71, Aircraft and General Public Liability Insurance - Department of the Interior, in solicitations and contracts when a fixed-price contract for operation of aircraft is anticipated and where the Government is using a contractor-furnished pilot.

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

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

## **PART 1429 - TAXES**

[Subpart 1429.3 - State and Local Taxes](#) on page 37

[1429.303 Application of State and local taxes to Government contractors and subcontractors](#), on page 37

### **Subpart 1429.3 - State and Local Taxes**

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

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

## **PART 1430 - COST ACCOUNTING STANDARDS ADMINISTRATION**

[Subpart 1430.2 - CAS Program Requirements](#) on page 37

[1430.201 Contract requirements.](#) on page 37

[1430.201-5 Waiver.](#) on page 37

[1430.202 Disclosure requirements.](#) on page 37

[1430.202-2 Impracticability of submission.](#) on page 37

### **Subpart 1430.2 - CAS Program Requirements**

#### **1430.201 Contract requirements.**

##### **1430.201-5 Waiver.**

The CO shall prepare requests to waive contractor compliance with CAS prescribed in FAR 30.201-5 and 48 CFR 9903.201-5(e) (FAR Appendix). The CO shall submit the request for waiver to the Director, PAM, without the power of redelegation, for a determination. PAM must report any waivers granted on a fiscal year basis to the CASB in accordance with FAR 30.201-5(e).

##### **1430.202 Disclosure requirements.**

##### **1430.202-2 Impracticability of submission.**

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

## **PART 1431 - CONTRACT COST PRINCIPLES AND PROCEDURES**

[Subpart 1431.1 - Applicability](#) on page 37

[1431.101 Objectives.](#) on page 37

### **Subpart 1431.1 - Applicability**

#### **1431.101 Objectives.**

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

## **PART 1432 - CONTRACT FINANCING**

[Subpart 1432.1 - Non-Commercial Item Purchase Financing](#) on page 38

[1432.102 Description of contract financing methods.](#) on page 38

[Subpart 1432.3 - Loan Guarantees for Defense Production](#) on page 38

[1432.304 Procedures.](#) on page 38

[1432.304-2 Certificate of eligibility.](#) on page 38

[Subpart 1432.4 - Advance Payments for Non-Commercial Items](#) on page 38

[1432.402 General.](#) on page 38

[1432.407 Interest.](#) on page 38

[Subpart 1432.5 - Progress Payments Based on Costs](#) on page 38

[1432.501 General.](#) on page 38

[1432.501-2 Unusual progress payments.](#) on page 38

[1432.502-2 Contract finance office clearance.](#) on page 38

[Subpart 1432.6 - Contract Debts](#) on page 38

[1432.602 Responsibilities.](#) on page 38

[1432.610 Compromising debts.](#) on page 38  
[Subpart 1432.9 - Prompt Payment](#) on page 38  
[1432.903 Responsibilities.](#) on page 38

## **Subpart 1432.1 - Non-Commercial Item Purchase Financing**

### **1432.102 Description of contract financing methods.**

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

- (a) Payments based on costs would be impracticable; and
- (b) Adequate measures exist for determining quality standards and the percentage of work accomplished.

## **Subpart 1432.3 - Loan Guarantees for Defense Production**

### **1432.304 Procedures.**

#### **1432.304-2 Certificate of eligibility.**

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

## **Subpart 1432.4 - Advance Payments for Non-Commercial Items**

### **1432.402 General.**

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

#### **1432.407 Interest.**

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

## **Subpart 1432.5 - Progress Payments Based on Costs**

### **1432.501 General.**

#### **1432.501-2 Unusual progress payments.**

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

#### **1432.502-2 Contract finance office clearance.**

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

## **Subpart 1432.6 - Contract Debts**

### **1432.602 Responsibilities.**

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

#### **1432.610 Compromising debts.**

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

## **Subpart 1432.9 - Prompt Payment**

### **1432.903 Responsibilities.**

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

## **PART 1433 - PROTESTS, DISPUTES, AND APPEALS**

[Subpart 1433.1 - Protests](#) on page 39

[1433.102 General](#) on page 39

[1433.103 Protests to the agency](#) on page 39

[1433.104 Protests to GAO](#) on page 39

[1433.106 Solicitation provisions and contract clauses](#) on page 40

[Subpart 1433.2 - Disputes and Appeals](#) on page 40

[1433.203 Applicability](#) on page 40

[1433.209 Suspected fraudulent claims](#) on page 40

[1433.211 Contracting officer's decision](#) on page 40

[1433.213 Obligation to continue performance](#) on page 40

[1433.214 Alternative dispute resolution \(ADR\)](#) on page 40

[1433.215 Contract clauses](#) on page 40

### **Subpart 1433.1 - Protests**

#### **1433.102 General.**

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

#### **1433.103 Protests to the agency.**

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

#### **1433.104 Protests to GAO.**

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

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

(3)(i) The contracting activity shall have no more than 15 working days from the date of telephonic notification by the SOL to deliver the protest report to the Assistant Solicitor, Acquisitions and Intellectual Property. For reports involving use of the 10 working day express option, the SOL shall establish the report delivery date after consultation with the contracting activity.

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

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



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

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

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

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

(3) The SOL shall be responsible for notifying GAO of the finding to continue contract performance notwithstanding protest.

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

#### **1433.106 Solicitation provisions and contract clauses.**

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

### **Subpart 1433.2 - Disputes and Appeals**

#### **1433.203 Applicability.**

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

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

#### **1433.209 Suspected fraudulent claims.**

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

#### **1433.211 Contracting officer's decision.**

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

#### **1433.213 Obligation to continue performance.**

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

#### **1433.214 Alternative dispute resolution (ADR).**

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

#### **1433.215 Contract clauses.**

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

## **SUBCHAPTER F - SPECIAL CATEGORIES OF CONTRACTING**

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### **PART 1434 [RESERVED]**

### **PART 1435 - RESEARCH AND DEVELOPMENT CONTRACTING**

[1435.010 Scientific and technical reports.](#) on page 40

#### **1435.010 Scientific and technical reports.**

If a Research and Development (R&D) contract results involve classified or national security information, the CO shall follow the agency procedures prescribed in DIAR 1404.403 prior to making the results available. Copies of publications and



reports are also required to be sent to the DOI Departmental Library, 1849 C Street, NW., MS-2258, Main Interior Building, Washington, DC 20240.

## **PART 1436 - CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

[Subpart 1436.2 - Special Aspects of Contracting for Construction](#) on page 41

[1436.209 Construction contracts with architect-engineer firms.](#) on page 41

[1436.270 Preparation of solicitations and contracts for construction.](#) on page 41

[1436.270-1 Uniform contract format.](#) on page 41

[1436.270-2 Part I - The Schedule.](#) on page 42

[1436.270-3 Part II - Contract clauses.](#) on page 42

[1436.270-4 Part III - Documents, exhibits and other attachments.](#) on page 42

[1436.270-5 Part IV - Representations and instructions.](#) on page 42

[Subpart 1436.5 - Contract Clauses](#) on page 43

[1436.570 Prohibition against use of lead-based paint.](#) on page 43

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[1436.602 Selection of firms for architect-engineer contracts.](#) on page 43

[1436.602-1 Selection criteria.](#) on page 43

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[1436.602-4 Selection authority.](#) on page 43

[1436.602-5 Short selection processes for contracts not to exceed the simplified acquisition threshold.](#) on page 43

[1436.603 Collecting data on and appraising firms' qualifications.](#) on page 43

### **Subpart 1436.2 - Special Aspects of Contracting for Construction**

#### **1436.209 Construction contracts with architect-engineer firms.**

Approval to award a contract for construction to a firm or its subsidiaries that designed the project shall be made by the HCA only after discussion with Director, PAM, and with legal concurrence. The request for approval prepared by the CO shall include the reason(s) why award to the design firm is required; an analysis of the facts involving potential or actual organizational conflicts of interest, including benefits and detriments to the Government and the prospective contractor; and the measures which are to be taken to avoid, neutralize or mitigate conflicts of interest. A copy of the documentation shall be forwarded to PAM at the time of consultation.

#### **1436.270 Preparation of solicitations and contracts for construction.**

##### **1436.270-1 Uniform contract format.**

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

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

**Table 1436-1 - Uniform Contract Format**

| <b>Section</b>               | <b>Title</b>                |
|------------------------------|-----------------------------|
| <b>Part I - The Schedule</b> |                             |
| A                            | Solicitation/contract form. |
| B                            | Bid schedule.               |
| C                            | Specifications/Drawings.    |
| D                            | Packaging and marking.      |
| E                            | Inspection and acceptance.  |
| F                            | Deliveries or performance.  |

| Section   | Title  |
|---|--|
| 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. |
| L   | Instructions, conditions, and notices to offerors.                 |
| M   | Evaluation factors for award.                                      |

[75 FR 19829, Apr. 15, 2010, as amended at 76 FR 50142, Aug. 12, 2011]

**1436.270-2 Part I - The Schedule.**

The CO shall prepare the Schedule as follows:

- (a) *Section A, Solicitation/contract form.* Use SF 1442, Solicitation, Offer, and Award (Construction, Alteration or Repair), as prescribed in FAR 36.701(a).
- (b) *Section B, Bid schedule.* Bid schedule.
- (c) *Section C, Specifications/Drawings.* Include specifications and drawings (*See* FAR Part 11) or reference other location in the uniform contract format (*e.g.* Section J, attachment \_\_\_\_).
- (d) *Section D, Packaging and Marking.* Not applicable.
- (e) *Section E, Inspection and acceptance.* Include inspection, acceptance, quality assurance, and reliability requirements (*See* FAR Part 46).
- (f) *Section F, Deliveries or performance.* Include Suspension of Work, Liquidated Damages, Commencement, Prosecution, and Completion of Work, Variation in Quantity clauses (*See* FAR Part 12).
- (g) *Section G, Contract administration data.* Include Contracting Officer's Representative/Technical Representative identification, and any required administration information (*e.g.*, accounting and appropriation data).
- (h) *Section H, Special contract requirements.* Include any special contract requirements which are not included in other sections of the uniform contract format.

**1436.270-3 Part II - Contract clauses.**

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

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

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

**1436.270-5 Part IV - Representations and instructions.**

The CO shall prepare the representations and instructions as follows:

- (a) *Section K, Representations, certifications, and other statements of offerors.* Include provisions requiring representations, certifications, or submission of other information by an offeror.
- (b) *Section L, Instructions, conditions, and notices to offerors.* Include other provisions or instructions to offerors which are not included in other sections of the uniform contract (*e.g.*, FAR 52.214-19 if using sealed bidding).
- (c) *Section M, Evaluation factors for award.* Identify all factors that will be considered in awarding the contract (*See*, for example, FAR 14.201-8 for sealed bidding; FAR 15.304 for competitive proposals).

## **Subpart 1436.5 - Contract Clauses**

### **1436.570 Prohibition against use of lead-based paint.**

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

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

### **1436.571 Additive and deductive items.**

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

## **Subpart 1436.6 - Architect-Engineer Services**

### **1436.602 Selection of firms for architect-engineer contracts.**

#### **1436.602-1 Selection criteria.**

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

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

#### **1436.602-2 Evaluation boards.**

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

#### **1436.602-3 Evaluation board functions.**

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

#### **1436.602-4 Selection authority.**

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

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

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

### **1436.603 Collecting data on and appraising firms' qualifications.**

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

## **PART 1437 - SERVICE CONTRACTING**

[Subpart 1437.1 - Service Contracts - General](#) on page 44

[1437.102 Policy.](#) on page 44

[1437.103 Contracting officer responsibility.](#) on page 44

[1437.170 Special service contract requirements.](#) on page 45

[Subpart 1437.70 - Appraisal Services \(Real Property\)](#) on page 45

[1437.7000 Scope of subpart.](#) on page 45

[1437.7001 Contractor qualification requirements.](#) on page 45

[1437.7002 Appraisal standards.](#) on page 46

[Subpart 1437.71 - Information Collection Services](#) on page 46

[1437.7100 Scope of subpart.](#) on page 46

[1437.7101 General.](#) on page 46

[1437.7102 Clauses.](#) on page 46

## **Subpart 1437.1 - Service Contracts - General**

### **1437.102 Policy.**

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

### **1437.103 Contracting officer responsibility.**

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

- (1) Award and administer contracts in a manner that will provide the customer with quality services on time and within budget;
- (2) Ensure that requirements are clearly defined and appropriate performance standards are included in the contract;
- (3) Utilize the checklist in paragraph (b) of this section, or bureau substitute, to ensure compliance with general policies and the specific guidance in OFPP Policy Letters 92-1, Inherently Governmental Functions, 91-2, Service Contracting, and 89-1, Conflicts of Interest Policies Applicable to Consultants;
- (4) Work in close collaboration with the beneficiaries of the services being purchased to ensure that contractor performance meets contract requirements and performance standards;.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (viii) Is the acquisition plan adequate to ensure that there is proper consideration given to quality and best value?
- (4) *Control*. If the response to any of the following questions is negative, there may be a control problem.
- (i) Are there sufficient resources to evaluate contractor performance when the statement of work requires the contractor to provide advice, analysis and evaluation, opinions, alternatives, or recommendations that could significantly influence agency policy development or decision-making?
  - (ii) Does the quality assurance plan provide for adequate monitoring of contractor performance?
  - (iii) Is the statement of work written so that it specifies a contract deliverable or requires progress reporting on contractor performance?
  - (iv) Is agency expertise adequate to independently evaluate the contractor's approach, methodology, results, options, conclusions or recommendations?
  - (v) Is the requirement for a function or service absent from the list in Appendix B of OFPP Policy Letter 92-1? If it is similar to a function or service on that list, greater management scrutiny may be required.
- (5) *Conflicts of Interest*. If the response to any of the following questions is affirmative, there may be a conflict of interest.
- (i) Can the potential offeror perform under the contract in such a way as to devise solutions or make recommendations that would influence the award of future contracts to that contractor?
  - (ii) If the requirement is for support services (such as system engineering or technical direction), were any of the potential offerors involved in developing the system design specifications or in the production of the system?
  - (iii) Has a potential offeror participated in earlier work involving the same program or activity that is the subject of the present contract wherein the offeror had access to source selection or propriety information not available to other offerors competing for the contract?
  - (iv) Will the contractor be evaluating a competitor's work?
  - (v) Does the contract allow the contractor to accept its own products or activities on behalf of the Government?
  - (vi) Will the work under this contract put the contractor in a position to influence government decision-making, *e.g.*, developing regulations that will affect the contractor's current or future business?
  - (vii) Will the work under this contract effect the interests of the contractor's other clients?
  - (viii) Are any of the potential offerors, or their personnel who will perform the contract, former agency officials who - while employed by the agency - personally and substantially participated in the development of the requirement for, or the procurement of, these services within the past two years?
- (6) *Competition*. If the response to any of the following questions is negative, completion may be unnecessarily limited.
- (i) Is the statement of work defined so as to avoid overly restrictive specifications or performance standards?
  - (ii) Is the contract formulated in such a way as to avoid creating a continuous and dependent arrangement with the same contractor?
  - (iii) Is the use of an indefinite quantity or term contract arrangement appropriate to obtain the required services?
  - (iv) Will the requirement be obtained through the use of full and open competition?

#### **1437.170 Special service contract requirements.**

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

- (a) Aircraft-related services and maintenance shall be acquired as prescribed in 353 DM;
- (b) Audiovisual services, including motion pictures, slide shows and videotape recordings, shall be acquired as prescribed in 471 DM 1;
- (c) Information-technology services shall be acquired as prescribed in 376 DM 4;
- (d) Guard services for safeguarding classified information shall be acquired as prescribed in 442 DM 8;
- (e) Printing services shall be acquired as prescribed in 314 DM 1;
- (f) Contracts which require collection of identical information from ten or more members of the public shall be cleared as prescribed in 381 DM 12.

### **Subpart 1437.70 - Appraisal Services (Real Property)**

#### **1437.7000 Scope of subpart.**

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

#### **1437.7001 Contractor qualification requirements.**

- (a) Prior to award of a contract for real property appraisal services when the services are required in support of court actions, the CO shall coordinate with the appropriate Solicitor's office and obtain written concurrence from the Assistant

U.S. Attorney assigned to represent the Government in the matter that the source to be selected possesses the necessary qualifications for adequate contract performance. This requirement shall be treated as a special standard of responsibility (*See* FAR 9.104-2).

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

**1437.7002 Appraisal standards.**

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

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

**Subpart 1437.71 - Information Collection Services**

**1437.7100 Scope of subpart.**

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

**1437.7101 General.**

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

**1437.7102 Clauses.**

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

**PARTS 1438-1441 [RESERVED]**

## **SUBCHAPTER G - CONTRACT MANAGEMENT**

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### **PART 1442 - CONTRACT ADMINISTRATION AND AUDIT SERVICES**

[Subpart 1442.2 - Contract Administration Services](#) on page 46

[1442.202 Assignment of contract administration.](#) on page 46

[Subpart 1442.6 - Corporate Administrative Contracting Officer](#) on page 46

[1442.602 Assignment and location.](#) on page 46

**Subpart 1442.2 - Contract Administration Services**

**1442.202 Assignment of contract administration.**

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

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

**Subpart 1442.6 - Corporate Administrative Contracting Officer**

**1442.602 Assignment and location.**

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

### **PART 1443 - CONTRACT MODIFICATIONS**

[Subpart 1443.2 - Change Orders](#) on page 47

[1443.205 Contract clauses.](#) on page 47

## **Subpart 1443.2 - Change Orders**

### **1443.205 Contract clauses.**

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

## **PART 1444 [RESERVED]**

## **PART 1445 - GOVERNMENT PROPERTY**

[Subpart 1445.3 - Authorizing the Use and Rental of Government Property](#) on page 47

[1445.302 Contracts with foreign governments or international organizations.](#) on page 47

### **Subpart 1445.3 - Authorizing the Use and Rental of Government Property**

#### **1445.302 Contracts with foreign governments or international organizations.**

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

## **PART 1446 - QUALITY ASSURANCE**

[Subpart 1446.1 - General](#) on page 47

[1446.170 Government-Industry Data Exchange Program \(GIDEP\).](#) on page 47

[Subpart 1446.4 - Government Contract Quality Assurance](#) on page 47

[1446.401 General.](#) on page 47

[Subpart 1446.5 - Acceptance](#) on page 47

[1446.501 General.](#) on page 47

[Subpart 1446.6 - Material Inspection and Receiving Reports](#) on page 48

[1446.670 Inspection, receiving and acceptance reports.](#) on page 48

[1446.671 Inspection, receiving and acceptance certification.](#) on page 48

[Subpart 1446.7 - Warranties](#) on page 48

[1446.704 Authority for use of warranties.](#) on page 48

[1446.708 Warranties of data.](#) on page 48

### **Subpart 1446.1 - General**

#### **1446.170 Government-Industry Data Exchange Program (GIDEP).**

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

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

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

### **Subpart 1446.4 - Government Contract Quality Assurance**

#### **1446.401 General.**

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

### **Subpart 1446.5 - Acceptance**

#### **1446.501 General.**

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

## **Subpart 1446.6 - Material Inspection and Receiving Reports**

### **1446.670 Inspection, receiving and acceptance reports.**

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

(b) The documentation required in paragraph (a) of this section shall be made at the place or places specified in the contract for performance of Government quality assurance (*See* FAR 46.401(b)) as prescribed in FAR 46.402 or FAR 46.403, as appropriate and for acceptance in accordance with FAR 46.503.

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

### **1446.671 Inspection, receiving and acceptance certification.**

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

Inspection, Receiving and Acceptance Certification

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

\_\_\_\_ Signature and typed name of authorized Government representative.

Date \_\_\_\_

## **Subpart 1446.7 - Warranties**

### **1446.704 Authority for use of warranties.**

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

### **1446.708 Warranties of data.**

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

## **PART 1447 [RESERVED]**

## **PART 1448 - VALUE ENGINEERING**

[Subpart 1448.1 - Policies and Procedures](#) on page 48

[1448.102 Policies.](#) on page 48

### **Subpart 1448.1 - Policies and Procedures**

#### **1448.102 Policies.**

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

## **PART 1449 - TERMINATION OF CONTRACTS**

[Subpart 1449.1 - General Principles](#) on page 48

[1449.106 Fraud or other criminal conduct.](#) on page 48

[1449.107 Audit of prime contract settlement proposals and subcontract settlements.](#) on page 49

[1449.111 Review of proposed settlements.](#) on page 49

[Subpart 1449.4 - Termination for Default](#) on page 49

[1449.402 Termination of fixed-price contracts for default.](#) on page 49

[1449.402-3 Procedure for default.](#) on page 49

### **Subpart 1449.1 - General Principles**

#### **1449.106 Fraud or other criminal conduct.**

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



**1449.107 Audit of prime contract settlement proposals and subcontract settlements.**

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

**1449.111 Review of proposed settlements.**

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

**Subpart 1449.4 - Termination for Default****1449.402 Termination of fixed-price contracts for default.****1449.402-3 Procedure for default.**

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

**PART 1450 - EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT****Subpart 1450.1 - Extraordinary Contractual Actions** on page 49

**1450.101 General.** on page 49

**1450.101-2 Policy.** on page 49

**1450.101-3 Records.** on page 49

**1450.102 Delegation of and limitations on exercise of authority.** on page 49

**1450.102-1 Delegation of authority.** on page 49

**1450.103 Contract adjustments.** on page 49

**1450.103-6 Disposition.** on page 49

**1450.104 Residual powers.** on page 49

**1450.104-2 General.** on page 49

**1450.104-3 Special procedures for unusually hazardous or nuclear risks.** on page 49

**Subpart 1450.1 - Extraordinary Contractual Actions****1450.101 General.****1450.101-2 Policy.**

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

**1450.101-3 Records.**

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

**1450.102 Delegation of and limitations on exercise of authority.****1450.102-1 Delegation of authority.**

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

**1450.103 Contract adjustments.****1450.103-6 Disposition.**

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

**1450.104 Residual powers.****1450.104-2 General.**

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

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

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

## **PART 1451 - USES OF GOVERNMENT SOURCES BY CONTRACTORS**

[Subpart 1451.1 - Contractor Use of Government Supply Sources](#) on page 50

[1451.102 Authorization to use Government supply sources.](#) on page 50

### **Subpart 1451.1 - Contractor Use of Government Supply Sources**

#### **1451.102 Authorization to use Government supply sources.**

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

## **PART 1452 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

[1452.000 Scope of part.](#) on page 50

[Subpart 1452.2 - Text of Provisions and Clauses](#) on page 50

[1452.200 Scope of subpart.](#) on page 50

[1452.201-70 Authorities and delegations.](#) on page 50

[1452.203-70 Restrictions on Endorsements.](#) on page 51

[1452.204-70 Release of Claims.](#) on page 51

[1452.215-70 Examination of Records by the Department of the Interior.](#) on page 51

[1452.215-71 Use and Disclosure of Proposal Information - Department of the Interior.](#) on page 52

[1452.224-1 Privacy Act Notification.](#) on page 53

[1452.226-70 Indian Preference.](#) on page 53

[1452.226-71 Indian Preference Program.](#) on page 54

[1452.227-70 Appeals of Use or Exceptions.](#) on page 55

[1452.228-7 Insurance - Liability to Third Persons.](#) on page 56

[1452.228-70 Liability Insurance.](#) on page 56

[1452.228-71 Aircraft and General Public Liability Insurance.](#) on page 56

[1452.228-72 Liability for Loss or Damage - Department of the Interior.](#) on page 56

[1452.228-73 Liability for Loss or Damage \(Property Interest\).](#) on page 57

[1452.233-2 Service of Protest.](#) on page 58

[1452.236-70 Prohibition Against Use of Lead-based Paint.](#) on page 58

[1452.236-71 Additive or Deductive Items.](#) on page 58

[1452.237-70 Information Collection.](#) on page 58

[1452.237-71 Utilization of Woody Biomass.](#) on page 58

[1452.280-1 Notice of Indian small business economic enterprise set-aside.](#) on page 59

[1452.280-2 Notice of Indian economic enterprise set-aside.](#) on page 59

[1452.280-3 Subcontracting limitations.](#) on page 60

[1452.280-4 Indian economic enterprise representation.](#) on page 61

#### **1452.000 Scope of part.**

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

### **Subpart 1452.2 - Text of Provisions and Clauses**

#### **1452.200 Scope of subpart.**

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

#### **1452.201-70 Authorities and delegations.**

As prescribed in section 1401.670-1, insert the following clause:

##### **Authorities and Delegations (SEP 2011)**

**(a) The Contracting Officer is the only individual authorized to enter into or terminate this contract, modify any term or condition of this contract, waive any requirement of this contract, or accept nonconforming work.**

(b) The Contracting Officer will designate a Contracting Officer's Representative (COR) at time of award. The COR will be responsible for technical monitoring of the contractor's performance and deliveries. The COR will be appointed in writing, and a copy of the appointment will be furnished to the Contractor. Changes to this delegation will be made by written changes to the existing appointment or by issuance of a new appointment.

(c) The COR is not authorized to perform, formally or informally, any of the following actions:

(1) Promise, award, agree to award, or execute any contract, contract modification, or notice of intent that changes or may change this contract;

(2) Waive or agree to modification of the delivery schedule;

(3) Make any final decision on any contract matter subject to the Disputes Clause;

(4) Terminate, for any reason, the Contractor's right to proceed;

(5) Obligate in any way, the payment of money by the Government.

(d) The Contractor shall comply with the written or oral direction of the Contracting Officer or authorized representative(s) acting within the scope and authority of the appointment memorandum. The Contractor need not proceed with direction that it considers to have been issued without proper authority. The Contractor shall notify the Contracting Officer in writing, with as much detail as possible, when the COR has taken an action or has issued direction (written or oral) that the Contractor considers to exceed the COR's appointment, within 3 days of the occurrence. Unless otherwise provided in this contract, the Contractor assumes all costs, risks, liabilities, and consequences of performing any work it is directed to perform that falls within any of the categories defined in paragraph (c) prior to receipt of the Contracting Officer's response issued under paragraph (e) of this clause.

(e) The Contracting Officer shall respond in writing within 30 days to any notice made under paragraph (d) of this clause. A failure of the parties to agree upon the nature of a direction, or upon the contract action to be taken with respect thereto, shall be subject to the provisions of the Disputes clause of this contract.

(f) The Contractor shall provide copies of all correspondence to the Contracting Officer and the COR.

(g) Any action(s) taken by the Contractor, in response to any direction given by any person acting on behalf of the Government or any Government official other than the Contracting Officer or the COR acting within his or her appointment, shall be at the Contractor's risk.

(End of clause)

[76 FR 50142, Aug. 12, 2011]

#### **1452.203-70 Restrictions on Endorsements.**

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

##### **Restriction on Endorsements - Department of the interior (JUL 1996)**

The Contractor shall not refer to contracts awarded by the Department of the Interior in commercial advertising, as defined in FAR 31.205-1, in a manner which states or implies that the product or service provided is approved or endorsed by the Government, or is considered by the Government to be superior to other products or services. This restriction is intended to avoid the appearance of preference by the Government toward any product or service. The Contractor may request the Contracting Officer to make a determination as to the propriety of promotional material.

(End of clause)

#### **1452.204-70 Release of Claims.**

As prescribed in 1404.804-70, insert the following clause:

##### **Release of Claims - Department of the Interior (JUL 1996)**

After completion of work and prior to final payment, the Contractor shall furnish the Contracting Officer with a release of claims against the United States relating to this contract. The Release of Claims form (DI-137) shall be used for this purpose. The form provides for exception of specified claims from operation of the release.

(End of clause)

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

As prescribed in 1415.209-70, insert the following clause:

##### **Examination of Records by the Department of the Interior (APR 1984)**

For purposes of the Examination of Records by the Comptroller General clause of this contract (FAR 52.215-1), the Secretary of the Interior, the Inspector General, and their duly authorized representative(s) from the Department of the Interior shall have the same access and examination rights as the Comptroller General of the United States.

(End of clause)

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

As prescribed in 1415.207-70, insert the following provision:

**Use and Disclosure of Proposal Information - Department of the Interior (APR 1984)**

(a) **Definitions.** For the purposes of this provision and the Freedom of Information Act (5 U.S.C. 552), the following terms shall have the meaning set forth below:

(1) **“Trade Secret”** means an unpatented, secret, commercially valuable plan, appliance, formula, or process, which is used for making, preparing, compounding, treating or processing articles or materials which are trade commodities.

(2) **“Confidential commercial or financial information”** means any business information (other than trade secrets) which is exempt from the mandatory disclosure requirement of the Freedom of Information Act, 5 U.S.C. 552. Exemptions from mandatory disclosure which may be applicable to business information contained in proposals include exemption (4), which covers “commercial and financial information obtained from a person and privileged or confidential,” and exemption (9), which covers “geological and geophysical information, including maps, concerning wells.”

(b) If the offeror, or its subcontractor(s), believes that the proposal contains trade secrets or confidential commercial or financial information exempt from disclosure under the Freedom of Information Act, (5 U.S.C. 552), the cover page of each copy of the proposal shall be marked with the following legend:

“The information specifically identified on pages \_\_\_\_\_ of this proposal constitutes trade secrets or confidential commercial and financial information which the offeror believes to be exempt from disclosure under the Freedom of Information Act. The offeror requests that this information not be disclosed to the public, except as may be required by law. The offeror also requests that this information not be used in whole or part by the government for any purpose other than to evaluate the proposal, except that if a contract is awarded to the offeror as a result of or in connection with the submission of the proposal, the Government shall have the right to use the information to the extent provided in the contract.”

(c) The offeror shall also specifically identify trade secret information and confidential commercial and financial information on the pages of the proposal on which it appears and shall mark each such page with the following legend:

“This page contains trade secrets or confidential commercial and financial information which the offeror believes to be exempt from disclosure under the Freedom of Information Act and which is subject to the legend contained on the cover page of this proposal.”

(d) Information in a proposal identified by an offeror as trade secret information or confidential commercial and financial information shall be used by the Government only for the purpose of evaluating the proposal, except that (i) if a contract is awarded to the offeror as a result of or in connection with submission of the proposal, the Government shall have the right to use the information as provided in the contract, and (ii) if the same information is obtained from another source without restriction it may be used without restriction.

(e) If a request under the Freedom of Information Act seeks access to information in a proposal identified as trade secret information or confidential commercial and financial information, full consideration will be given to the offeror's view that the information constitutes trade secrets or confidential commercial or financial information. The offeror will also be promptly notified of the request and given an opportunity to provide additional evidence and argument in support of its position, unless administratively unfeasible to do so. If it is determined that information claimed by the offeror to be trade secret information or confidential commercial or financial information is not exempt from disclosure under the Freedom of Information Act, the offeror will be notified of this determination prior to disclosure of the information.

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

(End of provision)

**1452.224-1 Privacy Act Notification.**

(a) As prescribed in 1424.104, the clause at FAR 52.224-1, Privacy Act Notification, shall be modified before insertion into solicitations and contracts by -

(1) Changing the title of the clause to read "Privacy Act Notification (JUL 1996) (Deviation)"; and

(2) Adding the following sentence to the end of the clause:

"Applicable Department of the Interior regulations concerning the Privacy Act are set forth in 43 CFR 2, subpart D. The CFR is available for public inspection at the Departmental Library, Main Interior Bldg., 1849 C St. NW, Washington DC, at each of the regional offices of bureaus of the Department and at many public libraries."

(b) As prescribed in FAR 52.103(a) and 52.107(f), the clause at FAR 52.252-6, Authorized Deviation in Clauses, shall be inserted into solicitations and contracts containing the clause in paragraph (a) of this section.

**1452.226-70 Indian Preference.**

As prescribed in 1426.7003(a), insert the following clause in solicitations issued and contracts awarded by the Bureau of Indian Affairs except those pursuant to Title I and to Indian Tribes and Indian Organizations under Title II of Public Law 93-638 (25 U.S.C. 450 *et seq.* and 25 U.S.C. 455 *et seq.*, respectively); a contracting activity other than the Bureau of Indian Affairs when the contract is entered into pursuant to an act specifically authorizing contracts with Indian organizations, and a contracting activity other than the Bureau of Indian Affairs when the work to be performed is specifically for the benefit of Indians and is in addition to any incidental benefits which might otherwise accrue to the general public.

**Indian Preference - Department of the Interior (APR 1984)**

(a) The Contractor agrees to give preferences to Indians who can perform the work required regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation for training and employment opportunities under this contract and, to the extent feasible consistent with the efficient performance of this contract, training and employment preferences and opportunities shall be provided to Indians regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation who are not fully qualified to perform under this contract. The Contractor also agrees to give preference to Indian organizations and Indian-owned economic enterprises in the awarding of any subcontracts consistent with the efficient performance of this contract. The Contractor shall maintain such records as are necessary to indicate compliance with this paragraph.

(b) In connection with the Indian employment preference requirements of this clause, the Contractor shall also provide opportunities for training incident to such employment. Such training shall include on-the-job, classroom, or apprenticeship training which is designed to increase the vocational effectiveness of an Indian employee.

(c) If the Contractor is unable to fill its training and employment needs after giving full consideration to Indians as required by this clause, those needs may be satisfied by selection of persons other than Indians in accordance with the clause of this contract entitled "Equal Opportunity."

(d) If no Indian organizations or Indian-owned economic enterprises are available for awarding of subcontracts in connection with the work performed under this contract, the Contractor agrees to comply with the provisions of this contract involving utilization of small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, or labor surplus area concerns.

(e) As used in this clause:

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

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

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

(4) "Indian Tribe" means an Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 668; 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

**(f) The Contractor agrees to include the provisions of the clause including this paragraph (f) in each subcontract awarded under this contract.**

**(g) In the event of noncompliance with this clause, the Contractor's right to proceed may be terminated in whole or in part by the Contracting Officer and the work completed in a manner determined by the Contracting Officer to be in the best interests of the Government.**

(End of clause)

**1452.226-71 Indian Preference Program.**

As prescribed in 1426.7003(b), insert the following clause in all solicitations and contracts awarded by the contracting activity that may exceed \$50,000, contain the clause at 1452.226-70, and where it is determined by the Contracting Officer, prior to solicitation, that the work under the contract will be performed in whole or in part on or near an Indian reservation(s). The clause may also be included in solicitations issued and contracts awarded by a contracting activity not exceeding \$50,000 that contain the clause at 1452.226-70 and which, in the opinion of the Contracting Officer, offer substantial opportunities for Indian employment, training, and subcontracting.

**Indian Preference Program - Department of the Interior (APR 1984)**

**(a) In addition to the requirements of the clause of this contract entitled "Indian Preference - Department of the Interior," the Contractor agrees to establish and conduct an Indian preference program which will expand the opportunities for Indian organizations and Indian-owned economic enterprises to receive a preference in the awarding of subcontracts and which will expand opportunities for Indians to receive preference for training and employment in connection with the work to be performed under this contract. In this connection, the Contractor shall**

-

**(1) Designate a liaison officer who will:**

- (i) Maintain liaison with the Government and Tribe(s) on Indian preference matters;**
- (ii) Supervise compliance with the provisions of this clause; and**
- (iii) Administer the Contractor's Indian preference program.**

**(2) Advise its recruitment sources in writing and include a statement in all advertisements for employment that Indian applicants will be given preference in employment and training incident to such employment.**

**(3) Not less than twenty (20) calendar days prior to commencement of work under this contract, post a written notice in the Tribal office of any reservations on which or near where the work under this contract is to be performed, which sets forth the Contractor's employment needs and related training opportunities. The notice shall include the approximate number and types of employees needed, the approximate dates of employment; the experience or special skills required for employment, if any; training opportunities available; and all other pertinent information necessary to advise prospective employees of any other employment requirements. The Contractor shall also request the Tribe(s) on or near whose reservation(s) the work is to be performed to provide assistance to the Contractor in filling its employment needs and training opportunities. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to contact in regard to the posting of notices and requests for Tribal assistance.**

**(4) Establish and conduct a subcontracting program which gives preference to Indian organizations and Indian-owned economic enterprises as subcontractors and suppliers under this contract. Consistent with the efficient performance of this contract, the Contractor shall give public notice of existing subcontracting opportunities by soliciting bids or proposals only from Indian organizations or Indian-owned economic enterprises. The Contractor shall request assistance and information on Indian firms qualified as suppliers or subcontractors from the Tribe(s) on or near whose reservation(s) the work under the contract is to be performed. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to be contacted in regard to the request for assistance and information. Public notices and solicitations for existing subcontracting opportunities shall provide an equitable opportunity for Indian firms to submit bids or proposals by including -**

- (i) A clear description of the supplies or services required including quantities, specifications, and delivery schedules which facilitate the participation of Indian firms;**
- (ii) A statement indicating the preference will be given to Indian organizations and Indian-owned economic enterprises in accordance with Section 7(b) of Public Law 93-638; (88 Stat. 2205; 25 U.S.C. 450e(b));**
- (iii) Definitions for the terms "Indian organization" and "Indian-owned economic enterprise" as prescribed under the "Indian Preference - Department of the Interior" clause of this contract;**

(iv) A representation to be completed by the bidder or offeror that it is an Indian organization or Indian-owned economic enterprise; and

(v) A closing date for receipt of bids or proposals which provides sufficient time for preparation and submission of a bid or proposal. If after soliciting bids from Indian organizations and Indian-owned economic enterprises, no responsible bid is received, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference - Department of the Interior" clause of this contract. If one or more responsible bids are received, award shall be made to the low responsible bidder if the bid price is determined to be reasonable. If the low responsive bid is determined to be unreasonable as to price, the Contractor shall attempt to negotiate a reasonable price and award a subcontract. If a reasonable price cannot be agreed upon, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference - Department of the Interior" clause of the contract.

(5) Maintain written records under this contract which indicate:

(i) The names and addresses of all Indians seeking employment for each employment position available under this contract;

(ii) The number and types of positions filled by Indians and non-Indians, and the name, address and position of each Indian employed under this contract;

(iii) For those positions where there are both Indian and non-Indian applicants, and a non-Indian is selected for employment, the reason(s) why the Indian applicant was not selected;

(iv) Actions taken to give preference to Indian organizations and Indian-owned economic enterprises for subcontracting opportunities which exist under this contract;

(v) Reasons why preference was not given to Indian firms as subcontractors or suppliers for each requirement where it was determined by the Contractor that such preference would not be consistent with the efficient performance of the contract, and

(vi) The names and addresses of all Indian organizations and Indian-owned economic enterprises contacted, and receiving subcontract awards under this contract.

(6) The Contractor shall submit to the Contracting Officer for approval a semiannual report which summarizes the Contractor's Indian preference program and indicates the number and types of available positions filled and dollar amounts of all subcontracts awarded to Indian organizations and Indian-owned economic enterprises and all other firms.

(7) Records maintained pursuant to this clause will be kept available for review by the Government until expiration of one (1) year after final payment under this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulation.

(b) For purpose of this clause, the following definitions of terms shall apply:

(1) The terms "Indian," "Indian Tribe," "Indian Organization, and "Indian-owned economic enterprise" are defined in the clause of this contract entitled "Indian Preference."

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

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

(c) Nothing in the requirements of this clause shall be interpreted to preclude Indian Tribes from independently developing and enforcing their own Indian preference requirements. Such requirements must not hinder the Government's right to award contracts and to administer their provisions.

(d) The Contractor agrees to include the provisions of this clause including this paragraph (d) in each subcontract awarded under this contract and to notify the Contracting Officer of such subcontracts.

(e) In the event of noncompliance with this clause, the Contractor's right to proceed may be terminated in whole or in part by the Contracting Officer and the work completed in a manner determined by the Contracting Officer to be in the best interest of the Government.

(End of clause)

#### **1452.227-70 Appeals of Use or Exceptions.**

As prescribed in 1427.303(d)(1), insert the following clause:

**Appeals of Use of Exceptions (JUL 1996)**

If the Contractor appeals the Contracting Officer determination to use one of the exceptions described in FAR 27.303(d)(1), such appeal shall be made by written notice specifically identifying the basis for the appeal within 30 working days from the receipt of the determination. Such appeal shall be mailed to the Associate Solicitor for General Law, U.S. Department of the Interior, Washington, DC 20240, who is designated as the appeals official.

(End of clause)

**1452.228-7 Insurance - Liability to Third Persons.**

(a) As prescribed in 1428.311-1, the clause at FAR 52.228-7, Insurance - Liability to Third Persons, shall be modified before insertion into solicitations and contracts by:

(1) changing the title of the clause to read: "INSURANCE - Liability to Third Persons (APR 1984) (Deviations)"; and

(2) changing the first sentence in subparagraph (c)(2) of the clause to read:

"For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise but subject to the 'Limitation of Cost' or 'Limitation of Funds' clause of this contract."

(b) As prescribed in FAR 52.103(a) and 52.107(f), the clause at FAR 52.252-6, Authorized Deviations in Clauses, shall be inserted into solicitations and contracts containing the clause in paragraph (a) of this section.

[75 FR 19829, Apr. 15, 2010, as amended at 76 FR 50142, Aug. 12, 2011]

**1452.228-70 Liability Insurance.**

As prescribed in 1428.301, insert the following clause:

**Liability Insurance - Department of the Interior (JUL 1996)**

(a) The Contractor shall procure and maintain during the term of this contract and any extension thereof liability insurance in form satisfactory to the Contracting Officer by an insurance company which is acceptable to the Contracting Officer. The named insured parties under the policy shall be the Contractor and the United States of America. The amounts of the insurance shall be not less than as follows:

\$\_\_ each person\*

\$\_\_ each occurrence\*

\$\_\_ property damage\*

(b) Each policy shall have a certificate evidencing the insurance coverage. The insurance company shall provide an endorsement to notify the Contracting Officer 30 days prior to the effective date of cancellation or termination of the policy or certificate; or modification of the policy or certificate which may adversely affect the interest of the Government in such insurance. The certificate shall identify the contract number, the name and address of the Contracting Officer, as well as the insured, the policy number and a brief description of contract services to be performed. The contractor shall furnish the Contracting Officer with a copy of an acceptable insurance certificate prior to beginning the work.

\*These amounts to be set by the Contracting Officer.

(End of clause)

**1452.228-71 Aircraft and General Public Liability Insurance.**

As prescribed in 1428.306-70(c)(1), insert the following clause:

**Aircraft and General Public Liability Insurance Department of the Interior (MAR 1989)**

(a) The Contractor, at the Contractor's expense, agrees to maintain, during the continuance of this contract, aircraft liability and general public liability insurance with limits of liability for:

(1) Bodily injury to or death of aircraft passengers of not less than \$75,000 for any one passenger and a limit for each occurrence in any one aircraft of at least an amount equal to the sum produced by multiplying \$75,000 by 75 percent of the total number of passenger seats installed in the aircraft;

(2) Bodily injury to or death of persons (excluding passengers) of not less than \$75,000 for any one person in any one occurrence and \$300,000 for occurrence; and

(3) Property damage of not less than \$100,000 for each occurrence; or

(4) a single limit of liability for each occurrence equal to or greater than the combined required minimums set forth in paragraphs (a)(1) through (3) of this clause.

(b) The Contractor also agrees to maintain worker's compensation and other legally required insurance with respect to the Contractor's own employees and agents.

(End of clause)

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

As prescribed in 1428.306-70(c)(2), insert the following clause:



**Liability for Loss or Damage - Department of the Interior (APR 1984)**

(a) The Contractor shall indemnify and hold the Government harmless from any and all loss or damage to the aircraft furnished under this contract except as provided in paragraph (d) of this clause. For the purpose of fulfilling its obligation under this clause, the Contractor shall procure and maintain during the term of this contract, and any extensions thereof, full insurance acceptable to the Contracting Officer. The Contractor's insurance coverage shall apply to pilots furnished by the Government who operate the aircraft. The contractor may request a list of Government pilots by name and qualification who are potential pilots.

(b) Prior to the commencement of work hereunder, the Contractor shall furnish to the Contracting Officer a copy of the insurance policy or policies or a certificate of insurance issued by the underwriter(s) showing that the coverage required by this clause has been obtained.

(c) Each policy or certificate evidencing the insurance shall contain an endorsement which provides that the insurance company will notify the Contracting Officer 30 days prior to the effective date of any cancellation or termination of any policy or certificate or any modification of a policy or certificate which adversely affects the interests of the Government in such insurance. The notice shall be sent by registered mail and shall identify this contract, the name and address of the contracting office, the policy, and the insured.

(d) If the aircraft is damaged or destroyed while in the custody and control of the Government, the Government will reimburse the Contractor for the deductible stipulated in the insurance coverage (if any) as follows:

(1) In-Motion Accidents - Up to 5 percent of the current insured value of the aircraft stated in the policy, or \$10,000, whichever is less.

(2) Not In-Motion Accidents - Up to \$250 per accident. Such reimbursement shall not be made, however, for loss or damage to the aircraft resulting from:

(i) Normal wear and tear,

(ii) Negligence or fault in maintenance of the aircraft by the Contractor, or

(iii) A defect in construction of the aircraft or a component thereof.

(e) If damage to the aircraft is established to be the fault of the Government, rental payments to the Contractor during the repair period will be made as set forth elsewhere in this contract. The Government may, at its option, make necessary repairs or return the aircraft to the Contractor for repair. In the event the aircraft is lost, destroyed, or damaged so extensively as to be beyond repair, no rental payment will be made to the Contractor thereafter.

(f) Any failure to agree as to the responsibility of the Government or the Contractor under this clause shall, after a final finding and determination by the Contracting Officer, be considered a dispute within the meaning of the "Disputes" clause of this contract.

(End of clause)

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

As prescribed in 1428.311-2(c), insert the following clause:

**Liability for Loss or Damage (Property Interest) - Department of the Interior (APR 1984)**

(a) The Government assumes all risk and liability for damage to or loss of the aircraft for the term of this contract, while the aircraft is in the Government's possession, except for;

(1) Normal wear and tear to the aircraft, or

(2) Loss which occurs as a result of negligence or fault in maintenance of the aircraft by the Contractor, or

(3) Loss resulting from a latent defect in the construction of the aircraft or a component thereof.

(b) In the event of damage to the aircraft, the Government may, at its option, make the necessary repairs with its own facilities, or by contract, or pay the Contractor the reasonable cost of repair of the aircraft. If damage to the aircraft is established to be the fault of the Government, rental payments to the Contractor during the repair period will be made as set forth elsewhere in this contract.

(c) In the event the aircraft is lost, destroyed, or damaged so extensively as to be beyond repair, no rental payment will be made to the Contractor thereafter, but the Government will pay to the Contractor a sum equal to the fair market value of the aircraft just prior to such loss, destruction, or extensive damage, less the salvage value of the aircraft.

(d) The Contractor certifies that the contract price does not include any cost attributable to insurance or to any reserve fund it has established to protect its interests in or use of the aircraft, regardless of whether or not the insurance coverage applies for the period during which the Government has possession of the aircraft. If, in the event of loss or damage to the aircraft, the Contractor receives compensation for such loss or damage, in any form, from

any source, the amount of such compensation shall be credited to the Government in determining the amount of the Government's liability under this clause; except that this shall not apply to proceeds of insurance received solely as an advance of insurance pending determination of Government liability, or for an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss or damage, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and such rights shall be immediately assigned to the Government. Except as the Contracting Officer may permit in writing, the Contractor shall neither release nor discharge any third party from liability for such loss or damage nor otherwise compromise or adversely affect the Government's subrogation or other rights hereunder. The Contractor shall cooperate with the Government in any suit or action undertaken by the Government against any such third party.

(f) Any failure to agree as to the responsibility of the Government or the Contractor under this clause shall, after a final finding and determination by the Contracting Officer, be considered a dispute within the meaning of the "Disputes" clause of this contract.

(End of clause)

#### **1452.233-2 Service of Protest.**

As prescribed in 1433.106, the provision at FAR 52.233-2, Service of Protest, shall be modified before insertion into solicitations and contracts by changing the title of the provision to read: "Service of Protest Department of the Interior (JUL 1996) (Deviation)"; and adding the following sentence to the end of the provision:

"(c) A copy of the protest served on the Contracting Officer shall be simultaneously furnished by the protester to the Department of the Interior Assistant Solicitor, Acquisitions and Intellectual Property, 1849 C Street, NW., Room 6511, Washington, DC 20240."

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

As prescribed in 1436.570(b), insert the following clause:

##### **Prohibition Against Use of Lead-Based Paint - Department of the Interior (JUL 1996)**

Paint containing more than .06 percent by weight of lead in paint, or the equivalent measure of lead in the dried film of paint already applied, shall not be used in the construction or rehabilitation of residential structures under this contract or any resulting subcontracts.

(End of clause)

#### **1452.236-71 Additive or Deductive Items.**

As prescribed in 1436.571, insert the following provision:

##### **Additive or Deductive Items - Department of the Interior (JUL 1996)**

So that the Government may obtain the most desirable features of work within the limit of its funds available at time of bid evaluation, award may be made to the bidder having the lowest total of the base bid and a combination of additive and deductive items. All bids shall be evaluated on the basis of the same additive and deductive bid items using the order of priority of the items listed in the schedule.

(End of provision)

#### **1452.237-70 Information Collection.**

As prescribed in 1437.7102, insert the following clause:

##### **Information Collection - Department of the Interior (JUL 1996)**

If performance of this contract requires the contractor to collect information on identical items from ten or more public respondents, no action shall be taken or funds expended in the solicitation or collection of such information until the contractor has received from the Contracting Officer written notification that approval has been obtained from the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980. The Contractor agrees to provide all information requested by the Contracting Officer which is necessary to obtain approval from OMB.

(End of clause)

#### **1452.237-71 Utilization of Woody Biomass.**

As prescribed in § 1437.7202, insert the following clause:

##### **Utilization of Woody Biomass (MAY 2005)**

(a) The contractor may remove and utilize woody biomass, if:

- (1) Project work is progressing as scheduled; and
- (2) Removal is completed before contract expiration.

(b) To execute this option, the contractor must submit a written request to the Government.

(c) Following receipt of the written request, and if appropriate, the Government and the contractor will negotiate and execute a separate timber/vegetative sales contract. Payment under the timber/vegetative sales contract must be at a price equal to or greater than the appraised value of the woody biomass. The contractor must make any appropriate payment specified in the related timber/vegetative sales contract before removal may be authorized.

(d) If required by law, regulation or Bureau policy, the Government will prepare a timber/vegetative sales notice and/or prospectus, including volume estimates, appraised value and any appropriate special provisions.

(e) The contractor must treat any woody biomass not removed in accordance with the specifications in the service contract.

(f) The sales contract and service contract are severable; default or termination under either contract does not remove the contractor from payment or performance obligations under the other contract.

(g) Definitions:

*Timber/vegetative sales contract and/or notice* means the agency-specific authorized contract instrument for the sale, barter, exchange, billing or other compensation for the payment, removal, and/or transportation of woody biomass material.

*Woody biomass* means the trees and woody plants, including limbs, tops, needles, leaves, and other woody parts, grown in a forest, woodland, or rangeland environment, that are the by-products of management, restoration and/or hazardous fuel reduction treatment.

#### **1452.280-1 Notice of Indian small business economic enterprise set-aside.**

As prescribed in 1480.503(d)(3), and in lieu of the requirements of FAR 19.508, insert the following provision in each written solicitation of offers to provide supplies or services when purchasing commercial items under FAR Part 12 or using simplified acquisition procedures under FAR Part 13. If the solicitation is oral, information substantially identical to that contained in the provision must be given to potential offerors.

##### **Notice of Indian Small Business Economic Enterprise Set-aside (JUL 2013)**

Under the Buy Indian Act, 25 U.S.C. 47, offers are solicited only from Indian economic enterprises (Subpart 1480.8) that are also small business concerns. Any acquisition resulting from this solicitation will be from such a concern. Offers received from enterprises that are not both Indian economic enterprises and small business concerns will not be considered and will be rejected.

(End of provision)

[78 FR 34271, June 7, 2013]

#### **1452.280-2 Notice of Indian economic enterprise set-aside.**

As prescribed in 1480.503(d)(4) and 1480.504-1(f)(5), insert the following clause in solicitations and contracts involving Indian economic enterprise set-asides. If the solicitation is oral, information substantially identical to that contained in the provision must be given to potential offerors.

##### **Notice of Indian Economic Enterprise Set-aside (JUL 2013)**

(a) Definitions as used in this clause.

*Indian* means a person who is a member of an Indian Tribe or “Native” as defined in the Alaska Native Claims Settlement Act (PL 92-203; 85 Stat. 688; 43 U.S.C. 1601).

*Indian Economic Enterprise* means any business activity owned by one or more Indians or Indian Tribes that is established for the purpose of profit, provided that:

(i) The combined Indian or Indian Tribe ownership shall constitute not less than 51 percent of the enterprise; (ii) the Indians or Indian Tribes shall, together, receive at least a majority of the earnings from the contract; and (iii) the management and daily business operations of an Indian economic enterprise must be controlled by one or more individuals who are members of an Indian Tribe. To ensure actual control over the enterprise, the individuals must possess requisite management or technical capabilities directly related to the primary industry in which the enterprise conducts business. The enterprise must meet these requirements throughout the following time periods:

(1) At the time an offer is made in response to a written solicitation;

(2) At the time of contract award; and,

(3) During the full term of the contract.

*Indian Tribe* means an Indian Tribe, band, nation, or other recognized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as

Indians, including any Alaska Native village, regional or village corporation established under the Alaska Native Claims Settlement Act (PL 92-203, 85 Stat. 688; 43 U.S.C. 1601).

**Representation** means the positive statement by an enterprise of its eligibility for preferential consideration and participation for acquisitions conducted under the Buy Indian Act, 25 U.S.C. 47, in accordance with the procedures in Subpart 1480.8.

**(b) General.**

(1) Under the Buy Indian Act, offers are solicited only from Indian economic enterprises.

(2) BIA will reject all offers received from ineligible enterprises.

(3) Any award resulting from this solicitation will be made to an Indian economic enterprise, as defined in paragraph (a) of this clause.

**(c) Required Submissions.** In response to this solicitation, an offeror must also provide the following:

(1) A description of the required percentage of the work/costs to be provided by the offeror over the contract term as required by section 1452.280-3, Subcontracting Limitations clause;

(2) A description of the source of human resources for the work to be performed by the offeror;

(3) A description of the method(s) of recruiting and training Indian employees, indicating the extent of soliciting employment of Indian persons, as required by DIAR 1452.226-70, Indian Preference, or DIAR 1452.226-71, Indian Preference Program, clause(s);

(4) A description of how subcontractors (if any) will be selected in compliance with the "Indian Preference" or "Indian Preference Program" clause(s);

(5) The names, addresses, and descriptions of work to be performed by Indian persons or economic enterprises being considered for subcontracts (if any) and the percentage of the total direct project work/costs they would be performing;

(6) Qualifications of the key personnel (if any) that will be assigned to the contract; and

(7) A description of method(s) for compliance with any supplemental Tribal employment preference requirements, if contained in this solicitation.

**(d) Required Assurance.** The offeror must provide written assurance to the Indian Affairs that it will comply, or has, complied fully with the requirements of this clause. It must do this before Indian Affairs awards the Buy Indian contract, and upon successful and timely completion of the contract, but before the Indian Affairs Contracting Officer (CO) accepts the work or product.

**(e) Non-responsiveness.** Failure to provide the information required by paragraphs (c) and (d) of this clause may cause Indian Affairs to find an offer non-responsive and to reject it.

**(f) Eligibility.**

(1) Participation in the Mentor-Protégé Program established under section 831 of the National Defense Authorization Act for Fiscal Year 1991 (25 U.S.C. 47 note) does not render an Indian economic enterprise ineligible for contracts awarded under the Buy Indian Act.

(2) If a contractor no longer meets the definition of an Indian economic enterprise after award, the contractor must notify the CO in writing. The notification must include full disclosure of circumstances causing the contractor to lose eligibility status and a description of any actions that the contractor will take to regain eligibility. Failure to give the CO immediate written notification means that: (i) The economic enterprise may be declared ineligible for future contract awards under this part; and (ii) Indian Affairs may consider termination for default if it is in the best interest of the government.

(End of clause)

[78 FR 34271, June 7, 2013]

**1452.280-3 Subcontracting limitations.**

A contractor shall not subcontract to other than responsible Indian economic enterprises more than 50 percent of the subcontracted work when the prime contract was awarded under the Buy Indian Act. For this purpose, work to be performed does not include the provision of materials, supplies, or equipment. As prescribed in 1480.601(b), insert the following clause in each written solicitation or contract to provide supplies, services, or covered construction:

**Subcontracting Limitations (JUL 2013)**

**(a) Definitions as used in this clause.**

(1) **Concern** means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States or its outlying areas and that makes a significant

contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. It includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see 19.101) any business entity, whether organized for profit or not, and any foreign business entity, *i.e.*, any entity located outside the United States and its outlying areas.

(2) *Subcontract* means any agreement (other than one involving an employer-employee relationship) entered into by a Government prime contractor or subcontractor calling for supplies and/or services required for performance of the contract, contract modification, or subcontract.

(3) *Subcontractor* means a concern to which a contractor subcontracts any work under the contract. It includes subcontractors at any tier who perform work on the contract.

(b) Required Percentages of work by the concern. The contractor must comply with FAR 52.219-14 Limitations on Subcontracting clause in allocating what percentage of work to subcontract. Of the work subcontracted, no more than 50 percent may be subcontracted to a concern other than a responsible Indian economic enterprise.

(c) Indian Preference. Regardless of the contract type for services, supplies, or covered construction, the contractor agrees to give preference to Indian organizations and Indian owned economic enterprises in awarding subcontracts under this contract in accordance with DIAR 1452.226-71, Indian Preference.

(d) Cooperation. The contractor must:

(1) Carry out the requirements of this clause to the fullest extent; and

(2) Cooperate in any study or survey that the CO, Indian Affairs, or its agents may conduct to verify the contractor's compliance with this clause.

(e) Incorporation in Subcontracts. The contractor must incorporate the substance of this clause, including this paragraph (e), in all subcontracts for supplies, services, and construction awarded under this contract.

(End of clause)

[78 FR 34271, June 7, 2013]

#### **1452.280-4 Indian economic enterprise representation.**

As prescribed in 1480.801(a), insert the following provision in each written solicitation for supplies, services, or covered construction:

**Indian Economic Enterprise Representation (JUL 2013)**

The offeror represents as part of its offer that it [ ] does [ ] does not meet the definition of Indian economic enterprise as defined in 1480.201.

(End of provision)

[78 FR 34271, June 7, 2013]

## **SUBCHAPTER H - INDIAN AFFAIRS SUPPLEMENT**

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## **Subpart 1480.1 - General**

### **1480.101 Scope of part.**

This part prescribes policies and procedures for the procurement of supplies and services from Indian economic enterprises under the Buy Indian Act, 25 U.S.C. 47, and this part.

### **1480.102 Buy Indian Act acquisition regulations.**

(a) This part supplements Federal Acquisition Regulation (FAR) and Department of the Interior Acquisition Regulation (DIAR) requirements to satisfy the needs of Indian Affairs in implementing the Buy Indian Act.

(b) This part is under the direct oversight and control of the Chief Financial Officer, within the Office of the Assistant Secretary - Indian Affairs, Department of the Interior (CFO). The CFO is responsible for issuing and implementing this part.

(c) Acquisitions conducted under this part are subject to all applicable requirements of the FAR and DIAR, as well as internal policies, procedures or instructions issued by the Indian Affairs. The provisions of the FAR take precedence in all instances where there may be a conflict or discrepancy.

## **Subpart 1480.2 - Definitions**

### **1480.201 Definitions.**

The following words and terms are used as defined below unless a different definition is prescribed for a particular subpart or portion of a subpart.

*Buy Indian Act* means section 23 of the Act of June 25, 1910 (25 U.S.C. 47).

*Buy Indian contract* means any contract involving activities covered by the Buy Indian Act that is negotiated under the provisions of 41 U.S.C. 252(c) and 25 U.S.C. 47 between an Indian economic enterprise and a Contracting Officer representing the Department of the Interior.

*Challenge to representation* means an accurate, complete and timely written objection by an interested party to an offeror's representation submitted in response to a solicitation under the Buy Indian Act.

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

*Concern* means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States or its outlying areas and that makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. It includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see FAR 19.101), it includes any business entity, whether organized for profit or not, and any foreign business entity, *i.e.*, any entity located outside the United States and its outlying areas.

*Contracting Officer (CO)* means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings on behalf of the U.S. Government.

*Covered construction* means construction for road facilities on Indian-owned land; road facilities on an Indian reservation; road facilities that are primary access routes proposed by tribal governments, including roads between villages, roads to landfills, roads to drinking water sources, roads to natural resources identified for economic development; roads that provide access to intermodal termini, such as airports, harbors, or boat landings; bridges along these roads; planning and other needs and facilities associated with roads; and sidewalks along these roads.

*Day* means a calendar day.

*Deviation* means an exception to the requirement for use of the Buy Indian Act in fulfilling an acquisition requirement of Indian Affairs.

*Fair market price* means a price based on reasonable costs under normal competitive conditions and not on lowest possible cost, as determined in accordance with FAR 19.202-6(a).

*Governing body* means the recognized entity empowered to exercise governmental authority over an Indian tribe.

*Indian* means a person who is a member of an Indian Tribe or “Native” as defined in the Alaska Native Claims Settlement Act (PL 92-203; 85 Stat 688; 43 U.S.C. 1601).

*Indian Affairs (IA)* means all bureaus and offices under the Assistant Secretary - Indian Affairs.

*Indian economic enterprise (IEE)* means any business activity owned by one or more Indians or Indian Tribes that is established for the purpose of profit provided that: the combined Indian or Indian Tribe ownership must constitute not less than 51 percent of the enterprise; the Indians or Indian Tribes must, together, receive at least a majority of the earnings from the contract; and the management and daily business operations of an enterprise must be controlled by one or more individuals who are Indians. To ensure actual control over the enterprise, the individuals must possess requisite management or technical capabilities directly related to the primary industry in which the enterprise conducts business. The enterprise must meet these requirements throughout the following time periods:

- (1) At the time an offer is made in response to a written solicitation;
- (2) At the time of contract award; and
- (3) During the full term of the contract.

*Indian land* means land over which an Indian Tribe is recognized by the United States as having governmental jurisdiction and land owned by a Native corporation established under the Alaska Native Claims Settlement Act of 1971 (85 Stat. 688, 43 U.S.C. 1601), so long as the Native corporation qualifies as an IEE, as defined herein. In the State of Oklahoma, or where there has been a final judicial determination that a reservation has been disestablished or diminished, the term means that area of land constituting the former reservation of the Tribe as defined by the Secretary.

*Indian small business economic enterprise (ISBEE)* means an IEE that is also a small business concern established in accordance with the criteria and size standards of 13 CFR part 121.

*Indian Tribe* means an Indian Tribe, band, nation, or other recognized group or community that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, including any Alaska Native village or regional or village corporation under the Alaska Native Claims Settlement Act (PL 92-203, 85 Stat. 688; 43 U.S.C. 1601).

*Interested party* means an IEE that is an actual or prospective offeror whose direct economic interest would be affected by the proposed or actual IA award of a particular contract set-aside pursuant the Buy Indian Act.

*Product of Indian industry* means anything produced by an IEE either through physical labor or by intellectual effort involving the use and application of its skills.

*Representation* means the positive statement by an enterprise of its eligibility for preferential consideration and participation for acquisitions conducted under the Buy Indian Act, 25 U.S.C. 47, in accordance with the procedures in Subpart 1480.8.

*Reservation* means Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act, 43 U.S.C. 1601.

*Subcontract* means any agreement (other than one involving an employer-employee relationship) entered into by a Government prime contractor or subcontractor calling for supplies and/or services required for performance of the contract, contract modification, or subcontract.

*Subcontractor* means a concern to which a contractor subcontracts any work under the contract. The term includes subcontractors at any tier who perform work on the contract.

*Work* means the level of work effort by the prime contractor based on total direct project costs.

### **Subpart 1480.3 - Applicability**

#### **1480.301 Scope of part.**

Except as provided in 1480.302 and 1480.401(b), this part applies to all acquisitions, including simplified acquisitions, made by IA and by any other bureau or office of the Department of the Interior delegated the authority to make acquisitions under the Buy Indian Act and 1480.401(d).

#### **1480.302 Restrictions on use of the Buy Indian Act.**

(a) IA must not use the authority of the Buy Indian Act and the procedures contained in this part to award intergovernmental contracts to tribal organizations to plan, operate or administer authorized IA programs (or parts thereof) that are within the scope and intent of the Indian Self-Determination and Education Assistance Act. IA must use the Buy Indian Act solely to award procurement contracts to IEEs.

(b) IA must not use the authority of this Act for construction contracts, as defined in FAR 36.102, unless the construction is covered construction, as defined in 1480.201.

### **Subpart 1480.4 - Policy**

#### **1480.401 Requirement to give preference to Indian economic enterprises.**

(a) IA must use the negotiation authority of the Buy Indian Act, 25 U.S.C. 47, to give preference to Indians whenever the use of that authority is authorized and practicable. The Buy Indian Act provides that, “so far as may be practicable, Indian labor shall be employed, and purchases of the products (including, but not limited to printing, notwithstanding any other law) of Indian industry may be made in open market at the discretion of the Secretary of the Interior.” Thus, IA may use the Buy Indian Act to give preference to IEEs through set-asides when acquiring supplies, services, and covered construction to meet IA needs and requirements. IA must contract for covered construction in accordance with FAR Part 36.

(b) IA or any other bureau or office of the Department of the Interior delegated the authority to make acquisitions under the Buy Indian Act may not use the Buy Indian Act to give preference to IEEs through set-asides when acquiring construction that is not covered construction.

(c) The provisions of this section shall not apply to the awarding of contracts under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.) by the Department of the Interior.

#### **1480.402 Delegations and responsibility.**

(a) The Secretary has delegated authority under the Buy Indian Act to the Assistant Secretary - Indian Affairs. IA exercises this authority in support of its mission and program activities and as a means of fostering Indian employment and economic development.

(b) The Secretary may delegate authority under the Buy Indian Act to a bureau or office within the Department of the Interior other than IA only in accordance with the Departmental Manual.

(c) As the head of the contracting activity, the CFO is responsible for ensuring that all IA acquisitions under the Buy Indian Act comply with the requirements of this part.

#### **1480.403 Deviations.**

(a) The following officials may authorize a deviation for an IA acquisition:

| <b>For a proposed contract action . . .</b>             | <b>The following official may authorize a deviation . . .</b>   |
|---|---|
| Exceeding \$25,000 but not exceeding \$550,000          | The CCO (or the IA Procurement Chief, absent a CCO).  |
| Exceeding \$550,000 but not exceeding \$11.5 million    | IA Competition Advocate.  |
| Exceeding \$11.5 million but not exceeding \$57 million | The head of the procuring activity, or a designee who is a civilian serving in a position in a grade above GS-15 under the General Schedule or in a comparable or higher position under another schedule. |
| Exceeding \$57 million                                  | Department of the Interior Senior Procurement Executive.  |



(b) Deviations may be authorized prior to issuing the solicitation when IA makes the following determinations and the appropriate official takes the following actions:

| <b>Acquisition type</b>   | <b>Basis for deviation</b>   | <b>Necessary actions</b>   |
|---|--|--|
| In pursuit of a simplified or commercial item acquisition in accordance with FAR Parts 12 or 13 and DIAR 1413 | IA determines after a market survey that there is no reasonable expectation of obtaining offers that will be competitive in terms of market price, quality, and delivery from two or more responsible ISBEs (or at least from one such enterprise, if the purchase does not exceed the dollar threshold described in FAR 13.003) | The official must: (1) Document the reasons for the deviation in the file; (2) Ascertain the availability of small business suppliers through market research; and (3) If appropriate, compete the purchase using an unrestricted small business set-aside as prescribed in FAR 19.502-2.  |
| In pursuit of all other acquisitions  | IA determines that there is no reasonable expectation that offers will be received from two or more responsible IEEs at a reasonable and fair market price   | The official must: (1) Provide a written determination in the contract file stating there is no reasonable expectation of receiving offers from two or more responsible IEEs and that award cannot be made at a reasonable and fair market price; and (2) Proceed with the acquisition using the order of precedence established in FAR 8.001. |

(c) Deviations may be authorized after issuing solicitations when IA makes the following determinations and the appropriate official takes the following actions:

| <b>Acquisition type</b>   | <b>Basis for deviation</b>   | <b>Necessary actions</b>  |
|---|--|---|
| In pursuit of a simplified or commercial item acquisition in accordance with FAR Parts 12 or 13 and DIAR 1413 | Only one offer is received from a responsible ISBEE and the price is unreasonable or no offers are received from a responsible ISBEE | The official must: (1) Document the reasons for the deviation in the file; (2) Ascertain the availability of small business suppliers through market research; and (3) If appropriate, compete the purchase using an unrestricted small business set-aside as prescribed in FAR 19.502-2. |
| In pursuit of all other acquisitions  | The Indian tribe justifies a deviation under 1480.504-1(b)(2)  | IA must proceed under PL 93-638.  |

| Acquisition type | Basis for deviation   | Necessary actions   |
|------------------|---|---|
|                  | (1) All otherwise acceptable offers received from IEEs are unreasonable; (2) Only one offer is received from an IEE and the CO determines the price to be unreasonable; or (3) No responsive offers have been received from IEEs. | The official must: (1) Cancel the solicitation; (2) Reject all offers in writing in accordance with FAR 14.404-3; and (3) Complete the acquisition by either: (i) Using negotiation, provided the CO has obtained the approval required by FAR 14.404-1; or (ii) If negotiation with the offerors responding to the canceled solicitation is not authorized, the CO must proceed with a new acquisition using the order of precedence in FAR 8.001. |

(d) In response to a set-aside acquisition, when using competitive proposals, proposals may be rejected by a written determination by the CCO that a reasonable price cannot be negotiated.

## **Subpart 1480.5 - Procedures**

### **1480.501 General.**

All acquisitions made in accordance with this part, including simplified or commercial item acquisitions, must conform to all applicable requirements of the FAR and DIAR.

### **1480.502 Order of precedence for use of Government supply sources.**

Acquisitions made under an authorized deviation from the Buy Indian Act regulation must be made in conformance with the order of precedence required by FAR 8.002.

### **1480.503 Commercial item or simplified acquisitions.**

(a) Each acquisition of supplies, services, and covered construction that is subject to commercial item or simplified acquisition procedures in accordance with FAR Parts 12 or 13 and DIAR 1413 must be set aside exclusively for ISBEEs. IA will use ISBEE commercial item(s) or simplified acquisition set-asides to accomplish this preference action.

(b) If the CO proceeds with an ISBEE commercial item or simplified acquisition set-aside and receives an offer at a reasonable price from only one such responsible economic enterprise (see FAR 19.502-2), the CO must make an award to that enterprise. If the CO proceeds with an ISBEE commercial item or simplified acquisition set-aside and receives an offer from only one responsible economic enterprise at a price that is not reasonable, the CO may negotiate with that enterprise to reach a reasonable price.

(c) Commercial item or simplified acquisitions under this section must conform to the competition and price reasonableness documentation requirements of FAR 12.209 for commercial item acquisitions and FAR 13.106 for simplified acquisitions.

#### **(d) Clauses and Provisions.**

(1) Insert the clause at DIAR 1452.226-70, Indian Preference, in accordance with DIAR 1426.7003(a).

(2) Insert the clause at DIAR 1452.226-71, Indian Preference Program, in accordance with DIAR 1426.7003(b).

(3) Insert the clause at 1452.280-1, NOTICE OF INDIAN SMALL BUSINESS ECONOMIC ENTERPRISE SET-ASIDE in accordance with 1480.503(a).

(4) Insert the clause at 1452.280-2, NOTICE OF INDIAN ECONOMIC ENTERPRISE SET-ASIDE, in accordance with 1480.504-1(a).

(5) Insert the clause at 1452.280-3, SUBCONTRACTING LIMITATIONS, in accordance with 1480.601(b).

(6) Insert the clause at 1452.280-4, INDIAN ECONOMIC ENTERPRISE REPRESENTATION, in accordance with 1480.801(a).

### **1480.504 Other than full and open competition.**

#### **1480.504-1 Set-asides for Indian economic enterprises.**

(a) Each proposed procurement for supplies or services that has an anticipated dollar value in excess of the simplified acquisition threshold amount in FAR Part 13.003 must be set aside exclusively for IEEs, and referred to as an "Indian

Economic Enterprise Set-aside,” when there is a reasonable expectation that offers will be received from two or more responsible IEEs, and award will be made at a reasonable price except when:

- (1) The acquisition is for construction that is not covered construction, as described in 1480.401(b);
- (2) A deviation has been obtained in accordance with 1480.403; or
- (3) Use of other than full and open competition has been justified and approved in accordance with 1480.504-2.

(b) When acquiring services to be performed in whole or in part on Indian land under a tribe's jurisdiction, the CO must give written notice to the governing body or bodies of the applicable Indian tribe simultaneously with publication of the synopsis required by paragraph (c)(1) of this section. The notice must state IA's intent to solicit services or supplies using an IEE set-aside and provide the tribe with the opportunity to contract for the program within 15 calendar days from the date of the synopsis publication in the GPE.

(1) If the tribe does not oppose the set-aside intention or advise IA by the established deadline of its intent to contract, IA will proceed with the solicitation in accordance with FAR 5.2.

(2) If the tribe advises IA by the established deadline of its intent to contract, it must adequately justify a deviation for work on or near Indian land under its jurisdiction through a tribal resolution in accordance with Public Law 93-638.

(c) When using an IEE set-aside in accordance with this section, the CO must do the following:

(1) Synopsise the acquisition in the Governmentwide point of entry (GPE) as required by FAR Subpart 5.2, and identify it as an IEE set-aside.

(2) Use the Class Justification for Use of Other Than Full and Open Competition (JOFOC) in Acquisition of Supplies and Services from Indian Industry to meet the requirements of FAR 6.303.

(3) By separate memorandum to the file, document that the supplies or services to be acquired are available from two or more responsible and IEEs; the anticipated cost to IA of the required supplies or services is determined to be reasonable; and the information in the JOFOC in Acquisition of Supplies and Services from Indian Industry is accurate and complete as it pertains to the proposed acquisition.

(4) Reject offers that fail to provide representation that they meet the definition of an IEE. The CO may also request the Office of the Inspector General (on Form DI-1902 as part of a normal pre-award audit) to:

- (i) Assist in determining the eligibility of the low responsive and responsible offerors on Buy Indian Act awards; and
- (ii) Determine whether the work will be performed by the labor force required under 1480.601.

(5) When using sealed bidding, determine that the price offered by the prospective contractor is considered to be reasonable and at a fair market price as required by FAR 14.408-2 before awarding a contract.

(6) When using competitive proposals, solicit proposals in accordance with FAR Subpart 15.2 and select sources in accordance with FAR Subpart 15.3 and DIAR Subpart 1415.6.

(7) When using competitive proposals or when negotiating modifications that impact the cost of a contract, conduct proposal analyses, including cost or price analyses in accordance with FAR Subpart 15.4, negotiate profit or fee in accordance with the procedures in FAR Subpart 15.4 and DIAR Subpart 1415.9, and prepare a negotiation memorandum in accordance with FAR 15.406-3 and DIAR 1415.808.

(8) When acquiring architect-engineer services, solicit proposals and evaluate potential contractors in accordance with FAR Part 36 and DIAR Subpart 1436.6.

(d) This paragraph applies to solicitations that are not restricted to participation of IEEs.

(1) If an interested IEE is identified after a market survey has been performed and a solicitation has been issued, but before the date established for receipt of offers, the contracting office must provide a copy of the solicitation to this enterprise. In this case, the CO:

- (i) Will not give preference under the Buy Indian Act to the IEE, and
- (ii) May extend the date for receipt of offers when practical.

(2) If more than one IEE comes forward subsequent to the solicitation, but prior to the date established for receipt of offers, the CO may cancel the solicitation and re-compete it as an IEE set-aside.

(e) When only one offer is received from a responsible IEE in response to an acquisition set-aside under paragraph (a) of this section:

(1) If the offer is not at a reasonable and fair market price, then the CO may negotiate with that enterprise for a reasonable and fair market price.

(2) If the offer is at a reasonable and fair market price, the CO must:

- (i) Make an award to that enterprise;
- (ii) Document the reason only one offer was considered; and

(iii) Initiate action to increase competition in future solicitations.

(f) Provisions and Clauses.

(1) Insert the clause at DIAR 1452.226-70, Indian Preference, in accordance with DIAR 1426.7003(a).

(2) Insert the clause at DIAR 1452.226-71, Indian Preference Program, in accordance with DIAR 1426.7003(b).

(3) Insert the clause at 1452.280-2, NOTICE OF INDIAN ECONOMIC ENTERPRISE SET-ASIDE, in accordance with 1480.504-1(a).

(4) Insert the clause at 1452.280-3, SUBCONTRACTING LIMITATIONS, in accordance with 1480.601(b).

(5) Insert the clause at 1452.280-4, INDIAN ECONOMIC ENTERPRISE REPRESENTATION, in accordance with 1480.801(a).

(6) When applicable, Tribal employment preference requirements may be added to the requirements of the clause in accordance with DIAR 1426.7005.

**1480.504-2 Other circumstances for use of other than full and open competition.**

(a) Other circumstances may exist where the use of an IEE set-aside in accordance with 1480.401(a) and FAR 6.302-5 is not feasible. In such situations, the requirements of FAR Subparts 6.3 and DIAR Subparts 1406.3 apply in justifying the use of the appropriate authority for other than full and open competition.

(b) Except as provided in FAR 5.202, all proposed acquisition actions must first be publicized in accordance with the requirements of FAR 5.2 and DIAR 1405.2.

(c) Justifications for use of other than full and open competition in accordance with this section must be approved in accordance with DIAR 1406. These approvals are required for a proposed contract, or for an out of scope modification to an existing contract.

**1480.505 Debarment and suspension.**

Violation of the regulations in this part by an offeror or an awardee may be cause for debarment or suspension in accordance with FAR 9.406 and 9.407. IA must refer recommendations for debarment or suspension to the Director, Office of Acquisition and Property Management, Department of the Interior, in accordance with DIAR 1409.406 and 1409.407 through the IA Division of Acquisitions with the concurrence of the head of the contracting activity.

**Subpart 1480.6 - Contract Requirements**

**1480.601 Subcontracting limitations.**

(a) In contracts awarded under the Buy Indian Act and this part, the contractor must agree to perform the contract in accordance with FAR 52.219-14, Limitations on Subcontracting.

(b) The CO must also insert the clause at 1452.280-3, SUBCONTRACTING LIMITATIONS, in all purchase orders and contracts for services, supplies, or covered construction and awarded to IEEs pursuant this part.

**1480.602 Performance and payment bonds.**

Solicitations requiring performance and payment bonds must conform to FAR Part 28 and authorize use of any of the types of security acceptable in accordance with FAR Subpart 28.2 or section 11 of Public Law 98-449, the Indian Financing Act Amendments of 1984. The CO may accept alternative forms of security in lieu of performance and payment bonds according to FAR 28.102 and 25 U.S.C. 47a, if a determination is made that such forms of security provide the Government with adequate security for performance and payment.

**Subpart 1480.7 - Contract Administration**

**1480.701 Contract administration requirements.**

The CO and the CO's representative (see DIAR 1401.670) must monitor performance and progress to ensure contractor compliance with FAR Part 42 regarding all contract requirements. The CO must ensure contractor compliance with the following provisions of this part:

(a) Qualification as an IEE as defined in 1480.201;

(b) Maintenance of the subcontracting limitations required by the clause at 1452.280-3 when acquiring services, supplies, and covered construction; and

(c) Enforcement of Indian preference requirements contained in DIAR 1426.7004.

## **Subpart 1480.8 - Representation by an Indian Economic Enterprise Offeror**

### **1480.801 General.**

(a) The CO must insert the provision at 1452.280-4, INDIAN ECONOMIC ENTERPRISE REPRESENTATION, in all solicitations regardless of dollar value that are set aside for IEEs in accordance with this part.

(b) To be considered for an award under 1480.503 or 1480.504-1, an offeror must represent that it meets the definition of "Indian economic enterprise" in response to a specific solicitation set-aside in accordance with the Buy Indian Act and this part.

(c) The enterprise must meet the definition of "Indian economic enterprise" throughout the following time periods:

- (1) At the time an offer is made in response to a solicitation;
- (2) At the time of contract award; and
- (3) During the full term of the contract.

(d) If, after award, a contractor no longer meets the eligibility requirements in paragraph (b) of this section, the contractor must provide immediate, written notification to the CO. The notification must include:

- (1) Full disclosure of circumstances causing the contractor to lose eligibility status; and
- (2) A description of actions, if any, that must be taken to regain eligibility.

(e) Failure to provide immediate written notification required by paragraph (d) of this section means that:

- (1) The economic enterprise may be declared ineligible for future contract awards under this part; and
- (2) IA may consider termination for default if it is determined to be in the best interest of the government.

(f) The CO will accept an offeror's representation in a specific bid or proposal that it is an IEE unless another interested party challenges the IEE representation or the CO has reason to question the representation. Challenges of and questions concerning a specific representation must be referred to the CO or CCO in accordance with Subpart 1480.9.

(g) Participation in the Mentor-Protégé Program established under section 831 of the National Defense Authorization Act for Fiscal Year 1991 (25 U.S.C. 47 note) does not render an IEE ineligible for contracts awarded under the Buy Indian Act.

### **1480.802 Representation provision.**

(a) IA contracting offices must provide copies of the IEE representation to any interested parties upon written request.

(b) The submission of a Solicitation Mailing List Application by an enterprise does not remove the requirement for it to provide representation as an IEE, as required by this part, if it wishes to be considered as an offeror for a specific solicitation. COs may determine the validity of the contents of the applicant's representation.

(c) Any false or misleading information submitted by an enterprise when submitting an offer in consideration for an award set aside under the Buy Indian Act is a violation of the law punishable under 18 U.S.C. 1001. False claims submitted as part of contract performance are subject to the penalties enumerated in 31 U.S.C. 3729 to 3731 and 18 U.S.C. 287.

### **1480.803 Representation process.**

(a) Only IEEs may participate in acquisitions set aside in accordance with the Buy Indian Act and this part. IA procedure supports responsible IEEs and seeks to prevent circumvention or abuse of the Buy Indian Act.

(b) Eligibility is based on information furnished by the enterprise to an IA CO in the IEE representation at 1452.280-4 in response to a specific solicitation under the Buy Indian Act.

(c) The CO may ask the appropriate Regional Solicitor to review the enterprise's representation.

(d) The IEE representation does not relieve the CO of the obligation for determining contractor responsibility, as required by FAR Subpart 9.1.

## **Subpart 1480.9 - Challenges to Representation**

### **1480.901 General.**

(a) The CO can accept an offeror's written representation of being an IEE (as defined in 1480.201) only when it is submitted with an offer in response to a solicitation under the Buy Indian Act. Another interested party may challenge the representation of an offeror or contractor by filing a written challenge to the applicable CO in accordance with the procedures in 1480.902.

(b) After receipt of offers, the CO may question the representation of any offeror in a specific offer by filing a formal objection with the CCO.

### **1480.902 Receipt of challenge.**

(a) An interested party must file any challenges against an offeror's representation with the local CO.

(b) The challenge must be in writing and must contain the basis for the challenge with accurate, complete, specific, and detailed evidence. The evidence must support the allegation that the offeror is either ineligible or fails to meet both the

definitions of “Indian” and of “Indian economic enterprise” established in 1480.201. The CO will dismiss any challenge that is deemed frivolous or that does not meet the conditions in this section.

(c) To be considered timely, a challenge must be received by the CO no later than 10 days after the basis of challenge is known or should have been known, whichever is earlier.

(1) A challenge may be made orally if it is confirmed in writing within the 10-day period after the basis of challenge is known or should have been known, whichever is earlier.

(2) A challenge may be made in writing if it is delivered by hand, telefax, telegram, or letter postmarked within the 10-day period after the basis of challenge is known or should have been known, whichever is earlier.

(3) A CO's objection is always considered timely, whether filed before or after award.

(d) Upon receiving a timely challenge, the CO must:

(1) Notify the challenger of the date it was received, and that the representation of the enterprise being challenged is under consideration by IA; and

(2) Furnish to the economic enterprise (whose representation is being challenged) a request to provide detailed information on its eligibility by certified mail, return receipt requested.

(e) Within 3 days after receiving a copy of the challenge and IA's request for detailed information, the challenged offeror must file with the CO a complete statement answering the allegations in the challenge, and furnish evidence to support its position on representation. If the offeror does not submit the required material within the 3 days, or another period of time granted by the CO, IA may assume that the offeror does not intend to dispute the challenge and IA must not award to the challenged offeror.

(f) Within 10 days after receiving a challenge, the challenged offeror's response and other pertinent information, the CO must determine the representation status of the challenged offeror and notify the challenger and the challenged offeror of the decision by certified mail, return receipt requested, and make known the option to appeal the determination to the Office of Acquisition and Property Management, Department of the Interior (PAM).

(g) If the representation accompanying an offer is challenged and subsequently upheld by the PAM, the written notification of this action must state the reason(s). The PAM may review the economic enterprise for possible suspension or debarment recommendations.

#### **1480.903 Award in the face of challenge.**

(a) Award of a contract in the face of challenge may be made on the basis of the CO's written determination that the challenged offeror's representation is valid.

(1) This determination is final for IA unless it is appealed to the PAM, and the CO is notified of the appeal before award.

(2) If an award was made before the time the CO received notice of appeal, the contract must be presumed to be valid.

(b) After receiving a challenge involving an offeror being considered for award, the CO must not award the contract until the CO has determined the validity of the representation, or 10 days have expired since the CO received the challenge, whichever occurs first. Award must be made when the CO determines in writing that an award must be made to protect the public interest, or the supplies and services are urgently required, or a prompt award will otherwise be advantageous to the Government.

(c) If a timely challenge on representation is filed with the CO and received before award in response to a specific offer and solicitation, the CO must notify eligible offerors within one day that the award will be withheld and a time extension for acceptance is requested.

(d) If a challenge on representation is filed with the CO and received after award in response to a specific offer and solicitation, the CO need not suspend contract performance or terminate the awarded contract unless the CO believes that an award may be invalidated and a delay would prejudice the Government's interest. However, if contract performance is to be suspended, a mutual no cost agreement will be sought.

#### **1480.904 Challenge not timely.**

If a CO receives an untimely filed challenge of a representation, the CO must notify the challenger that the challenge cannot be considered on the instant acquisition but will be considered in any future actions. However, the CO may question at any time, before or after award, the representation of an IEE.

## **PARTS 1481-1499 [RESERVED]**