

## CHAPTER 6—DEPARTMENT OF STATE

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## SUBCHAPTER A—GENERAL

### PART 600 [RESERVED]

### PART 601—DEPARTMENT OF STATE ACQUISITION REGULATIONS SYSTEM

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AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 53 FR 26159, July 11, 1988, unless otherwise noted.

#### 601.000 Scope of part.

This part describes the Department of State Acquisition Regulation (DOSAR) in terms of establishment, relationship to the Federal Acquisition Regulation (FAR), arrangement, applicability, and deviation procedures.

[53 FR 26159, July 11, 1988, as amended at 59 FR 66750, Dec. 28, 1994]

#### Subpart 601.1—Purpose, Authority, Issuance

##### 601.101 Purpose.

The DOSAR is issued to provide Department guidance in accordance with the policy cited in FAR 1.301(a)(2). The portions of this regulation that affects the relationship between a Department of State organization and a contractor or potential contractor are published in this chapter 6 of title 48 of the Code of Federal Regulations, in accordance with FAR 1.301(b).

[59 FR 66750, Dec. 28, 1994]

##### 601.105 Issuance.

##### 601.105-3 Copies.

The DOSAR is available through the Department's Intranet system at <http://aope.a.state.gov>, or through the Internet from A/OPE's Acquisition Web site. The Internet address is: <http://www.statebuy.state.gov/>.

[69 FR 19329, Apr. 13, 2004]

#### 601.106 OMB approval under the Paperwork Reduction Act.

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

have been approved by OMB under OMB Control Number 1405–0050. The information and recordkeeping requirements for Form DS–4053, *Department of State Mentor-Protégé Program Application*, have been approved by OMB under OMB Control Number 1405–0161.

[80 FR 6913, Feb. 9, 2015]

### Subpart 601.2—Administration

#### 601.201 Maintenance of the FAR.

##### 601.201–1 The two councils.

The Office of the Procurement Executive (A/OPE) represents the Department of State (DOS) on the Civilian Agency Acquisition Council. The Procurement Executive shall appoint a representative for this purpose. A/OPE is responsible for coordinating with all interested DOS elements proposed FAR revisions and for advocating FAR revisions sought by the Department.

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994]

### Subpart 601.3—Agency Acquisition Regulations

#### 601.301 Policy.

(a) The Assistant Secretary of State for Administration is the agency head for the purposes of FAR 1.301. The Assistant Secretary of State for Administration redelegated to the Procurement Executive the authority to prescribe, promulgate, and amend DOS acquisition policies, rules, and regulations.

(b) The Department of State Acquisition Regulation (DOSAR) is prescribed under the authority of 22 U.S.C. 2658 and 40 U.S.C. 486(c).

(c) The DOSAR implements and supplements the FAR.

[59 FR 66751, Dec. 28, 1994, as amended at 64 FR 43620, Aug. 11, 1999; 80 FR 6913, Feb. 9, 2015]

#### 601.302 Limitations.

(a) The FAR and the DOSAR apply to all DOS acquisitions of personal property and services, including construction, both within and outside the United States, unless expressly excluded by this subpart, or exempt from the Federal Property and Administrative Services Act of 1949, as amended

(40 U.S.C. 474(7)), or undertaken pursuant to section 208 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4308), or the Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 292 *et seq.*).

(b) At posts where Joint Administrative Offices have been formed and DOS is the procurement agency, the FAR and DOSAR apply to all administrative and technical support acquisitions.

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994; 64 FR 43620, Aug. 11, 1999; 80 FR 6913, Feb. 9, 2015]

#### 601.303 Publication and codification.

(a) The DOSAR is issued as Chapter 6 of Title 48, Code of Federal Regulations. The DOSAR is established as Chapter 6 of the Federal Acquisition Regulations System. The DOSAR is divided into the same parts, subparts, sections, subsections, and paragraphs as is the FAR. However, when the FAR coverage is adequate by itself there will be no corresponding DOSAR coverage. Where the DOSAR implements a specific part, subpart, section, or subsection of the FAR, the DOSAR coverage is numbered and titled to correspond to the appropriate FAR number and title, except that the DOSAR number will include a 6 or 60 such that there will always be three numbers to the left of the decimal. For example, the DOSAR implementation of FAR 14.1 is shown as 614.1 and the DOSAR implementation of FAR 1.301 is shown as 601.301. Materials that supplement the FAR are assigned the numbers 70 and up. For example, DOSAR requires additional definitions than those used in FAR; this supplementary material is provided in 602.101–70.

(b) The DOSAR and its revisions are published in the FEDERAL REGISTER and in the Code of Federal Regulations, both of which may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

(c) The DOSAR shall be referenced in the same manner as described at FAR 1.105–2(c).

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994; 64 FR 43620, Aug. 11, 1999]

### Subpart 601.4—Deviations from the FAR

#### 601.403 Individual deviations.

The Procurement Executive is the agency head's designee for the purposes of FAR 1.403.

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994]

#### 601.404 Class deviations.

The Procurement Executive is the agency head's designee for the purposes of FAR 1.404(a).

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994]

#### 601.405 Deviations pertaining to treaties and executive agreements.

The Procurement Executive shall determine whether a deviation pertaining to treaties and executive agreements is authorized under FAR 1.405 or that a request for deviation is required under FAR 1.405(e).

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994]

#### 601.470 Deviations from the DOSAR

The authority to approve any deviations from the DOSAR is reserved to the Procurement Executive.

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994]

### Subpart 601.5—Agency and Public Participation

#### 601.570 Rulemaking.

(a) The DOSAR is promulgated and may be revised, as necessary, in accordance with FAR part 1.

(b) The Procurement Executive shall issue all DOS acquisition regulations.

[59 FR 66751, Dec. 28, 1994]

### Subpart 601.6—Career Development, Contracting Authority, and Responsibilities

#### 601.601 General.

The Procurement Executive is the agency head for the purposes of FAR 1.601.

#### 601.601-70 Delegations of authority.

(a) *Delegations.* As stated in 601.603-3(a), there is no contracting officer authority conferred by virtue of position. Pursuant to 601.602-1(b), the Procurement Executive has designated the following as contracting activities as defined in FAR 2.101. These authorities are not redelegable. In addition, specific individuals are designated as heads of contracting activities (HCAs) (*see* FAR 2.101):

(1) *Overseas posts.* Each overseas post shall be regarded as a contracting activity to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies, equipment, publications, and services. The Principal Officer, the Management Officer, or the Supervisory General Services Officer are designated as HCAs; *provided*, that he/she has a contracting officer's warrant issued by the Procurement Executive. The Procurement Executive (or authorized A/OPE staff) may delegate to a contracting officer, on a case-by-case basis, the authority to award a contract or modification which exceeds the contracting officer's warrant level.

(i) No authority is delegated to enter into cost-reimbursement, fixed-price incentive, or fixed-price redeterminable contracts. Design/build solicitations and contracts may only be entered into with the written approval of A/OPE and OBO. Proposed construction contracts exceeding \$500,000 and any related architect-engineer contracts must have prior A/OPE approval.

(ii) When expressly authorized by a U.S. Government agency which does not have a contracting officer at the post, the officers named in paragraph (a)(1) introductory text of this section may enter into contracts for that agency. Use of this authority is subject to the statutory authority of that agency and any special contract terms or other requirements necessary for compliance with any conditions or limitations applicable to the funds of that agency. The agency's authorization shall cite the statute(s) and state any special contract terms or other requirements with which the acquisition so authorized must comply. In view of the contracting officer's responsibility

for the legal, technical, and administrative sufficiency of contracts, questions regarding the propriety of contracting actions that the post is required to take pursuant to this authority may be referred to the Department for resolution with the headquarters of the agency concerned.

(2) *Office of Logistics Management; Office of Acquisition Management (A/LM/AQM).* The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies and services, including construction, is delegated to the Director or designee as the HCA.

(3) *Foreign Service Institute.* The authority to enter into and administer contracts pursuant to Chapter 7, Title I, of the Foreign Service Act of 1980, as amended (22 U.S.C. 4021 *et seq.*), is delegated to the Director of the Foreign Service Institute, the Executive Director, the Deputy Executive Director, and the Supervisory Contracting Officer as the HCA.

(4) *Office of Foreign Missions.* The authority to enter into and administer contracts pursuant to Title II of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4301 *et seq.*), is delegated to the Director, Office of Foreign Missions, and the Administrative Officer as the HCA.

(5) *U.S. Mission to the United Nations.* The authority to enter into and administer contracts pursuant to the United Nations Participation Act of 1945, as amended (22 U.S.C.287), is delegated to the Counselor for Administration as the HCA.

(b) *Other delegations.* Several DOS offices have been delegated limited procurement authority, although they have not been designated as HCAs. Matters requiring HCA resolution are referred to the A/LM/AQM. These delegations are provided only to warranted contracting officers in the respective offices. They are as follows:

(1) *Office of Language Services.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against existing contracts up to the maximum ordering threshold or limitation for interpreting, translating, conference reporting, and related language support and escort services.

(2) *Office of Overseas Schools.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against existing contracts up to the maximum ordering threshold or limitation pursuant to section 29 of the State Department Basic Authorities Act of 1956, as amended.

(3) *Library.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against existing contracts up to the maximum ordering threshold or limitation pursuant to the provisions of the Public Printing and Documents Act of 1968, as amended, and for the acquisition of newspapers, books, maps, and periodicals.

(4) *Office of International Conferences.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against existing contracts up to the maximum ordering threshold or limitation pursuant to section 5, Title I, of the Department of State Basic Authorities Act of 1956, as amended.

(5) *Bureau of International Narcotics and Law Enforcement Affairs.* The authority to enter into and administer simplified acquisition transactions under FAR part 13, to enter into and administer contracts over the simplified acquisition threshold but not exceeding \$500,000 for non-commercial item acquisitions; up to \$6.5 million for the acquisition of commercial items using the simplified acquisition procedures under the Test Program of FAR subpart 13.5; orders against existing contracts up to the maximum ordering threshold or limitation and personal services contracts pursuant to the Foreign Assistance Act of 1961, as amended; and, 48 CFR Chapter 7, Agency for International Development Acquisition Regulation (AIDAR), including any amendments thereto. INL follows the AIDAR guidance for doing personal service contracts. All other contracting actions follow the DOSAR and DoS regulations. These authorities extend to any acquisition performed by any Department of State contracting activity on behalf of INL.

(6) *Office of Small and Disadvantaged Business Utilization.* The authority to enter into and administer 8(a) purchase

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orders and contracts as a third party pursuant to the Memorandum of Understanding signed with the Small Business Administration.

(7) *Bureau of Administration, Office of Operations.* The authority to enter into and administer simplified acquisition transactions for emergency or contingency operations necessary to protect life or federal property. This authority is limited to cases when a contracting officer in the Office of Acquisitions Management is unavailable.

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

(i) RPSO Frankfurt in conjunction with Consulate General Frankfurt; and  
(ii) RPSO Florida in conjunction with the Florida Regional Center.

(c) *Execution of delegated authority.* (1) Whenever the contracting officer makes use of the various statutory authorities available to the Department to waive the application of the Federal Acquisition Regulation or laws governing acquisition, such as those provided in the Foreign Assistance Act (22 U.S.C. 2291) or the Foreign Service Buildings Act (22 U.S.C. 294), a written determination of the basis for using the authority must be prepared and included in the file.

(2) If the statute or current practice of the requiring office does not specify a particular format, use the following format.

DETERMINATION FOR USE OF AUTHORITY TO WAIVE \_\_\_\_\_ [FILL IN WHAT IS BEING WAIVED]

SUBJECT: [State title of program or project]  
DESCRIPTION OF REQUIREMENT: [Briefly describe what is being acquired]

STATUTORY AUTHORITY: [Cite specific statute, such as 22 U.S.C. 2291(a)(4) for INL, and provide quotation from the law that conveys authority for the waiver at issue]

SCOPE OF WAIVER: [Describe what is being waived, such as (but not limited to) the Federal Acquisition Regulation (FAR) in its entirety, the Competition in Contracting Act as implemented in FAR Parts 5 and 6, or FAR Part 32 limitation on advance payments, etc.; also identify the in-

dividual acquisition or class of acquisitions for which the waiver is being sought.]  
JUSTIFICATION: [Describe the need to use the authority and the anticipated impact of not doing so; discuss alternatives considered, if any]

CONCURRENCE:

Contracting Officer

Date

Legal Advisor

Date

APPROVAL/SIGNATURE:

Approving Official

Date

(3) The determination may be made for an individual acquisition or on a class basis, as appropriate. The Contracting Officer must ensure that the proper official makes the determination in question. There may already be a Department of State delegation of authority to a specific individual to make the determination.

[59 FR 66752, Dec. 28, 1994, as amended at 60 FR 39662, Aug. 3, 1995; 64 FR 43620, Aug. 11, 1999; 69 FR 19330, Apr. 13, 2004; 71 FR 34839, June 16, 2006; 72 FR 45695, Aug. 15, 2007. Redesignated and amended at 80 FR 6913, Feb. 9, 2015]

### 601.602 Contracting officers.

#### 601.602-1 Authority.

(a) DOS contracts are awarded pursuant to the foreign affairs management responsibilities conferred on the Secretary of State (22 U.S.C. 2656), and the various laws, regulations, and Executive Orders relating thereto.

(b) Except as otherwise provided by law, DOS regulations, and this DOSAR, the Procurement Executive has the authority to execute, award, and administer contracts, purchase orders, other contractual arrangements, and other agreements, including FAR-covered interagency acquisition agreements, for the expenditure of funds involved in the acquisition of personal property, services, and for the sale of personal property. The Procurement Executive may further delegate this authority to

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those DOS employees appointed or designated to the contracting activities enumerated in 601.601-70.

(c) The contracting officer shall not award, modify, or terminate a contract unless all reviews, clearances, and approvals prescribed in the FAR or the DOSAR have been obtained, and all applicable requirements of law, the FAR, the DOSAR, and other regulations have been met.

[53 FR 26159, July 11, 1988, as amended at 55 FR 5774, Feb. 16, 1990; 59 FR 66751, Dec. 28, 1994; 72 FR 45695, Aug. 15, 2007; 81 FR 24707, Apr. 27, 2016]

### 601.602-3 Ratification of unauthorized commitments.

(b) *Policy.* (1) The Government generally is not bound by unauthorized commitments. Unauthorized commitments violate the Federal Property and Administrative Services Act, other Federal laws, the FAR, the DOSAR, and proper acquisition practice. Therefore, such unauthorized commitments are serious violations that could result in disciplinary action against the transgressor, e.g., withdrawal of a contracting officer's warrant or a Contracting Officer's Representative delegation or collection action.

(2)(i) Unauthorized commitments not exceeding \$1,000. The head of the contracting activity is delegated the authority to serve as the ratifying official for unauthorized commitments not exceeding \$1,000, including unauthorized commitments from other agencies where a DOS employee serves as the contracting officer for that action. The head of the contracting activity may refer any actions not exceeding \$1,000 to the DOS Procurement Executive for ratification if he or she so chooses.

(ii) Unauthorized commitments exceeding \$1,000. All DOS unauthorized commitments in excess of \$1,000 shall be submitted to the DOS Procurement Executive for ratification. Unauthorized commitments in excess of \$1,000 from other agencies may be referred to the other agency's representative at post for resolution in accordance with that agency's ratification process.

(3) *Claims.* Unauthorized contractual commitments that would involve claims subject to resolution under the Contracts Dispute Act of 1978 shall be

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processed in accordance with FAR subpart 33.2 and subpart 633.2.

(4) *Disciplinary action.* The Procurement Executive may refer egregious cases of unauthorized commitments to HR/ER for possible disciplinary action in accordance with 3 FAM 4370 or 3 FAM 4540. Examples might include repeated unauthorized commitments knowingly made by an employee; failure to take responsibility for a deliberate unauthorized commitment; or similar reasons. The Procurement Executive may revoke the appointment certificate of any contracting officer who makes an unauthorized commitment. The Procurement Executive may direct a contracting officer to revoke the appointment memorandum of a Contracting Officer's Representative or Government Technical Monitor who makes an unauthorized commitment.

[80 FR 6914, Feb. 9, 2015]

### 601.602-3-70 Procedures.

(a)(1) The person who made the unauthorized commitment shall submit all records and documents concerning the unauthorized commitment to the contracting officer assigned the ratification action. That person shall provide a complete written, signed statement of the facts, including why normal acquisition procedures were not followed; a statement justifying a sole source acquisition (Justification for Other Than Full and Open Competition) if the unauthorized commitment exceeds \$100,000; why and how the vendor was selected; a list of other sources considered; a description of work or products; a statement regarding the status of performance; an estimated or agreed price; certified funding citations; a statement as to why he/she should not be personally liable for the cost, e.g., a public purpose was served and no personal benefit was received; a statement as to whether the individual has ever been responsible for any other unauthorized commitments in the Department of State; and, a statement as to the number of unauthorized commitments processed by the responsible office within the last three calendar years and the circumstances surrounding each of these actions.

(2) When the person who made the unauthorized contractual commitment



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is no longer available to attest to the circumstances of the unauthorized commitment, an officer from the responsible office shall accomplish the requirements of this paragraph; the statement shall identify the individual responsible for the unauthorized commitment.

(3) In addition, a cognizant management official from the office that employed the individual who made the unauthorized commitment at the time the unauthorized commitment was made shall provide a statement detailing actions that he/she will take to ensure that such commitments will not occur again under the same or similar circumstances.

(4) This statement shall be cleared by the Executive Director of the Bureau that employs (or employed) the person who made the unauthorized commitment.

(b) The contracting officer assigned the ratification action shall prepare and execute a recommendation to the ratifying official. The contracting officer shall either recommend that the ratifying official approve and ratify the unauthorized commitment; or, disapprove the ratification of the unauthorized commitment.

(1) The recommendation shall include the facts and circumstances of the unauthorized commitment; the information prescribed in FAR 1.602-3(c)(1) and (c)(3) through (6); and a recommendation to the ratifying official as to whether the unauthorized commitment should be ratified.

(2) Following the signature of the contracting officer, the recommendation shall include a statement that the ratifying official could have granted authority to enter into a contractual commitment at the time it was made and still has the authority to do so; that the ratifying official hereby ratifies (or disapproves) the unauthorized commitment in the amount specified; and a date and signature block for the ratifying official.

(c) The information required in paragraph (b)(1) of this section shall be supported by factual findings included or referenced in the recommendation.

(d) The contracting officer shall submit the complete file to the ratifying official. For actions exceeding \$1,000,

the file shall be submitted through the head of the contracting activity to the Procurement Executive.

(e) Upon receipt and review of the complete file, if the ratifying official ratifies the unauthorized commitment, the file shall be returned, through the head of the contracting activity if the action exceeds \$1,000, to the contracting officer for issuance of the appropriate contractual document(s). If the request for ratification is not justified, the ratifying official shall return the request to the head of the contracting activity (if over \$1,000) or to the contracting officer (if under \$1,000) with a written explanation for the decision and a recommendation for disposition of the action.

[80 FR 6914, Feb. 9, 2015]

### **601.603 Selection, appointment, and termination of appointment for contracting officers.**

#### **601.603-1 General.**

Details of the Department's acquisition career management program are described in 14 FAH-3, Acquisition Career Management Program Handbook, which is available on the Internet at <http://www.state.gov/m/a/dir/regs/fah/14fah03/index.htm>

[72 FR 45695, Aug. 15, 2007, as amended at 80 FR 6914, Feb. 9, 2015]

#### **601.603-3 Appointment.**

(a) *General.* There is no contracting officer authority conferred upon any DOS employee by virtue of position. The Procurement Executive appoints all DOS contracting officers, in conformance with FAR 1.603-3, with the one exception as noted in paragraph (b) of this section. The contracting officer shall retain the original copy of the Standard Form 1402, Certificate of Appointment, signed by the Procurement Executive. Only qualified employees shall be appointed as contracting officers. A/OPE is responsible for providing guidance and oversight in managing such appointments.

(b) *Temporary warrants.* The Chief of Mission is delegated the authority by the Procurement Executive to issue temporary contracting officer warrants for periods up to 90 calendar days in order to cover emergency, post-specific

operational requirements (e.g., staffing gaps, medical evacuations, extended leave, etc.). These temporary appointments shall be executed on the Standard Form 1402, and a copy shall be furnished to A/OPE. The warrant shall contain both a dollar limitation of no more than \$100,000 and a specific time period (not to exceed 90 days) during which the warrant is effective.

(c) *Non-Federal employees.* Only United States Government employees shall be appointed as contracting officers. For acquisitions at \$25,000 and below only, this includes locally employed staff (i.e., Foreign Service Nationals and Third Country nationals). Personal services contractors are not eligible for appointment as DOS contracting officers.

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

- (1) The Human Resources Officer;
- (2) The Human Resources/Financial Management Officer; or,
- (3) The Management Officer or an American Foreign Service Officer designated to perform human resource functions.

(e) *Real property leases.* The FAR and DOSAR do not apply to leases of real property. A contracting officer certificate of appointment is not required. Authority to sign real property leases is as follows:

(1) *Domestic real property leases.* The General Services Administration has delegated domestic leasing authority to the Department of State's Office of Real Property Management (A/OPR/RPM). This delegation is accomplished on a case-by-case basis.

(2) *Real property leases abroad.* Authority to sign real property leases abroad is held by the Director/Chief Operating Officer (DIR/COO) of the Bureau of Overseas Buildings Operations (OBO), through the Secretary of State, under the Foreign Buildings Act of 1926, as amended (22 U.S.C. 292 *et seq.*). Leases at post may be executed by the General Services Officer or by other

post administrative personnel as authorized by OBO.

[59 FR 66752, Dec. 28, 1994, as amended at 64 FR 43620, Aug. 11, 1999; 69 FR 19330, Apr. 13, 2004; 76 FR 30265, May 25, 2011; 80 FR 6914, Feb. 9, 2015]

## PART 602—DEFINITIONS OF WORDS AND TERMS

### Subpart 602.1—Definitions

Sec.

602.101 Definitions.

602.101–70 DOSAR definitions.

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

SOURCE: 53 FR 26162, July 11, 1988, unless otherwise noted.

### Subpart 602.1—Definitions

#### 602.101 Definitions.

##### 602.101–70 DOSAR definitions.

For the purposes of the DOSAR, unless otherwise indicated, the following terms have the meanings set forth in this subpart.

*Chief of Mission* means the principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including any individual assigned under section 502(c) of the Foreign Service Act of 1980 (Public Law 96-465) to be temporarily in charge of such a mission or office.

*Consolidated Receiving Point* or *CRP*; means the contractor under contract to a Despatch Agency to receive and prepare items for shipment to a post. The CRP receives, records, consolidates, and packs items for shipment overseas under the direction of the Despatch Agency.

*Department* or *DOS* means the Department of State, including all of its activities wherever located.

*Despatch Agency* means the office responsible for the transportation of supplies between the U.S. and posts within its specific geographic area as assigned by the Office of Logistics Operations. There are six Despatch Agencies, one each in Iselin, New Jersey; Baltimore, Maryland; Miami, Florida; Seattle, Washington; Brownsville, Texas; and

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the European Logistical Support Office in Antwerp, Belgium.

*Government* means the Government of the United States of America unless specifically stated otherwise.

*Major system* has the same definition as described in FAR 2.101; however, the Department of State's dollar threshold as defined in paragraph (2) is \$30 million. The Under Secretary for Management is the head of the agency for the purposes of paragraph (3).

*Overseas post* means a "post" located outside the United States of America.

*Post* means a diplomatic or consular mission of the United States of America, administered or managed by the DOS.

[53 FR 26163, July 11, 1988, as amended at 59 FR 66753, Dec. 28, 1994; 60 FR 39662, Aug. 3, 1995; 64 FR 43620, Aug. 11, 1999; 69 FR 19330, Apr. 13, 2004; 72 FR 45695, Aug. 15, 2007]

### **PART 603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

#### **Subpart 603.1—Safeguards**

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603.104 Procurement integrity.

603.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

603.104-7 Violations or possible violations.

#### **Subpart 603.2—Contractor Gratuities to Government Personnel**

603.204 Treatment of violations.

#### **Subpart 603.4—Contingent Fees**

603.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

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#### **Subpart 603.9—Whistleblower Protections for Contractor Employees**

603.905 Procedures for investigating complaints.

603.906 Remedies.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 53 FR 26163, July 11, 1988, unless otherwise noted.

#### **Subpart 603.1—Safeguards**

SOURCE: 64 FR 43620, Aug. 11, 1999, unless otherwise noted.

#### **603.104 Procurement integrity.**

#### **603.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.**

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

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

(2) Clerical personnel directly involved in the acquisition;

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

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

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

(6) Personnel in the following offices: Office of Small and Disadvantaged Business Utilization (OSDBU), Office of the Legal Adviser, Office of Legislative Affairs, Office of the Inspector General, Office of the Procurement Executive, the Small Business Administration, and the Office of Federal Contract Compliance Programs (Department of Labor).

(c) All information which is considered proprietary or source selection information shall be marked to prevent its unauthorized disclosure before

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

[64 FR 43620, Aug. 11, 1999. Redesignated at 69 FR 19330, Apr. 13, 2004; 80 FR 6915, Feb. 9, 2015]

#### **603.104-7 Violations or possible violations.**

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

(d)(2)(ii)(B) The Procurement Executive is the agency head’s designee for the purposes of FAR 3.104-7(d)(2)(ii)(B).

[64 FR 43620, Aug. 11, 1999. Redesignated and amended at 69 FR 19330, Apr. 13, 2004]

#### **Subpart 603.2—Contractor Gratuities to Government Personnel**

##### **603.204 Treatment of violations.**

(a) The Procurement Executive is the agency head’s designee for the purposes of FAR 3.204.

(b) Upon completion of the investigation and/or prosecution or with the consent of the U.S. Department of Justice, the Assistant Inspector General for Investigations shall provide to the

Procurement Executive a report, together with all pertinent documentation, concerning the suspected violation. The Office of the Procurement Executive shall provide to the contractor a written notice by certified mail, return receipt requested, presenting the findings, and shall establish a schedule, including location, for an investigative hearing for the purposes described in FAR 3.204(b).

[64 FR 43620, Aug. 11, 1999, as amended at 69 FR 19330, Apr. 13, 2004]

#### **Subpart 603.4—Contingent Fees**

##### **603.405 Misrepresentations or violations of the Covenant Against Contingent Fees.**

(a) The contracting officer may request the Office of the Inspector General to develop further information if the facts available are deemed insufficient to determine whether an actual violation has occurred. The contracting officer may also obtain the advice of the Office of the Legal Adviser as to the legality and general propriety of any information disclosed.

[64 FR 43621, Aug. 11, 1999]

#### **Subpart 603.6—Contracts with Government Employees or Organizations Owned or Controlled by Them**

##### **603.601 Policy.**

(a) It is Department policy not to award contracts to Federal employees, or businesses substantially owned or controlled by Federal employees. This policy also applies to individuals hired under personal services agreements and personal services contracts.

[59 FR 66754, Dec. 28, 1994, as amended at 69 FR 19331, Apr. 13, 2004]

##### **603.602 Exceptions.**

The Procurement Executive is the agency head’s designee for the purposes of FAR 3.602.

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### Subpart 603.7—Voiding and Rescinding Contracts

#### 603.704 Policy.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.704.

[59 FR 66754, Dec. 28, 1994]

#### 603.705 Procedures.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.705.

[59 FR 66754, Dec. 28, 1994]

### Subpart 603.8—Limitations on the Payment of Funds To Influence Federal Transactions

#### 603.804 Policy

(b) The contracting officer shall forward a copy of all contractor disclosures furnished pursuant to the clause at FAR 52.203-12 to the Office of the Legal Adviser, Employment Law, Senior Ethics Counsel (L/EMP/Ethics).

[69 FR 19331, Apr. 13, 2004]

### Subpart 603.9—Whistleblower Protections for Contractor Employees

SOURCE: 64 FR 43621, Aug. 11, 1999, unless otherwise noted.

#### 603.905 Procedures for investigating complaints.

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

#### 603.906 Remedies.

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

## PART 604—ADMINISTRATIVE MATTERS

### Subpart 604.2—Contract Distribution

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604.202 Agency distribution requirements.

### Subpart 604.5—Electronic Commerce in Contracting

604.502 Policy.

### Subpart 604.8—Government Contract Files

604.802 Contract files.

604.803 Contents of contract files.

604.803-70 Contract file table of contents.

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604.805 Storage, handling, and disposal of contract files.

### Subpart 604.13—Personal Identity Verification

604.1301 Policy.

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604.1303-70 DOSAR contract clause.

### Subpart 604.16—Unique Procurement Instrument Identifiers

604.1601 Policy.

### Subpart 604.70—Contract Review

604.7001 Policy.

604.7002 Procedures.

### Subpart 604.71—Procurement Quality Assurance Program

604.7101 Purpose.

604.7102 Contracting activity reviews.

604.7102-1 Peer reviews.

604.7102-2 Form and scope of review

604.7102-3 Approval.

604.7103 Review by Assistant Legal Adviser for Buildings and Acquisitions (L/BA).

### Subpart 604.72—Secure Procurement for Controlled Access Areas

604.7201 Policy.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 69 FR 19331, Apr. 13, 2004, unless otherwise noted.

### Subpart 604.2—Contract Distribution

SOURCE: 80 FR 6915, Feb. 9, 2015, unless otherwise noted.

#### 604.202 Agency distribution requirements.

As necessary, the contracting officer shall distribute copies of the signed contract or modification to those officers/offices involved in contract administrative support functions, e.g., the

Contracting Officer's Representative; the requirements office; the Post Occupational Safety and Health Officer (POSHO); the Despatch Agent or other receiving activity, particularly if it is the initial point of contact for receipt of goods or services; the financial management office; and each post or office where the contract shall be performed. Where required by the laws of a foreign country, overseas posts shall retain the original copy of the contract or modification awarded by a domestic contracting activity for performance overseas. The contracting officer shall send copies of contracts and modifications awarded as small business or 8(a) set-asides to OSDDBU.

### Subpart 604.5—Electronic Commerce in Contracting

#### 604.502 Policy.

(b) The Assistant Secretary of State for Administration is the head of the agency for the purpose of FAR 4.502(b).

(1)(i) *Materials not in automated format.* For solicitations containing drawings or other materials that are not in an automated format, the contracting officer shall:

(A) Post as much of the solicitation as possible on the Internet; and,

(B) Make hard copies available for those parts of the solicitation that are not in an automated format.

(ii) *Posting solicitations for overseas contracting activities.* Contracting officers at overseas contracting activities shall post competitive local guard solicitations on the Internet using the Government-wide point of entry if U.S. firms may be competing. Posting of other solicitations is optional.

[69 FR 19331, Apr. 13, 2004, as amended at 72 FR 45695, Aug. 15, 2007]

### Subpart 604.8—Government Contract Files

SOURCE: 80 FR 6915, Feb. 9, 2015, unless otherwise noted.

#### 604.802 Contract files.

Heads of contracting activities shall maintain standard procedures to conform to FAR 4.802 for file location and maintenance.

(f) *Electronic files.* Offices may maintain files in electronic media provided all documentation is maintained as required by FAR subpart 4.8. Electronic files dispersed in multiple locations, or maintained with no naming convention, do not constitute adequate electronic records.

#### 604.803 Contents of contract files.

##### 604.803–70 Contract file table of contents.

(a) It is the Department's policy that all contracts, regardless of dollar value, be properly documented so as to provide a complete record of: pre-solicitation activities; the solicitation, evaluation, and award process; and, the administration of the contract through closeout.

(b) All domestic contracting activities awarding contracts using other than simplified acquisition procedures shall use the format of Form DS–1930, *Domestic Contract File Table of Contents*, and all overseas contracting activities shall use the format of Form DS–1929, *Overseas Contract File Table of Contents*, unless an alternate format has been approved by A/OPE.

(c) Each table of contents is organized in chronological order, with six separate sections for each of the six parts of the file folder (from Section I, Pre-Solicitation, through Section VI, Contract and Modifications/Contract Closeout). Alternatively, for ease of contract administration, offices may choose to organize contract files with Section VI of the table of contents at the beginning of the folder, with Section I at the back of the folder.

(d) The format of Form DS–1928, *Contract Administration File Table of Contents*, may be used by those offices that prefer to have a separate file folder for contract modifications or delivery/task orders.

#### 604.804 Closeout of contract files.

##### 604.804–70 Contract closeout procedures.

(a) This section sets forth procedures for closing out contracts awarded using other than simplified acquisition procedures by contracting activities and requirements offices. It is the Department's policy to close out contracts in

the time frames prescribed by FAR Part 4.

(b) Contracting activities are responsible for initiating each contract closeout. Contracting activities and requirements offices are jointly responsible for timely compliance with required contract closeout procedures.

(c) The contract closeout process shall begin as soon as possible after the contract is physically completed, which means that the contractor has delivered the required supplies and the Government has inspected and accepted them, or the contractor has performed and the Government has accepted all services required by the contract, and the base period and any option periods exercised have expired.

(d) *Specific procedures.* The normal steps for closing out a physically completed contract shall be as follows. These steps are summarized in the Contract Closeout Checklist, which shall be completed by the contracting officer and included in the contract file. The contracting officer shall indicate any items that are not applicable (e.g., patent reports, royalty reports, etc.).

(1) The contracting officer shall verify that all work under the contract has been completed; obtain the COR's assessment of the contractor's performance; and conduct an initial funds status review, *i.e.*, determine if the contract has excess funds that should be deobligated by contract modification. Contracting officers shall send a cover memo to the COR, to which should be attached the COR Completion Certificate, the applicable performance evaluation form (depending on whether the contract is for construction (SF-1420), architect-engineering services (SF-1421), or other supplies or services (DS-1771, *Contractor Evaluation Statement*)); and, a final payment and closeout memorandum. Contracting officers may require CORs to input past performance data directly into the Contractor Performance Assessment Reporting System (CPARS) as opposed to completing a paper evaluation form (see 642.1503-70).

(2) After receipt of the COR's response, and the contractor's release, the contracting officer shall send a final payment memo to the office re-

sponsible for payment of invoices/vouchers.

(3) An audit is required for cost-reimbursement contracts over \$550,000, unless available data are considered adequate for a reasonableness determination, in which case the contract file shall be documented with the appropriate rationale. Requests for audits, normally by the Defense Contract Audit Agency (DCAA) in accordance with the agreement DOS has with DCAA to conduct incurred cost audits, shall be submitted through the A/LM/AQM/BOD/QA Audit Team (see 642.101(b)). Cost-reimbursement contracts may be closed after receipt of the audit report and resolution of any issues raised. Quick closeout procedures may be followed, as prescribed in FAR 42.708. The contracting officer may request an audit of any contract, if warranted; however, audits should not be requested if the cost of the audit is likely to exceed potential cost recovery, except where fraud or misrepresentation is suspected.

(4) The contracting officer shall send a letter to the contractor requesting release of claims, using the appropriate format. In addition, a Contractor Assignment Letter is required for certain contracts. To determine which format is applicable, contracting officers shall refer to the Payments clause in the contract.

(5) The contracting officer shall reconcile the contract obligations and contractor payments, and then deobligate any excess funds remaining in the contract by issuing a contract modification on a SF-30. Close coordination with the finance office is necessary in order to receive the required information to perform a funds status review.

(6) The contracting officer shall verify that all relevant documentation is included in the contract file (see 604.803-70).

(7) Upon completion of 8(a) contracts, the contracting officer shall complete the Small Business Administration's Contract Completion Form within ten (10) days of contract completion. One copy shall be forwarded to SBA, one copy shall be retained in the contract file, and one copy shall be sent to OSDDBU.

(8) For classified contracts, the contractor is required to return to the Department all classified material received or generated under the contract, or to destroy all classified material, unless retention is requested and authorized by the Department. The contracting officer shall notify DS/PRD/IN of contract completion, final delivery of goods or services or the termination of the classified contract. The contracting officer shall ensure that any classified material contained in the contract file is properly marked and accounted for.

(9) Closeout documents are available on the Intranet at the A/OPE Web site.

(e) Contract files that have been closed out shall be retained in accordance with the schedule in FAR 4.805.

(f) Contract files for contracts using simplified acquisition procedures are considered closed when the contracting officer receives evidence of property/services and final payment. Disposal of such files shall be as prescribed in FAR 4.805.

[80 FR 6915, Feb. 9, 2015, as amended at 82 FR 58351, Dec. 12, 2017]

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

Heads of contracting activities shall prescribe procedures for handling, storing, and disposing of contract files. Additional guidance on records management may be found in 5 FAM.

### **Subpart 604.13—Personal Identity Verification**

SOURCE: 76 FR 20250, Apr. 12, 2011, unless otherwise noted.

#### **604.1301 Policy.**

The DOS official responsible for verifying contractor employee personal identity is the Assistant Secretary for Diplomatic Security.

[76 FR 20250, Apr. 12, 2011. Redesignated at 80 FR 6916, Feb. 9, 2015]

#### **604.1303 Contract clause.**

[76 FR 20250, Apr. 12, 2011. Redesignated at 80 FR 6916, Feb. 9, 2015]

#### **604.1303–70 DOSAR contract clause.**

The contracting officer shall insert the clause at 652.204–70, Department of State Personal Identification Card Policy and Procedures, in solicitations and contracts that require contractor employees to perform on-site at a DOS location and/or that require contractor employees to have access to DOS information systems.

[80 FR 6916, Feb. 9, 2015]

### **Subpart 604.16—Unique Procurement Instrument Identifiers**

SOURCE: 80 FR 6916, Feb. 9, 2015, unless otherwise noted.

#### **604.1601 Policy.**

(c)(1) *Procurement Instrument Identifier (PIID)*. Uniform numbers shall be assigned to all DOS procurement instruments, domestic and overseas. The numbering system applies to all contracts, purchase orders, and other related instruments, including solicitation documents and delivery orders. This includes instruments executed by DOS contracting officers on behalf of other federal agencies. It does not include requisitions submitted to a contracting activity, or to instruments awarded under Federal assistance arrangements, e.g., grants, cooperative agreements, and loans. Numbers shall be placed in appropriate spaces on government forms and appear on all documentation intended to support official contract files.

(2) *Responsibility*. Heads of contracting activities are responsible for enforcing compliance with the uniform numbering system. Heads of contracting activities shall develop and maintain a system for assigning and recording contract numbers that conforms to this section.

(3) *Instrument identification numbers*. A 13-character “alpha-numeric” designator shall be assigned to all DOS procurement instruments. Positions (beginning at the left) one through six shall identify the purchasing office; positions seven and eight, the fiscal year in which the number is assigned; position nine, a symbol designating a type



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of procurement instrument; and positions ten through thirteen, a four-position serial number.

(i) The first six positions shall commence with “S” to designate a DOS-issued contract. The remaining five characters shall identify the activity preparing the instrument. Domestic and overseas contracting activities shall assign the character codes using the five-digit designator from the listing at [http://www.aopeprocurementreports.com/ReportServer\\_OPEMS2008/Pages/ReportViewer.aspx?%2fDOSReport%2fPostCodeList&rs:Command=Render](http://www.aopeprocurementreports.com/ReportServer_OPEMS2008/Pages/ReportViewer.aspx?%2fDOSReport%2fPostCodeList&rs:Command=Render). DOS organizations not listed shall contact A/OPE for assignment of an office code.

(ii) The seventh and eighth positions shall be the last two digits of the fiscal year in which the number is assigned.

(iii) The ninth position shall be a capital letter assigned to indicate the type of instrument, as follows:

(A) Blanket Purchase Agreement .....	A
(B) Invitation for Bids .....	B
(C) Contract (includes letter contracts, contracts incorporating basic agreements and basic ordering agreements) .....	C
(D) Indefinite Delivery Contract .....	D
(E) Reserved. Do not use .....	E
(F) Delivery/Task Order (includes orders placed against all U.S. Government contracts, whether issued by DOS or another agency) .....	F
(G) Basic Ordering Agreement .....	G
(H) Basic Agreement .....	H
(I) Request for Information/Comment .....	I
(J) Reserved. Do not use .....	J
(K) Reserved. Do not use .....	K
(L) Orders under Blanket Purchase Agreements .....	L
(M) Purchase Order .....	M
(N) Reserved. Do not use .....	N
(O) Do not use this letter .....	O
(P) Personal services contract .....	P
(Q) Request for Quotations .....	Q
(R) Request for Proposals .....	R

(iv)(A) The tenth through thirteenth positions shall be the serial number for the instrument. A separate set of serial numbers may be used for any type of instrument listed in paragraph (c)(3)(iii) of this section. Each series of numbers for the same activity shall begin with the number 0001 at the start of each fiscal year.

(v)(A) The following illustrates a properly configured contract number for the first number assigned to a fiscal year 2015 contract awarded by the Department of State, Embassy Ottawa: SCA525-15-C-0001

(B) Use of the dashes to separate the individual elements of the series is optional; however, when reporting individual contract actions to the Federal Procurement Data System (see FAR subpart 6.4), dashes shall not be used.

(C) Contracting activities are authorized to use the first digit of the serial number (position 10) to establish discrete series of numbers. For example, the “1000” series may be reserved for Bureau of Consular Affairs requirements (domestic), or the “1000” series may be reserved for Economic section requirements (overseas). Use of discrete series is appropriate generally for activities handling large numbers of transactions and can provide useful management information.

(4) *Solicitation amendment and contract modification numbers.* Solicitation amendments are to be numbered sequentially, beginning with the alpha designator “A,” e.g., A001. Contract modifications shall also be numbered sequentially, beginning with the alpha designator “M,” e.g., M001.

## Subpart 604.70—Contract Review

SOURCE: 80 FR 6916, Feb. 9, 2015, unless otherwise noted.

### 604.7001 Policy.

The contracting officer shall review each proposed contractual document and its supporting file for completeness and accuracy. Each contract file shall contain all pertinent information applicable to the proposed action. Each contract file should be in sufficient detail to permit reconstruction of all significant events by any subsequent reviewer without referral to the individual responsible for the contractual action.

### 604.7002 Procedures.

(a) *Overseas contracting activities.* (1) A/OPE reviews all procurements that exceed the warrant levels of post contracting officers. Post contracting officers may request A/OPE review and assistance for transactions below this level.

(2) *Personal services agreements.* Prior A/OPE approval is not applicable to personal services agreements, as they

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are not subject to procurement statute and regulation.

(b) *Domestic contracting activities and Regional Procurement Support Offices.* A/OPE reviews domestic acquisitions as described in the A/LM/AQM Quality Assurance Plan.

(c) *Delegation or waiver.* The Procurement Executive may delegate or waive the review requirements. In such instances, the Procurement Executive shall provide to each head of the contracting activity, as appropriate, a written delegation or waiver of these requirements.

### Subpart 604.71—Procurement Quality Assurance Program

SOURCE: 80 FR 6916, Feb. 9, 2015, unless otherwise noted.

#### 604.7101 Purpose.

A procurement quality assurance program is essential to the effective operation of each domestic contracting activity. Each domestic contracting activity and RPSO shall develop a quality assurance plan for review and approval of contract actions to ensure that all requirements of law, regulation, Departmental policy, and sound procurement practices are met, the taxpayer's interests are adequately protected, and the Department's mission is well-served. Post quality assurance includes A/OPE review of actions exceeding warrant levels and Staff Assistance Visits (SAVs).

#### 604.7102 Contracting activity reviews.

##### 604.7102-1 Peer reviews.

All contract actions above the simplified acquisition threshold shall be independently reviewed by at least one other qualified contracting professional. This includes solicitations, contracts, contract modifications, and delivery/task orders. This requirement is waived for overseas posts and RPSOs that have only one qualified contracting professional.

##### 604.7102-2 Form and scope of review

(a) The review shall focus on both compliance with statutory/regulatory requirements as well as good contracting practices. Reviews shall be in-

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cluded in the official contract file along with documentation regarding the actions taken in response to the review.

(b) Reviews should be limited in time to prevent unnecessary procurement lead-time, but thorough in scope, considering all documents in the contract file and all relevant contracting issues. Checklists may be used to facilitate a thorough review, as appropriate.

#### 604.7102-3 Approval.

The solicitation, contract, or contract modification being reviewed shall not be issued until all review comments requiring corrective action are satisfactorily resolved. Waivers shall not be granted except in unusual circumstances, and shall be approved in advance by the head of the contracting activity.

#### 604.7103 Review by Assistant Legal Adviser for Buildings and Acquisitions (L/BA).

(a) L/BA shall review solicitations, contract awards, and delivery orders against GSA Federal Supply Schedule contracts exceeding \$1 million that are generated by domestic contracting activities, including RPSOs. L/BA shall also review domestic contract modifications exceeding \$1 million if the scope or ceiling of the contract may be in question. This review is not required for modifications exercising priced options, incremental funding modifications, and similar actions that do not involve questions regarding the scope or ceiling of the contract.

(b) L/BA shall also review and approve any nonpersonal services contract, purchase order or blanket purchase agreement to be awarded to an individual who is a U.S. citizen.

### Subpart 604.72—Secure Procurement for Controlled Access Areas

#### 604.7201 Policy.

A/LM issues procedures for the acquisition of secure items that are needed by overseas posts. Posts shall contact A/LM/AQM regarding secure procurement matters, and shall consult the periodic guidance issued by A/LM on this subject.

## SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

### PART 605—PUBLICIZING CONTRACT ACTIONS

#### Subpart 605.2—Synopsis of Proposed Contract Actions

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605.202 Exceptions.

605.202-70 Foreign acquisitions.

605.207 Preparation and transmittal of synopses.

605.207-70 Acquisitions available from only one responsible source.

#### Subpart 605.3—Synopsis of Contract Awards

605.303 Announcement of contract awards.

#### Subpart 605.4—Release of Information

605.403 Requests from Members of Congress.

605.404 Release of long-range acquisition estimates.

605.404-1 Release procedures.

#### Subpart 605.5—Paid Advertisements

605.502 Authority.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 53 FR 26164, July 11, 1988, unless otherwise noted.

### Subpart 605.2—Synopsis of Proposed Contract Actions

#### 605.202 Exceptions.

##### 605.202-70 Foreign acquisitions.

(a) *Policy.* In accordance with a Determination and Findings issued by the Assistant Secretary of State for Administration, the requirement for advance notices in the Governmentwide point of entry (GPE) for the Department's foreign acquisitions awarded by overseas contracting activities is waived. GPE notices may be published for any acquisition where the contracting officer decides that publication would be in the Department's best interests.

(b) *Procedures.* Contracting officers at overseas contracting activities are not required to prepare an individual determination and findings to document

their decision to waive the GPE notice requirements.

(c) *Competition requirements.* Nothing in this section waives the requirement to obtain competition as required by FAR part 6 and DOSAR (48 CFR) part 606. Competition, including the use of written solicitation, shall be obtained in all cases to the extent feasible. If there are known U.S. firms or firms with U.S. affiliations in local residence capable of supplying the required supplies or services, the contracting activity shall ensure that those firms are included in the source list for the acquisition.

(d) *Policy exclusions.* GPE waiver authority does not apply to local guard service contracts exceeding \$250,000, or any contracts exceeding \$5 million. Local guard service contracts that exceed \$250,000 and other contracts that exceed \$5 million shall be published in the GPE. Option year prices shall be included when computing the applicability of this threshold.

[60 FR 39662, Aug. 3, 1995, as amended at 64 FR 43621, Aug. 11, 1999; 69 FR 19331, Apr. 13, 2004]

#### 605.207 Preparation and transmittal of synopses.

(a)(1) Contracting officers at overseas posts shall submit notices of proposed contract actions to A/OPE for electronic transmittal to the GPE. Alternately, posts may obtain a user ID and password that allows direct registration and issuance of the notice in the GPE. Posts should contact A/OPE for assistance in obtaining the ID and password if they choose to directly input the notice information.

[80 FR 6917, Feb. 9, 2015]

#### 605.207-70 Acquisitions available from only one responsible source.

In addition to the information required at FAR 5.207, each notice of a proposed acquisition from only one responsible source shall include descriptions of the specific qualifications or capabilities required to perform the

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work and the information a potential source must submit.

[53 FR 26164, July 11, 1988, as amended at 69 FR 19331, Apr. 13, 2004]

### **Subpart 605.3—Synopsis of Contract Awards**

#### **605.303 Announcement of contract awards.**

(a) Contracting officers shall make information available on awards over \$10 million to the Bureau of Legislative Affairs, upon request, in sufficient time for an announcement by 5:00 p.m. Washington, DC time on the day of the award. This requirement applies only to awards made by domestic contracting activities where performance will take place within the United States or its possessions.

[59 FR 66755, Dec. 28, 1994, as amended at 64 FR 43621, Aug. 11, 1999; 69 FR 19331, Apr. 13, 2004]

### **Subpart 605.4—Release of Information**

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

The Procurement Executive is the agency head for the purposes of FAR 5.403.

[59 FR 66755, Dec. 28, 1994, as amended at 72 FR 45695, Aug. 15, 2007]

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

##### **605.404-1 Release procedures.**

The Procurement Executive is the agency head's designee for the purposes of FAR 5.404-1(a) and the agency head for the purposes of FAR 5.404-1(b).

[55 FR 5774, Feb. 16, 1990]

### **Subpart 605.5—Paid Advertisements**

#### **605.502 Authority.**

(a) For paid advertisements in newspapers within the United States, the head of the contracting activity is the agency head's designee for the purposes of FAR 5.502(a). For acquisitions by overseas posts necessitating paid advertisements in newspapers outside the

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United States, the head of the contracting activity is the agency's head's designee for the purposes of FAR 5.502(a). When the head of the contracting activity is the contracting officer for the acquisition, no further approvals are necessary.

[59 FR 66755, Dec. 28, 1994]

### **PART 606—COMPETITION REQUIREMENTS**

#### **Subpart 606.2—Full and Open Competition After Exclusion of Sources**

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606.202 Establishing or maintaining alternative sources.

#### **Subpart 606.3—Other Than Full and Open Competition**

606.302 Circumstances permitting other than full and open competition.

606.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

606.302-4 International agreement.

606.302-6 National security.

606.302-7 Public interest.

606.303 Justifications.

606.303-1 Requirements.

606.303-2 Content.

606.304 Approval of the justification.

606.304-70 Acquisitions by overseas posts.

606.370 Department of State standardization program.

#### **Subpart 606.5—Advocates for Competition**

606.501 Requirement.

606.501-70 Overseas posts.

606.570 Solicitation provision.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 53 FR 26165, July 11, 1988, unless otherwise noted.

#### **Subpart 606.2—Full and Open Competition After Exclusion of Sources**

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

The Procurement Executive is the agency head for the purposes of FAR 6.202.

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### Subpart 606.3—Other Than Full and Open Competition

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

##### **606.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.**

(b)(4) The Procurement Executive is the agency head for the purposes of FAR 6.302-1(b)(4).

[59 FR 66755, Dec. 28, 1994]

##### **606.302-4 International agreement.**

(b)(2) In accordance with FAR 6.302-4, guard services shall be acquired from the host government only when it is the sole available source.

[59 FR 66755, Dec. 28, 1994]

##### **606.302-6 National security.**

(b) This subsection applies to all acquisitions involving national security information, regardless of dollar amount. In no case shall information be classified in order to restrict competition. Information may be classified only when its authorized disclosure could be expected to cause damage to national security.

(c)(1) The Chief, Controls Division, Office of Intelligence Liaison, Directorate for Coordination, Bureau of Intelligence and Research, is responsible for reviewing and certifying on any proposed acquisitions derived from or funded or administered by intelligence community agencies that involve sensitive compartmented information and ensuring that the provisions of Executive Order 13526 and FAR 6.302-6 have been met. The Office Director, Office of Information Security, Security Infrastructure Directorate, Bureau of Diplomatic Security (DS/SI/IS) is responsible for reviewing and certifying on all other proposed acquisitions funded by the Department of State that involve national security information and ensuring that the provisions of Executive Order 13256 and FAR 6.302-6 have been met. When disclosure of the Department's needs through full and open competition would compromise national security, the Justification for Other than Full and Open Competition

shall include the following specific information:

(i) How national security would be compromised if the Department of State's (or other agencies') needs were disclosed in the GPE;

(ii) Why the GPE notice cannot be worded in such a manner that national security would not be compromised;

(iii) Necessity for access to classified information to prepare technical and/or cost proposal and level of security clearance required;

(iv) Necessity for access to classified information to perform the proposed contract and level of security clearance required;

(v) Number and value of contracts that the justification covers; and

(vi) A statement as follows: "I hereby certify that the national security concerns of the referenced acquisition(s) meet the criteria set forth in Executive Order 12958 and FAR 6.302-6".

(2) Any acquisition involving national security information shall be publicized in the GPE unless disclosure of the agency's needs would compromise national security.

(3) The contracting officer is responsible for soliciting offers from as many potential sources as is practicable under the circumstances. However, given the sensitivity required for acquisitions involving national security information, it is expected that requirements offices will work closely with the contracting officer in maximizing competition.

[59 FR 66755, Dec. 28, 1994, as amended at 64 FR 43621, Aug. 11, 1999; 69 FR 19331, Apr. 13, 2004; 72 FR 45695, Aug. 15, 2007; 80 FR 6918, Feb. 9, 2015]

##### **606.302-7 Public interest.**

The authority to approve the determination prescribed in FAR 6.302-7(c) is reserved to the Secretary of State.

#### **606.303 Justifications.**

##### **606.303-1 Requirements.**

Justifications for contract actions prescribed in FAR 6.303-1(d) shall be forwarded by the contracting officer to A/OPE for transmittal to the Office of

## **606.303-2**

the United States Trade Representative.

[53 FR 26165, July 11, 1988, as amended at 59 FR 66755, Dec. 28, 1994]

### **606.303-2 Content.**

(a) All justifications shall address the requirements of FAR 6.303-2. A sample Justification for Other than Full and Open Competition for acquisitions by both overseas posts and domestic contracting activities is available on the A/OPE Intranet Web site. Use of the format for overseas posts is mandatory; domestic contracting activities may develop their own format based on the sample. In addition, sample formats are provided for posts to justify motor vehicle and household appliance purchases made in accordance with the Department's standardization program (see 606.370(b)). All applicable approvals are as indicated on the formats. The justification must be completed and signed by the appropriate individuals.

(b)(9) All justifications for acquisitions exceeding \$5 million shall include a copy of the acquisition plan, as required by 607.103(d).

[80 FR 6918, Feb. 9, 2015]

### **606.304 Approval of the justification.**

(a)(2) The approval authority for a proposed contract within the dollar range set forth in FAR 6.304(a)(2) for domestic contracting activities that do not have an advocate for competition is the Department Advocate for Competition.

[59 FR 66755, Dec. 28, 1994, as amended at 64 FR 43621, Aug. 11, 1999; 72 FR 45695, Aug. 15, 2007; 80 FR 6918, Feb. 9, 2015; 81 FR 24707, Apr. 27, 2016]

### **606.304-70 Acquisitions by overseas posts.**

The Departmental Advocate for Competition is the approval authority for the purposes of FAR 6.304(a)(3). This authority is not redelegable. Any such justification must be transmitted through the Principal Officer at the overseas post.

[59 FR 66756, Dec. 28, 1994, as amended at 80 FR 6918, Feb. 9, 2015]

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### **606.370 Department of State standardization program.**

(a) It is the Department's policy to promote full and open competition in all procurement actions. The authority at 41 U.S.C. 3304(a)(1) shall be used with respect to standardization when only specified makes and models of equipment will satisfy the Department's needs and only one source is available. This policy applies to all acquisitions involving standardization, regardless of dollar amount.

(b) Contracts awarded under the authority at 41 U.S.C. 3304(a)(1) shall be supported by the written justification described in FAR 6.303. The contracting officer, requirements office, procuring activity advocate for competition, and the Procurement Executive shall approve all Justifications for Other than Full and Open Competition that cite standardization of technical equipment as justification to restrict competition. The Management Officer at each post is the procuring activity advocate for competition for that post and the requirements office at post is the embassy functional office responsible for identifying the need to contract.

(c) Procurement of specified makes and models of technical equipment and systems, for which there is only one source of supply, is considered other than full and open competition. Such procurements shall be supported by an approved Justification for Other than Full and Open Competition. The justification shall include the content requirements of FAR 6.303-2. The justification shall also address potential cost savings in areas such as inventory, operations, training, maintenance, repairs, and administrative and management support. Areas of consideration for potential cost savings shall be supported by detailed estimates as attachments to the justification. Justifications shall specify an effective period, which shall bear a reasonable relationship to the life of the technical equipment. The effective period shall not exceed six years with a review at the end of the first three years. Periodic reviews shall be made during the standardization period to determine whether

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the standardization should be continued, revised or canceled.

[59 FR 66756, Dec. 28, 1994, as amended at 69 FR 19331, Apr. 13, 2004; 80 FR 6918, Feb. 9, 2015]

### Subpart 606.5—Advocates for Competition

#### 606.501 Requirement.

(a) The Procurement Executive is the head of the agency for the purposes of FAR 6.501 and designates the Department Advocate for Competition.

(b) A contracting activity advocate for competition has been designated for A/LM/AQM. A/LM/AQM's advocate for competition is also designated the contracting activity advocate for competition for the Regional Procurement Support Offices. The Department Advocate for Competition is the activity advocate for competition for all other domestic contracting activities.

[59 FR 66756, Dec. 28, 1994, as amended at 64 FR 43622, Aug. 11, 1999; 69 FR 19331, Apr. 13, 2004, as amended 80 FR 6918, Feb. 9, 2015; 81 FR 24707, Apr. 27, 2016]

#### 606.501–70 Overseas posts.

The Management Officer at each overseas post is the advocate for competition for that post.

[53 FR 26165, July 11, 1988, as amended at 69 FR 19331, Apr. 13, 2004; 80 FR 6918, Feb. 9, 2015]

#### 606.570 Solicitation provision.

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

[64 FR 43622, Aug. 11, 1999, as amended at 80 FR 6918, Feb. 9, 2015]

## PART 607—ACQUISITION PLANNING

### Subpart 607.1—Acquisition Plans

Sec.

607.102 Policy.

607.103 Agency-head responsibilities.

607.105 Contents of written acquisition plans.

### Subpart 607.5—Inherently Governmental Functions

607.503 Policy.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

#### 607.102 Policy.

It is the Department's policy that every acquisition be conducted and the contract file documented in conformance with the requirements for acquisition planning pursuant to FAR part 7.

[80 FR 6918, Feb. 9, 2015]

#### 607.103 Agency-head responsibilities.

The Procurement Executive is the agency head's designee for the purposes of FAR 7.103.

(d) Domestic requirements offices must develop a formal, written acquisition plan for all acquisitions exceeding \$5 million. This includes base period plus all option years. The plan shall address the content requirements of FAR 7.105.

(j) Acquisition plans for service contracts with an anticipated annual expenditure exceeding \$25 million must be approved by the bureau Assistant Secretary.

[55 FR 5774, Feb. 16, 1990, as amended at 80 FR 6918, Feb. 9, 2015]

#### 607.105 Contents of written acquisition plans.

(b)(10) Acquisition Plans for support of contract administration and other tasks closely related to inherently governmental functions must include a determination that the services being requested are not inherently governmental and a risk mitigation strategy. Procurement Information Bulletin (PIB) 2011–11, Attachment 1, lists functions requiring additional oversight and potential mitigation strategies.

(b)(19) Acquisition Plans must include planning for contract administration. Planning shall be developed by the bureau technical program office and should consider an initial assessment of resources required for contractor oversight, support, travel and communications. Planning should take into account the need for multiple

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technical monitors based on geographic dispersion and multiple technical disciplines. Program offices must identify financial and other resources that are reserved for implementation of contract administration.

[80 FR 6918, Feb. 9, 2015]

### **Subpart 607.5—Inherently Governmental Functions**

SOURCE: 80 FR 6918, Feb. 9, 2015, unless otherwise noted.

#### **607.503 Policy.**

(e) Requirements offices shall provide to the contracting officer a written determination that none of the functions to be performed are inherently governmental. This determination shall be included with the procurement request package, which is transmitted to the contracting officer to initiate an action. The Form DS-4208 may be used to meet this requirement. The contracting officer shall obtain review from the Assistant Legal Adviser for Buildings and Acquisitions (L/BA) of any request package that the contracting officer determines raises substantial questions as to the performance of inherently governmental functions. Disagreements regarding the determination shall be resolved by the head of the contracting activity.

## **PART 608—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

### **Subpart 608.4—Federal Supply Schedules**

Sec.

608.405 Ordering procedures for Federal Supply Schedules.

608.405-3 Blanket Purchase Agreements.

### **Subpart 608.8—Acquisition of Printing and Related Services**

608.802 Policy.

### **Subpart 608.70—Acquisition of Official Vehicles by Overseas Contracting Activities**

608.7001 Definitions.

608.7002 Acquisitions for the Department of State.

608.7003 Acquisitions on behalf of other Federal agencies.

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AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 80 FR 6919, Feb. 9, 2015, unless otherwise noted.

### **Subpart 608.4—Federal Supply Schedules**

SOURCE: 81 FR 24707, Apr. 27, 2016, unless otherwise noted.

#### **608.405 Ordering procedures for Federal Supply Schedules.**

##### **608.405-3 Blanket Purchase Agreements.**

(a) *Establishment.*

(3)(ii) The Procurement Executive is the head of the agency for the purposes of FAR 8.405-3(a)(3)(ii).

### **Subpart 608.8—Acquisition of Printing and Related Services**

#### **608.802 Policy.**

(a)(4) In accordance with Section 2(a) of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2669), overseas printing and binding services may be acquired from sources other than the Government Printing Office.

(b) The DOS central printing authority is the Director, Global Publishing Solutions under the Deputy Assistant Secretary for Global Information Services.

### **Subpart 608.70—Acquisition of Official Vehicles by Overseas Contracting Activities**

#### **608.7001 Definitions.**

*Official vehicle* means a U.S. Government-owned or leased motor vehicle that is fueled by petroleum or electric batteries, has a minimum of four wheels, and is designed primarily for use on highways, such as sedans, station wagons, buses, carryalls, and trucks.

#### **608.7002 Acquisitions for the Department of State.**

(a) A/LM funds and controls the acquisition of official vehicles required



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by overseas posts. Accordingly, any acquisition of official vehicles by overseas contracting activities must be approved and authorized in advance by A/LM.

(b) GSA is the mandatory source for U.S. manufactured vehicles acquired in the United States. Purchase requests are submitted by A/LM to GSA on behalf of overseas posts. Overseas posts shall use U.S. manufactured vehicles unless justified as described in paragraph (c) of this section.

(c) Overseas posts may acquire non-U.S. manufactured vehicles only in special cases that are approved in advance. Requests to purchase non-U.S. manufactured vehicles may be justified under the conditions specified in 6 FAM 228.9-3(B)(c). The request shall be submitted to A/LM for approval. If approval is granted to acquire non-U.S. manufactured vehicles from the local economy, overseas posts shall follow the normal procedures in the FAR.

(d) Standardization of motor vehicles shall follow the procedures in 606.370.

### **608.7003 Acquisitions on behalf of other Federal agencies.**

(a) *Acquisition of U.S. manufactured vehicles.* (1) GSA is the mandatory source for official vehicles purchased in the United States for all Federal agencies. Non-DOS agencies must have a waiver from GSA that allows them to acquire official vehicles from sources in the United States other than GSA, in accordance with the Federal Property Management Regulation, 41 CFR 101-38.104.

(2) DOS overseas contracting activities shall not obtain GSA waivers or acquire vehicles through GSA or directly from sources in the United States on behalf of other agencies. Requests to acquire vehicles in this manner shall be returned to the requesting agency without action, and the agency instructed to use its own contracting personnel or GSA for this purpose.

(b) *Acquisition from non-U.S. sources.* No GSA waiver is required for official vehicles purchased outside the United States from non-U.S. sources. Normal acquisition procedures shall be followed. However, contracting officers should be aware that statutory ceilings apply to the acquisition of passenger

vehicles (*i.e.*, sedans and station wagons) (see P.L. 103-329), so other agencies shall not request that posts acquire vehicles without providing an analysis of how the price compares with this ceiling.

## **PART 609—CONTRACTOR QUALIFICATIONS**

### **Subpart 609.2—Qualifications Requirements**

Sec.

609.202 Policy.

609.206 Acquisitions subject to qualification requirements.

609.206-1 General.

### **Subpart 609.4—Debarment, Suspension, and Ineligibility**

609.402 Policy.

609.403 Definitions.

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609.404 System for Award Management Exclusions.

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609.405 Effect of listing.

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609.407 Suspension.

609.407-1 General.

609.407-3 Procedures.

### **Subpart 609.5—Organizational and Consultant Conflicts of Interests**

609.503 Waiver.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 53 FR 26165, July 11, 1988, unless otherwise noted.

### **Subpart 609.2—Qualifications Requirements**

#### **609.202 Policy.**

The authority prescribed in FAR 9.202(a)(1) is delegated, without power of redelegation, to the head of the contracting activity.

[53 FR 26165, July 11, 1988, as amended at 59 FR 66756, Dec. 28, 1994]

## **609.206**

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

#### **609.206-1 General.**

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

[64 FR 43622, Aug. 11, 1999]

### **Subpart 609.4—Debarment, Suspension, and Ineligibility**

#### **609.402 Policy.**

The Procurement Executive is the agency head's designee to be the debar-  
ring official and the suspending official.

[80 FR 6919, Feb. 9, 2015]

#### **609.403 Definitions.**

[53 FR 26165, July 11, 1988, as amended at 80 FR 6919, Feb. 9, 2015]

#### **609.403-70 DOSAR definitions.**

*Fact-finding official* means the individual designated by the debar-  
ring official to conduct additional proceedings as necessary concerning disputed material facts.

[81 FR 51125, Aug. 3, 2016]

#### **609.404 System for Award Management Exclusions.**

A/OPE shall accomplish the agency responsibilities prescribed in FAR 9.404(c)(1) through (6). The authority to establish procedures prescribed in FAR 9.404(c)(7) is delegated, without power of redelegation, to the head of the contracting activity.

[80 FR 6919, Feb. 9, 2015]

#### **609.404-70 Specially Designated Nationals List.**

Contracting officers shall not award to any of the entities listed on the Specially Designated Nationals (SDN) List, available on the Department of Treasury's Office of Foreign Assets Control Web site at <http://www.treas.gov/ofac/>. Contracting officers shall consult this list prior to award for any dollar amount. This list is included in searches conducted on

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the System for Award Management (SAM) Web site at <https://www.sam.gov>.

[80 FR 6919, Feb. 9, 2015]

#### **609.405 Effect of listing.**

(a) The Procurement Executive is the agency head's designee for the purposes of FAR 9.405(a).

(d)(3) The Procurement Executive is the agency head's designee for the purposes of FAR 9.405(d)(3).

[59 FR 66756, Dec. 28, 1994, as amended at 60 FR 39662, Aug. 3, 1995; 64 FR 43622, Aug. 11, 1999; 69 FR 19331, Apr. 13, 2004]

#### **609.405-1 Continuation of current contracts.**

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405-1. The decision whether to terminate a current contract shall be made in consideration of the circumstances listed in 649.101-70.

[53 FR 26165, July 11, 1988, as amended at 81 FR 51125, Aug. 3, 2016]

#### **609.405-2 Restrictions on subcontracting.**

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405-2.

#### **609.406 Debarment.**

##### **609.406-1 General.**

The Procurement Executive is the agency head's designee for the purposes of FAR 9.406-1(c).

##### **609.406-3 Procedures.**

(a) *Investigation and referral.* (1) DOS employees aware of any cause that might serve as the basis for debarment shall refer those cases through the contracting officer to the debar-  
ring official. The debar-  
ring official shall refer to the Office of the Inspector General all reported cases that involve possible criminal or fraudulent activities for investigation by that office.

(2) Referrals for consideration of debarment shall include, as appropriate and available—

(i) The cause for debarment (see FAR 9.406-2);

(ii) A statement of facts;

(iii) Copies of supporting documentary evidence and a list of all necessary

or probable witnesses, including addresses and telephone numbers, together with a statement concerning their availability to appear at a fact-finding proceeding and the subject matter of their testimony;

(iv) A list of all contractors involved, either as principals or as affiliates, including current or last known home and business addresses and ZIP codes;

(v) A statement of the acquisition history with such contractors;

(vi) A statement concerning any known pertinent active or potential criminal investigation, criminal or civil court proceedings, or administrative claim before Boards of Contract Appeals; and

(vii) A statement from each DOS organizational element affected by the debarment action as to the impact of a debarment on DOS programs.

(3) As deemed appropriate, the debarring official may conduct investigations to supplement the information provided in the referral, or may request investigations by the Office of the Inspector General or other Department office.

(b) *Decisionmaking process.* (1) If the contractor does not respond to a debarment notice within 30 calendar days after receipt of the notice, the debarring official may put the debarment into effect.

(2) In response to the debarment notice, if the contractor or its representative notifies the debarring official within 30 days after receipt of the notice that it wants to present information and arguments in person to the debarring official, that official, or a designee, shall chair such a meeting. The oral presentation shall be conducted informally and a transcript need not be made. However, the contractor may supplement its oral presentation with written information and arguments for inclusion in the administrative record.

(3) Pursuant to FAR 9.406-3(b)(2), the contractor may request a fact-finding proceeding.

(4) The debarring official shall designate a fact-finding official and shall provide the fact-finding official with a copy of all documentary evidence considered in proposing debarment. Upon receipt of such material, the fact-finding

official shall notify the contractor and schedule a hearing date.

(5) In addition to the purposes provided in FAR 9.406-3(b)(2), the hearing is intended to provide the debarring official with findings of fact based on a preponderance of evidence submitted to the fact-finding official and to provide the debarring official with a determination as to whether a cause for debarment exists, based on the facts as found.

(6) The fact-finding proceeding shall be conducted in accordance with procedures determined by the fact-finding official. The rules shall be as informal as is practicable, consistent with FAR 9.406-3(b). The fact-finding official is responsible for making the transcribed record of the hearing, unless the contractor and the fact-finding official agree to waive the requirement for a transcript.

(7) The fact-finding official shall deliver written findings and the transcribed record, if made, to the debarring official. The findings shall resolve any facts in dispute based on a preponderance of the evidence presented and recommend whether a cause for debarment exists.

(c) *Notice of proposal to debar.* (1) Upon receipt of a complete referral and after consulting with the Office of the Legal Adviser, the debarring official shall decide whether to initiate debarment action.

(2) When a determination is made to initiate action, the debarring official shall provide to the contractor and any specifically named affiliates written notice in accordance with FAR 9.406-3(c).

(3) When a determination is made not to initiate action, the debarring official shall so advise the DOS officer who made the referral.

(d) *Debarring official's decision.* In addition to complying with FAR 9.406-3(d) and (e), the debarring official shall provide single copies of the decision to each DOS organizational element affected by the decision.

[53 FR 26165, July 11, 1988; 53 FR 36461, Sept. 20, 1988, as amended at 64 FR 43622, Aug. 11, 1999; 69 FR 19331, Apr. 13, 2004; 81 FR 51126, Aug. 3, 2016]

## **609.407**

### **609.407 Suspension.**

#### **609.407-1 General.**

The Procurement Executive is the agency head's designee for the purposes of FAR 9.407-1(d).

#### **609.407-3 Procedures.**

(a) *Investigation and referral.* Investigation and referral shall be accomplished as provided in 609.406-3(a), except that referrals made to the suspending official shall cite causes pertinent to a suspension action (see FAR 9.407-2).

(b) *Decisionmaking process.* (1) If the contractor does not respond to a notice of suspension within 30 calendar days after receipt of the notice, the suspending official may proceed with completion of investigation.

(2) The DOS decisionmaking process for a suspension action pursuant to FAR 9.407-3(b) follow those established for a debarment action (see 609.406(b)), except that the contractor may request and shall be entitled to a hearing before the fact-finding official only if permitted under FAR 9.407-3(b)(2).

(c) *Notice of suspension.* Notice of suspension shall be accomplished as provided in 609.406-3(a), except that the suspending official shall process the notice in accordance with FAR 9.407-3(c).

(d) *Suspending official's decision.* In addition to complying with FAR 9.407-3(d), the suspending official shall provide single copies of the decision to each DOS organizational element affected by the decision.

[53 FR 26165, July 11, 1988, as amended at 81 FR 51128, Aug. 3, 2016]

### **Subpart 609.5—Organizational and Consultant Conflicts of Interests**

#### **609.503 Waiver.**

The Procurement Executive is the agency head's designee for the purposes of FAR 9.503.

## **PART 611—DESCRIBING AGENCY NEEDS**

Sec.  
611.002 Policy.

## **48 CFR Ch. 6 (10-1-21 Edition)**

611.002-70 Metric system implementation.

### **Subpart 611.1—Selecting and Developing Requirements Documents**

611.103 Market acceptance.

### **Subpart 611.5—Liquidated Damages**

611.501 Policy.

### **Subpart 611.6—Priorities and Allocations**

611.600 Scope of subpart.

611.602 General.

611.603 Procedures.

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

SOURCE: 64 FR 43622, Aug. 11, 1999, unless otherwise noted.

### **611.002 Policy.**

#### **611.002-70 Metric system implementation.**

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

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

(c) *Definitions.*

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

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

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

*Measurement sensitive* means any item having an application or meaning depending substantially on some measured quantity. For example, measurement sensitive items include product

or performance criteria and standards binding on others, such as emission levels, size and weight limitations, etc.

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

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

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

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

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

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

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

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

(ii) For contracts expected to exceed \$500,000 contracting officers shall return to the requirements office all specifications and statements of work

that are not expressed in some form of metric terms unless the requirements office has prepared a justification, for the approval of the contracting officer, for the use of non-metric specifications or statements of work. The justification shall be in a format as prescribed by the head of the contracting activity. Option year prices shall be considered when computing the \$500,000 threshold.

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

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

(i) Existing specifications or standards are in inch-pound units, unless conversion of the existing specifications or standards is necessary or advantageous to the Government. Unnecessary retrofit of existing systems with new metric components should be avoided if the total cost of the retrofit, including redesign costs, exceeds \$50,000;

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

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

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

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

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

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

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

### **Subpart 611.1—Selecting and Developing Requirements Documents**

#### **611.103 Market acceptance.**

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

### **Subpart 611.5—Liquidated Damages**

#### **611.501 Policy.**

(d) The head of the contracting activity is the agency head for the purpose of FAR 11.501(d).

[64 FR 43622, Aug. 11, 1999. Redesignated and amended at 71 FR 34839, June 16, 2006]

### **Subpart 611.6—Priorities and Allocations**

SOURCE: 69 FR 19332, Apr. 13, 2004, unless otherwise noted.

#### **611.600 Scope of subpart.**

On September 18, 2001, the Department of Commerce (DOC) authorized the Department of State to use the Defense Priorities and Allocations System (DPAS). This authority expires on October 1, 2006. The Department of Defense has approved the Department's Embassy Security Protection Program (DOSESPP) as a national defense program eligible for the priorities support under the DPAS.

#### **611.602 General.**

(c)(1) Authority to use the DPAS is limited to the following circumstances:

(i) The contract or order must be placed with a U.S. firm; and,

(ii) The contract or order must be in support of the DOSESPP, which consists of work involving the security of overseas posts. The DOSESPP includes a wide range of elements of both physical and technical security, such as:

(A) New Embassy/Consulate Compound (NEC/NCC) Program. This program involves the construction of new secure Embassies, Consulates, and re-

lated facilities, as well as renovations of newly acquired buildings when used as alternatives to the construction of new secure buildings.

(B) Physical security upgrade. This includes installation of forced entry/ballistic resistant (FE/BR) windows and doors, walls/fences, active anti-ram barriers, bollards (concrete and steel barriers), and related items.

(C) Forced entry/ballistic resistant (FE/BR) components. This includes doors, windows, and related facilities and items that can provide the necessary time to protect Government personnel from attack.

(D) Armored vehicles. This includes passenger vehicles with appropriate armoring.

(E) Entry control and building surveillance equipment. This includes walk-through metal detectors, X-ray equipment, surveillance cameras, explosive detection equipment, and other features to enhance the protection of Government personnel and facilities.

(2) DOC has assigned the following priority rating to DOSESPP contracts or orders: DO-H8.

#### **611.603 Procedures.**

(f) Department of State contracting officers are authorized to sign DO-H8 rated contracts or orders. It is the responsibility of the requirements office to determine which contracts or orders should be rated. All contracts with U.S. firms under the DOSESPP will not necessarily need to be assigned a priority rating.

(g) The contracting officer should place a DO-H8 rating on any contract or order if there is any doubt as to whether a contractor doing work for Embassy security protection will be able to deliver on time. If an unrated contract or order is not completed on time, the contracting officer may modify the contract or order to add the rating; however, the rating shall only be effective for the newly established delivery date, not the original delivery date.

(1) DOC can provide special assistance to implement the DPAS program in specific cases. For example, the Department may request a higher priority rating, or request that DOC issue a written directive to a contractor that

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is not complying with the DPAS regulations. In addition, although the DPAS program normally applies only to U.S. firms, if the Department has a prime contract with a foreign firm that will be awarding subcontracts with U.S. firms, the Department may request from DOC authorization to place a rating on the prime contract.

(2) Contracting officers or requirements offices who wish to request special assistance from DOC must complete DOC Form BXA-999, *Request for Special Priorities Assistance*, and submit it to A/OPE, which will arrange for submission of the request to DOC.

## PART 612—ACQUISITION OF COMMERCIAL ITEMS

### Subpart 612.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

#### 612.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(c) The head of the contracting activity shall approve any request for a waiver to tailor a clause or otherwise include any additional terms or conditions in a solicitation or contract in a manner that is inconsistent with customary commercial practice.

[69 FR 19332, Apr. 13, 2004]

## SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

### PART 613—SIMPLIFIED ACQUISITION PROCEDURES

#### Subpart 613.2—Actions At or Below the Micro-Purchase Threshold

Sec.

613.201 General.

#### Subpart 613.3—Simplified Acquisition Methods

613.302 Purchase orders.

613.302-1 General.

613.302-5 Clauses.

613.302-5-70 DOSAR clauses.

613.303 Blanket purchase agreements (BPAs).

613.303-1 General.

613.303-5 Purchases under BPAs.

613.303-6 Review procedures.

613.305 Imprest funds and third party drafts.

613.305-3 Conditions for use.

613.307 Forms.

613.307-70 File folders for purchase orders, delivery orders, blanket purchase agreements, and purchase card transactions.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 64 FR 43623, Aug. 11, 1999, unless otherwise noted.

#### Subpart 613.2—Actions At or Below the Micro-Purchase Threshold

##### 613.201 General.

(g)(1) The procurement Executive is the agency head's designee for the purpose of FAR 13.201(g)(1).

[72 FR 45695, Aug. 15, 2007]

#### Subpart 613.3—Simplified Acquisition Methods

##### 613.302 Purchase orders.

###### 613.302-1 General.

(d) The contracting officer shall distribute copies of each purchase order in conformance with subpart 604.2.

[80 FR 6919, Feb. 9, 2015]

###### 613.302-5 Clauses.

The contracting officer shall ensure that the appropriate clauses prescribed in FAR part 13 are added or incorporated by reference on all purchase orders with both U.S. and foreign vendors.

[80 FR 6919, Feb. 9, 2015]

###### 613.302-5-70 DOSAR clauses.

In addition to the appropriate FAR clauses, each purchase order shall incorporate all DOSAR clauses required for or applicable to the acquisition. The DOSAR clauses may be incorporated by reference.

[80 FR 6919, Feb. 9, 2015]

##### 613.303 Blanket purchase agreements (BPAs).

###### 613.303-1 General.

BPAs shall not be used to acquire pest control services.

[80 FR 6919, Feb. 9, 2015]

###### 613.303-5 Purchases under BPAs.

(b) Individual purchases under BPAs for commercial items may exceed the simplified acquisition threshold; however, the higher threshold must be consistent with the requirements of FAR 13.303-5(b)(1) and (2).

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

[64 FR 43623, Aug. 11, 1999, as amended at 69 FR 19332, Apr. 13, 2004]

###### 613.303-6 Review procedures.

(a) Contracting officers shall conduct an annual internal review to ensure that authorized BPA procedures are being followed and report the results of the review, including needed corrective action, to the head of the contracting activity.

[80 FR 6919, Feb. 9, 2015]



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### 613.305 Imprest funds and third party drafts.

#### 613.305-3 Conditions for use.

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

#### 613.307 Forms.

(b)(2) Other than commercial items. The OF-347 shall be mandatory for use by domestic contracting activities for issuing purchase orders, delivery orders, and BPAs, unless ordering against another Federal agency contract that stipulates a different form (e.g., DD-1155, Order for Supplies or Services;) or, unless the Procurement Executive has approved another form. The OF-347 may also be used as a voucher. In lieu of the OF-347, DOS overseas contracting activities may use the DS-2076, Purchase Order, Receiving Report, and Voucher; and DS-2077, Continuation Sheet. Contracting activities may use the Optional Form (OF) 127, Receiving and Inspection Report, for documenting receipt and inspection.

[80 FR 6920, Feb. 9, 2015]

### 613.307-70 File folders for purchase orders, delivery orders, blanket purchase agreements, and purchase card transactions.

Contracting officers shall use Forms DS-1918, Purchase Order File; DS-1919, Delivery Order File; DS-1920, Blanket Purchase Agreement (BPA) File; and DS-3014, Purchase Card Transaction File (Actions Exceeding \$3,000 Through \$25,000), to record relevant data and document those acquisitions, respectively.

[80 FR 6920, Feb. 20, 2015]

## PART 614—SEALED BIDDING

### Subpart 614.2—Solicitation of Bids

Sec.

614.201 Preparation of Invitation for Bids (IFB).

614.201-70 Use of English language.

### Subpart 614.4—Opening of Bids and Award of Contract

614.402 Opening of bids.

614.402-1 Unclassified bids.

614.402-70 Waiver of public opening of bids.

614.404 Rejection of bids.

614.404-1 Cancellation of invitations after opening.

614.407 Mistakes in bids.

614.407-3 Other mistakes disclosed before award.

614.407-4 Mistakes after award.

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

SOURCE: 53 FR 26168, July 11, 1988, unless otherwise noted.

## Subpart 614.2—Solicitation of Bids

SOURCE: 64 FR 43623, Aug. 11, 1999, unless otherwise noted.

### 614.201 Preparation of Invitation for Bids (IFB).

#### 614.201-70 Use of English language.

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

## Subpart 614.4—Opening of Bids and Award of Contract

### 614.402 Opening of bids.

#### 614.402-1 Unclassified bids.

After the unclassified bids have been opened pursuant to FAR 14.402-1, the bid opening officer shall announce that the opening of bids has been completed and that all bidders will be notified as soon as possible regarding the award.

### 614.402-70 Waiver of public opening of bids.

Overseas posts may request waiver of the public opening of bids if that activity is inconsistent with local law or legal practice, or with post security. For that purpose, the Procurement Executive must approve a deviation in accordance with 601.470.

## **614.404**

### **614.404 Rejection of bids.**

#### **614.404-1 Cancellation of invitations after opening.**

The authority to make the determination prescribed in FAR 14.404-1(c) is delegated, without power of redelegation, to the head of the contracting activity. The head of the contracting activity shall obtain the concurrence of the Office of the Legal Adviser before making a determination pursuant to this subsection.

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

[53 FR 26168, July 11, 1988, as amended at 59 FR 66758, Dec. 28, 1994; 64 FR 43623, Aug. 11, 1999]

### **614.407 Mistakes in bids.**

#### **614.407-3 Other mistakes disclosed before award.**

The authority to make the determinations prescribed in FAR 14.407 is delegated, without power of redelegation, to the head of the contracting activity. In conformance with FAR 14.407-3(f), the head of the contracting activity shall obtain the concurrence of the Office of the Legal Adviser before making any determinations pursuant to this subsection.

[53 FR 26168, July 11, 1988. Redesignated and amended at 64 FR 43623, Aug. 11, 1999]

#### **614.407-4 Mistakes after award.**

The authority to make all determinations prescribed in FAR 14.407-4 is delegated, without power of redelegation, to the head of the contracting activity. In conformance with FAR 14.407-4(d), the head of the contracting activity shall consult with the Office of the Legal Adviser before making any determinations pursuant to this subsection.

[53 FR 26168, July 11, 1988. Redesignated and amended at 64 FR 43623, Aug. 11, 1999]

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### **PART 615—CONTRACTING BY NEGOTIATION**

#### **Subpart 615.2—Solicitation and Receipt of Proposals and Information**

Sec.

615.204 Contract format.

615.205 Issuing solicitations.

615.205-70 Use of English language.

#### **Subpart 615.3—Source Selection**

615.303 Responsibilities.

#### **Subpart 615.4—Contract Pricing**

615.404 Proposal analysis.

615.404-4 Profit.

#### **Subpart 615.6—Unsolicited Proposals**

615.604 Agency points of contact.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 64 FR 43623, Aug. 11, 1999, unless otherwise noted.

#### **Subpart 615.2—Solicitation and Receipt of Proposals and Information**

##### **615.204 Contract format.**

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

##### **615.205 Issuing solicitations.**

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

##### **615.205-70 Use of English language.**

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

[64 FR 43623, Aug. 11, 1999, as amended at 81 FR 24707, Apr. 27, 2016]

#### **Subpart 615.3—Source Selection**

##### **615.303 Responsibilities.**

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

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15.303(a). The HCA is delegated authority to appoint someone other than the contracting officer as source selection authority for a particular acquisition.

[64 FR 43623, Aug. 11, 1999, as amended at 80 FR 6920, Feb. 9, 2015]

### Subpart 615.4—Contract Pricing

SOURCE: 80 FR 6920, Feb. 9, 2015, unless otherwise noted.

#### 615.404 Proposal analysis.

##### 615.404-4 Profit.

(b)(2) It is the Department's policy to use the structured approach for profit/fee analysis contained in the Department of Health and Human Services' (HHS) FAR Supplement (see 48 CFR chapter 3), for acquisitions awarded by domestic contracting activities and RPSOs. This document may be accessed from A/OPE's Acquisition Web site (see 601.105-3). Contracting officers shall follow these procedures. HHS Form 674, *Structured Approach Profit/Fee Objective*, or an equivalent form, may be used to document the profit/fee analysis. If more than one pre-negotiation cost objective is developed (e.g., high and low), a separate form should be completed for each. The contracting officer shall ensure that a written explanation is attached to the form justifying the weights chosen for each cost category or factor. This approach considers the factors outlined in FAR 15.404-4(d).

(c)(4)(i)(B) In accordance with a delegation from OBO, overseas posts may request a waiver from A/OPE if post is unable to negotiate a price for architect-engineer services within the six percent price limitation. To obtain a waiver, the contracting officer must send the following information to A/OPE:

- (1) Description of project;
- (2) Estimated dollar amount, with cost breakdown; and,
- (3) Description of negotiation efforts.

### Subpart 615.6—Unsolicited Proposals

#### 615.604 Agency points of contact.

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

## PART 616—TYPES OF CONTRACTS

Sec.

616.000 Scope of part.

### Subpart 616.1—Selecting Contract Types

616.102 Policies

616.102-70 Overseas posts.

616.103 Negotiating contract type.

### Subpart 616.2—Fixed-Price Contracts

616.203 Fixed-Price contracts with economic price adjustment.

616.203-4 Contract clauses.

616.207 Firm-fixed-price, level-of-effort term contracts.

616.207-3 Limitations.

### Subpart 616.5—Indefinite-Delivery Contracts

616.504 Indefinite-quantity contracts.

616.505 Ordering.

616.506 Solicitation provisions and contract clauses.

616.506-70 DOSAR contract clause.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 53 FR 26169, July 11, 1988, unless otherwise noted.

#### 616.000 Scope of part.

The contracting officer may use any of the contract types described in FAR part 16 for acquisitions made under simplified acquisition procedures. The contracting officer shall document his/her decision to use a contract type in accordance with the requirements of FAR part 16.

[60 FR 39963, Aug. 3, 1995]

### Subpart 616.1—Selecting Contract Types

SOURCE: 80 FR 6920, Feb. 9, 2015, unless otherwise noted.

## **616.102**

### **616.102 Policies.**

#### **616.102-70 Overseas posts.**

Pursuant to 601.601-70(a)(1)(i), no authority is delegated to overseas posts to enter into cost-reimbursement, fixed-price incentive, or fixed-price re-determinable contracts, unless the Procurement Executive's approval is obtained. Such requests shall be submitted by the head of the contracting activity on a case-by-case basis.

#### **616.103 Negotiating contract type.**

(d) The Procurement Executive has issued class determinations for the following categories of contracts awarded by overseas contracting activities: painting, vehicle insurance, vehicle rental, alarm installation, cell phone rental, janitorial, hotel and cost per copy services; gardening and maintenance services; and packing/shipping services. Copies may be found in the Overseas Contracting and Simplified Acquisition Guidebook. Contracting officers need not develop their own determinations provided that they use A/OPE's model solicitations. Contracting officers shall place a copy of the appropriate determination in the contract file.

### **Subpart 616.2—Fixed-Price Contracts**

#### **616.203 Fixed-Price contracts with economic price adjustment.**

##### **616.203-4 Contract clauses.**

Contracting officers at domestic contracting activities may use an economic price adjustment clause based on cost indexes of labor or material in accordance with the circumstances listed in FAR 16.203-4(d) and after obtaining the approval of the head of the contracting activity. Overseas posts may use the clause at 652.216-71, Price Adjustment, when procuring continuing services (e.g., guard, janitorial, building maintenance, and gardening). Posts shall obtain A/OPE approval for any price adjustment clause that differs from the clause at 652.216-71.

[53 FR 26169, July 11, 1988, as amended at 59 FR 66759, Dec. 28, 1994]

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### **616.207 Firm-fixed-price, level-of-effort term contracts.**

#### **616.207-3 Limitations.**

The head of the contracting activity is the chief of the contracting office for the purposes of FAR 16.207-3.

### **Subpart 616.5—Indefinite-Delivery Contracts**

#### **616.504 Indefinite-quantity contracts.**

(c) *Multiple award preference—(1) Planning the acquisition.*

(ii)(D)(1) The Procurement Executive is the head of the agency for the purposes of FAR 16.504(c)(1)(ii)(D)(1).

[81 FR 24707, Apr. 27, 2016]

#### **616.505 Ordering.**

(b)(5) The Departmental Advocate for Competition is designated the task and delivery order ombudsman.

[64 FR 43624, Aug. 11, 1999, as amended at 69 FR 19332, Apr. 13, 2004; 80 FR 6920, Feb. 9, 2015]

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

##### **616.506-70 DOSAR contract clause.**

The contracting officer shall insert the clause at 652.216-70, Ordering—Indefinite-Delivery Contract, whenever the clause at FAR 52.216-20, Definite Quantity, or the clause at FAR 52.216-21, Requirements, or the clause at FAR 52.216-22, Indefinite Quantity, is used.

[53 FR 26169, July 11, 1988. Redesignated at 64 FR 43624, Aug. 11, 1999]

## **PART 617—SPECIAL CONTRACTING METHODS**

### **Subpart 617.1—Multiyear Contracting**

Sec.

617.104 General.

617.105 Policy.

617.105-1 Uses.

617.108 Congressional notification.

### **Subpart 617.2—Options**

617.204 Contracts.

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### Subpart 617.5—Interagency Acquisitions Under the Economy Act

617.503 Determination and findings requirements.

617.504–70 Ordering procedures.

### Subpart 617.6—Management and Operating Contracts

617.602 Policy.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 53 FR 26169, July 11, 1988, unless otherwise noted.

### Subpart 617.1—Multiyear Contracting

SOURCE: 64 FR 43624, Aug. 11, 1999, unless otherwise noted.

#### 617.104 General.

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

#### 617.105 Policy.

##### 617.105–1 Uses.

(d) Every multiyear contract shall comply with FAR 17.104(c), unless an exception is approved through the budget process in coordination with the cognizant financial management office/comptroller.

#### 617.108 Congressional notification.

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

### Subpart 617.2—Options

#### 617.204 Contracts.

(e) The Procurement Executive shall approve any solicitations or contracts which exceed the five (5) year maximum length for supplies or services. The Procurement Executive may dele-

gate this approval authority to individuals within the Office of the Procurement Executive.

[59 FR 66759, Dec. 28, 1994, as amended at 69 FR 19332, Apr. 13, 2004]

### Subpart 617.5—Interagency Acquisitions Under the Economy Act

#### 617.503 Determination and findings requirements.

The authority to make the determination prescribed in FAR 17.503 is delegated to the head of the contracting activity.

[64 FR 43624, Aug. 11, 1999]

#### 617.504–70 Ordering procedures.

(a) Department deputy assistant secretaries and Bureau Executive Directors or their equivalents are authorized to execute Economy Act IAAs. Department contracting officers also are authorized to execute Economy Act IAAs, as prescribed in FAR 17.504(a).

(b) Department of State form DS–1921, Award/Modification of Interagency Acquisition Agreement, shall be used for all Economy Act IAAs where the Department is the requesting agency. It shall also be used for Economy Act IAAs where the Department is the servicing agency if the requesting agency does not have a similar form that provides the same information.

[59 FR 66759, Dec. 28, 1994, as amended at 64 FR 43624, Aug. 11, 1999; 69 FR 19332, Apr. 13, 2004]

### Subpart 617.6—Management and Operating Contracts

#### 617.602 Policy.

The Assistant Secretary for Administration is the agency head for the purposes of FAR 17.602.

## SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

### PART 619—SMALL BUSINESS PROGRAMS

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619.000 Scope of part.

#### Subpart 619.2—Policies

619.201 General policy.

619.202 Specific policies.

619.202-70 The Department of State Mentor-Protégé Program.

#### Subpart 619.4—Cooperation with the Small Business Administration

619.402 Small Business Administration procurement center representatives.

619.402-70 DOS designee.

#### Subpart 619.5—Set-Asides for Small Business

619.501 General.

619.505 Rejecting Small Business Administration recommendations.

619.506 Withdrawing or modifying set asides.

#### Subpart 619.6—Certificates of Competency and Determinations of Responsibility

619.602 Procedures.

619.602-1 Referral.

#### Subpart 619.7—The Small Business Subcontracting Program

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

619.705-1 General support of the program.

619.705-3 Preparing the solicitation.

619.705-4 Reviewing the subcontracting plan.

619.705-6 Postaward responsibilities of the contracting officer.

619.705-6-70 Reporting responsibilities.

619.708-70 Solicitation provisions and contract clauses.

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

619.800 General.

619.803 Selecting acquisitions for the 8(a) program.

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

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

619.804 Evaluation, offering, and acceptance.

619.804-2 Agency offering.

619.804-3 SBA acceptance.

619.804-3- SBA Acceptance Under MOUs for Acquisitions Exceeding \$150,000.

619.805 Competitive 8(a).

619.805-2 Procedures.

619.806 Pricing the 8(a) contract.

619.808 Contract negotiation.

619.808-1 Sole source.

619.810 SBA appeals.

619.811 Preparing the contracts.

619.811-1 Sole source.

619.811-2 Competitive.

619.811-3 Contract clauses.

619.812 Contract administration.

619.870 Acquisition of technical requirements.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 53 FR 26170, July 11, 1988, unless otherwise noted.

#### 619.000 Scope of part.

(b) It is the Department's policy to provide maximum opportunities for U.S. small businesses to participate in the acquisition process. DOS contracts that are awarded domestically for performance overseas shall be subject to the Small Business Act as a matter of policy. Contracts that are both awarded and performed overseas should comply on a voluntary basis.

[71 FR 34839, June 16, 2006]

#### Subpart 619.2—Policies

##### 619.201 General policy.

(a) The Operations Director, Office of Small and Disadvantaged Business Utilization (OSDBU), is responsible for performing all functions and duties prescribed in FAR 19.201(c) and (d).

(b) In addition to the requirements of FAR 19.201(b), each head of the contracting activity, or designee, is responsible for establishing in coordination with the OSDBU Operations Director annual goals for the DOS small business program.

(d) Pursuant to FAR 19.201(d), each Small and Disadvantaged Business Utilization Specialist (SDBUS) is responsible for—

(1) Maintaining a program to locate capable small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business sources to fulfill DOS acquisition requirements;

(2) Coordinating inquiries and requests for advice from small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business concerns on DOS contracting and subcontracting opportunities and other acquisition matters;

(3) Advising contracting activities on new or revised small business policies, regulations, procedures, and other related information;

(4) Assuring that small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business concerns are provided adequate specifications or drawings by initiating, in writing, with appropriate technical and contracting personnel to ensure that all necessary specifications or drawings for current and future acquisitions, as appropriate, are available;

(5) Reviewing all proposed acquisitions in excess of the simplified acquisition threshold, including commercial items using the simplified acquisition procedures of FAR Subpart 13.5, and task and delivery orders under multiple award contracts exceeding \$2 million, to assure that small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business concerns will be afforded an equitable opportunity to compete and, as appropriate, initiating recommendations for small business, 8(a), or HUBZone set-asides. This includes proposed contract modifications for new or additional requirements that do not fall within the original scope of the contract and which exceed the simplified acquisition limitation. This does not include the exercising of contract options;

(6) Assuring that contract financing available under existing regulations is offered when appropriate and that requests by small business concerns for such financing are not treated as a handicap in the award of contracts;

(7) Providing assistance to the contracting officer in making determinations concerning responsibility of prospective contractors whenever small business concerns are involved;

(8) Participating in the evaluation of a prime contractor's small, small disadvantaged, woman-owned small, HUBZone small, veteran-owned small, and service-disabled veteran-owned small business subcontracting plans;

(9) Assuring that the participation of small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business concerns is accurately reported;

(10) Attending, as appropriate, debriefings to unsuccessful small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business concerns to assist those firms in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(11) Making available to SBA copies of solicitations when so requested;

(12) When a bid or offer from a small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business has been rejected for non-responsiveness or non-responsibility, upon request, aid, counsel, and assist that firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(13) Participating in Government-industry conferences to assist small business concerns, including Business Opportunity/Federal Acquisition Conferences, Minority Business Enterprise Acquisition Seminars and Business Opportunity Committee meetings;

(14) Maintaining a list of supplies and services that have been placed as repetitive small business set-asides;

(15) Participating in the development, implementation, and review of automated source systems to assure that the interests of small business concerns are included;

(16) Advising potential sources how they can obtain information about competitive acquisitions;

(17) Providing small business, small disadvantaged business, women-owned small business, HUBZone small business, veteran-owned small business, and service-disabled veteran-owned small business concerns information regarding assistance available from Federal agencies such as the Small Business Administration, Minority Business Development Agency, Bureau of Indian Affairs, Economic Development Administration, National Science Foundation, Department of Labor and others, including State agencies and trade associations; and

(18) Participating in interagency programs relating to small business matters as authorized by the OSDDBU Operations Director.

(f)(1) The Procurement Executive is the agency designee for the purposes of FAR 19.201(f)(1). The written determination shall be forwarded to the Procurement Executive through the OSDDBU Operations Director.

[69 FR 19333, Apr. 13, 2004, as amended at 72 FR 45695, Aug. 15, 2007; 80 FR 6920, Feb. 9, 2015]

#### **619.202 Specific policies.**

##### **619.202–70 The Department of State Mentor-Protégé Program.**

(a) *Purpose.* The Mentor-Protégé Program is designed to motivate and encourage firms to assist small businesses with business development, including small disadvantaged businesses, women-owned small businesses, HUBZone small businesses, veteran-owned small businesses and service-disabled veteran-owned small businesses. The program is also designed to improve the performance of DOS contracts and subcontracts, foster the establishment of long-term business relationships between small businesses and prime contractors, and increase the

overall number of small businesses that receive DOS contract and subcontract awards. The program is limited to non-commercial item acquisitions.

(b) *Definitions.* The definitions of small business (SB), HUBZone small business concern (HUBZone), small disadvantaged business (SDB), women-owned small business (WOSB), veteran-owned small business (VOSB), and service-disabled veteran-owned small business (SDVOSB) are the same as found in FAR 2.101.

*Mentor* means a prime contractor that elects to promote and develop small business subcontractors by providing developmental assistance designed to enhance the business success of the protégé.

*Protégé* means a small business, HUBZone small business, small disadvantaged business, women-owned small business, veteran-owned small business, or service-disabled veteran-owned small business that is the recipient of developmental assistance pursuant to a mentor-protégé program.

(c) *Non-affiliation.* For purposes of the Small Business Act, a protégé firm is not considered an affiliate of a mentor firm solely because the protégé firm is receiving developmental assistance from the mentor firm under the program.

(d) *General policy.* (1) Eligible business prime contractors not included on the “List of Parties Excluded from Federal Procurement and Nonprocurement Programs” that are approved as mentor firms may enter into agreements with eligible protégé.

(2) A firm’s status as a protégé under a DOS contract shall not have an effect on the firm’s ability to seek other prime contracts or subcontracts.

(e) *Incentives for prime contractor participation.* (1) Under the Small Business Act (15 U.S.C. 637(d)(4)(E)), DOS is authorized to provide appropriate incentives to encourage subcontracting opportunities for small businesses consistent with the efficient and economical performance of the contract. This authority is limited to negotiated acquisitions.



(2) Before awarding a contract that requires a subcontracting plan, the existence of a mentor-protégé arrangement, and performance, if any, under an existing arrangement, may be considered by the contracting officer in:

(i) Evaluating the quality of a proposed subcontracting plan under FAR 19.704-5; and,

(ii) Assessing the prime contractor's compliance with the subcontracting plans submitted in previous contracts as a factor in determining contractor responsibility under FAR 19.705-5(a)(1).

(3) A non-monetary award may be presented annually (or as often as appropriate) to the mentoring firm providing the most effective developmental support of a protégé. The Mentor-Protégé Program Manager will recommend an award winner to the Operations Director, OSDDBU.

(f) *Measurement of program success.* The success of the DOS Mentor-Protégé Program will be measured by:

(1) The increase in the number and dollar value of contracts awarded to protégé firms under DOS contracts from the date the protégé enters the program;

(2) The increase in the number and dollar value of contracts and subcontracts awarded to the protégé under other Federal agencies and commercial contracts; and,

(3) The developmental assistance provided by the mentor firm and the resulting increase in the technical, managerial, financial or other capabilities of the protégé firm, as reported by the protégé.

(g) *Eligibility of mentor firms.* A mentor firm:

(1) May be either a large or small business;

(2) Must be eligible for award of U.S. Government contracts;

(3) Must be able to provide developmental assistance that will enhance the ability of protégé to perform as subcontractors; and,

(4) Will be encouraged to enter into arrangements with protégé and firms with whom they have established business relationships.

(h) *Eligibility of protégé firms.* (1) A protégé firm must be:

(i) A SB, HUBZone, SDB, WOSB, VOSB, or SDVOSB as those terms are defined in FAR 2.101;

(ii) Small in the NAICS code for the services or supplies to be provided by the protégé to the mentor; and,

(iii) Eligible for award of U.S. Government contracts.

(2) Except for SDB and HUBZone firms, a protégé firm may self-certify to a mentor firm that it meets the requirements set forth in paragraph (h)(1) of this subsection. Mentors may rely in good faith on written representations by potential protégé that they meet the specified eligibility requirements. SDB status eligibility and documentation requirements are determined by FAR 19.304. HUBZone status eligibility and documentation requirements are determined by FAR 19.1303.

(3) Protégé may have multiple mentors, protégé participating in mentor-protégé programs in addition to DOS's program should maintain a system for preparing separate reports of mentoring activity for each agency's program.

(i) *Selection of protégé firms.* (1) Mentor firms are solely responsible for selecting protégé firms. The mentor is encouraged to identify and select a broad base of protégé firms whose core competencies support DOS's mission.

(2) Mentors may have multiple protégé.

(3) The selection of protégé firms by mentor firms may not be protested, except that any protest regarding the size or eligibility status of an entity selected by a mentor shall be handled in accordance with FAR and SBA regulations.

(j) *Application and agreement process for mentor-protégé teams to participate in the program.* (1) Firms interested in becoming a mentor firm shall apply in writing to OSDDBU. The application (Form DS-4053, Department of State Mentor-Protégé Program Application), shall be evaluated by the nature and extent of technical and managerial support proposed as well as the extent of financial assistance in the form of equity investment, loans, joint-venture support, and traditional subcontracting support proposed.

(2) A proposed mentor shall submit the application form and associated information to OSDBU.

(k) *OSDBU review of application.* (1) OSDBU shall review the information to ensure the mentor and protégé are eligible and the information provided is complete. OSDBU shall consult with the contracting officer on the adequacy of the proposed mentor-protégé arrangement, and its review shall be complete no later than 30 calendar days after receipt of the application by OSDBU.

(2) Upon completion of the review, OSDBU will advise the mentor if its application is acceptable. The mentor may then implement the developmental assistance program in accordance with the approved agreement.

(3) The agreement defines the relationship between the mentor and protégé firms only. The agreement itself does not create any privity of contract between the mentor or protégé and the DOS.

(l) *Developmental assistance.* The forms of developmental assistance a mentor can provide to a protégé include:

- (1) Management guidance relating to:
  - (i) Financial management;
  - (ii) Organizational management;
  - (iii) Overall business management/planning;
  - (iv) Business development; and,
  - (v) Technical assistance.
- (2) Loans;
- (3) Rent-free use of facilities and/or equipment;
- (4) Property;
- (5) Temporary assignment of personnel to protégé for purpose of training; and,
- (6) Any other types of permissible, mutually beneficial assistance.

(m) *Obligation.* (1) A mentor or protégé firm may voluntarily withdraw from the program. However, in no event shall such withdrawal impact the program mission and contractual requirements under the prime contract.

(2) Mentor and protégé firms shall submit to OSDBU annual reports on program progress of the mentor-protégé agreements. Large business mentors may submit these reports as part of their SB, HUBZone, SDB, WOSB, VOSB, and SDVOSB plan sub-

mission in accordance with the due date on the SF-295. DOS shall consider the following in evaluating these reports:

(i) Specific actions taken by the contractor, during the evaluation period, to increase the participation of protégés as suppliers to the U.S. Government and to commercial entities;

(ii) Specific actions taken by the mentor, during the evaluation period, to develop the technical and corporate administrative expertise of a protégé as defined in the agreement;

(iii) To what extent the protégé has met the developmental objectives in the agreement; and,

(iv) To what extent the mentor firm's participation in the Mentor-Protégé Program resulted in the protégé receiving contract(s) and subcontract(s) from private firms and agencies other than the DOS.

(3) The DOS OSDBU shall submit the annual reports to the cognizant contracting officer regarding participating prime contractor(s) performance in the program.

(4) Mentor and protégé firms shall submit an evaluation to the OSDBU at the conclusion of the mutually agreed upon program period, the conclusion of the contract, or the voluntary withdrawal by either party from the program, whichever comes first.

(n) *Internal controls.* (1) OSDBU shall oversee the program and shall work with the cognizant contracting officer to achieve program objectives.

(2) DOS may rescind approval of an existing Mentor-Protégé agreement if it determines that such an action is in the Department's best interest. The rescission shall be in writing and sent to the mentor and protégé firms after approval by the OSDBU Operations Director. Rescission of an agreement does not change the terms of the subcontract between the mentor and the protégé or the prime contractor's obligations under its subcontracting plan.

(o) *Solicitation provision and contract clause.* (1) The contracting officer shall insert the provision at 652.219-72, Department of State Mentor-Protégé Program, in all unrestricted solicitations exceeding \$650,000 (\$1,500,000 for construction) that offer subcontracting opportunities.

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(2) The contracting officer shall insert the clause at DOSAR 652.219-73, Mentor Requirements and Evaluation, in all contracts where the prime contractor has signed a Mentor-Protégé Agreement with the Department of State.

[69 FR 19333, Apr. 13, 2004, as amended at 80 FR 6920, Feb. 9, 2015]

### **Subpart 619.4—Cooperation with the Small Business Administration**

#### **619.402 Small Business Administration procurement center representatives.**

##### **619.402-70 DOS designee.**

Where the FAR requires action by a Small Business Administration procurement center representative, but one has not been assigned to the DOS contracting activity, the OSDBU Operations Director shall perform the action so required.

[53 FR 26170, July 11, 1988, as amended at 80 FR 6920, Feb. 9, 2015]

### **Subpart 619.5—Set-Asides for Small Business**

#### **619.501 General.**

(c) Contracting officers shall use Department of State Form DS-1910, Small Business Review—Actions Above the Simplified Acquisition Threshold, to document set-aside decisions.

[59 FR 66759, Dec. 28, 1994, as amended at 60 FR 39663, Aug. 3, 1995; 64 FR 43624, Aug. 11, 1999]

#### **619.505 Rejecting Small Business Administration recommendations.**

The Procurement Executive is the agency head for the purposes of FAR 19.505.

#### **619.506 Withdrawing or modifying set asides.**

(b) The Procurement Executive shall resolve disagreements between the OSDBU Operations Director and the contracting officer.

[59 FR 66759, Dec. 28, 1994, as amended at 80 FR 6920, Feb. 9, 2015]

### **Subpart 619.6—Certificates of Competency and Determinations of Responsibility**

#### **619.602 Procedures.**

##### **619.602-1 Referral.**

The contracting officer shall transmit to the OSDBU Operations Director concurrently with the submission to the appropriate SBA Regional Office, a copy of the documentation supporting the determination that a small business concern is not responsible, as required by FAR 19.602-1(a).

[53 FR 26170, July 11, 1988, as amended at 80 FR 6920, Feb. 9, 2015]

### **Subpart 619.7—The Small Business Subcontracting Program**

#### **619.705 Responsibilities of the contracting officer under the subcontracting assistance program.**

##### **619.705-1 General support of the program.**

It is the Department's policy to incorporate its current fiscal year goals as negotiated with the SBA into all pertinent Department solicitations, in addition to the standard subcontract clauses. Incorporation of the goals does not require that large prime contractors must subcontract, but does require that to the extent they plan to subcontract, specific goals be established for doing business with small, small disadvantaged, women-owned small, HUBZone small, veteran-owned small, and service-disabled veteran-owned small business firms. Where funds are available, an incentive clause such as that found in FAR 52.219-10, Incentive Subcontracting Program, is encouraged.

[69 FR 19335, Apr. 13, 2004]

##### **619.705-3 Preparing the solicitation.**

To further promote the use of small, disadvantaged, women-owned small, HUBZone small, veteran-owned small, and service-disabled veteran-owned small business firms by large prime contractors, contracting officers are encouraged to consider the adequacy of the subcontracting plans, and/or past performance in achieving negotiated

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subcontract goals, as part of the overall evaluation of the technical proposals.

[69 FR 19335, Apr. 13, 2004]

#### **619.705-4 Reviewing the subcontracting plan.**

OSDBU shall review subcontracting plans to determine if small, small disadvantaged, women-owned small, HUBZone small, veteran-owned small, and service-disabled veteran-owned small business concerns are afforded the maximum practicable opportunity to participate as subcontractors. OSDBU shall recommend to the contracting officer changes needed to subcontracting plans found to be deficient.

[69 FR 19335, Apr. 13, 2004, as amended at 80 FR 6920, Feb. 9, 2015]

#### **619.705-6 Postaward responsibilities of the contracting officer.**

#### **619.705-6-70 Reporting responsibilities.**

(a) The contracting officer shall forward to the OSDBU Operations Director a copy of each subcontracting plan that was incorporated into a contract or contract modification. Each contracting activity shall maintain a list of its active prime contracts that contain subcontracting plans.

(b) Contracting officers shall collect subcontracting data from contractors required to establish subcontracting plans in support of small, small disadvantaged, women-owned small, HUBZone small, veteran-owned small, and service-disabled veteran-owned small business concerns. This data shall be collected annually and semi-annually, using Standard Form 295, Summary Subcontracting Report, for the annual submissions, and Standard Form 294, Subcontracting Report for Individual Contracts, for the semi-annual submissions. The head of the contracting activity shall forward these reports to the OSDBU Operations Director, not later than the 30th day of the month following the close of the reporting period.

[53 FR 26170, July 11, 1988, as amended at 59 FR 66760, Dec. 28, 1994; 69 FR 19335, Apr. 13, 2004; 80 FR 6920, Feb. 9, 2015]

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#### **619.708-70 Solicitation provisions and contract clauses.**

The contracting officer shall insert a provision substantially the same as the provision at 652.219-70, Department of State Subcontracting Goals, in solicitations whenever the clause at FAR 52.219-9, Small Business Subcontracting Plan, is used.

[59 FR 66760, Dec. 28, 1994, as amended at 69 FR 19335, Apr. 13, 2004]

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

SOURCE: 64 FR 43624, Aug. 11, 1999, unless otherwise noted.

#### **619.800 General.**

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

#### **619.803 Selecting acquisitions for the 8(a) program.**

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

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

[64 FR 43624, Aug. 11, 1999, as amended at 80 FR 6921, Feb. 9, 2015]

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

Contracting activities may use the simplified acquisition procedures of FAR part 13 and DOSAR part 613 to issue purchase orders or contracts, not exceeding \$150,000, to 8(a) participants. The \$150,000 limitation for use of FAR part 13 simplified acquisition procedures applies to the acquisition of both commercial and non-commercial items. The following applies to such acquisitions:

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

(b) The contracting activity shall use the System for Award Management (<https://www.sam.gov>) to establish that the selected 8(a) firm is a current program participant.

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

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

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

[64 FR 43624, Aug. 11, 1999, as amended at 71 FR 34839, June 16, 2006; 80 FR 6921, Feb. 9, 2015]

### **619.804 Evaluation, offering, and acceptance.**

#### **619.804-2 Agency offering.**

(a) When applicable, this notification shall identify that the offering is in ac-

cordance with the MOU identified in 619.800.

#### **619.804-3 SBA acceptance.**

### **619.804-3-70 SBA Acceptance Under MOUs for Acquisitions Exceeding \$150,000.**

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

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

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

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

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

### **619.805 Competitive 8(a).**

#### **619.805-2 Procedures.**

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

(b) For requirements exceeding \$150,000 processed under the MOU cited in 619.800, the contracting officer shall submit the name, address, and telephone number of the low offeror (in sealed bid acquisitions) or the apparent successful offeror (in negotiated acquisitions) to the SBA Business Opportunity Specialist at the field office servicing the identified 8(a) firm. The SBA shall determine the eligibility of the firm(s) and advise the contracting officer within two working days of the

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receipt of the request. If the firm is determined to be ineligible, the contracting officer shall submit information on the next low offeror or next apparent successful offeror, as applicable, to the cognizant SBA field office.

[64 FR 43624, Aug. 11, 1999, as amended at 69 FR 19335, Apr. 13, 2004; 72 FR 45695, Aug. 15, 2007; 80 FR 6921, Feb. 9, 2015]

### 619.806 Pricing the 8(a) contract.

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

### 619.808 Contract negotiation.

#### 619.808-1 Sole source.

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

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

#### 619.810 SBA appeals.

(c) The Procurement Executive is the agency head for the purposes of FAR 19.810(c).

[64 FR 43624, Aug. 11, 1999, as amended at 72 FR 45696, Aug. 15, 2007]

### 619.811 Preparing the contracts.

#### 619.811-1 Sole source.

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

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lar, non-8(a) acquisition, except for the following:

(1) The award form shall cite 41 U.S.C. 3304(a)(5) or 10 U.S.C. 2304(c)(5), as appropriate, and 15 U.S.C. 637(a) as the authority for use of other than full and open competition.

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

(3) For acquisitions exceeding \$150,000, the contracting activity shall include SBA's requirement number on the award document.

(4) A single award document shall be used between the agency and the 8(a) contractor, *i.e.*, an SBA signature will not be required. The title of the agency contracting officer shall include the contracting activity, as follows: Contracting Officer for the Department of State [insert contracting activity]. In addition, in accordance with the MOU, OSDBU staff who have been issued limited contracting officer warrants for this purpose shall sign the contract as a third party. The 8(a) contractor's signature shall be placed on the award document as the prime contractor. The 8(a) contractor's name and address shall be placed in the "Awarded to" or "Contractor name" block on the appropriate form.

[64 FR 43624, Aug. 11, 1999, as amended at 80 FR 6921, Feb. 9, 2015]

#### 619.811-2 Competitive.

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

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

#### 619.811-3 Contract clauses.

(d) The contracting officer shall insert the clause at FAR 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, (Deviation), in competitive solicitations and contracts exceeding \$150,000 when the acquisition is processed under the MOU cited in 619.800.

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

[64 FR 43624, Aug. 11, 1999, as amended at 71 FR 34839, June 16, 2006; 72 FR 45696, Aug. 15, 2007; 80 FR 6921, Feb. 9, 2015]

### 619.812 Contract administration.

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

[64 FR 43624, Aug. 11, 1999, as amended at 80 FR 6921, Feb. 9, 2015]

### 619.870 Acquisition of technical requirements.

(a) *Offering letter.* When a decision has been made by OSDBU and the contracting officer to process an acquisition through the SBA under the 8(a) program, the contracting activity shall promptly send to the applicable SBA office a letter offering the acquisition to the SBA, with an information copy to the Small and Disadvantaged Business Utilization Specialist. The offering letter should transmit the statement of work, purchase description, technical data package, or specifications and such other information deemed necessary by the contracting officer.

(b) The contracting officer has greater latitude in holding discussions with the business concerns being considered under an 8(a) program acquisition if under the \$4 million competitive threshold for 8(a) competition than under a non-8(a) program acquisition. Informal assessments of potential 8(a) sources shall be within the parameters of 13 CFR 124.308(g). The technical evaluation must be carefully reviewed to determine if any source declared to be

unacceptable is capable of being made acceptable.

[80 FR 6921, Feb. 9, 2015]

## PART 622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

### Subpart 622.3—Contract Work Hours and Safety Standards Act

Sec.

622.302 Liquidated damages and overtime pay.

### Subpart 622.4—Labor Standards for Contracts Involving Construction

622.404 Construction Wage Rate Requirements statute wage determinations.

622.404-3 Procedures for requesting wage determinations.

622.404-6 Modifications of wage determinations.

622.404-7 Correction of wage determinations containing clerical errors.

622.404-11 Wage determination appeals.

622.406 Administration and enforcement.

622.406-1 Policy.

622.406-8 Investigations.

622.406-9 Withholding from or suspension of contract payments.

622.406-10 Disposition of disputes concerning construction contract labor standards enforcement.

622.406-11 Contract terminations.

622.406-12 Cooperation with the Department of Labor.

### Subpart 622.6—Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000

622.604 Exemptions.

622.604-2 Regulatory exemptions.

### Subpart 622.8—Equal Employment Opportunity

622.803 Responsibilities.

622.807 Exemptions.

### Subpart 622.13—Equal Opportunity for Veterans

622.1305 Waivers.

622.1310 Solicitation provision and contract clauses.

### Subpart 622.14—Employment of Workers with Disabilities

622.1403 Waivers.

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622.1408 Contract clause.

### **Subpart 622.15—Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor**

622.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 53 FR 26172, July 11, 1988, unless otherwise noted.

### **Subpart 622.3—Contract Work Hours and Safety Standards Act**

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

The authority to make the determination prescribed in FAR 22.302(c) is delegated, without power of redelegation, to the head of the contracting activity.

[55 FR 5774, Feb. 16, 1990]

### **Subpart 622.4—Labor Standards for Contracts Involving Construction**

SOURCE: 55 FR 5774, Feb. 16, 1990, unless otherwise noted.

#### **622.404 Construction Wage Rate Requirements statute wage determinations.**

##### **622.404-3 Procedures for requesting wage determinations.**

The cognizant contracting activity (see 601.601-70) is the contracting agency for the purposes of FAR 22.404-3(b) and (d).

[53 FR 26172, July 11, 1988, as amended at 72 FR 45696, Aug. 15, 2007; 80 FR 6921, Feb. 9, 2015]

##### **622.404-6 Modifications of wage determinations.**

The cognizant contracting activity is the contracting agency for the purposes of FAR 22.404-6.

(b)(6) The head of the contracting activity is the agency head's designee for the purposes of FAR 22.404-6(b)(6).

[55 FR 5774, Feb. 16, 1990, as amended at 59 FR 66760, Dec. 28, 1994]

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#### **622.404-7 Correction of wage determinations containing clerical errors.**

The cognizant contracting activity is the contracting agency for the purposes of FAR 22.404-7.

#### **622.404-11 Wage determination appeals.**

The cognizant contracting activity is the contracting agency for the purposes of FAR 22.404-11.

#### **622.406 Administration and enforcement.**

##### **622.406-1 Policy.**

The cognizant contracting activity is the contracting agency for the purposes of FAR 22.406-1(a).

##### **622.406-8 Investigations.**

(a) The head of the contracting activity is responsible for conducting labor standards investigations as prescribed in FAR 22.406-8(a).

(d) The Procurement Executive is the agency head's designee for the purposes of FAR 22.406-8(d).

[55 FR 5774, Feb. 16, 1990, as amended at 80 FR 6921, Feb. 9, 2015]

##### **622.406-9 Withholding from or suspension of contract payments.**

The authority to suspend contract payments pursuant to FAR 22.406-9(b) is delegated, without power of redelegation, to the head of the contracting activity.

##### **622.406-10 Disposition of disputes concerning construction contract labor standards enforcement.**

The cognizant contracting activity is the contracting agency for the purposes of FAR 22.406-10(b).

##### **622.406-11 Contract terminations.**

The cognizant contracting activity is the contracting agency for the purposes of FAR 22.406-11.

##### **622.406-12 Cooperation with the Department of Labor.**

Any information furnished to the Department of Labor pursuant to FAR 22.406-12(a) shall be submitted through the head of the contracting activity.



**Subpart 622.6—Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000**

**622.604 Exemptions**

**622.604-2 Regulatory exemptions.**

The Procurement Executive is the agency head for the purposes of FAR 22.604-2(b)(1).

[55 FR 5774, Feb. 16, 1990, as amended at 71 FR 34839, June 16, 2006]

**Subpart 622.8—Equal Employment Opportunity**

**622.803 Responsibilities.**

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

[64 FR 43626, Aug. 11, 1999]

**622.807 Exemptions.**

The Procurement Executive is the agency head for the purposes of FAR 22.807(a)(1).

**Subpart 622.13—Equal Opportunity for Veterans**

**622.1305 Waivers.**

The Procurement Executive is the agency head for the purposes of FAR 22.1305.

[53 FR 26172, July 11, 1988. Redesignated and amended at 69 FR 19335, Apr. 13, 2004]

**622.1310 Solicitation provision and contract clauses.**

The Procurement Executive is the agency head for the purposes of FAR 22.1310 (a)(1)(ii) and (a)(2).

[55 FR 5775, Feb. 16, 1990. Redesignated and amended at 69 FR 19336, Apr. 13, 2004; 72 FR 45696, Aug. 15, 2007]

**Subpart 622.14—Employment of Workers with Disabilities**

**622.1403 Waivers.**

The Procurement Executive is the agency head for the purposes of FAR 22.1403.

**622.1408 Contract clause.**

The Procurement Executive is the agency head for the purposes of FAR 22.1408.

[55 FR 5775, Feb. 16, 1990]

**Subpart 622.15—Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor**

**622.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.**

(e) The contracting officer shall refer to the DOS Inspector General for investigation any instances where the contracting officer has reason to believe that forced or indentured child labor was used to mine, produce, or manufacture an end product furnished pursuant to a contract awarded subject to the certification required in FAR 22.1503(c).

[69 FR 19336, Apr. 13, 2004]

**PART 623—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

**Subpart 623.2—Energy and Water Efficiency and Renewable Energy**

Sec.

623.204 Procurement exemptions.

**Subpart 623.3—Hazardous Material Identification and Material Safety Data**

623.302-70 Policy.

**Subpart 623.4—Use of Recovered Materials and Biobased Products**

623.400 Scope of subpart.

**Subpart 623.5—Drug-Free Workplace**

623.506 Suspension of payments, termination of contract, and debarment and suspension actions.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 53 FR 26172, July 11, 1988, unless otherwise noted.

## **623.204**

### **Subpart 623.2—Energy and Water Efficiency and Renewable Energy**

SOURCE: 80 FR 6921, Feb. 9, 2015, unless otherwise noted.

#### **623.204 Procurement exemptions.**

The head of the contracting activity is the agency head's designee for the purpose of executing the written determination to not purchase ENERGY STAR® or FEMP-designated products."

### **Subpart 623.3—Hazardous Material Identification and Material Safety Data**

#### **623.302–70 Policy.**

Any work that affects the safety and/or health of post personnel, including the handling of hazardous materials, shall comply with the applicable requirements of the Department of State Safety/Health and Environmental Management Resource Guide (6 FAM 606.7). Requirements offices shall ensure that any contractor operations and activities, whether sponsored by the post or other Department organization, are closely coordinated with the Post Occupational Safety and Health Officer during both planning and implementation phases.

[59 FR 66760, Dec. 28, 1994, as amended at 80 FR 6921, Feb. 9, 2015]

### **Subpart 623.4—Use of Recovered Materials and Biobased Products**

SOURCE: 64 FR 43626, Aug. 11, 1999, unless otherwise noted.

#### **623.400 Scope of subpart.**

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

[64 FR 43626, Aug. 11, 1999, as amended at 69 FR 19336, Apr. 13, 2004]

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### **Subpart 623.5—Drug-Free Workplace**

#### **623.506 Suspension of payments, termination of contract, and debarment and suspension actions.**

(e) The authority to approve the termination prescribed in FAR 23.506(e) is reserved to the Secretary of State.

[55 FR 5775, Feb. 16, 1990, as amended at 81 FR 24707, Apr. 27, 2016]

## **PART 624—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

### **Subpart 624.2—Freedom of Information Act**

#### **624.203 Policy.**

DOS regulations implementing the Freedom of Information Act (5 U.S.C. 552), as amended, are codified in Chapter 1, Department of State, Subchapter R, Access to Information, Part 171, Availability of information and records to the public, of Title 22 of the Code of Federal Regulations (22 CFR Part 171).

[53 FR 26172, July 11, 1988. Redesignated at 80 FR 6921, Feb. 9, 2015]

## **PART 625—FOREIGN ACQUISITION**

### **Subpart 625.1—Buy American—Supplies**

Sec.

625.103 Exceptions.

625.105 Determining reasonableness of cost.

### **Subpart 625.2—Buy American—Construction Materials**

625.202 Exceptions.

625.204 Evaluating offers of foreign construction material.

### **Subpart 625.70—Arab League Boycott and Related Provisions**

625.7001 Policy.

625.7002 Solicitation provision and contract clause.

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

SOURCE: 53 FR 26172, July 11, 1988, unless otherwise noted.

## Department of State

625.7002

### Subpart 625.1—Buy American— Supplies

#### 625.103 Exceptions.

(a) The authority to make the determination prescribed in FAR 25.103(a) is delegated, without power of redelegation, to the head of the contracting activity.

[69 FR 19336, Apr. 13, 2004]

#### 625.105 Determining reasonableness of cost.

(a)(1) The authority to make the determinations prescribed in FAR 25.105(a)(1) is delegated, without power of redelegation, to the head of the contracting activity.

[69 FR 19336, Apr. 13, 2004]

### Subpart 625.2—Buy American— Construction Materials

#### 625.202 Exceptions.

(a)(1) The authority to make the determination prescribed in FAR 25.202(a)(1) is delegated, without power of redelegation, to the head of the contracting activity.

[69 FR 19336, Apr. 13, 2004]

#### 625.204 Evaluating offers of foreign construction material.

(b) The head of the contracting activity is the agency head for the purposes of FAR 25.204(b).

[69 FR 19336, Apr. 13, 2004]

### Subpart 625.70—Arab League Boycott and Related Provisions

SOURCE: 64 FR 43626, Aug. 11, 1999, unless otherwise noted.

#### 625.7001 Policy.

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

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

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

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

(c) Section 565 may be waived on a country-by-country basis if such a waiver is in the national interest and necessary to carry on diplomatic functions and is approved by the Secretary of State or his/her designee.

#### 625.7002 Solicitation provision and contract clause.

Contracting officers shall include the following provision and clause in all solicitations and contracts exceeding the simplified acquisition threshold, unless a waiver has been granted in accordance with 625.7001(c):

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

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

[64 FR 43626, Aug. 11, 1999, as amended at 80 FR 6921, Feb. 9, 2015]

## SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

### PART 627—PATENTS, DATA, AND COPYRIGHTS

#### Subpart 627.2—Patents and Copyrights

Sec.

627.201 Patent and copyright infringement liability.

627.201-2 Contract clauses.

#### Subpart 627.3—Patent Rights Under Government Contracts

627.303 Contract clauses.

627.304 Procedures.

627.304-1 General.

627.304-4 Appeals.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 59 FR 66763, Dec. 28, 1994, unless otherwise noted.

#### Subpart 627.2—Patents and Copyrights

**627.201 Patent and copyright infringement liability.**

**627.201-2 Contract clauses.**

(e) The Procurement Executive is the agency head's designee for the purposes of FAR 27.201-2(e).

[59 FR 66763, Dec. 28, 1994. Redesignated and amended at 80 FR 6921, Feb. 9, 2015]

#### Subpart 627.3—Patent Rights Under Government Contracts

**627.303 Contract clauses.**

The Procurement Executive is the agency head's designee to make the determinations addressed in FAR 27.303. Determinations proposed to be issued by the Procurement Executive shall be reviewed by the Office of the Legal Adviser.

[59 FR 66763, Dec. 28, 1994, as amended at 80 FR 6922, Feb. 9, 2015]

**627.304 Procedures.**

**627.304-1 General.**

The Procurement Executive is the agency head's designee for the purposes of FAR 27.304-1. Questions regarding fact-finding procedures as specified in

FAR 27.304-1(a)(4) shall be referred to A/OPE. Determinations proposed to be issued by the Procurement Executive shall be reviewed by the Office of the Legal Adviser.

[59 FR 66763, Dec. 28, 1994, as amended at 81 FR 24707, Apr. 27, 2016]

**627.304-4 Appeals.**

The Procurement Executive is the agency head's designee for the purposes of FAR 27.304-4. Questions regarding the appeals procedure as specified in FAR 27.304-4(b) shall be referred to A/OPE.

[59 FR 66763, Dec. 28, 1994. Redesignated and amended at 80 FR 6922, Feb. 9, 2015]

### PART 628—BONDS AND INSURANCE

#### Subpart 628.1—Bonds and Other Financial Protections

Sec.

628.101 Bid guarantees.

628.101-1 Policy on use.

628.106-6 Furnishing information.

#### Subpart 628.2—Sureties and Other Security for Bonds

628.203 Acceptability of individual surety.

628.203-7 Exclusion of individual sureties.

#### Subpart 628.3—Insurance

628.305 Overseas workers' compensation and war-hazard insurance.

628.309 Contract clauses for workers' compensation insurance.

628.309-70 DOSAR provisions and clauses.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.

#### Subpart 628.1—Bonds and Other Financial Protections

SOURCE: 59 FR 66763, Dec. 28, 1994, unless otherwise noted.

## Department of State

## 628.305

### 628.101 Bid guarantees.

#### 628.101-1 Policy on use.

(c) The Procurement Executive is the agency head's designee for the purposes of FAR 28.101-1(c).

#### 628.106-6 Furnishing information.

(c) The head of the contracting activity is the agency head's designee for the purposes of FAR 28.106-6(c).

## Subpart 628.2—Sureties and Other Security for Bonds

### 628.203 Acceptability of individual surety.

(g) Evidence of possible criminal or fraudulent activities by an individual surety shall be referred to the Assistant Inspector General for Investigations.

[59 FR 66763, Dec. 28, 1994, as amended at 69 FR 19336, Apr. 13, 2004]

### 628.203-7 Exclusion of individual sureties.

The Procurement Executive is the agency head's designee for the purposes of FAR 28.203-7.

[59 FR 66763, Dec. 28, 1994]

## Subpart 628.3—Insurance

SOURCE: 71 FR 34840, June 16, 2006, unless otherwise noted.

### 628.305 Overseas workers' compensation and war-hazard insurance.

(b)(1) Acquisitions for services, including construction but excluding personal services contracts, requiring contractor personnel to perform work outside of the United States, shall include the contractual obligation for coverage under the Defense Base Act (42 U.S.C. Sections 1651-1654, as amended), for covered contractor employees. For the purposes of this section, "covered contractor employees" includes the following individuals:

(i) United States citizens or residents;

(ii) Individuals hired in the United States or its possessions, regardless of citizenship; and,

(iii) Local nationals and third country nationals where contract performance takes place in a country where there are no local workers' compensation laws.

(2) Individuals who are self-employed (*i.e.*, they have not incorporated) do not meet the definition of an employee. No Defense Base Act insurance is required when contracting with these individuals.

(3) Exceptions are discussed in paragraphs (e)(1) and (f) of this section.

(d) The authority to recommend a waiver from the Defense Base Act, as set forth in FAR 28.305(d), is reserved to the Secretary of State.

(e)(1) The Secretary of Labor has waived the applicability of the Defense Base Act to all DOS service contracts, including construction, for contractor employees who are local nationals or third country nationals. This waiver is conditioned on the requirement for the contractor to provide workers' compensation benefits against the risk of work injury or death and assume liability toward the employees and their beneficiaries for war-hazard injury, death, capture, or detention as prescribed by the local workers' compensation laws.

(2) In cases where a contract is performed in a country where there are no local workers' compensation laws, local and third country national contractor employees are considered to be "covered contractor employees", and the contractor shall acquire Defense Base Act insurance for those employees pursuant to the contract between the Department of State and the Defense Base Act insurance broker.

(f)(1) Section 16 of the State Department Basic Authorities Act (22 U.S.C. 2680a), as amended, provides that the Defense Base Act shall not apply with respect to such contracts as the Secretary of State determines are contracts with persons employed to perform work for the Department of State on an intermittent basis for not more than 90 days in a calendar year. The Department of State has established that "persons" includes employees hired by companies under contract with the Department. The Procurement Executive has the authority to issue the waivers for employees who

work on an intermittent or short-term basis. Waivers may be issued only for employees who are U.S. citizens and residents, and only where the contractor provides evidence of alternative workers' compensation coverage for those employees. Waivers may not be issued for local or third country nationals.

(2) The contractor shall submit waiver requests to the contracting officer. The request shall contain the following information:

- (i) Contract number;
- (ii) Name of contractor;
- (iii) Brief description of the services to be provided under the contract and country of performance;
- (iv) Name and position title of individual(s);
- (v) Nationality of individual(s) (must be U.S. citizen or resident);
- (vi) Dates (or timeframe) of performance at the overseas location; and
- (vii) Evidence of alternative workers' compensation coverage for these employees (e.g., evidence that the State workers' compensation program covers workers on short-term foreign assignments).

(3) The contracting officer shall review the request for completeness and accuracy. If the request is complete and accurate, the contracting officer shall forward the request to the Procurement Executive. If the contractor does not provide complete and accurate information, the contracting officer shall return the request to the contractor with an explanation as to what additional information is required.

(4) The Procurement Executive shall review requests for waiver forwarded by the contracting officer and either approve or disapprove the request. The Procurement Executive shall return the request indicating his/her approval or disapproval to the contracting officer. Any request that is not approved shall describe the reason(s) why the request was not approved. The contracting officer shall provide the contractor with the original of the approved or disapproved document and maintain a copy in the contract file.

[71 FR 34840, June 16, 2006, as amended at 80 FR 6922, Feb. 9, 2015]

#### **628.309 Contract clauses for workers' compensation insurance.**

#### **628.309–70 DOSAR provisions and clauses.**

(a) The contracting officer shall insert the provision at 652.228–70, Defense Base Act—Covered Contractor Employees, in all solicitations for services and construction to be performed outside of the United States.

(b) The contracting officer shall insert the clause at 652.228–71, Workers' Compensation Insurance (Defense Base Act)—Services, in solicitations and contracts for services to be performed outside of the United States when there is a reasonable expectation that offers will include covered contractor employees, as defined in 628.305(b). If the contracting officer is unsure as to whether offers will include covered contractor employees, the contracting officer shall insert the clause.

[71 FR 34840, June 16, 2006, as amended at 80 FR 6922, Feb. 9, 2015]

### **PART 629—TAXES**

#### **Subpart 629.1—General**

Sec.

629.101 Resolving tax problems.

#### **Subpart 629.2—Federal Excise Taxes**

629.202 General exemptions.

629.202–70 Exemption from other Federal taxes.

#### **Subpart 629.3—State and Local Taxes**

629.302 Application of State and local taxes to the Government.

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

#### **Subpart 629.4—Contract Clauses**

629.401 Domestic contracts.

629.401–70 DOSAR contract clause.

629.402 Foreign contracts.

629.402–1 Foreign fixed-price contracts.

629.402–1–70 DOSAR contract clause.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.

## Subpart 629.1—General

### 629.101 Resolving tax problems.

In certain instances, acquisitions by posts are exempt from various taxes in foreign countries. Contracting officers shall ascertain such exemptions and take maximum advantage of them.

## Subpart 629.2—Federal Excise Taxes

### 629.202 General exemptions.

#### 629.202-70 Exemptions from other Federal taxes.

Taxable articles purchased for presentation abroad as gifts to foreign dignitaries and taxable articles purchased for presentation as gifts to foreign dignitaries visiting in the United States but which are to be taken out of the United States may be exempt from retail taxes or manufacturers excise taxes, in accordance with the letter of October 18, 1963, from the Chief, Excise Tax Branch, Internal Revenue Service.

## Subpart 629.3—State and Local Taxes

### 629.302 Application of State and local taxes to the Government.

The Office of the Legal Adviser is the agency-designated counsel for the purposes of FAR 29.302(a).

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

The authority to make the determination prescribed in FAR 29.303(a) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70). The Office of the Legal Adviser is the agency-designated counsel for the purposes of FAR 29.303(c).

## Subpart 629.4—Contract Clauses

### 629.401 Domestic contracts.

#### 629.401-70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.229-71, Excise Tax Exemption Statement for Contractors Within the United States, in sollicita-

tions and contracts if the prospective contractor is located inside the United States and the acquisition involves export of supplies to an overseas post.

### 629.402 Foreign contracts.

#### 629.402-1 Foreign fixed-price contracts.

#### 629.402-1-70 DOSAR contract clause.

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

[64 FR 43627, Aug. 11, 1999]

## PART 630—COST ACCOUNTING STANDARDS ADMINISTRATION

### Subpart 630.2—CAS Program Requirements

Sec.

630.201 Contract requirements.

630.201-5 Waiver.

SOURCE: 69 FR 19336, Apr. 13, 2004, unless otherwise noted.

### Subpart 630.2—CAS Program Requirements

#### 630.201 Contract requirements.

#### 630.201-5 Waiver.

(a) The Procurement Executive is the head of the agency for the purposes of FAR 30.201-5(a) and (b).

## PART 631—CONTRACT COST PRINCIPLES AND PROCEDURES

### Subpart 631.1—Applicability

Sec.

631.101 Objectives.

### Subpart 631.2—Contracts with Commercial Organizations

631.205 Selected costs.

631.205-6 Compensation for personal services.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 59 FR 66764, Dec. 28, 1994, unless otherwise noted.

## 631.101

### Subpart 631.1—Applicability

#### 631.101 Objectives.

The Procurement Executive is the agency head's designee for the purposes of FAR 31.101.

### Subpart 631.2—Contracts with Commercial Organizations

#### 631.205 Selected costs.

#### 631.205-6 Compensation for personal services.

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

[64 FR 43627, Aug. 11, 1999, as amended at 72 FR 45696, Aug. 15, 2007; 80 FR 6922, Feb. 9, 2015]

## PART 632—CONTRACT FINANCING

Sec.

632.006 Reduction or suspension of contract payments upon finding of fraud.

632.006-1 General.

632.006-2 Definitions.

632.006-3 Responsibilities.

632.006-4 Procedures.

### Subpart 632.1—Non-Commercial Item Purchase Financing

632.114 Unusual contract financing.

### Subpart 632.2—Commercial Item Purchase Financing

632.201 Statutory authority.

### Subpart 632.4—Advance Payments for Non-Commercial Items

632.402 General.

632.404 Exclusions.

632.407 Interest.

### Subpart 632.7—Contract Funding

632.702 Policy.

632.702-70 DOS policy.

632.703 Contract funding requirements.

632.703-3 Contracts crossing fiscal years.

632.706 Contract clauses.

632.706-70 DOSAR contract clause.

### Subpart 632.8—Assignment of Claims

632.803 Policies.

### Subpart 632.9—Prompt Payment

632.906 Making payments.

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632.908 Contract clauses.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.

### 632.006 Reduction or suspension of contract payments upon finding of fraud.

#### 632.006-1 General.

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

[64 FR 43627, Aug. 11, 1999]

#### 632.006-2 Definitions.

*Remedy coordination official* means the Procurement Executive.

[64 FR 43627, Aug. 11, 1999, as amended at 69 FR 19336, Apr. 13, 2004]

#### 632.006-3 Responsibilities.

(b) DOS personnel shall report immediately and in writing any apparent or suspected instances where the contractor's request for advance, partial, or progress payments is based on fraud. The report shall be made to the contracting officer and the Assistant Inspector General for Investigations. The report shall outline the events, acts, or conditions which indicate the apparent or suspected violation and include all pertinent documents. The Assistant Inspector General for Investigations will investigate, as appropriate. If appropriate, the Office of the Inspector General will provide a report to the Procurement Executive.

[80 FR 6922, Feb. 9, 2015]

#### 632.006-4 Procedures.

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

[64 FR 43627, Aug. 11, 1999]

### Subpart 632.1—Non-Commercial Item Purchase Financing

#### 632.114 Unusual contract financing.

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

[64 FR 43627, Aug. 11, 1999]



**Subpart 632.2—Commercial Item Purchase Financing**

**632.201 Statutory authority.**

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

[64 FR 43627, Aug. 11, 1999]

**Subpart 632.4—Advance Payments for Non-Commercial Items**

**632.402 General.**

(b) Advance payments shall be authorized sparingly. Contracting officers should consider the use of partial payments, fast payments, or more frequent payments as alternatives to advance payments.

(c)(1)(iii) The authority to make the determination prescribed in FAR 32.402(c)(1)(iii) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603–70). For acquisitions by overseas posts, the head of the contracting activity shall obtain the concurrence of the Procurement Executive before making a determination pursuant to this section.

[53 FR 26173, July 11, 1988, as amended at 59 FR 66764, Dec. 28, 1994]

**632.404 Exclusions.**

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

[64 FR 43627, Aug. 11, 1999]

**632.407 Interest.**

(d) The Procurement Executive is the agency head's designee for the purposes of FAR 32.407(d).

[59 FR 66764, Dec. 28, 1994]

**Subpart 632.7—Contract Funding**

SOURCE: 64 FR 43628, Aug. 11, 1999, unless otherwise noted.

**632.702 Policy.**

**632.702–70 DOS policy.**

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

**632.703 Contract funding requirements.**

**632.703–3 Contracts crossing fiscal years.**

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

**632.706 Contract clauses.**

**632.706–70 DOSAR contract clause.**

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

**Subpart 632.8—Assignment of Claims**

**632.803 Policies.**

(b) The assignment of claims shall be prohibited for all personal services contracts. The assignment of claims shall also be prohibited for all contracts awarded and performed overseas, unless approval is received from the Procurement Executive. The Directors, Regional Procurement Support Offices may approve the assignment of claims for contracts under their administration after obtaining legal consultation.

[59 FR 66764, Dec. 28, 1994, as amended at 64 FR 43628, Aug. 11, 1999]

## 632.906

### Subpart 632.9—Prompt Payment

#### 632.906 Making payments.

(a) *General.* The authority to make the determination prescribed in FAR 32.906(a) is delegated, without power of redelegation, to the head of the contracting activity. Before making this determination, the head of the contracting activity shall consult with the appropriate financial office.

[69 FR 19336, Apr. 13, 2004]

#### 632.908 Contract clauses.

(a) The contracting officer may insert a clause substantially the same as the clause at 652.232-70, Payment Schedule and Invoice Submission (Fixed-Price), in fixed-price type solicitations and contracts.

(b) The contracting officer may insert a clause substantially the same as the clause at 652.232-71, Voucher Submission (cost-Reimbursement), in cost-reimbursement type solicitations and contracts.

[59 FR 66764, Dec. 28, 1994]

## PART 633—PROTESTS, DISPUTES, AND APPEALS

### Subpart 633.1—Protests

Sec.

633.102 General.

633.103 Protests to the agency.

633.104 Protests to GAO.

### Subpart 633.2—Disputes and Appeals

633.203 Applicability.

633.214 Alternative dispute resolution (ADR)

633.214-70 DOS ADR program.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.

### Subpart 633.1—Protests

#### 633.102 General.

All communications relative to protests filed with the Government Accountability Office (GAO) shall be co-

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ordinated with the Office of the Legal Adviser.

[53 FR 26173, July 11, 1988, as amended at 64 FR 43628, Aug. 11, 1999; 72 FR 45696, Aug. 15, 2007]

#### 633.103 Protests to the agency.

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

[64 FR 43628, Aug. 11, 1999, as amended at 80 FR 6922, Feb. 9, 2015]

#### 633.104 Protests to GAO.

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

[64 FR 43628, Aug. 11, 1999]

### Subpart 633.2—Disputes and Appeals

#### 633.203 Applicability.

(b) The Procurement Executive is the agency head for the purposes of FAR 33.203(b).

(c) The Agency Board of Contract Appeals for the Department of State is the United States Civilian Board of Contract Appeals (CBCA). See <http://www.cbca.gsa.gov>.

[53 FR 26173, July 11, 1988, as amended at 80 FR 6922, Feb. 9, 2015]

#### 633.214 Alternative Dispute Resolution (ADR)

##### 633.214-70 DOS ADR program.

(a) *Policy.* The Department's goal is to resolve contract disputes before the issuance of a contracting officer's final decision under the Disputes statute (41 U.S.C. chapter 71). Contracting officers shall consider all possible means of reaching a negotiated settlement, consistent with the Government's best interests, before issuing a final decision on a contractor claim under the process outlined in FAR 33.206 through 33.211.

(b) *When to use ADR*—(1) *Factors favoring ADR*. Contracting officers should consider using ADR in those cases where:

- (i) Only facts are in dispute;
- (ii) The facts are clearly not favorable to the Government;
- (iii) The anticipated costs (in time and money) are less than the anticipated costs of litigation;
- (iv) Settlement attempts have reached an impasse;
- (v) ADR techniques have been used successfully in similar situations;
- (vi) There is a need for independent expert analysis; or,
- (vii) The claim has merit but its value is overstated.

(2) *Factors disfavoring ADR*. The following circumstances do not favor use of ADR:

- (i) Cases involving disputes controlled by clear legal precedent, making compromise difficult;
- (ii) The resolution will have a significant impact on other pending cases or on the future conduct of Department business;
- (iii) The dispute is primarily over issues of law;
- (iv) A decision of precedential value is needed;
- (v) A significant policy question is involved;
- (vi) A full public record of the proceeding is important;
- (vii) The outcome could significantly involve persons who are not parties to the contract;
- (viii) The costs of pursuing an ADR procedure (in time and money) exceed the cost of litigation;
- (ix) The nature of the case may cause ADR to be used merely for delay or discovery; or,
- (x) The case involves criminal violations.

(3) *Initial action*. Immediately upon receipt of a claim, the contracting officer shall send a letter acknowledging receipt of the claim and soliciting the contractor's views on submitting this claim for ADR. In every dispute, the first step toward resolution shall be unassisted negotiations, in which the parties try to work out the disagreement among themselves. If this fails, before issuing a final decision, the contracting officer shall consult first with

the head of the contracting activity, and contact the Office of the Legal Adviser and A/OPE to determine whether the disagreement appears susceptible to resolution by ADR. Consideration shall be given to pursuing additional fact-finding or designating a neutral expert in the disputed issue to provide an advisory opinion.

(c) *Methods of ADR*. If the initial action to resolve the dispute fails, and the contracting officer issues a final decision which is appealed, ADR may still be feasible. The CBCA issues a notice regarding ADR to all contractors who file appeals under the Contract Disputes Act. This notice describes the following ADR techniques, which contracting officers are urged to discuss with contractors at any time:

(1) *Settlement judge*. A settlement judge is either an administrative judge or hearing examiner who is appointed by the parties in dispute for the purpose of facilitating settlement. The agenda is flexible and based on the specifics of the individual dispute. By holding a frank, in-depth discussion of the strengths and weaknesses of each party's position, the settlement judge may be able to foster a settlement of the dispute. The settlement judge may meet with the parties jointly or individually, and the settlement judge's recommendations are not binding. Typically, the settlement judge's opinions, based on his or her experience in handling prior disputes, will help the parties realize whether their arguments have merit or not.

(2) *Minitrial*. A minitrial is not an actual trial but rather a flexible, expedited, but structured procedure in which each party presents an abbreviated version of its position both to a neutral advisor (who may be appointed by the CBCA) and to principals of the parties who have full contractual authority to conclude a settlement. The parties mutually decide on the form of presentation without regard to traditional judicial proceedings or rules of evidence. An advance agreement by the parties specifies the procedure to be followed in making presentations, as well as the role of the neutral advisor. Upon conclusion of the presentations, settlement negotiations are conducted.

The neutral advisor may assist the parties in negotiating settlement, including making non-binding recommendations.

(3) *Summary trial with binding decision.* A summary trial with binding decision is a procedure in which the scheduling of an appeal is expedited and the parties try their appeal informally before an administrative judge or panel of judges. The length of the trial and the time for presentation and decision are tailored to the needs of the particular case. Trial procedures and rules applicable to appeals are modified or eliminated to expedite resolution of the appeal. The parties must agree, however, that all decisions, rulings, and orders by the judge(s) are final, conclusive, and not appealable, and may not be set aside, except for fraud. A summary “bench” decision is issued at the conclusion of the trial or a summary written decision will be issued within ten (10) days of either the trial’s conclusion or receipt of a trial transcript.

(4) *Mediation.* Mediation is a process in which a neutral and impartial third party assists the Government and the contractor in conflict to negotiate an acceptable settlement of contested issues. The mediator is jointly selected and is asked by the disputing parties to assist them to reach a voluntary agreement. The mediator has no decision-making authority and cannot impose a decision. Mediation assistance involves working with the parties to improve their communications, clarify or interpret data, identify key issues to be discussed, design an effective negotiation process, generate settlement options, or help to identify or formulate areas of agreement. Additional information on alternative dispute resolution and mediation resources is available at the following address on the Internet: <http://www.adrr.com>

(5) *Arbitration.* Non-binding arbitration is a process in which a dispute is jointly submitted by the Government and a contractor to an impartial and neutral person or panel who provides a written, non-binding opinion used as a guide for negotiations toward a settlement. Although the Administrative Dispute Resolution Act of 1990 (Pub. L. 101-552) allows agencies to use binding arbitration, the law provides that the

agency head may vacate any arbitration award within 30 days after it is served on all parties. For this reason, non-binding arbitration is preferable. Additional information on alternative dispute resolution and mediation resources is available at the following address on the Internet: <http://www.adrr.com>

(6) *Partnering.* Partnering involves an agreement in principle to share the risks involved in completing a project, and to establish and promote a partnership environment. Partnering itself is not a contractual agreement and it does not create any legally enforceable rights, but instead partnering seeks to create a new cooperative attitude in completing Government contracts. The three basic steps in partnering are:

(i) Establish the new relationship through personal contact among the principals for the Government and the contractor before the work begins;

(ii) Prepare a joint statement of goals establishing common objectives in specific detail for reaching the goals; and,

(iii) Identify specific dispute prevention processes designed to head off problems, evaluate performance, and promote cooperation. Additional information on alternative dispute resolution and mediation resources is available at the following address on the Internet: <http://www.adrr.com>

(d) *ADR procedures.* The ADR method shall be selected voluntarily by both the Government and the contractor. Both parties shall agree on the procedures to be followed, including the agenda and amount of time allowed for each party to present its case. The parties may choose not to have a written transcript or hearing on the record, as this might inhibit settlement. Also, the decision rendered, if any, should not be considered to establish any precedent for future litigation unless the parties agree otherwise. In cases where the parties agree to pay jointly for a third-party neutral advisor, it is recommended that the parties and the advisor agree on a fair and reasonable price. The Government would then issue a simplified acquisition (if the dollar amount does not exceed the simplified acquisition threshold) for 50% of the agreed price, and the advisor would

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submit separate invoices (each for 50% of the price) to the Government and the contractor.

[59 FR 66764, Dec. 28, 1994, as amended at 64 FR 43628, Aug. 11, 1999; 80 FR 6922, Feb. 9, 2015]

## SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

### PART 634—MAJOR SYSTEM ACQUISITION

Sec.

634.003 Responsibilities.

634.005 General requirements.

634.005-6 Full production.

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

SOURCE: 53 FR 26175, July 11, 1988, unless otherwise noted.

#### 634.003 Responsibilities.

(a) The Procurement Executive is the agency head's designee for the purposes of FAR 34.003(a).

(b) The Under Secretary for Management is the agency head for the purposes of FAR 34.003(c) and the acquisition executive for the purposes of A-109.

[53 FR 26175, July 11, 1988, as amended at 59 FR 66766, Dec. 28, 1994; 64 FR 43628, Aug. 11, 1999]

#### 634.005 General requirements.

##### 634.005-6 Full production.

The Deputy Secretary is the agency head for the purposes of FAR 34.005-6 with power of redelegation to the Under Secretary for Management.

[59 FR 66766, Dec. 28, 1994, as amended at 64 FR 43628, Aug. 11, 1999]

### PART 636—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

#### Subpart 636.1—General

Sec.

636.101 Applicability.

636.101-70 Exception.

636.104 Policy

636.104-70 Foreign Service Buildings Act of 1926, as amended.

636.104-71 Omnibus Diplomatic Security and Antiterrorism Act.

#### Subpart 636.2—Special Aspects of Contracting for Construction

636.209 Construction contracts with architect-engineer firms.

#### Subpart 636.5—Contract Clauses

636.513 Accident prevention.

636.570 Additional DOSAR provisions.

#### Subpart 636.6—Architect-Engineer Services

636.602 Selection of firms for architect-engineer contracts.

636.602-1 Selection criteria.

636.602-4 Selection authority.

636.602-5 Short selection processes for contracts not to exceed the simplified acquisition threshold.

636.606 Negotiations.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 53 FR 26175, July 11, 1988, unless otherwise noted.

#### Subpart 636.1—General

##### 636.101 Applicability.

##### 636.101-70 Exception.

Contracts for overseas construction, including capital improvements, alterations, and major repairs, may be excepted where necessary from the provisions of the FAR (48 CFR Chapter 1) under the authority of section 3 of the Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 294). The Director/Chief Operating Officer of the Bureau of Overseas Buildings Operations is authorized to approve such exceptions.

[69 FR 19337, Apr. 13, 2004]

##### 636.104 Policy.

##### 636.104-70 Foreign Service Buildings Act of 1926, as amended.

(a) *Policy.* Section 11 of the Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 302) limits competition for the construction, alteration, or repair of buildings or grounds abroad exceeding \$5 million to:

(1) American-owned firms; or

(2) Firms from countries which permit or agree to permit substantially equal access to American firms for comparable diplomatic and consular building projects.

(b) *Limitation.* This participation may be permitted by or limited to:

(1) Host-country firms where required by international agreement; or

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(2) By the laws of the host country; or

(3) Where determined by the Secretary of State to be necessary in the interest of bilateral relations or necessary to carry out the construction project.

(c) *Evaluation preference.* For purposes of determining competitive status, American-owned firms shall receive a ten (10) percent price preference reduction, provided that two prospective responsible bidders/offerors submit a bid/offer.

[69 FR 19337, Apr. 13, 2004]

### **636.104–71 Omnibus Diplomatic Security and Antiterrorism Act.**

(a) *Preference for United States contractors.* The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Public Law 99-399; 22 U.S.C. 4852) limits certain construction projects abroad to United States persons or qualified United States joint venture persons. The Omnibus Diplomatic Security and Antiterrorism Act of 1986 applies to the following, as determined by the Assistant Secretary for Diplomatic Security:

(1) Diplomatic construction or design projects abroad exceeding \$10 million; or,

(2) Diplomatic construction projects abroad at any dollar amount that involve technical security, unless the project involves low-level technology.

(b) *Exception.* This preference shall not apply with respect to any diplomatic construction or design project in a foreign country whose statutes prohibit the use of United States contractors on such projects.

(c) *Subcontracting limitation.* With respect to a diplomatic construction project, a prime contractor may not subcontract more than 50 percent of the total value of the contract for that project.

[69 FR 19337, Apr. 13, 2004]

## **Subpart 636.2—Special Aspects of Contracting for Construction**

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

The Procurement Executive is the head of the agency for the purposes of FAR 36.209.

## **Subpart 636.5—Contract Clauses**

### **636.513 Accident prevention.**

(a) The contracting officer shall insert the clause at 652.236–70, Additional Safety Measures in all solicitations and contracts that include FAR 52.236–13, Accident Prevention, Alternate I, *i.e.*:

(1) When a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold and the contract will involve work of a long duration or hazardous nature; or

(2) When a contract for services to be performed at Government facilities (see FAR part 37) is contemplated, and technical representatives advise that special precautions are appropriate, such as contracts for building maintenance, building operations or infrastructure repair.

(b) The contracting officer shall confer with OBO/OM/SHEM if there are any questions on any factors listed in paragraph (a) of the clause, or if the contracting officer has any questions regarding safety issues.

[82 FR 58353, Dec. 12, 2017]

### **636.570 Additional DOSAR provisions.**

(a) The contracting officer shall insert the provision at 652.236–71, Foreign Service Buildings Act, As Amended, in all contracts exceeding \$5,000,000 for the construction, alteration, or repair of buildings and grounds overseas, unless:

(1) An international agreement with or laws of the host country government permits or limits the participation to host-country firms; or,

(2) The Secretary of State determines that it is necessary to the interest of bilateral relations or to carry out the

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project to either permit or limit the participation to host-country firms; or,

(3) The provision at 652.236-72 applies.

(b) The contracting officer shall insert the provision at 652.236-72, Statement of Qualifications for the Omnibus Diplomatic Security and Antiterrorism Act, in all diplomatic construction or design solicitations exceeding \$10 million; or, diplomatic construction projects abroad at any dollar amount that involve technical security, unless the project involves low-level technology, as determined by the Assistant Secretary of Diplomatic Security.

[69 FR 19337, Apr. 13, 2004, as amended at 80 FR 6922, Feb. 9, 2015]

### Subpart 636.6—Architect-Engineer Services

#### 636.602 Selection of firms for architect-engineer contracts.

##### 636.602-1 Selection criteria.

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

[64 FR 43628, Aug. 11, 1999]

##### 636.602-4 Selection authority.

(a) For acquisitions conducted by A/LM/AQM on behalf of the Bureau of Overseas Buildings Operations, the final selection decision shall be made by the Director/Chief Operating Officer of the Bureau of Overseas Buildings Operations, with the concurrence of the contracting officer and L/BA. For other domestic acquisitions, the selection decision shall be made by an individual designated by the Assistant Secretary of State for Administration. For acquisitions conducted by overseas posts, the selection decision shall be made by the contracting officer."

[80 FR 6922, Feb. 9, 2015]

##### 636.602-5 Short selection processes for contracts not to exceed the simplified acquisition threshold.

The short selection process described in FAR 36.602-5 is authorized for use for contracts not expected to exceed the simplified acquisition threshold.

[59 FR 66766, Dec. 28, 1994, as amended at 60 FR 39663, Aug. 3, 1995]

## 48 CFR Ch. 6 (10-1-21 Edition)

### 636.606 Negotiations.

(a) Contracting officers at overseas posts may request a waiver from A/OPE if the contracting officer is unable to negotiate a fee within the six percent limitation. See 615.404-4(c)(4)(i)(B)."

[80 FR 6922, Feb. 9, 2015]

## PART 637—SERVICE CONTRACTING

### Subpart 637.1—Service Contracts—General

Sec.

637.102 Policy.

637.102-70 Special requirements for the acquisition of local guard services overseas.

637.102-71 Safety considerations.

637.103 Contracting officer responsibility.

637.104 Personal services contracts.

637.104-70 DOS authorities for personal services contracts.

637.104-71 Personal services agreements.

637.110 Solicitation provisions and contract clauses.

### Subpart 637.2—Advisory and Assistance Services

637.204 Guidelines for determining availability of personnel.

### Subpart 637.6—Performance-Based Contracting

637.601 General.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 53 FR 26176, July 11, 1988, unless otherwise noted.

### Subpart 637.1—Service Contracts—General

#### 637.102 Policy.

(c) Any Acquisition Plan or procurement request package for services expected to exceed \$25,000 shall include a Form DS-4208 completed by the requiring activity. Instructions for completing the DS-4208 may be found at <http://aopepd.a.state.gov/Content/documents/DS-4208-Instructions.docx>.

[53 FR 26176, July 11, 1988, as amended at 80 FR 6922, Feb. 9, 2015]



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### **637.102-70 Special requirements for the acquisition of local guard services overseas.**

(a) *Policy.* Section 136 of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (22 U.S.C. 4864) encourages the participation of United States persons and qualified United States joint venture persons in local guard contracts overseas under diplomatic security programs.

(b) *Evaluation preference.* For purposes of determining competitive status, proposals of United States persons and qualified United States joint venture persons shall receive a ten (10) percent price preference reduction.

[69 FR 19337, Apr. 13, 2004]

### **637.102-71 Safety considerations.**

When contracting for services to be performed overseas, always consider 636.513(b) and FAR 36.513(b), and consult with technical representatives to determine whether special precautions are appropriate, such as when the services are for building operations, building maintenance or infrastructure repairs.

[82 FR 58353, Dec. 12, 2017]

### **637.103 Contracting officer responsibility.**

(a)(2) The Office of the Legal Adviser is the DOS legal counsel for the purposes of FAR 37.103(a)(2).

(e) The Contracting Officer shall review the Forms DS-4208 submitted by requiring activities, not contract for inherently governmental functions and assist in implementation of mitigation strategies for efforts that are closely associated with inherently governmental functions. A copy of the DS-4208 shall be retained in the contract file.

[53 FR 26176, July 11, 1988, as amended at 80 FR 6922, Feb. 9, 2015]

### **637.104 Personal services contracts.**

(e) The Office of the Legal Adviser is the DOS legal counsel for the purposes of FAR 37.104(e).

### **637.104-70 DOS authorities for personal services contracts.**

Pursuant to FAR 37.104(b), DOS statutory authorities for personal services contracts are—

(a) For the Department, section 2(c) of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2669);

(b) For the Bureau of Population, Refugees, and Migration, section 5(a)(6) of the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2605);

(c) For the Bureau for International Narcotics and Law Enforcement Affairs, section 636(a)(3) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2396);

(d) For the Foreign Service Institute, section 704(a)(4) of the Foreign Service Act of 1980, as amended (22 U.S.C. 4024);

(e) For the Office of Foreign Missions, section 208(d) of Title II—Authorities Relating to the Regulation of Foreign Missions, of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4308);

(f) For the Bureau of Overseas Buildings Operations, section 5 of the Foreign Service Buildings Act, 1926, as amended (22 U.S.C. 296);

(g) For the U.S. Mission to the United Nations, section 7 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287e);

(h) For the Bureau of International Organization Affairs, the separate State Department appropriations acts; and

(i) For the Bureau of Diplomatic Security, section 206 of Public Law 99-399, as amended by the Emergency Supplemental Appropriations Act of 1998.

[53 FR 26176, July 11, 1988, as amended at 59 FR 66766, Dec. 28, 1994; 60 FR 39663, Aug. 3, 1995; 64 FR 43629, Aug. 11, 1999; 69 FR 19337, Apr. 13, 2004]

### **637.104-71 Personal services agreements.**

(a) *Applicability.* This section applies only to personal services agreements (PSAs) awarded under the authority of 22 U.S.C. 2669(c).

(b) *Definition.* “Personal Services Agreement (PSA)” is a method of employment using the statutory authority under 22 U.S.C. 2669(c). The Procurement Executive has delegated program management responsibility for PSAs awarded under the Department of State basic authority at 22 U.S.C. 2669(c). When applied to U.S. citizens hired under this authority, the term “PSA Plus” is normally used.

(c) *Policy.* DOS contracting officers at overseas posts should not award any personal services contracts that are subject to acquisition statutes and regulations.

(d) *Authority.* (1) The Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, amended section 2(c) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2669(c)) by revising the Department’s authority. This language states: “and such contracts are authorized to be negotiated, the terms of the contracts to be prescribed, and the work to be performed, where necessary, without regard to such statutory provisions as relative to the negotiation, making, and performance of contracts and performance of work in the United States.”

(2) This authority was further amended under the National Defense Authorization Act for Fiscal Year 2002 which added subsection (n) to 22 U.S.C. 2669. This language states “exercise the authority provided in section (c), upon the request of the Secretary of Defense or the head of any other department or agency of the United States, to enter into personal services contracts with individuals to perform services in support of the Department of Defense or such other department or agency, as the case may be.” This authority allowed the use of 22 U.S.C. 2669(c) by all other agencies, provided they meet certain criteria and agree to follow certain guidelines laid out in a Memorandum of Agreement (MOA). That MOA is not signed at the post level, but by a senior official at the Department of State and the other agency. Without the MOA in place, other agencies may not use this basic authority. HR/OE has responsibility for implementation of the authority that came with this legislative change. The HR/OE Web site includes the latest listing

of agencies that have signed the MOA and can use this authority.

(3) This statutory language has continuing effect and provides authority to the Department of State, and now other agencies, if they so agree, to obtain personal services without adherence to acquisition statutes. In furtherance of the authority provided by the statute, the Procurement Executive has waived the applicability of acquisition regulations when obtaining personal services under the authority of 22 U.S.C. 2669(c). As a result, it is not necessary for the individual executing a PSA under the authority of 22 U.S.C. 2669(c) to have a contracting officer’s certificate of appointment required under FAR 1.603 and 601.603 (see 601.603–3(d)).

(e) *Signatory authority.* Only direct hire U.S. citizens may sign PSAs. Provided the individual meets that criterion, individuals who may sign PSAs are limited to the following:

(1) The Human Resources Officer;

(2) The Human Resources/Financial Management Officer; or,

(3) The Management Officer or American FSO designated to perform human resources functions (e.g., GSO, RSO, etc.).

[80 FR 6923, Feb. 9, 2015]

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

(a) The contracting officer shall insert the clause at 652.237–70, Compensatory Time Off, in personal services contracts awarded in support of International Narcotics Control programs overseas, if the contracting officer determines its use appropriate.

(b) The contracting officer shall insert a clause substantially the same as the clause at 652.237–72, Observance of Legal Holidays and Administrative Leave, in all solicitations and contracts where contractor personnel will be working on-site in any Department of State facility. Overseas contracting activities may add local holidays to the list included in paragraph (a) of the clause.

(c) The contracting officer shall insert the provision at 652.237–73, Statement of Qualifications for Preference

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as a U.S. Person, in all overseas local guard solicitations.

[59 FR 66766, Dec. 28, 1994, as amended at 64 FR 43629, Aug. 11, 1999; 69 FR 19337, Apr. 13, 2004; 76 FR 20250, Apr. 12, 2011]

### Subpart 637.2—Advisory and Assistance Services

#### 637.204 Guidelines for determining availability of personnel.

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

[64 FR 43629, Aug. 11, 1999]

### Subpart 637.6—Performance-Based Contracting

#### 637.601 General.

It is the Department's policy that all new service contracts be performance-based, with clearly defined deliverables and performance standards. Any deviations from this policy shall be fully justified in writing and approved by the Departmental Advocate for Competition.

[69 FR 19337, Apr. 13, 2004, as amended at 80 FR 6923, Feb. 9, 2015]

## PART 639—ACQUISITION OF INFORMATION TECHNOLOGY

### Subpart 639.1—General

Sec.

639.107 Contract clause.

639.107-70 DOSAR solicitation provision and contract clause.

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

SOURCE: 72 FR 51569, Sept. 10, 2007, unless otherwise noted.

### Subpart 639.1—General

#### 639.107 Contract clause.

#### 639.107-70 DOSAR solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 652.239-70, Information Technology Security Plan and Accreditation, in solicitations that include information technology resources or services in which the contractor will have physical or electronic access to Department information that directly supports the mission of the Department.

(b) The contracting officer shall insert the clause at 652.239-71, Security Requirements for Unclassified Information Technology Resources, in solicitations and contracts containing the provision at 652.239-70. The provision and clause shall not be inserted in solicitations and contracts for personal services with individuals.

## PART 641—ACQUISITION OF UTILITY SERVICES

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

SOURCE: 64 FR 43629, Aug. 11, 1999, unless otherwise noted.

### Subpart 641.2—Acquiring Utility Services

#### 641.201 Policy.

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

## SUBCHAPTER G—CONTRACT MANAGEMENT

### PART 642—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Sec.

#### Subpart 642.1—Contract Audit Services

642.101 Contract audit responsibilities

#### Subpart 642.2—Contract Administration Services

642.270 Contracting Officer's Representative (COR).

642.271 Government Technical Monitor (GTM).

642.272 DOSAR contract clauses.

#### Subpart 642.6—Corporate Administration Contracting Officer

642.602 Assignment and location.

#### Subpart 642.7—Indirect Cost Rates

642.703 General.

642.703-2 Certificate of indirect costs.

#### Subpart 642.15—Contractor Performance Information

642.1503 Procedures.

642.1503-70 Contractor Performance Assessment Reporting System (CPARS).

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 53 FR 26176, July 11, 1988, unless otherwise noted.

#### Subpart 642.1—Contract Audit Services

SOURCE: 82 FR 58351, Dec. 12, 2017, unless otherwise noted.

#### 642.101 Contract audit responsibilities.

(b) The Department has an inter-agency agreement with the Defense Contract Audit Agency (DCAA) to perform incurred cost audits on cost-reimbursement contracts. DCAA audits are requested through the A/LM/AQM/BOD/QA Audit Team.

### Subpart 642.2—Contract Administration Services

#### 642.270 Contracting Officer's Representative (COR).

(a) *Scope.* Contracting officers may designate technically qualified personnel as their authorized representatives to assist in the administration of contracts. This section is mandatory for domestic contracting activities and recommended for overseas contracting activities.

(b) *Policy.* It is Department policy that only Department of State employees who have completed adequate training and have the necessary experience and judgment shall be appointed as CORs. This policy shall be reinforced by contracting officers and administered jointly by A/OPE and FSI. Required training shall be funded by the COR's office.

[59 FR 66766, Dec. 28, 1994]

#### 642.271 Government Technical Monitor (GTM).

(a) *Policy.* The contracting officer may appoint a Government Technical Monitor (GTM) to assist the Contracting Officer's Representative (COR) in monitoring a contractor's performance. The contracting officer may appoint a GTM because of physical proximity to the contractor's work site, or because of special skills or knowledge necessary for monitoring the contractor's work. The contracting officer may also appoint a GTM to represent the interests of another requirements office or post concerned with the contractor's work. A GTM shall be a direct-hire U.S. Government employee.

[69 FR 19338, Apr. 13, 2004]

#### 642.272 DOSAR contract clauses.

(a) The contracting officer shall insert a clause substantially the same as the clause at 652.242-70, Contracting Officer's Representative, in solicitations and contracts when appointment of a contracting officer's representative is anticipated.

(b) The contracting officer shall insert a clause substantially the same as

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the clause at 652.242-73, Authorization and Performance, in all solicitations and contracts to be awarded and/or performed overseas. For overseas local guard contracts, the contracting officer shall use the clause with its Alternate I.

[64 FR 43629, Aug. 11, 1999. Redesignated at 69 FR 19338, Apr. 13, 2004]

### Subpart 642.6—Corporate Administration Contracting Officer

#### 642.602 Assignment and location.

The Procurement Executive is the agency head's designee for the purposes of FAR 42.602(a).

### Subpart 642.7—Indirect Cost Rates

#### 642.703 General.

#### 642.703-2 Certificate of indirect costs.

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

[64 FR 43629, Aug. 11, 1999]

### Subpart 642.15—Contractor Performance Information

#### 642.1503 Procedures.

#### 642.1503-70 Contractor Performance Assessment Reporting System (CPARS).

(a) The Department of State subscribes to the Contractor Performance Assessment Reporting System (CPARS) maintained at <http://www.cpars.gov/>. CPARS is an Internet-based tool allowing government activities to input past performance information. This information is uploaded by CPARS into the Past Performance Information Retrieval System (PPIRS).

(b) All DOS contracting officers shall evaluate contractors' past performance as required by FAR 42.1502 and 42.1503.

(c) All Terminations for Default and Terminations for Cause shall be entered into CPARS regardless of contract purpose or dollar value.

(d) Heads of contracting activities shall send a list of the names, work addresses, and phone numbers of all acquisition personnel whom they wish to

have access to the CPARS to [AQMCPARS@state.gov](mailto:AQMCPARS@state.gov).

[80 FR 6923, Feb. 9, 2015]

## PART 643—CONTRACT MODIFICATIONS

### Subpart 643.1—General

Sec.

643.102 Policy.

643.102-70 Contract compliance and review.

643.104 Notification of contract changes.

643.104-70 DOSAR contract clause.

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

SOURCE: 53 FR 26176, July 11, 1988, unless otherwise noted.

### Subpart 643.1—General

#### 643.102 Policy.

#### 643.102-70 Contract compliance and review.

When applicable, the contracting officer shall ensure the proposed contract modification complies with the competition requirements of FAR Part 6 and DOSAR Part 606.

[53 FR 26176, July 11, 1988, as amended at 59 FR 66767, Dec. 28, 1994; 64 FR 43629, Aug. 11, 1999]

#### 643.104 Notification of contract changes.

#### 643.104-70 DOSAR contract clause.

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

[64 FR 43629, Aug. 11, 1999]

## PART 644—SUBCONTRACTING POLICIES AND PROCEDURES

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 64 FR 43629, Aug. 11, 1999, unless otherwise noted.

### **Subpart 644.3—Contractors’ Purchasing Systems Reviews**

#### **644.302 Requirements.**

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

## **PART 645—GOVERNMENT PROPERTY**

### **Subpart 645.1—General**

Sec.

645.107 Contract clauses.

645.107–70 DOSAR contract clause and solicitation provision.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 78 FR 76076, Dec. 16, 2013, unless otherwise noted.

### **Subpart 645.1—General**

#### **645.107 Contract clauses.**

#### **645.107–70 DOSAR contract clause and solicitation provision.**

(a) The contracting officer shall insert the provision at 652.245–70, Status of Property Management System, in solicitations when any of the following conditions apply:

(1) Highway motor vehicles or aircraft, regardless of cost, are provided by the Government or acquired by the contractor for the account of the Government;

(2) Software exceeding \$500,000 in value, including labor costs to develop, is provided by the Government or acquired by the contractor for the account of the Government; or

(3) Personal property greater than \$25,000 (and not in paragraph (a)(1) of this subsection) is provided by the Government or acquired by the contractor for the account of the Government. The personal property must be complete within itself; does not lose its identity or become a component part of other property when put into use; and is of a durable nature with an estimated useful life expectancy to exceed two years.

(b) The contracting officer shall insert the clause at 652.245–71, Special Reports of Government Property, in all

solicitations and contracts that contain the provision at 652.245–70.

[78 FR 76076, Dec. 16, 2013, as amended at 80 FR 6923, Feb. 9, 2015]

## **PART 647—TRANSPORTATION**

Sec.

647.000 Scope of part.

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

647.207 Solicitation provisions, contract clauses, and special requirements.

647.207–7 Liability and insurance.

### **Subpart 647.3—Transportation in Supply Contracts**

647.305 Solicitation provisions, contract clauses, and transportation factors.

647.305–70 Notice of shipment.

647.305–71 Shipping instructions.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 59 FR 66767, Dec. 28, 1994, unless otherwise noted.

#### **647.000 Scope of part.**

The FAR and DOSAR do not apply to the acquisition of transportation services via Government bill of lading (GBL) or other similar forms.

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

#### **647.207 Solicitation provisions, contract clauses, and special requirements.**

#### **647.207–7 Liability and insurance.**

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

[64 FR 43629, Aug. 11, 1999]

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### Subpart 647.3—Transportation in Supply Contracts

SOURCE: 80 FR 6923, Feb. 9, 2015, unless otherwise noted.

#### 647.305 Solicitation provisions, contract clauses, and transportation factors.

##### 647.305-70 Notice of shipment.

The contracting officer shall insert the clause at 652.247-70, Notice of Shipment, in solicitations and contracts entered into and performed outside the United States, when overseas shipment of supplies is required.

##### 647.305-71 Shipping instructions.

The contracting officer shall insert the clause at 652.247-71, Shipping Instructions, in solicitations and contracts with a source in the United States if overseas shipment of supplies is required.

## PART 648—VALUE ENGINEERING

### Subpart 648.1—Policies and Procedures

Sec.

648.102 Policies.

#### Subpart 648.2—Contract Clauses

648.201 Clauses for supply or service contracts.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### Subpart 648.1—Policies and Procedures

#### 648.102 Policies.

(a) The authority to grant exemptions prescribed in FAR 48.102(a), or to extend future contract savings or sharing pursuant to FAR 48.102(g), is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70).

[55 FR 5775, Feb. 16, 1990]

#### Subpart 648.2—Contract Clauses

##### 648.201 Clauses for supply or service contracts.

The authority to determine exemptions prescribed in FAR 48.201(a)(6) is

delegated, without power of redelegation, to the head of the contracting activity.

[55 FR 5775, Feb. 16, 1990]

## PART 649—TERMINATION OF CONTRACTS

Sec.

649.101 Authorities and responsibilities.

649.101-70 Termination action decisions after debarment.

649.106 Fraud or other criminal conduct.

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 59 FR 66767, Dec. 28, 1994, unless otherwise noted.

### Subpart 649.1—General Principles

#### 649.101 Authorities and responsibilities.

##### 649.101-70 Termination action decisions after debarment.

(a) Prior to making a decision to terminate, based on the consideration listed below, the contracting officer shall have the proposed action reviewed and approved by:

(1) The Office of the Legal Adviser;

(2) An individual one level above the contracting officer; and

(3) For overseas posts, A/OPE.

(b) *Termination for default.* Termination for default under a contract's default clause is appropriate when the circumstances giving rise to the debarment or suspension also constitute a default in the contractor's performance of that contract. Debarment or suspension of the contractor for reasons unrelated to the performance of that contract may not support a termination for default.

(c) *Termination for convenience or cancellation.* Termination for convenience or cancellation under appropriate contract clauses should be considered when the contractor presents a significant risk to the Government in completing a current contract and when such termination for convenience or cancellation is determined to be in the Government's best interests. In making this determination, the contracting officer should consider such factors as the—

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- (1) Seriousness of the cause for debarment or suspension;
- (2) Extent of contract performance;
- (3) Potential costs to the Government;
- (4) Urgency of the requirement and the impact of the delay; and/or
- (5) Availability of other safeguards to protect the Government's interests.

[53 FR 26165, July 11, 1988, as amended at 59 FR 66756, Dec. 28, 1994. Redesignated at 81 FR 51125, Aug. 3, 2016]

### 649.106 Fraud or other criminal conduct.

If the Contracting Officer (CO) suspects fraud or other criminal conduct related to the settlement of a terminated contract, the CO shall discontinue negotiations and report the facts to the Office of the Inspector General.

[59 FR 66767, Dec. 28, 1994, as amended at 80 FR 6923, Feb. 9, 2015]

### 649.111 Review of proposed settlements.

All proposed termination settlements shall be reviewed and approved by the Office of the Legal Adviser for legal sufficiency. In addition,

(a) All proposed termination settlements from domestic contracting activities shall be approved by the head of the contracting activity, with the exception of termination settlements on simplified acquisitions and no-cost termination settlements; and,

(b) All proposed termination settlements from overseas contracting ac-

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tivities shall be approved by the Procurement Executive.

[80 FR 6924, Feb. 9, 2015]

## PART 651—USE OF GOVERNMENT SOURCES BY CONTRACTORS

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

### Subpart 651.70—Contractor Use of Travel Advances, Official Travel Orders, and Government Travel Requisitions

#### 651.7001 Policy.

(a) It is the Department's policy that contractors shall not:

(1) Receive travel advances from the Department for contract-related travel;

(2) Travel under official travel orders; or,

(3) Receive Government Travel Requisitions (GTRs) for transportation.

(b) All contract-related travel shall be performed on the contractor's account with reimbursement provided after submission of a proper voucher.

(c) This policy does not apply to personal services contractor; *provided*, that such contractors are paid through the Department's payroll system and they are subject to the standard payroll deductions of Federal Withholding Tax and FICA.

[59 FR 66767, Dec. 28, 1994, as amended at 69 FR 19338, Apr. 13, 2004. Redesignated at 81 FR 24707, Apr. 27, 2016]



## SUBCHAPTER H—CLAUSES AND FORMS

### PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.  
652.000 Scope of part.

#### Subpart 652.1—Instructions for Using Provisions and Clauses

652.100 Scope of subpart.  
652.100-70 Policy.  
652.102 Incorporating provisions and clauses.  
652.102-1 Incorporation by reference.

#### Subpart 652.2—Text of Provisions and Clauses

652.200 Scope of subpart.  
652.204-70 Department of State Personal Identification Card Policy and Procedures.  
652.206-70 Advocate for Competition/Ombudsman.  
652.216-70 Ordering—Indefinite-Delivery Contract.  
652.216-71 Price Adjustment.  
652.219-70 Department of State Subcontracting Goals.  
652.219-71 Section 8(a) Direct Awards.  
652.219-72 Department of State Mentor-Protégé Program.  
652.219-73 Mentor Requirements and Evaluation.  
652.225-70 Arab League Boycott of Israel.  
652.225-71 Section 8(a) of the Export Administration Act of 1979, as Amended.  
652.228-70 Defense Base Act—Covered Contractor Employees.  
652.228-71 Worker's Compensation Insurance (Defense Base Act)—Services.  
652.229-70 Excise Tax Exemption Statement for Contractors Within the United States.  
652.229-71 Personal Property Disposition at Posts Abroad.  
652.232-70 Payment Schedule and Invoice Submission (Fixed-Price).  
652.232-71 Voucher Submission (Cost-Reimbursement).  
652.232-72 Limitation of Funds.  
652.236-70 Additional Safety Measures.  
652.236-71 Foreign Service Buildings Act, as Amended.  
652.236-72 Statement of Qualifications for the Omnibus Diplomatic Security and Antiterrorism Act.  
652.237-70 Compensatory time off.  
652.237-71 [Reserved]  
652.237-72 Observance of Legal Holidays and Administrative Leave.

652.237-73 Statement of Qualifications for Preference as a U.S. Person.  
652.239-70 Information Technology Security Plan and Accreditation.  
652.239-71 Security Requirements for Unclassified Information Technology Resources.  
652.242-70 Contracting Officer's Representative (COR).  
652.242-71-652.242-72 [Reserved]  
652.242-73 Authorization and Performance.  
652.243-70 Notices.  
652.245-70 Status of Property Management System.  
652.245-71 Special Reports of Government Property.  
652.247-70 Notice of Shipments.  
652.247-71 Shipping Instructions.  
652.247-72 [Reserved]

AUTHORITY: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

SOURCE: 53 FR 26177, July 11, 1988, unless otherwise noted.

#### 652.000 Scope of part.

This part sets forth solicitation provisions and contract clauses, in addition to those prescribed in FAR Part 52, for use in DOS acquisitions.

#### Subpart 652.1—Instructions for Using Provisions and Clauses

##### 652.100 Scope of subpart.

##### 652.100-70 Policy.

(a) The solicitation provisions and contract clauses in FAR subpart 52.2 or this subpart 652.2 shall be used as prescribed therein, except when the use of any provision or clause is prohibited by or inconsistent with local laws, or the supplies or services could not be obtained if the provision or clause were to be included.

(b) The contracting officer shall justify the exclusion of any provisions or clauses in accordance with FAR subpart 1.4 and 601.470.

[53 FR 26177, July 11, 1988, as amended at 81 FR 24707, Apr. 27, 2016]

**652.102 Incorporating provisions and clauses.****652.102-1 Incorporation by reference.**

The Procurement Executive is the agency head for the purposes of FAR 52.102-1(a)(2)(ii).

**Subpart 652.2—Text of Provisions and Clauses****652.200 Scope of subpart.**

This subpart sets forth the text of all DOSAR provisions and clauses, and for each provision and clause provides a cross-reference to the location in the DOSAR that prescribes its use.

**652.204-70 Department of State Personal Identification Card Policy and Procedures.**

As prescribed in 604.1303-70, insert the following clause:

DEPARTMENT OF STATE PERSONAL IDENTIFICATION CARD POLICY AND PROCEDURES (FEB 2015)

(a) The Contractor shall comply with the Department of State (DOS) Personal Identification Card Policy and Procedures for all employees performing under this contract who require frequent and continuing access to DOS facilities, or information systems. The Contractor shall insert the substance of this clause in all subcontracts when the subcontractor's employees will require frequent and continuing access to DOS facilities, or information systems.

(b) The DOS Personal Identification Card Policy and Procedures may be accessed at <http://www.state.gov/m/ds/rls/rpt/c21664.htm>.

(End of clause)

[80 FR 6932, Feb. 9, 2015]

**652.206-70 Advocate for Competition/Ombudsman.**

As prescribed in 606.570, insert the following provision:

ADVOCATE FOR COMPETITION/OMBUDSMAN  
(FEB 2015)

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

tices, potential offerors are encouraged first to contact the contracting officer for the solicitation. If concerns remain unresolved, contact:

(1) For solicitations issued by the Office of Acquisition Management (A/LM/AQM) or a Regional Procurement Support Office, the A/LM/AQM Advocate for Competition, at [AQMCCompetitionAdvocate@state.gov](mailto:AQMCCompetitionAdvocate@state.gov).

(2) For all others, the Department of State Advocate for Competition at [cat@state.gov](mailto:cat@state.gov).

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

(End of provision)

[64 FR 43629, Aug. 11, 1999, as amended at 80 FR 6924, Feb. 9, 2015]

**652.216-70 Ordering—Indefinite-Delivery Contract.**

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

ORDERING—INDEFINITE-DELIVERY CONTRACTS  
(APR 2004)

The Government shall use one of the following forms to issue orders under this contract:

(a) The Optional Form 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule—Continuation; or,

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(b) The DS-2076, Purchase Order, Receiving Report and Voucher, and DS-2077, Continuation Sheet.

(End of clause)

[53 FR 26177, July 11, 1988, as amended at 59 FR 66768, Dec. 28, 1994; 64 FR 43630, Aug. 11, 1999; 69 FR 19338, Apr. 13, 2004]

### 652.216-71 Price Adjustment.

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

#### PRICE ADJUSTMENT (AUG 1999)

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

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

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

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

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

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

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

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

(d) In order to establish the change between the requested adjusted rate and the

original rate, the contractor shall support the appropriate data and composition of the original rate and the requested adjusted rate. This shall include details regarding specific hourly rates paid to individual employees. For contracts paid in U.S. dollars, the contractor's request for price adjustment shall present data reflecting:

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

(2) The current exchange rate and its effect on payment of workers in local currency. The allowable adjustment shall be limited to the extent to which increases in direct service labor costs due to host country law changes are not offset by exchange rate gains.

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

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

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

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

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

(End of clause)

[64 FR 43630, Aug. 11, 1999]

### 652.219-70 Department of State Subcontracting Goals.

As prescribed in 619.708-70, insert a provision substantially the same as follows:

DEPARTMENT OF STATE SUBCONTRACTING  
GOALS (APR 2004)

(a) The offeror shall provide a Small, Small Disadvantaged, Woman-Owned Small, HUBZone Small, and Service-Disabled Veteran-Owned Small Enterprise Subcontracting Plan that details its approach to selecting and using Small, Small Disadvantaged, Woman-Owned Small, HUBZone Small, and Service-Disabled Veteran-Owned Small Business Enterprises.

(b) For the fiscal year [insert appropriate fiscal year], the Department's subcontracting goals are as follows:

- (1) Goal for subcontracting to SB:
- (2) Goal for subcontracting to SDB:
- (3) Goal for subcontracting to SWB:
- (4) Goal for subcontracting to HUBZone Firms:
- (5) Goal for subcontracting to SDVO:
- (6) Omnibus goals (if applicable):
  - (i) 10% to minority business
  - (ii) 10% to small business

(End of provision)

[69 FR 19338, Apr. 13, 2004]

**652.219-71 Section 8(a) Direct Awards.**

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

SECTION 8(a) DIRECT AWARDS (AUG 1999)

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

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

ministration functions to a contract administration office.

(c) The contractor agrees:

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

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

(End of clause)

[64 FR 43630, Aug. 11, 1999]

**652.219-72 Department of State Mentor-Protégé Program.**

As prescribed in 619.202-70(o)(1), insert the following provision:

DEPARTMENT OF STATE MENTOR-PROTÉGÉ  
PROGRAM (APR 2004)

(a) Large and small businesses are encouraged to participate in the Department of State Mentor-Protégé Program. Mentor firms provide eligible small business protégés with developmental assistance to enhance their business capabilities and ability to obtain Federal contracts.

(b) Mentor firms are large prime contractors or eligible small businesses capable of providing developmental assistance. Protégé firms are small businesses, as defined in 13 CFR parts 121, 124, and 126.

(c) Developmental assistance is technical, managerial, financial, and other mutually beneficial assistance that aids protégés. Firms interested in participating in the program are encouraged to contact the Department of State OSDBU for further information.

(End of provision)

[69 FR 19338, Apr. 13, 2004]

**652.219-73 Mentor Requirements and Evaluation.**

As prescribed in 619.202-70(o)(2), insert the following clause:

MENTOR REQUIREMENTS AND EVALUATION  
(APR 2004)

(a) Mentor and protégé firms shall submit an evaluation to the Department of State's OSDBU at the conclusion of the mutually agreed upon program period, the conclusion of the contract, or the voluntary withdrawal

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by either party from the program, whichever occurs first. At the conclusion of each year in the mentor-protégé program, the prime contractor and protégé will formally brief the Department of State Mentor-Protégé Program Manager regarding program accomplishments under their mentor-protégé agreement.

(b) A mentor or protégé shall notify the OSDBU and the contracting officer, in writing, at least 30 calendar days in advance of the effective date of the firm's withdrawal from the program. A mentor firm shall notify the OSDBU and the contracting officer upon receipt of a protégé's notice of withdrawal from the program.

(End of clause)

[69 FR 19338, Apr. 13, 2004]

### 652.225-70 Arab League Boycott of Israel.

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

#### ARAB LEAGUE BOYCOTT OF ISRAEL (AUG 1999)

(a) *Definitions.* As used in this provision:

*Foreign person* means any person other than a United States person as defined below.

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

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

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

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

(End of provision)

[64 FR 43631, Aug. 11, 1999]

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

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

#### SECTION 8(a) OF THE EXPORT ADMINISTRATION ACT OF 1979, AS AMENDED (AUG 1999)

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

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

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

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

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

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

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

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

(1) Complying or agreeing to comply with requirements:

(i) Prohibiting the import of goods or services from Israel or goods produced or services

provided by any business concern organized under the laws of Israel or by nationals or residents of Israel; or,

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

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

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

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

(5) Compliance by an individual or agreement by an individual to comply with the

immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for information regarding requirements of employment of such individual within the boycotting country; and,

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

(End of clause)

[64 FR 43631, Aug. 11, 1999]

#### **652.228-70 Defense Base Act—Covered Contractor Employees.**

As prescribed in 628.309-70(a), insert the following provision:

##### **DEFENSE BASE ACT—COVERED CONTRACTOR EMPLOYEES (FEB 2015)**

(a) Bidders/offerors shall indicate below whether or not any of the following categories of employees will be employed on the resultant contract, and, if so, the number of such employees:

Category	Yes/No	Number
(1) United States citizens or residents		
(2) Individuals hired in the United States, regardless of citizenship		
(3) Local nationals or third country nationals where contract performance takes place in a country where there are no local workers' compensation laws.	.....	Local nationals: _____ Third country nationals: _____
(4) Local nationals or third country nationals where contract performance takes place in a country where there are local workers' compensation laws.	.....	Local nationals: _____ Third country nationals: _____

(b) The contracting officer has determined that for performance in the country of [contracting officer insert country of performance and check the appropriate block below]

☐ Workers' compensation laws exist that will cover local nationals and third country nationals.

☐ Workers' compensation laws do not exist that will cover local nationals and third country nationals.

(c) If the bidder/offeror has indicated "yes" in block (a)(4) of this provision, the bidder/

offeror shall not purchase Defense Base Act insurance for those employees. However, the bidder/offeror shall assume liability toward the employees and their beneficiaries for war-hazard injury, death, capture, or detention, in accordance with the clause at FAR 52.228-4.

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(End of provision)

[71 FR 34841, June 16, 2006; 71 FR 41177, July 20, 2006; 80 FR 6932, Feb. 9, 2015]

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

As prescribed in 628.309-70(b), insert the following clause:

#### **WORKERS' COMPENSATION INSURANCE (DEFENSE BASE ACT)—SERVICES (FEB 2015)**

(a) This clause supplements FAR 52.228-3. For the purposes of this clause, "covered contractor employees" includes the following individuals:

(1) United States citizens or residents;  
(2) Individuals hired in the United States or its possessions, regardless of citizenship; and

(3) Local nationals and third country nationals where contract performance takes place in a country where there are no local workers' compensation laws.

(b) The Contractor shall procure Defense Base Act (DBA) insurance directly from a Department of Labor (DOL) approved insurance provider. Approved providers can be found at the DOL Web site at <http://www.dol.gov/owcp/dlhwc/lscarrrier.htm>.

(c)(1) Section 16 of the State Department Basic Authorities Act (22 U.S.C. 2680a), as amended, provides that the Defense Base Act shall not apply with respect to such contracts as the Secretary of State determines are contracts with persons employed to perform work for the Department of State on an intermittent basis for not more than 90 days in a calendar year. "Persons" includes individuals hired by companies under contract with the Department. The Procurement Executive has the authority to issue the waivers for Contractor employees who work on an intermittent or short-term basis.

(2) The Contractor shall submit waiver requests to the contracting officer. The request shall contain the following information:

- (i) Contract number;
- (ii) Name of Contractor;
- (iii) Brief description of the services to be provided under the contract and country of performance;
- (iv) Name and position title of individual(s);
- (v) Nationality of individual(s) (must be U.S. citizen or U.S. resident);
- (vi) Dates (or timeframe) of performance at the overseas location; and,
- (vii) Evidence of alternative workers' compensation coverage for these employees (e.g., evidence that the State workers' compensation program covers workers on short-term foreign assignments).

## **652.229-71**

(3) The contracting officer shall provide to the Contractor the original of the approved or disapproved document and maintain a copy in the contract file.

(End of clause)

[71 FR 34841, June 16, 2006; 71 FR 41177, July 20, 2006; 80 FR 6924, Feb. 9, 2015]

### **652.229-70 Excise Tax Exemption Statement for Contractors Within the United States.**

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

#### **EXCISE TAX EXEMPTION STATEMENT FOR CONTRACTORS WITHIN THE UNITED STATES (JUL 1988)**

This is to certify that the item(s) covered by this contract is/are for export solely for the use of the U.S. Foreign Service Post identified in the contract schedule.

The Contractor shall use a photocopy of this contract as evidence of intent to export. Final proof of exportation may be obtained from the agent handling the shipment. Such proof shall be accepted in lieu of payment of excise tax.

(End of clause)

[53 FR 26177, July 11, 1988, as amended at 64 FR 43632, Aug. 11, 1999]

### **652.229-71 Personal Property Disposition at Posts Abroad.**

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

#### **PERSONAL PROPERTY DISPOSITION AT POSTS ABROAD (AUG 1999)**

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

(End of clause)

[64 FR 43633, Aug. 11, 1999]

**652.232-70**

**48 CFR Ch. 6 (10-1-21 Edition)**

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

As prescribed in 632.908(a), the contracting officer may insert a clause substantially the same as follows:

**PAYMENT SCHEDULE AND INVOICE SUBMISSION  
(FIXED-PRICE) (AUG 1999)**

(a) *General.* The Government shall pay the contractor as full compensation for all work required, performed and accepted under this contract, inclusive of all costs and expenses, the firm fixed-price stated in Section B of this contract.

*[Use paragraph (b) only if partial payments apply. Otherwise, paragraph (a) above assumes the contractor will be paid in full amount upon completion of all contractual requirements.]*

(b) *Payment Schedule.* Payments will be made in accordance with the following partial payment schedule:

Partial payment No.	Specific deliverable	Delivery date	Payment amount
1			
2			
3			

*[Continue as necessary]*

(c) *Invoice Submission.* Invoices shall be submitted in an original and [contracting officer insert appropriate number of copies] to the office identified in Block 10 of the SF-26, Block 23 of the SF-33, or Block 18b of the SF-1449. To constitute a proper invoice, the invoice must include all items per FAR 52.232-25, "Prompt Payment".

(d) *Contractor Remittance Address.* Payment shall be made to the contractor's address as specified on the cover page of this contract, unless a separate remittance address is specified below:

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(End of clause)

[59 FR 66771, Dec. 28, 1994, as amended at 64 FR 43633, Aug. 11, 1999]

**652.232-71 Voucher Submission (Cost-Reimbursement).**

As prescribed in 632.908(b), the contracting officer may insert a clause substantially the same as follows:

**VOUCHER SUBMISSION (COST-REIMBURSEMENT)  
(AUG 1999)**

(a) *General.* The contractor shall submit, on a monthly basis [contracting officer may substitute a different time frame, if appro-

priate], an original and [contracting officer insert appropriate number] copies of each voucher. In addition to the items necessary per FAR 52.232-25, "Prompt Payment", the voucher shall show the elements of cost for the billing period and the cumulative costs to date. All vouchers shall be submitted to the office identified in Block 10 of the SF-26, Block 23 of the SF-33, or Block 18b of the SF-1449.

(b) *Contractor Remittance Address.* Payment shall be made to the contractor's address as specified on the cover page of this contract, unless a separate remittance address is specified below:

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(End of clause)

[59 FR 66772, Dec. 28, 1994, as amended at 64 FR 43633, Aug. 11, 1999]

**652.232-72 Limitation of Funds.**

As prescribed in 632.706-70, insert the following clause:

**LIMITATION OF FUNDS (AUG 1999)**

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

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

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

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



specified in paragraph (c)(1) of this clause or another date agreed to by the parties.

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

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

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

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

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

(End of clause)

[64 FR 43633, Aug. 11, 1999, as amended at 81 FR 24707, Apr. 27, 2016]

#### **652.236-70 Additional Safety Measures.**

As prescribed in 636.513, insert the following clause.

##### **ADDITIONAL SAFETY MEASURES (OCT 2017)**

In addition to the safety/accident prevention requirements of FAR 52.236-13, Accident Prevention Alternate I, the contractor shall comply with the following additional safety measures.

(a) *High risk activities.* If the project contains any of the following high risk activities, the contractor shall follow the section in the latest edition, as of the date of the solicitation, of the U.S. Army Corps of Engineers Safety and Health manual, EM 385-1-1, that corresponds to the high risk activity. Be-

fore work may proceed, the contractor must obtain approval from the COR of the written safety plan required by FAR 52.236-13, Accident Prevention Alternate I (see paragraph (f) of this clause), containing specific hazard mitigation and control techniques.

(1) Scaffolding;

(2) Work at heights above 1.8 meters;

(3) Trenching or other excavation greater than one (1) meter in depth;

(4) Earth-moving equipment and other large vehicles;

(5) Cranes and rigging;

(6) Welding or cutting and other hot work;

(7) Partial or total demolition of a structure;

(8) Temporary wiring, use of portable electric tools, or other recognized electrical hazards. Temporary wiring and portable electric tools require the use of a ground fault circuit interrupter (GFCI) in the affected circuits; other electrical hazards may also require the use of a GFCI;

(9) Work in confined spaces (limited exits, potential for oxygen less than 19.5 percent or combustible atmosphere, potential for solid or liquid engulfment, or other hazards considered to be immediately dangerous to life or health such as water tanks, transformer vaults, sewers, cisterns, etc.);

(10) Hazardous materials—a material with a physical or health hazard including but not limited to, flammable, explosive, corrosive, toxic, reactive or unstable, or any operations, which creates any kind of contamination inside an occupied building such as dust from demolition activities, paints, solvents, etc.; or

(11) Hazardous noise levels as required in EM 385-1 Section 5B or local standards if more restrictive.

(b) *Safety and health requirements.* The contractor and all subcontractors shall comply with the latest edition of the U.S. Army Corps of Engineers Safety and Health manual EM 385-1-1, or OSHA 29 CFR part 1910 or 1926 if no EM 385-1-1 requirements are applicable, and the accepted contractor's written safety program.

(c) *Mishap reporting.* The contractor is required to report *immediately* all mishaps to the COR and the contracting officer. A "mishap" is any

event causing injury, disease or illness, death, material loss or property damage, or incident causing environmental contamination. The mishap reporting requirement shall include fires, explosions, hazardous materials contamination, and other similar incidents that may threaten people, property, and equipment.

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

(e) *Subcontracts.* The contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

(f) *Written program.* The plan required by paragraph (f)(1) of the clause entitled "Accident Prevention Alternate I" shall be known as the Site Safety and Health Plan (SSHP) and shall address any activities listed in paragraph (a) of this clause, or as otherwise required by the contracting officer/COR.

(1) The SSHP shall be submitted at least 10 working days prior to commencing any activity at the site.

(2) The plan must address developing activity hazard analyses (AHAs) for specific tasks. The AHAs shall define the activities being performed and identify the work sequences, the specific anticipated hazards, site conditions, equipment, materials, and the control measures to be implemented to eliminate or reduce each hazard to an acceptable level of risk. Work shall not begin until the AHA for the work activity has been accepted by the COR and discussed with all engaged in the activity, including the Contractor, subcontractor(s), and Government on-site representatives.

(3) The names of the Competent/Qualified Person(s) required for a particular activity (for example, excavations, scaffolding, fall protection, other activities as specified by EM 385-1-1) shall be identified and included in the AHA. Proof of their competency/qualification shall be submitted to the

contracting officer or COR for acceptance prior to the start of that work activity. The AHA shall be reviewed and modified as necessary to address changing site conditions, operations, or change of competent/qualified person(s).

(End of clause)

[82 FR 58353, Dec. 12, 2017]

#### **652.236-71 Foreign Service Buildings Act, as Amended.**

As prescribed in 636.570(a), insert the following provision:

##### **FOREIGN SERVICE BUILDINGS ACT, AS AMENDED (FEB 2015)**

(a) This solicitation is subject to Section 11 of the Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 302). This statute limits competition under this solicitation to:

(1) American-owned firms, as described in paragraph (b) of this provision; and,

(2) Firms from countries that permit or agree to permit substantially equal access to American firms for comparable diplomatic and consular building projects.

(b) To qualify as an American-owned firm for purposes of this solicitation, the bidder/offeree must demonstrate evidence of:

(1) Performance of similar construction work in the United States or at a United States diplomatic or consular establishment abroad; and

(2) Either—  
(i) Ownership in excess of 50% by U.S. citizens or permanent residents; or

(ii) Incorporation in the United States for more than three (3) years and employment of U.S. citizens or permanent residents in more than half of the company's permanent full-time professional and managerial positions in the United States.

(c) For purposes of determining competitive status, offers submitted by American-owned firms shall be reduced by ten (10) percent, provided that two responsible bidders/offerees submit a bid/offer.

(d) *Evidence of qualification.* (1) Performance of similar construction work in the United States or at a United States diplomatic or consular establishment abroad. The bidder/offeree must describe below one or more similar projects completed in the United States or at a United States diplomatic or consular establishment abroad. For each project, provide the following information:

Location: \_\_\_\_\_  
(City and State/Country) \_\_\_\_\_  
Complexity: \_\_\_\_\_  
\_\_\_\_\_  
(Office building, etc.)

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Type of construction: \_\_\_\_\_  
Value of project: \_\_\_\_\_  
Location: \_\_\_\_\_  
(City and State/Country) \_\_\_\_\_  
Complexity: \_\_\_\_\_

(Office building, etc.)  
Type of construction: \_\_\_\_\_  
Value of project: \_\_\_\_\_  
Location: \_\_\_\_\_  
(City and State/Country) \_\_\_\_\_  
Complexity: \_\_\_\_\_

(Office building, etc.)  
Type of construction: \_\_\_\_\_  
Value of project: \_\_\_\_\_

If the bidder/offeree's participation was as a partner or co-venturer, indicate the percentage of the project performed by the bidder/offeree: \_\_\_\_\_ %

(2) Corporate location or ownership.

(i) The bidder/offeree certifies that it ☐ is ☐ is not owned in excess of fifty (50) percent by United States citizens or permanent residents.

(ii) The bidder/offeree certifies that it ☐ has ☐ has not been incorporated in the United States for more than three years and that it ☐ employs ☐ does not employ United States citizens or permanent residents in more than half of its permanent full-time professional and managerial positions in the United States.

(e) By signing this bid/offer, the bidder/offeree certifies to the best of its knowledge, all of the representations and certifications provided in this provision are accurate, current and complete.

(End of provision)

[69 FR 19339, Apr. 13, 2004, as amended at 80 FR 6924, Feb. 9, 2015]

### 652.236-72 Statement of Qualifications for the Omnibus Diplomatic Security and Antiterrorism Act.

As prescribed in 636.570(b), insert the following provision:

#### STATEMENT OF QUALIFICATIONS FOR THE OMNIBUS DIPLOMATIC SECURITY AND ANTITERRORISM ACT (FEB 2015)

(a) This solicitation is subject to Section 402 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (P.L. 99-399; 22 U.S.C. 4852). The Act limits certain construction projects abroad to United States persons or United States joint venture persons. This Statement of Qualifications shall be used to determine if a bidder/offeree meets the definition of a "United States person" or a "United States joint venture person".

(b) *Definition.* As used in this provision—  
*U.S. person* means a company, partnership, or joint venture that the Government deter-

mines, after consideration of all available information, including but not limited to that provided by the bidder/offeree in response to this solicitation, to be qualified pursuant to Section 402.

(c) *Representation.* The bidder/offeree represents as part of its bid/offer that it ☐ does ☐ does not meet the qualifications as a U.S. person as set forth in Section 402 of the Act.

[Complete a Statement of Qualifications for Purposes of Determining Status as a U.S. Person if the offeror represents that it is eligible. See paragraph (d) of this provision.]

*Warning:* Any material misrepresentation made in the Statement of Qualifications may be the basis for disqualification of a bidder/offeree and reference for consideration of suspension or debarment or for prosecution under Federal law (cf. 18 U.S.C. 1001). Bidder/offeree qualifications will be determined primarily on the basis of information submitted in the Statement of Qualifications, including attachments thereto, but the Government may, at its discretion, rely on information contained elsewhere in the bidder's/offeree's bid/proposal or obtained from other sources.

(d) *Statement of Qualifications for Purposes of Determining Status as a U.S. Person* (22 U.S.C. 4852). A bidder/offeree that represents that it is a U.S. person must provide the following information.

Statement of Qualifications for Purposes of Determining Status as a U.S. Person (22 U.S.C. 4852)

Name and address of U.S. person organization providing this information:

*Introduction.* Section 402 of the Omnibus Diplomatic Security and Antiterrorism Act (Public Law 99-399) provides that a "United States person" or a "qualified United States joint venture" must meet certain requirements, listed in sections 402(c)(2) and (3) of the Act, to be eligible to compete. To assist business entities to determine whether they qualify as a U.S. person or U.S. joint venture person, guidance is hereby provided. For ease of reference, the statutory language is quoted immediately before the definitions that apply to it. Space for the required information is provided immediately following each definition.

*NOTE:* The Statement of Qualifications shall provide information correctly applicable to the U.S. person whose qualifications are being certified, and shall not include information pertaining to corporate affiliates or subsidiaries. Organizations that wish to use the experience or financial resources of any other legally dependent organization or individual, including parent companies, subsidiaries, or other related organizations, must do so by way of a joint venture. A prospective bidder/offeree may be an individual

organization or firm, a formal joint venture in which the co-venturers have reduced their arrangement to writing, or a de facto joint venture where no formal agreement has been reached, but the offering entity relies upon the experience of a related U.S. firm that guarantees performance. To be considered a “qualified United States joint venture person,” the joint venture must have at least one firm or organization that itself meets all the requirements of a U.S. person listed in Section 402. By signing this bid/proposal, the U.S. person co-venturer agrees to be individually responsible for performance of the contract, notwithstanding the terms of any joint venture agreement.

1. *Section 402(c)(2)(A)*: “The term ‘United States person’ means a person which—(A) is incorporated or legally organized under the laws of the United States, including the District of Columbia, and local laws.”

Definitions for purposes of Section 402 determinations of eligibility—

*Incorporated* means the successful de jure incorporation of a business organization pursuant to the laws of any United States jurisdiction or component thereof.

*Legally organized* means the legally recognized existence of an organization other than a de jure corporation (e.g., a partnership) under the laws of any United States jurisdiction or component thereof. Only organizations that have a legal status, including the right to bring suit, to sign contracts, and to hold property under the law of the jurisdiction where they are doing business will qualify as legally organized. A natural person who is a United States citizen acting in his or her entrepreneurial capacity will be deemed to be a “person legally organized” within the scope of this definition, provided that the prospective bidder/offeree holds all required licenses to do business in the jurisdiction where he or she is located.

*United States* means any jurisdiction that is one of the fifty States, the District of Columbia, a United States territory, a United States possession, or the Commonwealths of Puerto Rico and the Northern Mariana Islands.

*Question 1.* The organization seeking eligibility under Section 402 is incorporated or is legally organized under the laws of what jurisdiction?

2. *Section 402(c)(2)(B)*: “The term ‘United States person’ means a person which—(B) has its principal place of business in the United States.”

Definitions for purposes of Section 402 determinations of eligibility—

*Principal place of business* means the main location of the prospective bidder/offeree. For purposes of this section, a prospective bidder/offeree shall identify only one principal place of business, and such location

shall include at least the offices of the chief operating officer and headquarters staff. The named location must be a United States jurisdiction from which a tax return has been filed or will be filed during the calendar year in which the prospective bidder/offeree submits this bid/offeree.

*United States* means any jurisdiction that is one of the fifty States, the District of Columbia, a United States territory, a United States possession, or the Commonwealths of Puerto Rico and the Northern Mariana Islands.

*Question 2(a).* The organization seeking eligibility has its principal place of business in what city and state?

*Question 2(b).* What kind of tax return was or will be filed, and in what jurisdiction, during the current calendar year?

(i) Jurisdiction: \_\_\_\_\_  
(e.g., federal, state, city)  
(ii) Type of return (e.g., income tax, franchise tax, etc.). Include all that apply: \_\_\_\_\_

3. *Section 402(c)(2)(C)*: “The term ‘United States person’ means a person which has been incorporated or legally organized in the United States—

(i) for more than 5 (five) years before the issuance date of the invitation for bids or request for proposals with respect to a construction project under subsection (a)(1); and,

(ii) for more than 2 (two) years before the issuance date of the invitation for bids or request for proposals with respect to a construction or design project abroad that involves technical security under subsection (a)(2).”

Definitions for purposes of Section 402 determinations of eligibility—

*Has been incorporated or legally organized* means that the organization can show continuity as an ongoing business. Organizations that have changed only their names meet the continuity requirement of this subsection. Organizations that have been bought, sold, merged, or otherwise substantially altered or enlarged their principal business activities will have the burden of proving that there have been ongoing operations by the same business entity for the required period of time. If the successor entity has acquired all of the assets and liabilities of the predecessor business and the predecessor business has no further existence, the successor may claim the incorporation date of the predecessor. In any other circumstance, the prospective bidder/offeree must show that the law of the jurisdiction in which it operates regards the prospective bidder/offeree as the complete successor in interest of the predecessor business for purpose of contractual obligations.

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*Issuance date* means the date in Block 3 of the Standard Form 1442 accompanying this solicitation.

*Years* means calendar years measured from day of the month to day of the month. For example, January 1, 2002 through December 31, 2002 is one calendar year, as is July 1, 2002 through July 1, 2003.

*Question 3:*

(i) On what date was the organization seeking eligibility incorporated or legally organized?

(ii) If this date is less than the required number of years before the issuance date, on the basis of what documentation does the organization seeking eligibility claim that it has been in business for the requisite period of time?

(Identify, and forward copies as an Attachment to this Statement. This material may include such items as certificates of incorporation, partnership agreements, resolutions of boards of directors, etc.).

4. *Section 402(c)(2)(D)*: “The term ‘United States person’ means a person which has performed within the United States or at a United States diplomatic or consular establishment abroad administrative and technical, professional, or construction services similar in complexity, type of construction, and value to the contract being bid.”

Definitions for purposes of Section 402 termination of eligibility—

*Administrative and technical, professional, or construction services* means the kind of work in which the prospective bidder/offeree is interested. If the proposed contract is for construction management services, the prospective bidder/offeree will be expected to demonstrate construction management expertise. In general, “administrative” means the capacity or ability to manage; “technical” means the specific skills peculiar to the type of work required; “professional” means expert services resulting from advanced training in the type of work required; and “construction” experience if it has not directly performed all of the actual construction activities. Thus, an entity whose only construction work experience was performed by its legally distinct subsidiary or parent will not be considered to have construction experience.

*Complexity* means the physical size and technical size and demands of the project. “Performed” means projects that have been fully completed by the prospective bidder/offeree and accepted by the owner or other party to the transaction. Projects still in progress have not yet been performed for purposes of this definition.

*Type of construction* means the overall nature of the facilities to be built, including the kinds of materials to be used. Thus, if the contract will require the construction of a multi-story office building, the prospective bidder/offeree will be expected to dem-

onstrate experience with facilities of this type.

*Value* means the total contract price of the project, not to the profit or loss to the bidder/offeree.

*Within the United States* means a United States jurisdiction that is the place where the subject matter of the contract or other arrangement was in fact completed. It does not mean the place where the contract or other arrangement was negotiated or signed. The term “United States” means any jurisdiction that is one of the 50 states, the District of Columbia, a United States territory, a United States possession, or the Commonwealth of Puerto Rico and the Northern Mariana Islands.

*Question 4:* List on this page, and an attachment (if necessary), one or more similar projects completed by the prospective bidder/offeree. For each project, provide the following information:

Location:

(City and State, or Country)

Type of service:

(administrative, etc.)

Complexity:

(office building, etc.)

Type of construction:

Value of project:

If the prospective bidder/offeree’s participation was as a partner or co-venturer, indicate the percentage of the project performed by the prospective offeree: \_\_\_\_\_ %

5. *Section 402(c)(2)(E)*: “The term ‘United States person’ means a person which—with respect to a construction project under subsection (a)(1)—has achieved a total business volume equal to or greater than the value of the project being bid in 3 years of the 5-year period before the date specified in subparagraph (C)(i).”

Definitions of purposes of Section 402 termination of eligibility—

*3 years of the 5-year period before the date specified in subparagraph (C)(i)* means the three to five calendar year period immediately preceding the issuance date of this solicitation.

*Total business volume* means the U.S. dollar value of the gross income or receipts reported by the prospective bidder/offeree on its annual federal income tax returns.

*Years* means the business year of the prospective bidder/offeree, as reflected on its annual federal income tax returns.

*Question 5:* Please complete the information below for at least three of the five listed years.

The gross receipts for the business year: (list year and amount).

The gross receipts for the business year: (list year and amount).

The gross receipts for the business year: (list year and amount).

The gross receipts for the business year: (list year and amount).

The gross receipts for the business year: (list year and amount).

6. *Section 402(c)(2)(F)*: “The term ‘United States person’ means a person which—(i) employs United States citizens in at least 80 percent of its principal management positions in the United States; (ii) employs United States citizens in more than half of its permanent, full-time positions in the United States; and (iii) will employ United States citizens in at least 80 percent of the supervisory positions on the foreign buildings office project site.”

Definitions for purposes of Section 402 determinations of eligibility—

*In the United States* refers to those positions that the prospective bidder/offeree maintains within all jurisdictions which are one of the 50 states, the District of Columbia, a United States territory, a United States possession, or the Commonwealths of Puerto Rico and the Northern Mariana Islands.

*Permanent, full-time positions* means positions with the prospective bidder/offeree that are intended to be indefinite, as opposed to limited, seasonal, or project-duration periods. The term ‘full-time’ refers to positions in which the occupants are expected to and ordinarily work 40 hours a week. The term ‘permanent, full-time positions’ covers the portion of the prospective bidder’s/offeree’s workforce that continues to be employed without regard to the fluctuating requirements of production or projects.

*Principal management positions* refers to chief operating officer and those management officials reporting directly to him or her. In the case of a partnership, the term refers to every general partner. In the case of a corporation, the term refers to those officers of the corporation who are active in running its day-to-day operations. Members of corporation boards of directors who do not have operational responsibilities do not occupy “principal management positions” simply by virtue of their service on the board. In all cases, the term “principal management positions” also includes the position or positions held by the individual or individuals who will have primary corporate management oversight responsibility for this contract if the prospective bidder/offeree is awarded the contract. Each prospective bidder/offeree is responsible for listing all of its principal management positions and identifying their current occupants by name and citizenship.

*Supervisory positions* means all positions with significant authority to direct the work of others as well as those for which access to

classified or controlled documents is required. Such positions will be identified in each contract.

*United States citizen* means natural persons with United States citizenship by virtue either of birth or of naturalization.

*Question 6(a)*: The bidder/offeree has the following staff:

(i) Principal management positions in the United States:

Chief Operating Officer:

(name)

(citizenship)

(ii) For each individual reporting directly to the above-named Chief Operating Officer, list position, name, and citizenship:

Position:

Name:

Citizenship:

(iii) Individual(s) expected to have primary management oversight responsibility for contract if it is awarded:

(name)

(citizenship)

*Question 6(b)*: Number of permanent, full-time positions in the United States: \_\_\_\_\_

*Question 6(c)*: Number of United States citizens currently employed in permanent, full-time positions in the United States: \_\_\_\_\_

*Question 6(d)*: Certification of intent to employ U.S. citizens in a minimum of 80 percent of the supervisory positions identified by the Government on this project:

I so certify: \_\_\_\_\_

(signature)

(name typed or printed)

(position)

(date)

7. *Section 402(c)(2)(G)*: “The term ‘United States person’ means a person which has the existing technical and financial resources in the United States to perform this contract.”

Definitions for purposes of Section 402 determinations of eligibility—

*Existing technical and financial resources* means the capability of the prospective bidder/offeree to mobilize adequate staffing and monetary arrangements from within the United States sufficient to perform the contract. Adequate staffing levels may be demonstrated by presenting the resumes of current United States citizens and resident aliens with skills and expertise necessary for the work in which the prospective bidder/offeree is interested or some other indication

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of available United States citizen or permanent legal resident human resources. Demonstration of adequate financial resources must be issued by entities that are subject to the jurisdiction of United States courts and have agents located within the United States for acceptance of service of process.

*Question 7:* Submit, as an Attachment to this Statement, materials demonstrating existing technical and financial resources in the United States.

8. *Section 402(c)(3):* “The term ‘qualified United States joint venture person’ means a joint venture in which a United States person or persons owns at least 51 percent of the assets of the joint venture.”

Definitions for purposes of Section 402 determinations of eligibility—

*Assets* means tangible and intangible things of value conveyed or made available to the joint venture by the co-venturers.

*Joint venture* means a formal or *de facto* arrangement by and through which two or more persons or entities associate for the purpose of carrying out the prospective contract. Prospective bidders/offers are advised that a joint venture may not be acceptable to projects requiring a Department of Defense facility security clearance because each co-venturer may post particular problems in obtaining security clearances. To be acceptable, all members of a joint venture must be individually and severally liable for the full performance of and resolution of any and all matters arising out of the contract, notwithstanding any provision of the joint venture agreement of law of the jurisdiction under which the joint venture was created.

*Question 8(a):* The bidder/offers is is not a joint venture.

*Question 8(b):* If the bidder/offers is a joint venture, the U.S. person participant is:

(name)

(address)

*Question 8(c):* If the bidder/offers is a joint venture, the names and countries of citizenship for all co-venturers are as follows:

(name)

(citizenship)

(name)

(citizenship)

(name)

(citizenship)

*Question 8(d):* If the bidder/offers is a joint venture, the U.S. person will own at least 51 percent of the assets of the joint venture.

I so certify:

(signature)

(name typed printed)

(position)

(title)

(e) *Signature:* By signing this document, the offeror indicates that to the best of his or her knowledge, all of the representations and certifications provided in response to the questions contained in this Statement of Qualifications are accurate, current, and complete and that the offeror is aware of the penalty prescribed in 18 U.S.C. 1001 for making false statements.

(End of provision)

[69 FR 19339, Apr. 13, 2004, as amended at 80 FR 6924, Feb. 9, 2015]

### 652.237-70 Compensatory time off.

As prescribed in 637.110(a), insert the following clause:

COMPENSATORY TIME OFF (DEC 1994)

(a) Compensatory time off means time from work during the personal service contract employee's basic work week in exchange for performing an equal amount of irregular or occasional overtime work which is officially ordered or approved.

(b) At the discretion of the Contracting Officer's Representative (COR), the contractor may earn compensatory time off in accordance with 3 FAM Section 232.6—Compensatory Time Off. Compensation time off remaining to the credit of a personal services contract employee at the end of a 16-week period and/or at the end of the contract period shall be forfeited.

(c) Compensatory time may not be converted to overtime.

(End of clause)

[59 FR 66772, Dec. 28, 1994]

### 652.237-71 [Reserved]

### 652.237-72 Observance of Legal Holidays and Administrative Leave.

As prescribed in 637.110(b), insert the following clause:

OBSERVANCE OF LEGAL HOLIDAYS AND ADMINISTRATIVE LEAVE (FEB 2015)

(a) The Department of State observes the following days as holidays:

New Year's Day  
Martin Luther King's Birthday  
Washington's Birthday  
Memorial Day  
Independence Day  
Labor Day

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Columbus Day

Veterans Day

Thanksgiving Day

Christmas Day

Any other day designated by Federal law, Executive Order, or Presidential Proclamation.

(b) When New Year's Day, Independence Day, Veterans Day or Christmas Day falls on a Sunday, the following Monday is observed; when it falls on Saturday, the preceding Friday is observed. Observance of such days by Government personnel shall not be cause for additional period of performance or entitlement to compensation except as set forth in the contract. If the contractor's personnel work on a holiday, no form of holiday or other premium compensation will be reimbursed either as a direct or indirect cost, unless authorized pursuant to an overtime clause elsewhere in this contract.

(c) When the Department of State grants administrative leave to its Government employees, assigned contractor personnel in Government facilities shall also be dismissed. However, the contractor agrees to continue to provide sufficient personnel to perform round-the-clock requirements of critical tasks already in operation or scheduled, and shall be guided by the instructions issued by the contracting officer or his/her duly authorized representative.

(d) For fixed-price contracts, if services are not required or provided because the building is closed due to inclement weather, unanticipated holidays declared by the President, failure of Congress to appropriate funds, or similar reasons, deductions will be computed as follows:

(1) The deduction rate in dollars per day will be equal to the per month contract price divided by 21 days per month.

(2) The deduction rate in dollars per day will be multiplied by the number of days services are not required or provided. If services are provided for portions of days, appropriate adjustment will be made by the contracting officer to ensure that the contractor is compensated for services provided.

(e) If administrative leave is granted to contractor personnel as a result of conditions stipulated in any "Excusable Delays" clause of this contract, it will be without loss to the contractor. The cost of salaries and wages to the contractor for the period of any such excused absence shall be a reimbursable item of direct cost hereunder for employees whose regular time is normally charged, and a reimbursable item of indirect cost for employees whose time is normally charged indirectly in accordance with the contractor's accounting policy.

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(End of clause)

[59 FR 66772, Dec. 28, 1994, as amended at 64 FR 43634, Aug. 11, 1999; 69 FR 19343, Apr. 13, 2004; 76 FR 20251, Apr. 12, 2011; 80 FR 6924, Feb. 9, 2015]

**652.237-73 Statement of Qualifications for Preference as a U.S. Person.**

As prescribed in 637.110(c), insert the following provision:

**STATEMENT OF QUALIFICATIONS FOR PREFERENCE AS A U.S. PERSON (APR 2004)**

(a) This solicitation is subject to Section 136 of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (22 U.S.C. 4864). The Act encourages the participation of United States persons and qualified United States joint venture persons in the provision of local guard services overseas, and provides for a preference for eligible offers.

(b) *Definitions.* As used in this provision—

*Eligible offer* means an offer that (1) is otherwise responsive to the solicitation; and (2) contains a fully prepared Statement of Qualifications (see paragraph (d) of this provision), which upon review is determined by the Government to meet the requirements of Section 136 for assignment of preference as a U.S. person.

*Preference* means subtraction by the Government of ten percent (10%) from the total evaluated price of an offer.

*U.S. person* means a company, partnership, or joint venture that the Government determines, after consideration of all available information, including but not limited to that provided by the offeror in response to the solicitation, to be qualified for assignment of preference pursuant to Section 136.

(c) *Representation.* The offeror represents as part of its offer that it is, is not eligible for preference as a U.S. person. [*Complete a Statement of Qualifications for Purposes of Obtaining Preference as a U.S. Person if the offeror represents that it is eligible. See paragraph (d) of this provision.*]

*Warning:* Any material misrepresentation made in the Statement of Qualifications may be the basis for disqualification of an offeror and reference for consideration of suspension or debarment or for prosecution under Federal law (cf. 18 U.S.C. 1001). The Government will determine offeror qualifications primarily on the basis of information submitted in the Statement of Qualifications, including Attachments thereto, but the Government may, at its discretion, rely on information contained elsewhere in the offeror's proposal or obtained from other sources.

(d) *Statement of Qualifications for Purposes of Obtaining Preference as a U.S. Person* (22 U.S.C. 4864). An offeror that represents that



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it is eligible for preference as a U.S. person must provide the following information. This Statement of Qualifications must be a complete and certified document, and submitted as a separate Volume 5, with all necessary attachments, as defined in Section L of this solicitation.

Statement of Qualifications for Purposes of Obtaining Preference as a U.S. Person (22 U.S.C. 4864)

Name and address of U.S. person or organization providing this information:

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*Introduction.* Section 136 of the Foreign Relations Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-246 (22 U.S.C. 4864), as amended, provides that a "United States person" or a "qualified United States joint venture" must meet certain requirements, listed in the Act, to be eligible for the statutory preference. To assist business entities to determine whether they qualify as a U.S. person or U.S. joint venture person entitled to preference under Section 136, guidance is hereby provided. Only those prospective offerors submitting a properly completed and certified Volume 5 with their initial proposals will be considered in the determination of eligibility for assignment of preference as a U.S. person or U.S. joint venture person. For ease of reference, statutory language is quoted immediately before the definitions that apply to it. Space for the required information is provided immediately following each definition.

NOTE: The Statement of Qualifications shall provide information correctly applicable to the U.S. person whose qualifications are being certified, and shall not include information pertaining to corporate affiliates or subsidiaries. Organizations that wish to use the experience or financial resources of another organization or individual, including parent companies, subsidiaries, or local, national or offshore organizations, must do so by way of a joint venture. The contract resulting from this solicitation shall not allow subcontracting. A prospective offeror may be a sole proprietorship, a formal joint venture in which the co-venturers have reduced their arrangement to writing, or a de facto joint venture with no written agreement. To be considered a "qualified joint venture person," the joint venture must have at least one firm or organization that itself meets all the requirements of a U.S. joint venture person listed in Section 136. By signing this proposal, the U.S. person co-venturer agrees to be individually responsible for performance of the contract, notwithstanding the terms of any joint venture agreement.

1. *Section 136(d)(1):* "The term 'United States person' means a person which—(A) is incorporated or legally organized under the

laws of the United States, including the laws of any State, locality, or the District of Columbia."

Definitions for purposes of Section 136 determinations of eligibility—

*Incorporated* means the state of legal recognition as an artificial person that may be afforded to a business entity pursuant to the laws of any United States jurisdiction or component thereof.

*Legally organized* means the state of legal recognition that may be afforded to a business entity that is other than a corporation pursuant to the laws of any United States jurisdiction or component thereof. This is the least form of legal recognition that will qualify an offeror for this preference. Only those prospective offerors that have legal status, including the right to bring suit, to sign contracts, and to hold property under the law of the jurisdiction under which they are doing business will qualify as legally organized. A natural person who is a United States citizen acting in his or her entrepreneurial capacity will be deemed to be a "person legally organized" within the scope of this definition, provided that the prospective offeror holds all required licenses to do business in the jurisdiction where he or she is located.

*United States* means any jurisdiction that is one of the fifty States, the District of Columbia, a United States territory, a United States possession, or the Commonwealth of Puerto Rico and the Northern Mariana Islands.

*Question 1.* The organization seeking eligibility under Section 136 is incorporated or is legally organized under the laws of what jurisdiction?

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2. *Section 136(d)(1):* "The term 'United States person' means a person that—(B) has its principal place of business in the United States."

Definitions for purposes of Section 136 determinations of eligibility—

*Principal place of business* means the geographic location of the main office or seat of management of the prospective offeror. For purposes of this Statement, a prospective offeror shall identify only one principal place of business, and such location shall include at least the offices of the chief operating officer and headquarters staff. The named location must be a United States jurisdiction in which the prospective offeror may bring suit and be sued and in which service of process shall be accepted.

*Question 2(a).* The organization seeking eligibility has its principal office in what city and state?

*Question 2(b).* What kind of tax return was or will be filed, and in what jurisdiction, during the current calendar year? The jurisdiction identified herein need not be the same jurisdiction identified in Question 2(a).

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(i) Jurisdiction:

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(ii) Type of return (e.g., income tax, franchise tax, etc.). Include all that apply:

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3. *Section 136(d)(1):* “The term ‘United States person’ means a person which—(C) has been incorporated or legally organized in the United States—(i) for more than 2 (two) years before the issuance date of the invitation for bids or request for proposals with respect to the contract under subsection (c) of this section.”

Definitions for purposes of Section 136 determinations of eligibility—

*Has been incorporated or legally organized* means that the organization can show continuity as an ongoing business. Organizations that have changed only their names meet the continuity requirement of this subsection. Organizations that have been bought, sold, merged, or otherwise substantially altered or enlarged their principal business activities will have the burden of proving that there have been ongoing operations by the same business entity for the required period of time. If the successor entity has acquired all of the assets and liabilities of the predecessor entity and the predecessor entity has no further existence, the successor may claim the incorporation or legal organization date of the predecessor. In any other circumstance, the prospective offeror must show that the law of the jurisdiction in which it operates regards the prospective offeror as the complete successor in interest of the predecessor entity for purpose of contractual obligations.

*Issuance date* means the date in Block 5 of the Standard Form 33 accompanying this solicitation.

*Years* means calendar years measured from day of the month to day of the month. For example, January 1, 2002 through December 31, 2002 is one calendar year, as is July 1, 2002 through July 1, 2003.

*Question 3:*

(i) On what date was the organization seeking eligibility incorporated or legally organized?

(ii) If this date is less than two years before the issuance date, on the basis of what documentation does the organization seeking eligibility claim that it has been in business for the requisite period of time?

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(Identify, and forward copies as an Attachment to this Statement).

4. *Section 136(d)(1):* “The term ‘United States person’ means a person which—(D)

has performed within the United States or overseas security services similar in complexity to the contract being bid.”

Definitions for purposes of Section 136 determination of eligibility—

*Complexity* means the physical size or extent of the effort, as described in Section B and Exhibit A of this solicitation; combined with the required quality of the effort as described in Sections C and H of this solicitation.

*Overseas* means within any jurisdiction that is not a part of the United States as defined below.

*Performed* means contracts that have been fully completed by the prospective offeror and accepted by the other party to the transaction. Contracts still in progress have been performed for purposes of this definition if performance in complexity to the contract being bid has been ongoing for at least one year. Contracts need not have been with the U.S. Government.

*Security services* means work of a kind as to fall within or compare closely with those described in the Statement of Work in Section C of this solicitation. An entity whose only security services experience was performed by its legally distinct parent or subsidiary organization will not be considered to have security services experience.

*Within the United States* means within the legal geographic boundaries of a United States jurisdiction that is the place where the subject matter (e.g., services) of the contract or other arrangement was in fact completed. The place where the contract or other arrangement was negotiated or signed is not relevant to this definition.

*Question 4:* Describe in an Attachment to this Statement (*see* L.1.3.5), the qualifying similar contracts or other arrangements performed by the prospective offeror. Provide required information on a sufficient number of arrangements to show that similar services have been performed overseas or in the United States. The description must consist of the following information on each arrangement, which shall be submitted as an Attachment to this Statement:

*Location:* (city and state or country).

*Type of service:* (for example, stationary guards, roving patrol, quick-reaction force, etc.).

*Complexity:* (type of facilities guarded, and number or extent of facilities, number of guards, etc.).

5. *Section 136(d)(1):* “The term ‘United States person’ means a person which—(E) with respect to the contract under subsection (c) of this section, has achieved a total business volume equal to or greater than the value of the project being bid in 3 years of the 5-year period before the date specified in subparagraph (C).”

Definitions of purposes of Section 136 determination of eligibility—

3 years of the 5-year period before the date specified in subparagraph (C) means the three to five calendar year period immediately preceding the issuance date of this solicitation.

*Total business volume* means the U.S. dollar value of the gross income or receipts reported by the prospective offeror on its annual federal income tax returns.

*Years* means calendar years.

*Question 5:* Describe in an Attachment to this Statement (see L.1.3.5), for at least three of the five twelve-month income tax periods (fiscal years) defined below, the gross receipts of the organization seeking eligibility.

(i) The fiscal year ending during the calendar year that includes the date of this solicitation.

(ii) The fiscal year ending in the calendar year immediately prior to the calendar year that includes the date of this solicitation.

(iii) The fiscal year ending in the calendar year two years before the calendar year that includes the date of this solicitation.

(iv) The fiscal year ending in the calendar year three years before the calendar year that includes the date of this solicitation.

(v) The fiscal year ending in the calendar year four years before the calendar year that includes the date of this solicitation.

An entity will be deemed to have met this requirement if the total cumulative business volume for the three years presented exceeds the contract price at time of award under this solicitation for the full term for which prices are solicited, including any option periods.

6. *Section 136(d)(1):* "The term 'United States person' means a person which " (F)(i) employs United States citizens in at least 80 percent of its principal management positions in the United States; and (F)(ii) employs United States citizens in more than half of its permanent full-time positions in the United States."

Definitions for purposes of Section 136 determinations of eligibility—

*Full-time* (positions) means those personnel positions in which the occupants are expected to and ordinarily work for 40 or more hours per week.

*In the United States* refers to those personnel positions that are encumbered as of the date of this solicitation and that the prospective offeror maintains in geographic locations within the jurisdictions defined above as constituting the United States.

*Permanent* (positions) means personnel positions that are intended to be indefinite as to length of employment, as opposed to limited, seasonal, or project-length personnel appointments.

*Permanent, full-time positions* means that portion of the prospective offeror's workforce that continues to be employed without regard to the ordinary fluctuations of production or projects.

*Principal management positions* means those personnel positions including at least the chief executive officer (if any) and the chief operating officer (whether by title or by function) of the organization seeking eligibility, together with all those management officials who constitute the highest levels of management authority within the organization. In the case of a partnership, all general partners are deemed to hold principal management positions. In the case of a corporation, those officers of the corporation who are principally responsible for the day-to-day operation of the corporation. Members of corporation boards of directors do not occupy "principal management positions" simply by virtue of their service on the board. In all cases, the term "principal management positions" also includes the position or positions held by the individual or individuals in the United States who will have primary corporate management oversight responsibility for this contract if the prospective contractor is awarded the contract.

*United States citizen* means natural persons with United States citizenship by virtue either of birth or of naturalization.

*Question 6(a):* The organization seeking eligibility shall list all of its principal management positions and identify the current occupant of each listed position by name and citizenship. Provide the information as an Attachment to this Statement in the following format:

(i) Principal management positions in the United States:

Chief Executive Officer (if any):

(name)

(citizenship)

Chief Operating Officer:

(name)

(citizenship)

(ii) For each additional corporate officer having principal responsibility for the day-to-day operations of the corporation, list position, name, and citizenship.

Position:

Name:

Citizenship:

(iii) Individual(s) in the United States expected to have primary management oversight responsibility for contract if it is awarded:

(name)

(citizenship)

*Question 6(b):* Number of permanent, full-time, currently encumbered personnel positions that are located in the United States (good faith estimates acceptable): \_\_\_\_\_

*Question 6(c):* Number of United States citizens currently employed in permanent, full-time positions that are located in the United States (good faith estimates acceptable): \_\_\_\_\_

7. *Section 136(d)(1):* “The term ‘United States person’ means a person which—(G) has the existing technical and financial resources in the United States to perform the contract.”

Definitions for purposes of Section 136 determinations of eligibility—

*Existing technical and financial resources* means technical and financial capability within the United States to mobilize adequate staffing, equipment and organizational arrangements to perform the contract. Adequate technical resources may be demonstrated by presenting an organization chart, and résumés of current officers and employees in the United States who possess skills and expertise necessary to provide management and oversight of the work. Other indicia will be considered if offered to demonstrate that the prospective offeror has available resources in the United States adequate to provide home office management and oversight of the work. Adequate financial resources may be demonstrated by proof of possession of a combination of net worth, bank lines of credit, or bank guarantees. If lines of credit or bank guarantees are used to demonstrate adequate financial resources, they must be from entities within the United States.

*Question 7:* Submit, as an Attachment to this Statement, materials demonstrating existing technical and financial resources in the United States (see L.1.3.5).

8. *Section 136(d)(2):* “The term ‘qualified United States joint venture person’ means a joint venture in which a United States person or persons owns at least 51 percent of the assets of the joint venture.”

Definitions for purposes of Section 136 determinations of eligibility—

*Assets* means tangible and intangible things of value conveyed or made available to the joint venture by the co-venturers. To be qualified for U.S. preference, 51 percent of the assets of the joint venture must be owned by the U.S. person co-venturer(s).

*Joint venture* means a formal or de facto association of two or more persons or entities to carry out a single business enterprise for profit, for which purpose they combine their property, money, effects, skills, and knowledge. To be acceptable, all members of a joint venture must be jointly and severally liable for full performance and resolution of matters arising out of the contract.

*Question 8(a):* The prospective offeror is is not a joint venture.

*Question 8(b):* If the prospective offeror is a joint venture, the U.S. person participant is:

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(address)

*Question 8(c):* If the prospective offeror is a joint venture, the names and countries of citizenship for all co-venturers are as follows:

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(citizenship)

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(citizenship)

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(citizenship)

*Question 8(d):* If the prospective offeror is a joint venture, the U.S. person will own at least 51 percent of the assets of the joint venture.

\_\_\_\_\_  
I so certify: (name)

\_\_\_\_\_  
(position)

\_\_\_\_\_  
(title)

(e) *Signature:* By signing this document, the offeror indicates that to the best of his or her knowledge, all of the representations and certifications provided in response to the questions contained in this Statement of Qualifications are accurate, current, and complete and that the offeror is aware of the penalty prescribed in 18 U.S.C. 1001 for making false statements.

(End of provision)

[69 FR 19343, Apr. 13, 2004, as amended at 76 FR 20251, Apr. 12, 2011]

## 652.239-70 Information Technology Security Plan and Accreditation.

As prescribed in 639.107-70(a), insert the following provision:

### INFORMATION TECHNOLOGY SECURITY PLAN AND ACCREDITATION (SEP 2007)

All offers/bids submitted in response to this solicitation must address the approach for completing the security plan and certification and accreditation requirements as required by the clause at 652.239-71, Security Requirements for Unclassified Information Technology Resources.

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(End of provision)

[72 FR 51569, Sept. 10, 2007]

### **652.239-71 Security Requirements for Unclassified Information Tech- nology Resources.**

As prescribed in 639.107-70(b), insert the following clause:

#### **SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES (SEP 2007)**

(a) *General.* The Contractor shall be responsible for information technology (IT) security, based on Department of State (DOS) risk assessments, for all systems connected to a Department of State (DOS) network or operated by the Contractor for DOS, regardless of location. This clause is applicable to all or any part of the contract that includes information technology resources or services in which the Contractor has physical or electronic access to DOS's information that directly supports the mission of DOS. The term "information technology", as used in this clause, means any equipment, including telecommunications equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. This includes both major applications and general support systems as defined by OMB Circular A-130. Examples of tasks that require security provisions include:

(1) Hosting of DOS e-Government sites or other IT operations;

(2) Acquisition, transmission or analysis of data owned by DOS with significant replacement cost should the Contractor's copy be corrupted; and

(3) Access to DOS general support systems/major applications at a level beyond that granted the general public; e.g., bypassing a firewall.

(b) *IT Security Plan.* The Contractor shall develop, provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this contract. The plan shall describe those parts of the contract to which this clause applies. The Contractor's IT Security Plan shall comply with applicable Federal laws that include, but are not limited to, 40 U.S.C. 11331, the Federal Information Security Management Act (FISMA) of 2002, and the E-Government Act of 2002. The plan shall meet IT security requirements in accordance with Federal and DOS policies and procedures, as they may be amended from time to time during the term of this contract that include, but are not limited to:

(1) OMB Circular A-130, Management of Federal Information Resources, Appendix III, Security of Federal Automated Information Resources;

(2) National Institute of Standards and Technology (NIST) Guidelines (see NIST Special Publication 800-37, Guide for the Security Certification and Accreditation of Federal Information Technology Systems (<http://csrc.nist.gov/publications/nistpubs/800-37/SP800-37-final.pdf>)); and

(3) Department of State information security sections of the Foreign Affairs Manual (FAM) and Foreign Affairs Handbook (FAH) (<http://foia.state.gov/Regs/Search.asp>), specifically:

(i) 12 FAM 230, Personnel Security;

(ii) 12 FAM 500, Information Security (sections 540, 570, and 590);

(iii) 12 FAM 600, Information Security Technology (section 620, and portions of 650);

(iv) 5 FAM 1060, Information Assurance Management; and

(v) 5 FAH 11, Information Assurance Handbook.

(c) *Submittal of IT Security Plan.* Within 30 days after contract award, the Contractor shall submit the IT Security Plan to the Contracting Officer and Contracting Officer's Representative (COR) for acceptance. This plan shall be consistent with and further detail the approach contained in the contractor's proposal or sealed bid that resulted in the award of this contract and in compliance with the requirements stated in this clause. The plan, as accepted by the Contracting Officer and COR, shall be incorporated into the contract as a compliance document. The Contractor shall comply with the accepted plan.

(d) *Accreditation.* Within six (6) months after contract award, the Contractor shall submit written proof of IT security accreditation for acceptance by the Contracting Officer. Such written proof may be furnished either by the Contractor or by a third party. Accreditation must be in accordance with NIST Special Publication 800-37. This accreditation will include a final security plan, risk assessment, security test and evaluation, and disaster recovery plan/continuity of operations plan. This accreditation, when accepted by the Contracting Officer, shall be incorporated into the contract as a compliance document, and shall include a final security plan, a risk assessment, security test and evaluation, and disaster recovery/continuity of operations plan. The Contractor shall comply with the accepted accreditation documentation.

(e) *Annual verification.* On an annual basis, the Contractor shall submit verification to the Contracting Officer that the IT Security Plan remains valid.

(f) *Warning notices.* The Contractor shall ensure that the following banners are displayed on all DOS systems (both public and

private) operated by the Contractor prior to allowing anyone access to the system:

Government Warning

**\*\*WARNING\*\*WARNING\*\*WARNING\*\***

Unauthorized access is a violation of U.S. law and Department of State policy, and may result in criminal or administrative penalties. Users shall not access other user's or system files without proper authority. Absence of access controls IS NOT authorization for access! DOS information systems and related equipment are intended for communication, transmission, processing and storage of U.S. Government information. These systems and equipment are subject to monitoring by law enforcement and authorized Department officials. Monitoring may result in the acquisition, recording, and analysis of all data being communicated, transmitted, processed or stored in this system by law enforcement and authorized Department officials. Use of this system constitutes consent to such monitoring.

**\*\*WARNING\*\*WARNING\*\*WARNING\*\***

(g) *Privacy Act notification.* The Contractor shall ensure that the following banner is displayed on all DOS systems that contain Privacy Act information operated by the Contractor prior to allowing anyone access to the system:

This system contains information protected under the provisions of the Privacy Act of 1974 (Pub. L. 93-579). Any privacy information displayed on the screen or printed shall be protected from unauthorized disclosure. Employees who violate privacy safeguards may be subject to disciplinary actions, a fine of up to \$5,000, or both.

(h) *Privileged or limited privileged access.* Contractor personnel requiring privileged access or limited privileged access to systems operated by the Contractor for DOS or interconnected to a DOS network shall adhere to the specific contract security requirements contained within this contract and/or the Contract Security Classification Specification (DD Form 254).

(i) *Training.* The Contractor shall ensure that its employees performing under this contract receive annual IT security training in accordance with OMB circular A-130, FISMA, and NIST requirements, as they may be amended from time to time during the term of this contract, with a specific emphasis on rules of behavior.

(j) *Government access.* The Contractor shall afford the Government access to the Contractor's and subcontractor's facilities, installations, operations, documentation, databases and personnel used in performance of the contract. Access shall be provided to the extent required to carry out a program of IT inspection (to include vulnerability testing), investigation and audit to safeguard against

threats and hazards to the integrity, availability and confidentiality of DOS data or to the function of information technology systems operated on behalf of DOS, and to preserve evidence of computer crime.

(k) *Subcontracts.* The Contractor shall incorporate the substance of this clause in all subcontracts that meet the conditions in paragraph (a) of this clause.

(l) *Notification regarding employees.* The Contractor shall immediately notify the Contracting Officer when an employee either begins or terminates employment when that employee has access to DOS information systems or data.

(m) *Termination.* Failure on the part of the Contractor to comply with the terms of this clause may result in termination of this contract.

(End of clause)

[72 FR 51569, Sept. 10, 2007]

**652.242-70 Contracting Officer's Representative (COR).**

As prescribed in 642.272(a), insert a clause substantially the same as follows:

CONTRACTING OFFICER'S REPRESENTATIVE  
(COR) (AUG 1999)

(a) The Contracting Officer may designate in writing one or more Government employees, by name and position title, to take action for the Contracting Officer under this contract. Each designee shall be identified as a Contracting Officer's Representative (COR). Such designation(s) shall specify the scope and limitations of the authority so delegated; provided, that the designee shall not change the terms or conditions of the contract, unless the COR is a warranted Contracting Officer and this authority is delegated in the designation.

(b) The COR is [insert job title of COR].

(End of clause)

[53 FR 26177, July 11, 1988, as amended at 59 FR 66772, Dec. 28, 1994; 64 FR 43634, Aug. 11, 1999; 69 FR 19345, Apr. 13, 2004]

**652.242-71-652.242-72 [Reserved]**

**652.242-73 Authorization and Performance.**

As prescribed in 642.272(b), insert a clause substantially the same as follows:

AUTHORIZATION AND PERFORMANCE (AUG 1999)

(a) The contractor warrants the following:

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(1) That it has obtained authorization to operate and do business in the country or countries in which this contract will be performed;

(2) That it has obtained all necessary licenses and permits required to perform this contract; and,

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

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

(End of clause)

*Alternate I* (AUG 1999). If the contract is for overseas local guard services, as prescribed in 642.272(b), substitute the following paragraphs (a)(1) and (a)(2) for paragraphs (a)(1) and (a)(2) of the basic clause:

(a)(1) That it has obtained authorization to operate and do business in the country or countries in which this contract will be performed, or will obtain such authorization before performance of this contract begins;

(a)(2) That it has obtained all necessary licenses and permits required to perform this contract, or will obtain such licenses and permits before performance of this contract begins;

[64 FR 43634, Aug. 11, 1999, as amended at 69 FR 19345, Apr. 13, 2004]

### 652.243-70 Notices.

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

NOTICES (AUG 1999)

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

(End of clause)

[64 FR 43634, Aug. 11, 1999]

### 652.245-70 Status of Property Management System.

As prescribed in 645.107-70(a), insert the following provision:

#### STATUS OF PROPERTY MANAGEMENT SYSTEM (DEC 2013)

(a) When used in this provision, government-furnished property, government property, and contractor-acquired property are as defined in FAR 45.101.

(b) Offerors shall include in their quote or offer:

(1) Whether the offeror's property management system that will be used on this contract to track government-furnished property and/or contractor-acquired property has been determined to be adequate by a Federal property manager;

(2) The name, address, telephone number and email address of both the—

(i) Cognizant Administrative Contracting Officer (ACO) responsible for review and determination of adequacy of the contractor's property system; and

(ii) The cognizant contractor government property manager;

(3) The voluntary consensus standard or industry leading practices and standards to be used in the management of government property, or existing property management plans, methods, practices or procedures for accountability of property.

(End of provision)

[78 FR 76076, Dec. 16, 2013]

### 652.245-71 Special Reports of Government Property.

As prescribed in 645.107-70(b), insert the following clause:

#### SPECIAL REPORTS OF GOVERNMENT PROPERTY (FEB 2015)

(a) *Definitions.* As used in this clause:

*Disposition* means government property that has been removed from use on the contract.

*Highway motor vehicle* means any vehicle, self propelled or drawn by mechanical power, designed and operated principally for highway transportation of property or passengers. (41 CFR 102-34.35).

(b) The Contractor shall establish and maintain a property management system that is in accordance with the clause at FAR 52.245-1, Government Property. This clause supplements these requirements by specifying the U.S. Department of State capitalized property reporting requirements.

(c) The Contractor shall submit electronically one report on an annual basis and three other reports on a quarterly basis for the following:

(1) Where highway motor vehicles or aircraft, regardless of cost, are provided by the Government or acquired by the Contractor for the account of the Government;

(2) Where software exceeding \$500,000 in value, including labor cost to develop, is provided by the Government or acquired by the Contractor for the account of the Government; or

(3) Where personal property greater than \$25,000 (not in paragraph (c)(1) of this clause) is provided by the Government or acquired by the Contractor for the account of the Government. The personal property must be complete within itself; does not lose its identity or become a component part of other property when put into use; and is of a durable nature with an estimated useful life expectancy to exceed two years.

(d) The Contractor shall submit all annual and quarterly reports in the following format, except as stated in paragraph (e) of this clause:

(1) Property shall be grouped by the following property classifications:

- (i) Highway motor vehicles;
- (ii) Communications equipment;
- (iii) Information technology (formerly called automated data processing) equipment;
- (iv) Reproduction equipment;
- (v) Security equipment;
- (vi) Software;
- (vii) Software-in-development;
- (viii) Medical equipment;
- (ix) Aircraft property; and
- (x) Other depreciable personal property.

(2) Data elements for each unit of property shall include:

- (i) Contract number: Federal Government contract or purchase order number;
- (ii) Task Order number;
- (iii) Property classification: From classification listed in paragraph (d)(1) of this clause;
- (iv) Denotation as either government-furnished property (GFP) or contractor-acquired property (CAP) (If from another DOS contract, or government agency, please specify);
- (v) Noun name of property (*i.e.*, generator);
- (vi) Description of property;
- (vii) Manufacturer;
- (viii) Model;
- (ix) Serial number;
- (x) National Stock Number if applicable
- (xi) Unique-item identifier or equivalent: such as barcode label (tag number) or system-assigned number. For highway motor vehicles, this must be the vehicle identification number (VIN);
- (xii) Date received: Date contractor took possession;
- (xiii) Date placed in service;
- (xiv) Acquisition cost (As defined in FAR clause 52.245-1(a)): Use estimated fair-market value for property transferred or donated, at the time acquired, if actual cost is unknown;
- (xv) Estimated useful life in years: The period during which the property is expected to provide the service for which it was in-

tended. This should normally be equivalent to the depreciation schedule;

(xvi) Current location of the property: Country and city;

(xvii) Disposal Date;

(xviii) Disposal Method;

(e) The Contractor shall submit a full property report, as described in this clause, including affirmation, for the report covering the first quarter of the base contract. Thereafter, submission of reports shall follow the time frames outlined in paragraph (h) below. Quarterly property reports, other than the annual report, may be either full property reports or only updates to the full property report. Quarterly reports do not require affirmations even when the Contractor chooses to submit a full property report. Affirmations are only required for the report covering the first quarter of the contract and the annual report for each subsequent option year of the contract. If the Contractor submits a full property report, dispositions subsequent to any previous report must also be identified in the report. If a Contractor submits a quarterly report in the form of an update, the update shall include acquisitions and dispositions.

(f) The Contractor shall provide any required affirmation in the following format. The affirmation shall be signed by the Contractor's managerial personnel (as defined in FAR clause 52.245-1):

"I hereby affirm that a physical inventory of the government property (as defined in Federal Acquisition Regulation (FAR) 45.101) of Department of State contract number (*insert contract number*) has been completed as of (*insert date*), the inventory has been reconciled to our records and the property information in our report, and that to the best of my knowledge and belief, this inventory is accurate, current, and complete.

Signed:

Printed:

Title:

Date:

(g) In addition to the information required above, the Contractor shall include in all property reports:

(1) The current degree to which properly qualified Government personnel have evaluated the Contractor's property management system as being an adequate property management system;

(2) The name, mailing address, telephone number, and email address of the qualified Government person(s) who performed the evaluation of the Contractor's property management system; and

(3) The cognizant contractor government property manager.



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(h) Reports shall cover the following time periods and are due on the following dates:

Report	Period covered	Due date
1st Quarter Report .....	For 1st quarter ending December 31 .....	January 15.
2nd Quarter Report (Annual Property Report) .....	For 2nd quarter ending March 31 .....	April 30.
3rd Quarter Report .....	For 3rd quarter ending June 30 .....	July 15.
4th Quarter Report .....	For 4th quarter ending September 30 .....	October 8.

(i) The Contractor shall send a copy of all reports to the individuals listed below. The Contractor shall submit reports in electronic format as an attachment to an email. The affirmation described in paragraph (f) of this clause shall be in Adobe Acrobat (.pdf) format (including the signature), while the inventories, both quarterly and annual, shall be in Microsoft Excel format (Adobe Acrobat and Microsoft Excel versions shall be compatible with versions used by DOS). Send all reports to:

- (1) The contracting officer;
  - (2) The Property Administrator;
  - (3) The contracting officer's representative (COR);
  - (4) *Propertyreports@state.gov*;
  - (5) *RM-FPRA-PROP@state.gov*; and
  - (6) All individuals listed below (if any):
- [contracting officer shall list individuals, if any].

(j) The Contractor shall cooperate by responding timely to all follow up questions and requests for supporting documentation whether requested by the Department or external auditors.

(End of clause)

[78 FR 76076, Dec. 16, 2013, as amended at 80 FR 6925, Feb. 9, 2015]

### 652.247-70 Notice of Shipments.

As prescribed in 647.305-70, insert the following clause:

#### NOTICE OF SHIPMENTS (FEB 2015)

At the time of delivery of supplies to a carrier for onward transportation, the Contractor shall give notice of prepaid shipment to the consignee establishment, and to such other persons as instructed by the Contracting Officer. If the Contractor has not received such instructions by 24 hours prior to the delivery time, the Contractor shall contact the Contracting Officer and request instructions from the Contracting Officer concerning the notice of shipment to be given.

(End of clause)

[53 FR 26177, July 11, 1988, as amended at 64 FR 43634, Aug. 11, 1999. Redesignated and amended at 80 FR 6924, 6925, Feb. 9, 2015]

### 652.247-71 Shipping Instructions.

As prescribed in 647.305-71, insert the following clause:

#### SHIPPING INSTRUCTIONS (FEB 2015)

(a) Each packing box shall be of solid construction in accordance with best commercial practices and sufficiently strong in direct ratio to the weight of the contents to withstand excessively rough handling while in transit overseas. It shall be constructed of lumber that is well seasoned, reasonably sound, free from bad cross grain and from knots or knotholes that interfere with nailing or that occupy more than 1/8 of the width of the piece of lumber. Box shall be constructed with three-way corners and diagonal bracing. All nails shall be cement-coated, of correct size and properly spaced to avoid splitting or warping, and shall be driven into the grain of the wood. Dimension of lumber shall be in accordance with the following table, dependent upon the weight of the contents:

Weight of box and contents	Minimum dimensions of lumber for struts, frame members, and single diagonal braces
Up to 45 kg .....	19.05 × 57.15mm
46 to 113 kg .....	22.23 × 73.03mm
114 to 181 kg .....	22.23 × 98.43mm
182 to 272 kg .....	22.23 × 123.83mm or 25.4 × 98.43 mm

(b) Each box shall be lined with waterproof paper and shall be bound with 19.05mm" steel straps firmly stapled in position to prevent the straps from slipping off the box. Articles must be secured and braced inside the shipping container to prevent the articles from shifting.

(c) Packing cases weighing 453.5kg and more must be equipped with skids. Each skid shall consist of two end sections of 50.8 × 152.4mm lumber placed flat and a center section of 50.8 × 101.6mm lumber placed flat and then arranged in line to provide 254mm fork-lift spaces between center and end sections. When goods are ready for shipment, the Contractor shall prepare four (4) copies of a packing list, indicating the contract and, if applicable, order numbers; case number; itemized list of contents; net and gross weights in kilograms; and outside dimensions, including all clears, of each shipping

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container. The Contractor shall provide three (3) copies of the packing list to the U.S. Despatch Agent as specified in the contract or order. The Contractor shall place the fourth copy of the packing list in packing case number one, which shall be marked as such so that it is easily identified by the consignee. Upon receipt of the packing list, the Despatch Agent will furnish export marks and instructions regarding shipment to the port specified, depending upon steamer services available at the time.

(d) The export marks shall be stenciled on one side of each box reserved for that purpose, and the appropriate case number stenciled in the lower left-hand corner of the same side. The contract and, as necessary, order numbers, net and gross weights in kilograms shall be stenciled on the same side. However, if the size of the box is too small to accommodate all stenciling on one side, the contract and order numbers and weights may be stenciled on the side opposite that used for the export marks and case number.

(e) The contract and, as necessary, order numbers must appear on all containers and papers relating to this clause.

(End of clause)

[53 FR 26177, July 11, 1988; 53 FR 36462, Sept. 20, 1988, as amended at 59 FR 66772, Dec. 28, 1994; 64 FR 43634, Aug. 11, 1999. Redesignated and amended at 80 FR 6924, 6925, Feb. 9, 2015]

**PART 653—FORMS**

Sec.

653.000 Scope of part.

**Subpart 653.1—General**

653.101 Requirements for use of forms.

653.101–70 Policy.

653.110 Continuation sheets.

**Subpart 653.2—Prescription of Forms**

653.200 Scope of subpart.

653.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

653.217 Special contracting methods.

653.217–70 DOS form DS–1921, Award/Modification of Interagency Acquisition Agreement.

653.219 Small business programs.

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

653.219–71 DOS form DS–4053, Department of State Mentor-Protégé Program Application.

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

SOURCE: 53 FR 26180, July 11, 1988, unless otherwise noted.

**653.000 Scope of part.**

This part prescribes DOSAR forms in addition to those provided in FAR Part 53.

**Subpart 653.1—General**

**653.101 Requirements for use of forms.**

**653.101–70 Policy.**

The forms in FAR subpart 53.2 or in subpart 653.2 shall be used as prescribed therein, except when the use of any form is prohibited by or inconsistent with local laws, or the supplies or services could not be obtained if the form were used. The contracting officer shall justify the exclusion of any form in accordance with FAR subpart 1.4 and 601.470.

[53 FR 26180, July 11, 1988, as amended at 69 FR 19345, Apr. 13, 2004; 72 FR 45696, Aug. 15, 2007]

**653.110 Continuation sheets.**

The provisions of FAR 53.110 also apply to forms prescribed in the DOSAR.

**Subpart 653.2—Prescription of Forms**

**653.200 Scope of subpart.**

This subpart prescribes or references optional and DOS forms for use in acquisition. Consistent with FAR 53.200, this subpart is arranged by subject matter, in the same order as and keyed to the parts of the DOSAR in which the form usage requirements are addressed.

**653.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, OF's 347, 348).**

**653.217 Special contracting methods.**

**653.217–70 DOS form DS–1921, Award/Modification of Interagency Acquisition Agreement.**

As prescribed in 617.504–70(b)(5)(i), DS–1921 is prescribed for use when awarding or modifying Economy Act Interagency Acquisition Agreements where the Department is the requesting agency.

[59 FR 66773, Dec. 28, 1994]

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**653.219 Small business programs.**

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

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

[64 FR 43634, Aug. 11, 1999]

**653.219-71 DOS form DS-4053, Department of State Mentor-Protégé Program Application.**

As prescribed in 619.102-70(i), DS-4053 is prescribed for use in applying for an agreement under the Department of State Mentor-Protégé Program.

[69 FR 19345, Apr. 13, 2004]

**PARTS 654-699 [RESERVED]**