

PRINTING PROCUREMENT REGULATION

United States Government Printing Office

GPO Publication 305.3 (Rev. 5-99)

NOTE TO USER

The Printing Procurement Regulation, GPO Publication 305.3, is issued by the Deputy Public Printer. The effective date of this revised edition is May 1, 1999.

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CHAPTER I. GENERAL

SECTION 1. PRINTING PROCUREMENT REGULATION

1. Purpose. The Printing Procurement Regulation (PPR) is issued to: (i) prescribe uniform policies and procedures for the procurement of printing, binding and related services and, (ii) provide guidance to Printing Procurement Department (PPD) personnel in applying those policies and procedures.

2. Authority. The PPR is issued by the Deputy Public Printer, pursuant to the authority vested in the Public Printer by Title 44, United States Code and the Regulations of the Joint Committee on Printing (JCP).

3. Applicability. The PPR shall apply to the procurement of all printing, binding, and related services made by or through PPD. Unless otherwise indicated, the guidance is equally applicable to both Central Office and Regional Printing Procurement Office (RPPO) operations. Where differences exist, they will be identified.

4. Arrangement of the PPR.

(a) *General Plan.* The PPR is divided into subject matter chapters, each of which deals with a separate aspect of printing procurement. Each chapter is further divided into sections and paragraphs.

(b) *Paragraph identification and citation.* Chapters are identified by capital Roman numerals. Sections and subsections are identified by Arabic numerals. Alpha and numeric identifiers, as appropriate, are used for paragraphs. When citing an individual paragraph, the number indicates the chapter and section in which it appears. The first part of the number indicates the chapter and is followed by a dash. The second portion of the number indicates the section in which the paragraph appears and is followed by a period. The third portion of the number, following the period, indicates the specific subsection and paragraph, within the section. Thus, for example, this paragraph would be cited as I-1.4(b) indicating paragraph (b) of subsection 4 of section 1 of chapter I.

(c) *Exhibits.* All exhibits will be found at the end of the chapters in which they are referenced.

5. Forms. Illustrations of forms used in the procurement of printing and brief descriptions of their purpose and use are contained in chapter XVII.

6. Amendment of the PPR. Changes to the PPR shall be accomplished by the issuance of replacement pages or pen and ink changes. These changes shall be consecutively numbered and published under cover of a change transmittal notice in accordance with GPO Instruction 001.1 series. Revisions will be indicated by a solid vertical line in the margin opposite the changed material. Any recommended revisions to the PPR shall be submitted to the Director, Procurement Analysis and Review Staff (A&R) (Stop PPA).

7. Deviation from the PPR.

(a) Circumstances arise in which the prescribed policies, procedures and provisions are not totally appropriate for the development of a new technique or approach, or for a specific contractual situation. In those cases, a deviation may be deemed necessary. The term “deviation” includes:

(1) The issuance and/or use of any policy, procedure, provision, or instruction of any kind at any stage of the procurement process which is inconsistent with a policy, procedure, or provision set forth in any of the GPO publications or directives governing procurement by the Printing Procurement Department; and

(2) The use of a clause or provision covering the same subject matter as a prescribed clause or provision, or the modification or omission of a prescribed clause or provision.

(b) To maintain uniformity to the maximum extent possible, deviations should be kept to a minimum. It is the responsibility of Contracting Officers to request a deviation whenever it is required in the best interest of the Government. A request for approval of any deviation shall be in writing to the Manager, PPD. The request shall explain the nature of the deviation and provide the reasons necessitating it. Adequate time should be allowed for review and approval of the request. The justification and approval shall be documented in the contract file.

SECTION 2. DEFINITION OF WORDS AND TERMS

As used throughout this regulation, the following terms shall have the meanings set forth in this section, unless the context in which they are used clearly requires a different meaning or a different meaning is prescribed in a particular chapter.

“*Authorization and consent*”—GPO approval for a contractor to infringe on a holder of a U.S. patent, and further, GPO consent to allow itself to be sued for damages in the U.S. Court of Federal Claims. This does not mean, however, that GPO assumes any liability for damages.

“*Bond*”—a written instrument executed by a bidder or contractor, identified in the instrument as the “principal”, together with a third party, identified in the instrument as the “surety”, to secure fulfillment by the bidder or contractor of its obligations as set out in the bond and, in the event of its failure to do so, to assure payment of any loss sustained by the party for whose protection the bond was furnished, to the extent provided in the bond.

“*Complete termination*”—the complete cessation of work under a contract by a contractor upon receipt of a notice to terminate, or on a specified date.

“*Consent of surety*”—an acknowledgment by a surety that its bond, given in connection with a contract, continues to apply to the contract as modified.

“*Contract*”—a mutually binding legal relationship normally obligating the seller to furnish supplies or services and

the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of funds and that, except as otherwise authorized, are in writing; for example, single and multiyear term contracts, one-time award purchase orders, print orders, and orders such as small purchases which become effective by written acceptance or by performance. It also includes contract modifications. Unless otherwise specified when used, the term is used in its all-inclusive context.

“Contract modification”—any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other provisions of an existing contract, whether accomplished by unilateral action in accordance with a contract clause, or by mutual action of the parties to the contract. It includes bilateral actions, such as supplemental agreements, and unilateral actions, such as change orders, administrative changes, plus notices of the exercise of a contract option.

“Contracting Officer”—any person appointed, with the authority to enter into, administer and terminate contracts, and make related determinations and findings.

“Effective date of termination”—the date upon which a notice of termination first requires a contractor to stop performance, in whole or in part.

“Government property”—all property owned by or leased to the Government or acquired by the Government under the terms of a contract. Government property includes (a) Government-furnished property, and (b) that part of contractor-acquired property, title to which is vested in the Government.

“Includes”—means “includes, but is not limited to”.

“Interested party”—An actual or prospective bidder whose direct economic interest would be affected by the award of, or failure to award, a contract.

“May”—is permissive. However, the words “no person may . . .” mean that no person is required, authorized or permitted to do the act prescribed.

“Offer”—a response to a solicitation that, if properly accepted, would bind the offeror to perform the resultant contract. Under sealed bid procedures, an offer is called a “bid” and under negotiated procedures a “proposal”.

“Partial termination”—the termination of part, but not all, of the work that has not been completed and accepted under a contract.

“Penal sum” or “penal amount”—the amount specified in a bond (expressed in dollars) as the maximum payment for which the surety is obligated.

“Performance bond”—a bond executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.

“Prime contract”—any contract, as defined above, entered into by the GPO.

“Procurement office”—the office which awards or executes, and administers contracts for printing, binding and related services. Unless otherwise specified, when used it includes both the Central Office and Regional Printing Procurement Offices.

“Program operator”—a printing specialist or procurement assistant assigned responsibility for processing and administering print orders under a term contract.

“Quotation”—a response to a request for quotations. A quotation is not an offer and cannot be accepted by the Government to form a binding contract.

“Settlement agreement”—a written agreement, in the form set forth in chapter XV, between a contractor and the GPO settling all, or a severable portion, of a settlement proposal.

“Settlement proposal”—a termination claim submitted by the contractor in the form, and supported by the data, required by chapter XV.

“Shall” or “will”—is imperative.

“Subcontract”—any contract, as defined above, other than a prime contract, entered into by a prime contractor or subcontractor calling for supplies or services required for the performance of a prime contract.

“Termination claim”—any claim for compensation made by a contractor when a contract has been terminated, in whole or in part; and any other claim which chapter XV authorizes to be asserted and settled in connection with a termination settlement.

SECTION 3. PROCUREMENT AUTHORITY AND RESPONSIBILITY

1. Scope. This section sets forth the procurement authority and responsibility of PPD in making purchases of printing, binding, and related services for GPO. It describes the roles of the Manager and Contracting Officers within the Department, from delegations of authority to control and maintenance of records.

2. Procurement Authority.

(a) **Public Printer.** By the authority of Title 44 United States Code, and in accordance with the regulations of the JCP, the Public Printer, may make contracts for the procurement of printing, binding, and related services.

(b) **Manager.** The Manager, in accordance with GPO Instruction 110.4G, selects and nominates to the Deputy Public Printer persons to be considered for appointment as Contracting Officers.

(c) **Contracting Officers.** Contracting Officers are authorized to enter into and administer contracts for printing, binding, and related services on behalf of GPO and to make related findings and determinations within the limitations of the authority delegated to them. In the exercise of such authority, they are subject to the requirements and limitations in GPO Instruction 110.4G and this Regulation. Contracting Officer limitations are as follows:

Authorized Contracting Officers

(Sign in their own names)

All contracts, purchase and print orders and contract modifications for commercial printing and related services.

Manager, PPD	None
Division Superintendents	None
Division Asst. Supts	None
Contract Specialists	None
Branch Chiefs	None
Section Chiefs	None
Managers, RPPO	None
Assistant Mgrs., RPPO	None
Printing Specialists	¹ \$50,000

¹ The Manager, PPD may nominate two printing specialists in each of the Central Office printing procurement divisions and one printing specialist in each regional or satellite office.

3. Procurement Responsibilities.

(a) **Manager.** In accordance with GPO Instruction 110.5B, the Manager, PPD (or designee), shall be responsible for the following:

(1) Assure that contracts, including interagency agreements, are made in accordance with all applicable laws, regulations, and directives.

(2) All procurement requests requiring approval of the Public Printer and all letters of inquiry to other Government agencies regarding anticipated purchases are routed (with any necessary justification) through the proper channels prior to submission to the Public Printer.

(3) Assure that all purchases, including reimbursable interagency agreements, contain the respective justifications and concurrences and approval of the Manager, PPD.

(4) Assure that emergency purchases are held to an absolute minimum and shall not accept any emergency requests or requisitions for any item unless such purchase request or requisition is justified by the originating agency as to the exigency of the purchase.

(5) Assure that purchase requests or requisitions are not accepted when, in the Manager's opinion, there has been an attempt to circumvent the rules and regulations governing competitive negotiation and bidding, or where there has been an obvious attempt to avoid the necessity of referring the purchase to the JCP.

(b) *Contracting Officers.* Printing Procurement Department Contracting Officers assist in fulfilling the responsibilities of the Manager to enter into and administer contracts for supplies or services on behalf of the Government and in the name of the United States. The authority is subject to the limitations in I-3.2(c) and any further limitations in this Printing Procurement Regulation. All Contracting Officers shall sign contractual documents in their own name.

(c) *Requirements To Be Met Before Entering Into Contracts.* No contract shall be entered into unless all applicable requirements of law, this Regulation, and GPO directives have been met.

4. Selection, Nomination, Appointment and Termination of Appointment of Contracting Officers.

(a) *Selection.* In selecting individuals to serve as Contracting Officers or in positions which include authority to act as Contracting Officers, consideration shall be given to experience, training, education, business acumen, judgment, character, reputation, and ethics. In considering experience, training, and education, the following shall be evaluated:

(1) Experience in the field of procurement gained in a Government or non-Government procurement office, or otherwise;

(2) Formal education or special training, including Government conducted or sponsored courses, in pertinent fields, such as business administration, law, accounting, engineering, architecture, or related fields; and

(3) Knowledge of applicable laws, executive orders, and regulations.

(b) *Nomination.* Each nomination shall be made on GPO Form 2673, "Appointment of Contracting Officer," signed by the Manager, PPD. This form shall become a part of the official file on the Contracting Officer. Suggested nominations shall be forwarded to the Manager by the appropriate Superintendent. Persons nominated shall include both those filling positions described in I-3.2(d) and those deemed necessary in addition to those positions. Any limitation on the scope of authority to be exercised by the Contracting Officer shall be entered on the form. The Manager shall forward the nomination to the Deputy Public Printer. A serially numbered

certificate, GPO Form 2672, "Certificate of Appointment" for the Deputy Public Printer's signature shall accompany the nomination.

(c) *Appointment.* If the nomination is approved, the Deputy Public Printer shall sign the certificate.

(d) *Modification.* Modification of a Contracting Officer's authority shall be accomplished by completing GPO Form 2673 (including updating experience or education). The modification becomes effective upon signature of the Deputy Public Printer and shall be retained as a part of the official file on the Contracting Officer. A copy of GPO Form 2673 shall be given to the Contracting Officer to be attached to his/her certificate of appointment.

(e) *Termination.* The appointment of a Contracting Officer may be terminated or suspended at any time by the Deputy Public Printer, but no such termination or suspension shall operate retroactively. Unless sooner terminated or suspended, the appointment of a Contracting Officer shall automatically cease: (1) upon the expiration date, if any, contained in the certificate of appointment; (2) upon reassignment to duties not requiring contracting authority; or (3) upon termination of employment with the GPO. GPO Form 2673 shall be annotated providing the reason for such suspension or termination of authority and a copy furnished to the subject employee. If the employee is subsequently reassigned to a position that requires contracting authority, the Manager shall issue a new GPO Form 2673 for approval of the Deputy Public Printer.

5. Determination and Finding.

(a) A determination and finding (D&F) constitutes a special form of approval or exercise of judgment required as a prerequisite to taking certain actions by procurement officials. A D&F must stand alone on its own merits and should ideally be confined to a single page, containing all available findings, concisely stated, to support the determinations.

(b) D&F's are commonly used to (1) justify authority to enter into negotiated contracts, (2) make advance payments, (3) determine the type of contract to be used, (4) mistakes in bid, (5) noncompetitive purchases, (6) authorizing award notwithstanding a GAO protest, and (7) nonresponsibility determinations.

(c) The customary form of a D&F contains:

(1) A title or heading.

(2) An identifying number.

(3) An opening statement of authorization.

(4) A series of numbered findings under the subhead "Findings".

(5) One or more determinations under the subhead "Determination".

6. Ratification of Unauthorized Commitments.

(a) *Definitions.*

"Ratification," means the act of approving an unauthorized commitment by an official who has the authority to do so.

"Unauthorized commitment," means an agreement that is not binding, solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government.

(b) *Policy.* (1) Positive action should be taken to preclude, to the maximum extent possible, the need for ratification actions. Although procedures are provided in this paragraph for use in those cases where the ratification of an unauthorized

commitment is necessary, these procedures may not be used in a manner that encourages such commitments being made by Government personnel.

(2) Subject to the limitations in paragraph (c) the Manager, PPD may ratify an unauthorized commitment.

(3) The ratification authority in paragraph (b)(2) may be delegated, but in no case shall the authority be delegated below the level of division head.

(4) Unauthorized commitments that would involve claims subject to resolution under the disputes clause should be processed in accordance with PPR XV-1, Disputes, Claims, and Appeals.

(c) *Limitations.* The authority in paragraph (b)(2) may be exercised only when—

(1) Supplies or services have been provided to and accepted by the Government or, the Government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment;

(2) The ratifying official could have granted authority to enter or could have entered into a contractual commitment at the time it was made and still has the authority to do so;

(3) The resulting contract would otherwise have been proper if made by an appropriate Contracting Officer;

(4) The Contracting Officer reviewing the unauthorized commitment determines the price to be fair and reasonable;

(5) The Contracting Officer recommends payment and legal counsel concurs in the recommendation; and

(6) Funds are available and were available at the time the unauthorized commitment was made.

(d) *Procedure.* Each unauthorized act will be submitted for review and possible ratification according to the following:

(1) The individual having committed the unauthorized act will prepare a statement of all pertinent facts of the transaction, accompanied by a file of all relevant documents and will forward them through the Office of General Counsel to the ratifying official. The file shall also include a determination and finding (D&F) for the Manager's signature clearly establishing the events, the intended action, and that the D&F is intended to ratify the previously unauthorized act.

(2) The statement shall include a description of any disciplinary action taken or an explanation why none was considered necessary and a description of action taken to prevent recurrence of the unauthorized act.

7. Nonratifiable Commitments.

(a) If the Contracting Officer, with the advice of the Office of General Counsel, determines that an unauthorized act cannot be ratified and the Government has been enriched by retaining a benefit conferred in good faith, the Contracting Officer shall proceed with a quantum meruit ("as much as deserved") analysis.

(b) To allow a quantum meruit claim, the Contracting Officer shall establish that the—

(1) goods or services were the result of a GPO initiated procurement which would have been a permissible procurement if correct procedures had been followed;

(2) Government must have received and accepted a benefit;

(3) contractor or other performing party must have acted in good faith; and

(4) amount claimed—or in any event, the amount that can be paid on the claim—must represent the reasonable value of the benefit received.

(5) the ordering agency must have sufficient funds available for payment of the claimed amount.

(c) The Contracting Officer shall—

(1) gather the facts required to support the elements listed in (b)(1)–(4);

(2) prepare a finding and determination on the facts; and

(3) provide a recommendation to the Manager, PPD for a decision on the claim. The recommendation shall have the concurrence of the Office of General Counsel.

SECTION 4. GENERAL POLICIES

1. Standards of Conduct/Conflict of Interest.

(a) *General.* Persons who represent the GPO in business dealings with commercial contractors must observe the highest ethical standards. Individuals should not allow themselves to be placed in a position in which a conflict of interest might arise, or might reasonably be suspected. Not only must their official conduct comply with Federal laws and GPO regulations, it must be such as to avoid any appearance of unethical conduct. Accordingly, each person engaged in the procurement of printing shall become thoroughly familiar and comply with GPO Instruction 655.3 series, Standards of Conduct for Government Printing Office Officers and Employees; GPO Instruction 655.10 series, Conflict of Interest; and PRA 318.1A, Procurement Integrity. Also of significance is GPO Instruction 1215.1 which places responsibility on GPO employees for reporting any suspected, attempted or actual illegal activity or misconduct.

(b) *Disqualification requirements.* If, during an individual procurement action, an actual or apparent conflict of interest arises, the involved person shall immediately disqualify themselves from any further participation in the specific procurement action. A written statement giving full details shall be promptly submitted through the immediate supervisor to the Manager, PPD for such action as may be determined to be necessary.

(c) *Contracts with Government employees.* Under normal circumstances, the Government cannot knowingly contract with its employees, or with businesses which are substantially owned or controlled by Government employees. If, however, a compelling reason exists (e.g. inability to satisfy Government requirements from any other source), such a contract may be permitted. If it is believed that an exceptional situation exists, the proposed contract, appropriately documented, shall be forwarded to the Manager, PPD for approval.

2. Suspected Antitrust Violations.

(a) *General.* Unless bids are genuinely competitive, prices tend to be higher than they should be. Practices designed to eliminate competition or restrain trade, and which may evidence possible violations of the antitrust laws, include: collusive bidding, follow-the-leader pricing, rotated low bids, uniform estimating systems, sharing of business, identical bids, and similar practices.

(b) *Reporting suspected violations.* Any offer or bid received which evidences a violation of the antitrust laws must be referred to the Office of Inspector General for action. Accordingly, any suspected violation shall be promptly reported, setting forth complete details regarding the circumstances.

The report shall be submitted to the Manager, PPD for processing in coordination with the Office of General Counsel. Reports of identical bids or offers under this section should be submitted only when there is reason to believe that the bids or offers may not have been arrived at independently.

(c) *Noncollusive bids.* By submission of a bid, the bidder in the "Certification of Independent Price Determination" on the reverse of the bid form, certifies that among other things:

(1) the prices have been arrived at independently without reference to or agreement with other bidders or with any competitor for the purpose of restricting competition;

(2) the prices bid have not been, and will not be, knowingly disclosed, and no attempts have been made to induce any other firm to submit or not to submit a bid;

(3) the signer of the bid is the one responsible for the decision as to the prices bid, and, has not and will not participate in any conduct contrary to (1) or (2) above.

Normally, a bid cannot be considered for award if any deletions or modifications to the certificate have been made. If, however, exception is taken to the disclosure provision, the Manager, PPD will make the determination required by paragraph (d) of the certificate. If the certificate is suspected of being false, or there is evidence of collusion, the matter will be reported in accordance with paragraph (b) above. Also, see the provision "Certification of Independent Price Determination" in GPO Contract Terms (Pub. 310.2).

3. Documentation of Procurement Actions. Official records; i.e., contract files, shall be established and maintained for all procurement actions. The contract file shall contain documentation, both formal and informal, of all actions taken with respect to the transaction, including final disposition. Such information may be necessary to provide essential facts for litigation or congressional inquiries; to furnish information for GAO investigations or to satisfy other similar requirements.

4. Taxes. The clause "Federal, State, and Local Taxes" in GPO Contract Terms (Pub. 310.2), is included by reference in all contracts and purchase orders. Questions concerning taxes shall be referred to the Office of General Counsel.

5. Freedom of Information. Release of information and records to the public is established in GPO Instruction 905.3A, Policy and Procedure Concerning Public Access to Information and Records of the Government Printing Office.

6. Liquidated Damages.

(a) *Application.* Normally, GPO contracts for printing, binding, and related services shall not include a clause for liquidated damages in the event of a contractor's failure to deliver or perform. Such a clause may be used, however, where the time of delivery or performance is so important that:

(1) the Government may, at the time of contracting, reasonably expect to suffer damages from late performance; and

(2) it would be difficult or impossible at that time to determine actual damages.

(b) When a Contracting Officer determines that circumstances warrant the inclusion of the liquidated damages in a contract, a memorandum, stating the reasons for the determination, shall be submitted to the appropriate Superintendent for approval. No contract shall include a liquidated damages clause without approval. Upon approval, the Liq-

uidated Damages clause in GPO Contract Terms (Pub. 310.2), shall be made applicable to the contract by including a clause in the solicitation substantially as follows:

LIQUIDATED DAMAGES.—If the contractor fails to deliver the supplies or perform the services within the time specified in the contract, or any authorized extension thereof, the actual damage to the Government for the delay will be difficult or impossible to determine. Therefore, pursuant to the Liquidated Damages clause (GPO Contract Terms, Pub. 310.2), in lieu of actual damages the contractor shall pay to the Government as fixed, agreed, and liquidated damages for each workday of delay, the amount set forth below.

Liquidated damages will be assessed against that part or parts of an order which have not been shipped to the specified destination on the specified date. Liquidated damages will not be assessed against that part or parts of an order which have been shipped on schedule.

The amount of damages will be computed at the rate of ____ percent (____ %) of the contract price of the quantity not shipped in accordance with specifications for each workday the contractor is in default of the shipping schedule(s); *Provided*, That the minimum amount of liquidated damages shall not be less than \$5.00 for the entire order and not more than \$ ____ per day on the entire order, except the total damages assessed against a contractor shall in no case exceed fifty percent (50%) of the total value of the entire order. Liquidated damages will not be assessed if the contractor has shipped at least ninety percent (90%) of the quantity ordered for shipment to each specified destination on or before the scheduled date.

Liquidated damages will apply to all shipments except: Materials furnished the contractor which are to be returned to the Government; sample copies or materials for file or storage purposes; and shipments marked either "File Copies" or "Depository Copies" sent to the Government Printing Office, if ordered. However, payment of an order will be withheld until evidence of shipment of such material or copies is furnished.

(c) *Rate.* The rate at which liquidated damages are to be assessed must be reasonably based on a case-by-case evaluation of the procurement requirement. Unless liquidated damages are fixed with reasonable reference to probable actual damages, they may be held to be a penalty and therefore unenforceable.

(d) *Excusable delays and liquidated damages.* A contractor shall not be charged with liquidated damages when delay arises out of causes beyond the control and without the negligence of the contractor. The rules governing excusable delays are set forth in paragraph (c) of the Default clause in GPO Contract Terms (Pub. 310.2).

(e) *Remission of liquidated damages.* Upon recommendation of the Public Printer, the Comptroller General of the United States may remit all or part of the damages as deemed equitable. A request for remission of damages must be made in writing by the contractor to the Contracting Officer. Any favorable recommendation, with appropriate supporting documentation, will be provided to the appropriate Superintendent who shall coordinate the recommendation with the Office of General Counsel. If the recommendation remains favorable, it shall be forwarded to the Public Printer through the Manager, PPD and the Deputy Public Printer.

(f) *Mitigation in default.* If a default occurs on a contract containing a liquidated damages clause, the Contracting Officer shall take action to mitigate liquidated damages by prompt efforts to obtain performance by the defaulting contractor or by prompt termination of the contract. If the supplies or services are still required after termination, the Contracting Officer shall attempt to repurchase elsewhere within a reasonable period of time. (See also XIV-1.3(f) and (g).)

7. Defense Priorities System.

(a) *General.* (1) *Policy.* In the interest of keeping current defense programs on schedule and maintaining an administra-

tive means of promptly mobilizing the nation's economic resources in event of war or national emergency, it is a statutory requirement and national policy to require contractors to use industrial priority ratings and allotment authority to support military procurement.

(2) *Purpose.* The purpose of defense priority ratings is not for delivery priority, but to enable the contractor to obtain necessary materials to satisfy the contract and to give Government contracts priority over commercial contracts.

(3) *Regulations.* Statutory authority for the system is the Defense Production Act of 1950, 64 Stat. 798, as amended. Responsibility for priorities and allocations under the act are delegated by the President to the Secretary of Commerce. Defense Priorities System Regulation 1 (DPS Reg. 1) and Defense Materials System Regulation 1 (DMS Reg. 1) and other rules and regulations published by the Bureau of Domestic Commerce (BDC), of the Department of Commerce, set forth the priorities and allocations program.

(4) *Required use.* When a priority rating is assigned to a contract or purchase order, the rating is applicable to the prime contractor who must extend that rating in writing to any direct subcontractors, vendors, and suppliers, who in turn extend the rating in writing to their suppliers. The only exception to the mandatory use of ratings is an optional exemption for individual purchase orders of \$500 or less.

(b) *Priority rating assigned.* (1) A rated order is one which is identified by a priority rating of either DO or DX with a program identification symbol. The program identification for printed materials is C-9, Miscellaneous. Priority rating DO-C-9 is commonly used on defense requisitions to GPO.

(2) Contracts and purchase orders shall contain, at a minimum, the following information in addition to normal contractual requirements to be a valid rated order:

(i) The priority rating.

(ii) Either of the following certifications: "Certified for national defense use under DMS Reg. 1," or "Certified under DPS Reg. 1." Either of these certifications is acceptable on a rated order.

(iii) The signature of the Contracting Officer.

(iv) The delivery date or dates required.

(3) All rated orders must be accepted by the contractor unless:

(i) The prospective purchaser is unwilling or unable to meet the supplier's regularly established prices or terms of sale or payment.

(ii) The rated order is for a product or a service which the supplier does not usually make or perform.

(iii) The rated order is for a product or material which the supplier makes or acquires only for its own use.

(iv) Filling the rated order would stop or interrupt the supplier's operations during the next 60 days in a way which would cause a substantial loss of total production or a substantial delay in operations.

(v) The rated order is placed by a person who produces the same product or performs the same service as that ordered.

(4) Precedence:

(i) All DO ratings have equal preferential status.

(ii) All DX ratings have equal preferential status.

(iii) DX-rated orders take precedence over DO-rated orders and unrated orders.

(c) *Implementation.* (1) For requisitions with a national defense priority, the following provision shall be included in the contract.

PRIORITIES, ALLOCATIONS, AND ALLOTMENTS. This contract and any delivery order thereunder is rated and certified for national defense use (Priority Rating DO-C-9). The contractor shall follow the provisions of DMS Reg. 1 or DPS Reg. 1 and all other applicable regulations and orders of the Bureau of Domestic Commerce in obtaining controlled materials and other products and materials needed to fill this contract.

Contractors are required to follow the provisions of DMS Reg. 1, and orders of the BDC in obtaining controlled materials and any other products and materials needed to fill this order. Copies of DMS Reg. 1 may be obtained from the U.S. Department of Commerce, Bureau of Domestic Commerce, Washington, DC 20230.

(2) Requested delivery dates shall be complied with as practicable. If a delivery schedule cannot be met, the contractor is obligated to notify the Contracting Officer of the delay and shall provide a revised schedule and the reason for delay. Precedence for filling rated orders shall be given as follows:

(i) DX-rated orders must be given precedence over DO-rated orders or unrated orders and DO-rated orders must be given precedence over unrated orders.

(ii) If there is a conflict between rated orders of equal preferential status, the contractor must give precedence in the order of their receipt.

(iii) If there is a conflict between rated orders of equal preferential status received on the same date, precedence must be given to the one which has the earliest required delivery date.

(3) If a solicitation on a rated order receives no response or timely delivery cannot be obtained, the Contracting Officer shall apply for assistance in accordance with paragraph (d).

(d) *Inadequate response or schedule delays.* (1) *Inadequate response to solicitations.* When there are no bids or proposals received as a result of a solicitation or if the bids or proposals received do not cover the entire requirement, normal procurement procedures shall be followed in attempting to locate sources. If such efforts are unsuccessful, and it is determined that the procurement must still be accomplished at that time, rated orders shall then be presented to one or more selected suppliers or manufacturers qualified to produce the item or material. This will be accomplished by issuing a solicitation under cover of a letter signed by the Contracting Officer, citing the requirements of the Defense Production Act, BDC regulations, and requesting timely acceptance thereof by the contractor. The letter shall also request that any reasons for rejection be promptly furnished in writing, as required by the BDC regulations.

(2) *Schedule delays.* If a contractor notifies the Contracting Officer that a delivery schedule cannot be met, due to an inability to obtain the required materials from subcontractors with whom rated orders have been placed, the Contracting Officer shall first ascertain whether the contractor has invoked the priority rating in writing in the subcontracts. If invoked, the Contracting Officer should then determine if the contractor has made all reasonable efforts to resolve the situation, and provide necessary assistance to the contractor.

(3) *Special assistance.* If further action is required to obtain a supplier or expedite delivery, the A&R Staff shall be contacted to obtain special assistance from BDC.

8. Extraordinary Contractual Actions, Public Law 85-804.

(a) *General.* (1) *Authority.* The Act of August 28, 1958, as amended (Public Law 85-804); 72 Stat. 972, as amended by 87 Stat. 605 (50 U.S.C. 1431-1435), as amended, hereinafter referred to as "the Act," empowers the President to authorize any agency or department of the Government which exercises functions in connection with the national defense to enter into contracts or into amendments or modifications of contracts and to make advance payments, without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever the agency head deems that such action would facilitate the national defense.

(2) *Limitations.* The Act provides that nothing therein shall be construed to authorize:

(i) the use of cost-plus-a-percentage-of-cost system of contracting;

(ii) any contract in violation of existing law relating to limitation of profits;

(iii) other than full and open competition for award of contracts for supplies or services;

(iv) the waiver of any bid, payment, performance, or other bond required by law;

(v) the amendment of any contract negotiated under 10 U.S.C. 2304(a)(15) or 41 U.S.C. 252(c)(13) to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder (both of the above code sections relate to negotiated procurement after unsuccessful advertising), or

(vi) the formalization of an informal commitment, unless the commitment was made at a time when it was impracticable to use normal procurement procedures.

(3) *Approval authority.* A commitment shall not be made under the Act for contracts, amendments, or modifications in excess of \$50,000 without approval of the Director, Procurement Services. For contractual actions under \$50,000 the Manager, PPD has approval authority.

(4) *Reporting.* All actions taken under the Act are a matter of public record. Congress shall be notified of all actions taken under the authority of this Act by the 15th of March each year.

(b) *Application.* (1) *Purpose and policy of the Act.* The general purpose of the Act and the regulations thereunder is to permit the correction of mistakes in contracts by administrative action during periods of national emergency so as to facilitate the national defense. The authority may not be used where other adequate legal authority is applicable. The authority cannot be used to encourage laxity and carelessness on the part of any person engaged in the defense effort.

(2) *Standards for use.* Action taken under the Act requires a finding that the national defense will be facilitated thereby.

(i) *Amendments without consideration.* If a contractor's continued performance on any defense contract is found essential to the national defense and if an actual or threatened loss under a contract, however caused, will impair the productive ability of the contractor, the contract may be adjusted without any additional benefit to the Government. The contract will, however, only be adjusted to the extent necessary to remove the impairment. Losses of a contractor resulting from Government action as a party to the contract may justify an amendment even though there is no liability on the part of the Government for its action.

(ii) *Mistakes.* A contract may be amended to mitigate or correct a mistake. This includes mistakes or ambiguities consisting of a failure to clearly express the agreement as both parties understood it; a mistake of the contractor which was so obvious that it was or should have been obvious to the Contracting Officer; and mutual mistake as to a material fact.

(iii) *Informal commitments.* Informal commitments may be formalized under certain circumstances to permit payment to persons who have taken action without a formal defense contract; for example, where any person, pursuant to written or oral instructions from an official of an agency and relying in good faith upon the apparent authority of the official to issue such instructions has arranged to furnish or has furnished property or services to the agency or to a contractor or subcontractor without formal contractual coverage for such property or services. Formalization of commitments under such circumstances normally will facilitate the national defense by assuring such persons that they will be treated fairly and paid expeditiously.

(3) *Responsibilities of the Contracting Officer.* All requests from contractors for relief or adjustment under the authority of the Act shall be referred to the A&R Staff for further assistance. The Staff shall be responsible for all reporting requirements under the Act.

9. Variations in Quantity.

(a) *General.* As stated in the Quantity Variations clause in GPO Contract Terms (Pub. 310.2), the Government will not accept any variations in the quantity of any item called for in a contract unless the variation is authorized in the solicitation. Variations in quantity should not be authorized unless caused by conditions of loading, shipping, packing, or for allowances in production processes. In the procurement of printing and binding, the latter condition is normally the reason which supports permitting quantity variations. If variation in quantity is permitted, acceptance and payment shall be made only to the extent prescribed in the contract.

(1) Any permissible variation may be stated as a percentage or as a specific quantity, and may be an increase, a decrease or a combination of both. No permitted variation should be greater than that necessary to provide reasonable protection to the contractor.

(2) When it is determined that a quantity variation will be permitted, provision shall be made in the solicitation to that effect and the extent of the allowable variation shall be specified. When the solicitation allows a quantity variation, the contractor's offered additional rate or other lesser negotiated rate shall be used to increase or decrease the invoice amount in accordance with any allowable variation.

(b) *"Overs" and "Unders."* "Overs" are those items intended to be shipped or delivered in excess of any authorized plus variation in quantity. "Unders" are those items constituting the difference between the amount required by the contract, including any authorized minus variation in quantity, and the amount to be shipped or delivered.

(1) Prior to shipment or delivery, the contractor, upon knowledge of any "over" or "under" quantity shall immediately contact the Contracting Officer for direction. The Contracting Officer shall subsequently convey the information to the ordering agency, appropriately documenting the contract file.

(2) Upon acceptance of any “overs” by the agency, the contract shall be modified (GPO Form 913) reimbursing the contractor at an agreed upon rate not to exceed the offered additional rate and obtaining the contractor’s agreement by a signed copy of the modification. Refusal to accept “overs” shall be conveyed to the contractor.

(3) Upon acceptance by the ordering agency of any short shipment, the contractor shall be informed that the contract will be modified. The contractor shall be instructed to “go back to press” when the shortage is not accepted.

(4) “Overs” shipped or delivered without direction of the Contracting Officer and not accepted by the ordering agency will be returned to the contractor at the contractor’s expense.

(5) Requests from contractors to ship short shall be considered on an individual basis. Requests from contractors with a significant history of such requests should receive close scrutiny. When the Contracting Officer becomes aware of a pattern of short shipments, that contractor’s performance shall be carefully monitored and evaluated for appropriate action.

10. Subcontracts.

(a) Definitions.

“Consent to subcontract” means the Contracting Officer’s written consent for the prime contractor to enter into a particular subcontract.

“Contractor” means the total contractor organization or a separate entity of it, such as an affiliate, division, or plant that performs the contract.

“Subcontract” means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

“Predominate production function” means the primary operation or process (e.g. presswork, bindery work, CD-ROM or microfiche replication) that is required in contract performance.

(b) The predominate production function shall not be subcontracted unless authorized by the terms of the contract.

(c) Production operations other than the predominate production function may be subcontracted unless prohibited by the contract.

(d) Contracting Officers shall indicate in solicitations whenever subcontracting of the predominate production function is to be permitted or whenever production operations other than the predominate production are prohibited from being subcontracted.

(e) Contractors, whose contract does not permit subcontracting, may make a written request to the Contracting Officer for consent to subcontract, justifying the reasons for the request.

(f) Contracting Officers shall consent to subcontracting only if consent is in the best interest of the Government.

(g) *Clause.* The Subcontracts clause in GPO Contract Terms (Pub. 310.2) is included in all contracts by reference.

11. Warranties.

(a) *General.* A warranty is a promise or affirmation given by a seller to a purchaser regarding the nature, usefulness,

or condition of supplies or performance of services to be furnished. The contract clauses permit GPO to reject supplies which do not meet the specifications or to require correction, at the contractor’s expense, of defects discovered upon inspection. GPO is further protected against latent defects discovered after inspection and acceptance.

(b) *Clause.* The Inspection and Tests and Warranty clauses in GPO Contract Terms (Pub. 310.2) provide for correction or rejection of supplies which do not meet specifications.

12. Status Reporting.

(a) *General.* Status reports shall be provided to customer agencies on changes in the delivery schedule and quality defects found during inspections performed by GPO.

(b) *Schedule changes.* The Purchase, Term Contracts, and Contract Management Divisions shall report changes in scheduled shipping dates to Departmental Account Representative Division, Customer Services, on a daily basis. A listing shall be prepared by the Contract Compliance Section in the format shown at exhibit I-1. The cause for the delay, whether contractor delinquency or contract modification, shall be annotated on the form. It is the responsibility of Departmental Account Representative Division to notify customer agencies. In the RPPO’s, the control clerk shall notify the agencies directly of changes in the scheduled dates, either by telephone or letter.

(c) *Quality defects.* When an inspection of samples reveals quality defects, the Contracting Officer shall notify the contractor of the defects found during inspection and action that is proposed. The ordering agency shall also be notified.

13. Contractor Team Arrangements.

(a) *Definition.* “Contractor team arrangement” means an arrangement in which—

(1) Two or more companies form a partnership or joint venture to act as a potential prime contractor; or

(2) A potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified Government contract or acquisition program within the scope of the subcontracts clause.

(b) *General.* (1) Contractor team arrangements may be desirable from both a Government and industry standpoint in order to enable the companies involved to (i) complement each other’s unique capabilities and (ii) offer the Government the best combination of performance, cost, and delivery for the system or product being acquired.

(2) The companies involved normally form a contractor team arrangement before submitting an offer or bid. However, they may enter into an arrangement later in the acquisition process, but only on competitively negotiated procurements.

(c) *Policy.* The Government will recognize the integrity and validity of contractor team arrangements for contracts valued in excess of \$50,000; *provided*, the arrangements are identified and company relationships are fully disclosed in an offer or bid or, for arrangements entered into after submission of an offer, before the contract becomes effective. The Government will not normally require or encourage the dissolution of contractor team arrangements.

(d) *Joint Venture Agreement.* Agreements shall be signed by all parties to the joint venture and contain the following before acceptance by the Government:

(1) The written agreement between the parties shall reserve to the Government the right to enforce the terms of

the contract both jointly and severably against the coven-
turers.

(2) The agreement must contain a statement from the attorney for each venturer that the joint venture is within the corporate power of each venturer.

(3) One party to the joint venture must have total control of all phases of contract performance. Control must include delegated authority to fix the responsibilities of the coven-
turers.

(4) One party to the joint venture must perform the contract primary production function. All other parties must perform at least one of the remaining production functions as described in the solicitation.

(5) The agreement should identify each venturers contribution toward contract completion such as materials, manpower, experience.

(6) Invoices for all phases of contract performance must be submitted by one party to the joint venture. All payments will be made in the name of the joint venture.

(7) The joint venture agreement must be limited solely to the objective of the contract.

(8) A copy of the executed agreement must be submitted with the proposal or bid.

(e) *Limitations.* Nothing in this subsection authorizes contractor team arrangements in violation of antitrust statutes or limits the Government's rights to—

(1) Require consent to subcontracts;

(2) Determine, on the basis of the stated contractor team arrangement, the responsibility of the prime contractor;

(3) Provide to the prime contractor data rights owned or controlled by the Government;

(4) Pursue its policies on competitive contracting, sub-contracting, and component breakout after initial production or at any other time; and

(5) Hold the prime contractor fully responsible for contract performance, regardless of any team arrangement between the prime contractor and its subcontractors.

(f) *Provision.* The following provision shall be included in solicitations when it is anticipated that contractor team arrangements will be formed. Substitute the words "negotiation" and "offeror" for "sealed bidding" and "bidder" in negotiated contracts.

TYPE OF BUSINESS ORGANIZATION—SEALED BIDDING

The bidder, by checking the applicable box, represents that—

(a) It operates as a corporation incorporated under the laws of the State of _____, an individual, a partnership, a nonprofit organization, a joint venture, or

(b) If the bidder is a foreign entity, it operates as an individual, partnership, a nonprofit organization, a joint venture, or a corporation, registered for business in _____ (country).

SECTION 5. CONTRACTOR RESPONSIBILITY

1. General. Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only. The award of a contract solely on the basis of the lowest responsive bid is not to the advantage of the Government if additional procurement or administrative costs could subsequently result.

2. Responsible Contractor. A responsible contractor is one who meets the minimum standards set forth in subsection 4

to the extent that such standards are applicable to the specific procurement.

3. Authority. The authority for determinations of contractor responsibility/nonresponsibility rests with the Contracting Officer over whose signature the award of a contract is to be made.

4. Minimum Standards for Responsible Prospective Contractors. To receive a favorable responsibility rating, a prospective contractor must meet the standards set forth below to the extent applicable to the specific procurement. The prospective contractor shall:

(a) Have adequate financial resources, or the ability to obtain adequate financial resources to perform the contract;

(b) be able to comply with the proposed delivery schedules, taking into consideration other existing commitments, commercial as well as governmental;

(c) have a satisfactory record of performance in regard to both quality and timeliness on previously awarded contracts;

(d) possess, or have the ability to acquire, the necessary equipment, technical skills, and productive capacity to perform the contract requirement.

(e) have adequate production controls and quality assurance methods to satisfy the quality requirements of the contract;

(f) be able to satisfy any specified special standards of responsibility. Such special standards may be incorporated in specifications where the requirements call for unusual expertise, specialized facilities, or location of facilities; and

(g) be otherwise qualified and eligible to receive an award under applicable laws and regulations.

5. Affirmative Responsibility Determinations.

(a) Prospective contractors must affirmatively demonstrate their responsibility. This may be achieved through satisfactory performance on prior similar awards or through the presentation of evidence of their ability to satisfy the contract requirements. A Contracting Officer, prior to making an affirmative responsibility determination, shall be satisfied that the available information sufficiently demonstrates that the prospective contractor meets the minimum standards set forth in subsection 4. This information shall include:

(1) Any list of debarred, suspended, or ineligible concerns or individuals;

(2) any current contractor compliance data which indicates the prospective contractor's performance in regard to timeliness, quality, and business integrity;

(3) the Bidder's Mailing List Application (GPO Form 2524); and

(4) any other known documentation which will offer assistance in the decisionmaking process (e.g., a recent preaward survey).

(b) If, in the opinion of the Contracting Officer, the available information is sufficient for an affirmative responsibility determination, the Contracting Officer shall so indicate by signing the appropriate award documents. On proposed awards in excess of \$50,000 and requiring CRB approval, Contracting Officers shall indicate their affirmative determination on page 1, Preaward Survey (GPO Form 707, Preaward Survey of Prospective Contractor) or a computer generated version and, where applicable, on the CRB memo itself. In the absence of sufficient evidence of a prospective contractor's capability or in the event of conflicting evidence,

the Contracting Officer may request a full preaward survey as prescribed in chapter XI.

6. Determinations of Nonresponsibility. The Contracting Officer shall make a determination of nonresponsibility if, after careful consideration of all available information, there is not a clear indication that the prospective contractor meets the minimum requirements set forth in subsection 4. Also, doubt as to the contractor's productive capacity or financial strength which cannot be resolved affirmatively shall require a determination of nonresponsibility.

(a) *Documentation.* (1) Determinations of nonresponsibility, when the proposed award is \$50,000 or more, shall be documented in the form of a D&F.

(2) Nonresponsibility determinations on proposed awards of less than \$50,000 shall be documented on an appropriate form as to the reason for the determination.

(3) Copies of nonresponsibility determinations shall be included in the contract file and contractor compliance file.

(4) Nonresponsibility determinations will be entered by the appropriate compliance activity in PICS screen CC (contractor correspondence) and routinely accessed through contractor inquiry (CI) when making responsibility determinations.

(b) *Notification of contractor.* The affected contractor shall be notified of the determination by letter, signed by the Contracting Officer. Copies of the letter shall be made a part of the contract file and the contractor's compliance file.

(c) *Disclosure of data.* The details or circumstances resulting in a determination of nonresponsibility shall not be made available to anyone outside the Government, except to the affected contractor when deemed necessary by the purchasing authority. The disclosure of such information may be made to, or summarized for, other Government offices or agencies upon request.

SECTION 6. GOVERNMENT-FURNISHED PROPERTY

1. Scope. This section sets forth policies with respect to providing Government-furnished property (GFP) for use by contractors performing under contracts with the GPO for printing, binding, and related services.

2. General.

(a) *Definition.* "Government-furnished property" is property in the possession of the Government and subsequently delivered or made available to the prime contractor performing under contract with GPO for printing, binding, and related services. Government furnished property (GFP) includes, but is not restricted to, binders, camera copy (including artwork, reproduction proofs, etc.), negatives, printed matter, labels, bills of lading, paper, book cloth, manuscript copy, transparencies, and electronic media.

(b) *Policy on furnishing material.* It is PPD policy that, excluding GFP, contractors will furnish all material required for the performance of GPO contracts for printing, binding, and related services. However, the GPO shall furnish material to a contractor when it is determined to be in its best interest by reason of economy, standardization, availability, expediting production, or other appropriate circumstances. Material to be furnished by GPO shall be described in the solicitation in sufficient detail to permit evaluation by bidders. It is also PPD policy to allow prospective bidders—upon re-

quest—to examine that GFP which will be used as printing media under the contract. Such inspections shall be made prior to award and only at the GPO or government facility where the printing media is located. Telephone responses to bidder requests to describe printing media in such detail as to be prejudicial to other bidders must be furnished as an amendment to the solicitation.

(c) *Responsibility and liability for GFP.* (1) *Prime Contractor.* Unless otherwise provided in the contract, the contractor to whom the contract was awarded assumes the risk of, and shall be responsible for, any loss or damage to GFP provided under the contract upon its delivery to such contractor. The contractor shall be liable for loss, damage, or destruction to GFP caused by its negligence. Should the property be destroyed or damaged by an act of God and the contractor is shown to have used sound judgment in protecting it, then the contractor shall be absolved of liability.

(2) *Subcontractor.* No GFP shall be furnished directly to a subcontractor unless the Contracting Officer is specifically requested to do so by the prime contractor. Such request, however, shall not relieve the prime contractor of total liability for the GFP.

(d) *Use of GFP.* GFP shall, unless otherwise provided in the contract or approved by the Contracting Officer, be used only in the performance of the contract.

3. Furnishing of GFP.

(a) *Method.* All GFP furnished to the contractor shall be sent via a method that will insure safe delivery and provide the Contracting Officer with a signed receipt showing date received by the contractor. Such methods may include certified mail and public conveyance such as bus, rail, truck, or airplane.

(b) *Contractor requests for materials and supplies.* Contracting Officers may, at their option, and when requested by the prime contractor, furnish materials or supplies not readily obtainable in the open market and which are required by the contractor for the performance of the contract. In such event, the cost to the Government of the materials or supplies, plus any handling and administrative costs, shall be deducted from the contract price of the work contracted for in such manner and at such times as the Contracting Officer may specify.

(c) *Excessive delay in furnishing GFP.* Contractor requests for progress payments based on excessive Government delay shall be processed as prescribed in VI-2 "Progress Payments."

4. Return of Government Property. GPO-furnished mechanical or electronic printing media supplied for use in the completion of the contract, shall be returned by the contractor as directed in the specifications or upon demand of the Contracting Officer. This material shall be returned immediately upon completion of the contract without demand by the Government at the contractor's expense unless the contract specifically provides otherwise. The contractor shall return all excess paper, supplies, or materials received from the Government resulting from overdelivery of such materials, more economical production than anticipated, or for any other reason. The excess material shall be returned at Government expense unless the contract specifically provides otherwise. The contractor shall request advice from the Contracting Officer as to the disposition of the excess materials. The contractor shall warrant, in submitting a claim upon the Government resulting

from the contract, that all such materials, supplies, and excess paper have been returned to the Government. It shall be the responsibility of the contractor to secure evidence of return of such Government property in the form of delivery receipts signed by an authorized officer or agent of GPO or any other receipt acceptable to GPO.

5. Inspection of Returned GFP.

(a) *GFP returned directly to ordering agency.* Most contracts will specify that the contractor must return GFP used as printing media directly to the ordering agency. In such cases, the responsibility for inspection shall be that of the ordering agency. Instances of returned media which is not in conformance with the contract terms, or not in the same condition as when furnished to the contractor shall be reported by the agency, through appropriate channels, to the Contracting Officer. The Contracting Officer shall take appropriate action to: (1) verify the agency claim; (2) either have the contractor correct the verified deficiency or reduce the contract price by an amount equal to the Government's cost for correcting the deficiency.

(b) *GFP returned to a GPO facility.* All GFP returned to a specified GPO facility shall be inspected by the Contracting Officer or a representative. The inspection shall assure that the GFP is in conformance with the terms of the contract and that there has been no damage to it. Where contractor-caused damage or nonconformance to the terms of the contract exists, the Contracting Officer shall have the contractor correct the deficiency or reduce the contract price by an amount equal to the Government's cost for correcting the deficiency.

SECTION 7. SMALL BUSINESS

1. Policy.

(a) It is the policy of the Government to aid, counsel, assist, and protect, insofar as possible, the interests of small business concerns in order to preserve free competitive enterprise and to place with small business concerns a fair proportion of the total Government purchases and contracts.

(b) In support of this policy, the specific policies set forth below shall be followed.

(1) Small business concerns shall be afforded an equitable opportunity to compete for contracts.

(2) The bidders list shall include all known established small business concerns and those that are also labor surplus area concerns.

(3) The maximum amount of time practicable shall be allowed for preparation and submission of bids.

(4) Delivery schedules shall be established to encourage small business participation, to the greatest extent consistent with customer requirements.

(5) Small purchases shall be placed with small business concerns whenever practicable.

2. Representation by Bidder. A representation by a bidder that it is a small business concern shall be accepted as conclusive by the Contracting Officer regarding the firm's status for the specific solicitation.

SECTION 8. CONTINGENT FEES

1. Covenant Against Contingent Fees. Every contract includes by reference the clause "Covenant Against Contingent Fees" in GPO Contract Terms (Pub. 310.2).

2. Policy Against Contingent Fees. A fee, regardless of what it is called or how it is computed, which is payable based on the success a representative has in obtaining Government contracts for a client is considered a contingent fee. It is contrary to public policy to permit the use of a contingent fee arrangement, unless such representatives are bona fide employees of the contractor or are bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

3. Enforcement.

(a) Unless exception is taken in the bid, the bidder warrants that by submission of the bid that no person or company other than a bona fide one has been employed to solicit the contract, and that there is no agreement to pay any fee contingent upon the success of securing the contract.

(b) If the bidder takes exception to the provision in the bid, or if misrepresentations or violations of the covenant against contingent fees are suspected, the facts shall be provided to the appropriate Superintendent for further action.

SECTION 9. BUY AMERICAN ACT

1. General.

(a) *Policy.* The Buy American Act (41 U.S.C. 10a-10d), establishes as a policy of the Government that manufactured materials, supplies, or articles acquired for public use shall be substantially constituted from domestically mined or manufactured articles or supplies.

(b) *Definitions.* "Components"—Those articles, materials, and supplies which are directly incorporated into the end products.

"End products"—Those articles, materials, and supplies which are to be acquired for public use.

"Domestic source end product"—

(1) An unmanufactured end product which has been mined or produced in the United States.

(2) An end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceed 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and shall include duty in the case of components of foreign origin.

"United States"—The States, the District of Columbia, Puerto Rico, American Samoa, the Virgin Islands, and any other place subject to United States jurisdiction.

"Foreign end product"—An end product other than a domestic source end product.

"Domestic bid"—A bid or offered price for a domestic source end product, including transportation to destination.

"Foreign bid"—A bid or offered price for a foreign end product, including transportation to destination and duty.

2. Statutory Requirements and Exceptions. The Buy American Act requires that in the procurement of supplies and services, only domestic source end products shall be acquired for public use, except for:

(a) End products which are for use outside the United States.

(b) End products which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(1) Determinations of nonavailability must be approved by:

- (i) Central Office Superintendents as applicable, for procurements not to exceed \$100,000.
- (ii) The Manager, PPD for procurements not to exceed \$1,000,000.
- (iii) The Public Printer or designee for procurements over \$1,000,000.

(2) The required determination shall be prepared in substantially the following form for the signature of the Contracting Officer and submitted through the Office of General Counsel for approval at the appropriate level in accordance with the above.

DETERMINATION

Date _____

Pursuant to the authority contained in Section 2, Title III of the Act of 3 March 1933, commonly called the Buy American Act (41 U.S. Code 10 a-d), I hereby find:

- (1) The *(name of the procurement office)* proposes to procure:
 - (a) (Describe the item(s) to be procured, unit quantity, and purpose for which intended.)
 - (b) at the (actual) (estimated) cost of _____ (State actual or estimated cost including transportation to destination and any applicable duty.)
 - (c) from _____ (State country of origin and name and address of prospective contractor.)
- (2) (Brief statement of the necessity for the procurement.)
- (3) (Statement of facts establishing the nonavailability of a similar item or items of domestic origin.)

Based upon the above showing of fact, it is determined that the above described item(s) is (are) not mined, produced, or manufactured, or the articles, materials, or supplies from which it (they) is (are) manufactured, are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. The requirement cannot be foregone.

(Contracting Officer Signature & Title)

APPROVED:

(Signature & Title)

(3) A validation that the requirement cannot be foregone shall be obtained from the requiring agency and shall be made a part of the contract file to support the statement in the determination.

(4) The determination, dated and signed by the Contracting Officer, shall be forwarded to the appropriate approval authority, as specified in I-9.2(b)(1), with a copy of the requirement validation and other pertinent information, as necessary.

(5) When a determination has been made that the Buy American Act does not apply, the contractor will be notified by appropriate means such as a notation in the body of the contract or by attaching a copy of the determination to the contract.

(c) End products for which the Deputy Public Printer determines the domestic preference to be inconsistent with the public interest, or the cost to the Government to be unreasonable.

(1) In making such determination, bids and proposals shall be evaluated so as to give preference to domestic bids as follows:

(i) Each foreign bid shall be adjusted for purposes of evaluation by adding to the foreign bid (inclusive of duty) a factor of 6 percent of that bid, except that a 12-percent factor shall be used instead of the 6-percent factor if the firm submitting the low acceptable domestic bid is a small business concern or a labor surplus area concern (or both).

(ii) If an award for more than \$100,000 would be made to a domestic concern if the 12-percent factor is applied, but would not be made if the 6-percent factor is applied, the case shall be submitted to the Deputy Public Printer for a decision as to whether the award to the small business concern or labor surplus area concern would involve unreasonable cost or inconsistency with the public interest.

(iii) If the evaluation procedure results in a tie between a foreign bid and a domestic bid, award shall be made on the domestic bid.

(2) Proposed awards shall be submitted to the Deputy Public Printer for decision where:

(i) Rejection of an acceptable low foreign bid is considered necessary to protect essential national security interests, such as maintenance of a mobilization base.

(ii) Rejection of any bid or proposal for other reasons of the national interest when considered necessary.

3. Implementation.

(a) Bidders must certify, in the manner directed on the bid, that the product to be delivered will be of domestic manufacture or origin as defined in the Buy American Act, as amended.

(b) The "Buy American Act" clause in GPO Contract Terms (Pub. 310.2) is included in all contracts by reference.

SECTION 10. CONTRACT REVIEW BOARD

1. Review of Proposed Procurement Actions.

(a) The Contract Review Board (CRB) shall review selected proposed procurement actions to insure that they are in the best interest of GPO and to insure compliance with established procurement policy and procedures.

(b) The CRB provides appraisals of significant proposed procurement actions at the highest level of competence and experience available in the purchasing activity. This appraisal is a supplement to, not a substitution for, normal supervisory and Contracting Officer review. The CRB should be composed of at least three qualified and impartial employees.

2. CRB Members. Contracting Officer members shall be from other than the division or section originating the CRB action. The CRB will consist of not less than three members selected as follows:

- (a) Chairperson:
 - (1) Director, Procurement Analysis and Review Staff (PPA).
 - (2) A PG-15 Contracting Officer or Senior Analyst, PPA.
 - (3) A PG-14 Contracting Officer.
- (b) Second member:
 - (1) A PG-14 Contracting Officer or Senior Analyst, PPA.
 - (2) A PG-13 Contracting Officer.
- (c) Third member:
 - (1) A PG-13 Contracting Officer.

(2) A PG-12 Contracting Officer.

(d) Contracting Officers required to sign the award documents of a particular procurement or their supervisors shall not participate in that CRB action.

3. Concurrence or Nonconcurrence.

(a) Concurrence or nonconcurrence of each CRB member must be indicated by the member's signature, together with any reasons for nonconcurrence, and the date thereof, on the CRB memorandum which shall be included in the official contract file. In the event that one or more CRB members do not concur with the proposed action, the Board will consult together to assure that all facts have been considered before returning the proposed action to the Contracting Officer.

(b) If the Contracting Officer decides to take action contrary to the position taken by a majority of the Board, he/she shall promptly inform the Chairperson of the proposed action and the reasons therefor. A written statement of the proposed conclusion and the reasons for the action shall be inserted into the permanent file.

4. Required Review and Concurrence.

(a) *Prior to award.* Contracting Officers shall submit the following for CRB review:

(1) Proposed award over \$50,000.

(2) Proposed cancellation of a solicitation, after bid opening or closing date for receipt of proposals, and subsequent resolicitation. (A solicitation may be resolicited without CRB review when no bids or proposals were received at time of opening or closing or when all bids are non-responsive.)

(b) *Post Award.* The Contracting Officer shall submit the following proposed actions to the CRB:

(1) Proposed termination of contract for default over \$1,000.

(2) Proposed termination of a contract for the convenience of the Government when resolicitation of the same, unchanged, product is required.

(3) Proposed settlement of a terminated contract, except one terminated for convenience when the settlement is less than \$5,000.

(4) Proposed modification of a contract (or print order) involving an increase or decrease of 25 percent or more of the contract (or print order) amount if the increase/decrease exceeds \$5,000, or any modification which increases or decreases the contract (or print order) amount in excess of \$25,000.

(c) *Other.* (1) The items cited above do not limit the actions which may be referred to the CRB. Contract matters should be presented to the CRB when additional judgment, advice, and procurement expertise would assist in resolving an existing or potential problem.

(2) Proposed award of a sealed bid contract under \$50,000—

(i) to other than the bidder submitting the lowest responsive bid;

(ii) of a competitively negotiated procurement resulting from a request for proposals (RFP), for the public exigency, or when negotiation is authorized after advertising;

(iii) when only one responsive bid is received; or

(iv) of a noncompetitive negotiated procurement;

does not require CRB review but shall be documented, supporting the action taken. Place the documentation in the contract file folder.

SECTION 11. SUSPENSION AND DEBARMENT

1. General. Suspension or debarment are means by which GPO may exclude bidders or contractors from participating in contracts and subcontracts. Each should be used for the purpose of protecting the Government's interest and not as punishment. To assure the Government the benefits to be derived from full and free competition of interested bidders, suspension and debarment should not be instituted for any longer period of time than is necessary to protect the Government's interests. *See* GPO Instruction 110.11B.

2. Definitions.

“Adequate evidence” means information sufficient to support the reasonable belief that a particular act or omission has occurred.

“Affiliates.” Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (1) either one controls or has the power to control the other, or (2) a third party controls or has the power to control both. Indications of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment.

“Agency” means any department, military department or defense agency, or other agency or independent establishment of the executive, judicial, or legislative branch.

“Civil judgment” means a judgment or finding of a civil offense by any court of competent jurisdiction.

“Contractor” means any individual or other legal entity that (1) directly or indirectly (e.g. through an affiliate) submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract, including a contract for carriage under Government or commercial bills of lading, or a subcontract under a Government contract; or (2) conducts business, or reasonably may be expected to conduct business, with the Government as an agent or representative of another contractor.

“Conviction” means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of “nolo contendere.”

“Debarment” means action taken by a debarring official under subsection 4 to exclude a contractor from GPO contracting and GPO-approved subcontracting for a reasonable, specified period; a contractor so excluded is “debarred.”

“Debarring Official” means the Public Printer or the Public Printer's designee.

“Fact-Finding Official” means the GPO Board of Contract Appeals.

“Indictment” means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

“Ineligible” means excluded from GPO contracting (and subcontracting, if appropriate) pursuant to statutory, executive order, or regulatory authority; for example, pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract Act, the Equal Employment

Opportunity Acts and executive orders, the Walsh-Healey Public Contracts Act, the Buy American Act, or the Environmental Protection Acts.

“Legal Proceedings” means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

“Notice” means a written communication sent by certified mail, return receipt requested, to the last known address of a party, its identified counsel, or agent for service of process. In the case of a business, such notice may be sent to any partner, principal officer, director, owner, or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt shall then be presumed.

“Preponderance of the evidence” means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

“Suspending Official” means the Public Printer or the Public Printer’s designee.

“Suspension” means action taken by a suspending official under subsection 9 to disqualify a contractor temporarily from GPO contracting and GPO-approved subcontracting; a contractor so disqualified is “suspended.”

3. Effect of Suspension or Debarment.

(a) Contractor’s debarred, suspended, or proposed for debarment are excluded from receiving contracts, and the GPO shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the Deputy Public Printer, or a designee determines that there is a compelling reason for such action. Contractors debarred, suspended, or proposed for debarment are also excluded from conducting business with the Government as agents or representatives of other contractors.

(b) Contractors included on the GPO List of Parties Excluded From Procurement Programs as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts and, if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. GPO shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors under those conditions and for that period.

(c) Contractors debarred, suspended, or proposed for debarment are excluded from acting as individual sureties.

(d) *Post Bid Opening Procedures.* (1) After opening of bids or receipt of proposals, the Contracting Officer shall review the GPO List of Parties Excluded From Procurement Programs.

(2) Bids received from any listed contractor in response to an invitation for bids shall be entered on the abstract of bids and rejected unless the Deputy Public Printer, or a designee determines in writing that there is a compelling reason to consider the bid.

(3) Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, nor shall discussions be conducted with a listed offeror during a period of ineligibility, unless the Deputy Public Printer, or a designee determines, in writing, that there is a compelling reason to do so. If the period of ineligibility expires or is terminated prior to award, the Contracting Officer may, but is not required to, consider such proposals, quotations, or offers.

(4) Immediately prior to award, the Contracting Officer shall again review the list to ensure that no award is made to a listed contractor.

(e) *Effect of Action on Existing Contracts.* (1) Notwithstanding the debarment, suspension, or proposed debarment of a contractor, GPO may continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment unless the Deputy Public Printer or a designee directs otherwise.

(2) When the circumstances giving rise to the debarment or suspension also constitute a default in the contractor’s performance of the contract, termination for default under the contract’s Default clause is appropriate.

(3) If the contractor presents a significant risk to the Government in completing the current contract, the Contracting Officer shall determine whether termination for convenience or cancellation under appropriate contract provisions is in the Government’s best interest. In making this determination, the Contracting Officer shall consult with the Office of General Counsel and should consider the following factors:

- (i) Seriousness of the cause for debarment or suspension;
- (ii) Extent of contract performance;
- (iii) Potential costs of termination and reprocurement;
- (iv) Urgency of the requirement and the impact of the delay of reprocurement;

(v) Availability of other safeguards to protect the Government’s interest until completion of the contract.

(f) GPO should not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment, unless the Deputy Public Printer, or a designee states in writing the compelling reasons for renewal or extension.

(g) GPO shall not issue orders under a multiple-award term contract to contractors debarred, suspended, or proposed for debarment, unless the Deputy Public Printer, or a designee states in writing the compelling reasons for such action.

4. Debarment.

(a) It is the debarment official’s responsibility to determine whether debarment is in the Government’s interest. The debarment official may, in the public interest, debar a contractor for any of the causes in subsection 5, using the procedures in subsection 10. The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor’s acts or omissions and any remedial measures or mitigating factors should be considered in making any debarment decision. Before arriving at any debarment decision, the debarment official should consider factors such as the following:

(1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as a cause for debarment;

(2) Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner;

(3) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarment official;

(4) Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action;

(5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the im-

proper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution;

(6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment;

(7) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government;

(8) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs;

(9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment; or

(10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

(b) The existence or nonexistence of any mitigating factors or remedial measures such as set forth in subsection 4(a) is not necessarily determinative of a contractor's present responsibility. Accordingly, if a cause for debarment exists, the contractor has the burden of demonstrating, to the satisfaction of the debarring official, its present responsibility and that debarment is not necessary.

(c) Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarring official may extend the debarment decision to include any affiliates of the contractor if they are (1) specifically named, and (2) given written notice of the proposed debarment and an opportunity to respond (see subsection 6(c)).

5. Causes for Debarment.

(a) The debarring official may debar a contractor for a conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;

(2) Violation of Federal or State antitrust statutes relating to the submission of offers;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property;

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) The debarring official may debar a contractor, based upon a preponderance of the evidence, for:

(1) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as—

(i) Willful failure to perform in accordance with the terms of one or more contracts; or

(ii) A history of failure to perform, or of unsatisfactory performance of, one or more contracts.

(2) Any other cause of so serious or so compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

(c) The debarring official may debar a contractor based on debarment by another agency.

6. Debarment Procedures.

(a) *Investigation and Referral.* Any constituent element of GPO that becomes aware of circumstances which may serve as the basis for a debarment shall refer those circumstances to the debarring official through appropriate channels for consideration of debarment action. However, circumstances that involve possible criminal or fraudulent activities shall first be reported to the Office of the Inspector General (OIG) for investigative consideration. If appropriate, the OIG shall make a referral to the debarring official.

(b) *Decisionmaking Process.* These procedures governing the debarment decisionmaking process are as informal as is practicable, consistent with principles of fundamental fairness. These procedures afford the contractor (and any specifically named affiliates) an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(c) *Disputed Material Facts.* In actions not based upon a conviction or civil judgment, if it is found that the contractor's submission in opposition raises a genuine dispute over the facts material to the proposed debarment, the GPO shall also:

(1) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(2) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(d) *Notice of Proposal to Debar.* A notice of proposed debarment shall be issued by the debarring official advising the contractor and any specifically named affiliates, by certified mail, return receipt requested:

(1) That debarment is being considered;

(2) Of the reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;

(3) Of the cause(s) relied upon under subsection 5 for proposing debarment;

(4) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;

(5) Of the GPO's procedures governing debarment decisionmaking;

(6) Of the effect of the issuance of the notice of proposed debarment; and

(7) Of the potential effect of an actual debarment.

(e) *Debaring Official's Decision.* (1) In actions based upon a conviction or judgment, or in which there is no dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the contractor. If no suspension is in effect, the decision shall be made within 30 working days after receipt of any information and argument submitted by the contractor, unless the debarring official extends this period for good cause.

(2) *Resolution of Disputed Facts.* (i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together

with any information and argument submitted by the contractor and any other information in the administrative record.

(ii) The debarring official may refer matters involving disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(iii) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(3) In any action in which the proposed debarment is not based upon a conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence.

(f) *Notice of Debarring Official's Decision.* (1) If the debarring official decides to impose debarment, the contractor and any affiliates involved shall be given prompt notice by certified mail, return receipt requested—

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates.

(2) If debarment is not imposed, the debarring official shall promptly notify the contractor and any affiliates involved, by certified mail, return receipt requested.

7. Period of Debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, a debarment should not exceed 3 years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The debarring official may extend the debarment for an additional period, if that official determines that an extension is necessary to protect the Government's interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of subsection 6 shall be followed to extend the debarment.

(c) The debarring official may reduce the period or extent of the debarment, upon the contractor's request, supported by documentation, for reasons such as—

(1) Newly discovered material evidence;

(2) Reversal of the conviction or judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

8. Scope of Debarment.

(a) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, direc-

tor, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.

(c) The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

9. Suspension.

(a) The suspending official may, in the public interest, suspend a contractor for any of the causes in subsection 10 using the procedures in subsection 11.

(b) *Nature of Suspension.* (1) Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In assessing the adequacy of the evidence, GPO will consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as contracts, inspection reports, and correspondence.

(2) The existence of a cause for suspension does not necessarily require that the contractor be suspended. The suspending official should consider the seriousness of the contractor's acts or omissions and may, but is not required to, consider remedial measures or mitigating factors, such as those set forth in subsection 4(a). A contractor has the burden of promptly presenting to the suspending official evidence of remedial measures or mitigating factors when it has reason to know that a cause for suspension exists. The existence or nonexistence of any remedial measures or mitigating factors is not necessarily determinative of a contractor's responsibility.

(c) Suspension constitutes suspension of all divisions or other organizational elements of the contractor, unless the suspension decision is limited by its terms to specific divisions, organizational elements, or commodities. The suspending official may extend the suspension decision to include any affiliates of the contractor if they are (1) specifically named, and (2) given written notice of the suspension and an opportunity to respond (see subsection 11(c)).

(d) A contractor's suspension shall be effective throughout the GPO, unless the Deputy Public Printer, or a designee states in writing the compelling reasons justifying continued business dealings between the GPO and the contractor.

(e) *Additional Scope.* (1) When the suspending official has authority to suspend contractors from both acquisition contracts pursuant to this subsection and contracts for the purchase of Federal personal property pursuant to FPMR 101-45.6, that official shall consider simultaneously suspending the contractor from the award of acquisition contracts and from the purchase of Federal personal property.

(2) When suspending a contractor from the award of acquisition contracts and from the purchase of Federal personal property, the suspension notice shall so indicate, and the appropriate FPMR citations shall be included.

10. Causes for suspension.

(a) The suspending official may suspend a contractor suspected, upon adequate evidence, of—

(1) Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;

(2) Violation of Federal or State antitrust statutes relating to the submission of offers;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property;

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor; or

(5) Suspension by another agency.

(b) Indictment for any of the causes in (a)(1) through (a)(5) above constitutes adequate evidence for suspension.

(c) The suspending official may, upon adequate evidence, also suspend a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

11. Suspension Procedures.

(a) *Investigation and Referral.* Any constituent element of GPO that becomes aware of circumstances which may serve as the basis for a suspension shall refer those circumstances to the suspending official through appropriate channels for consideration of the suspension action. However, circumstances that involve possible criminal or fraudulent activities shall first be reported to the Office of the Inspector General (OIG), for investigative consideration. If appropriate, the OIG shall make a referral to the suspending official.

(b) *Decisionmaking Process.* (1) These procedures governing the suspension decisionmaking process are as informal as is practicable, consistent with principles of fundamental fairness. These procedures afford the contractor (and any specifically named affiliates) an opportunity, following the imposition of suspension, to submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(2) In actions not based on an indictment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of Department of Justice advice, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, agencies shall also—

(i) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of Suspension.* When a contractor and any specifically named affiliates are suspended, they shall be immediately advised by certified mail, return receipt requested—

(1) That they have been suspended and that the suspension is based on an indictment or other adequate evidence that the contractor has committed irregularities (i) of a serious nature in business dealings with the Government or (ii)

seriously reflecting on the propriety of the Government dealings with the contractor—any such irregularities shall be described in terms sufficient to place the contractor on notice without disclosing the Government's evidence;

(2) That the suspension is for a temporary period pending the completion of an investigation and such legal or administrative proceeding as may ensue;

(3) Of the cause(s) relied upon under subsection 10 for imposing suspension;

(4) Of the effect of the suspension;

(5) That, within 30 days after receipt of the notice, the contractor may submit in person, in writing, or through a representative, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over the material facts; and

(6) That additional proceedings to determine disputed material facts will be conducted unless (i) the action is based on an indictment or (ii) a determination is made, on the basis of Department of Justice advice, that the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(d) *Suspending Official's Decision.* (1) In actions (i) based on an indictment, (ii) in which the contractor's submission does not raise a genuine dispute over material facts, or (iii) in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official's decision shall be based on all the information in the administrative record, including any submission made by the contractor.

(2) *Resolution of Disputed Facts.* (i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(ii) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(iii) The suspending official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(3) The suspending official may modify or terminate the suspension or leave it in force (for example, see subsection 7(c) for the reasons for reducing the period or extent of debarment). However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of (i) suspension by any agency, or (ii) debarment by any agency.

(4) Prompt written notice of the suspending official's decision shall be sent to the contractor and any affiliates involved, by certified mail, return receipt requested.

12. Period of Suspension.

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal or administrative proceedings, unless terminated by the suspending official or as provided in this subsection.

(b) If legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall

be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional 6 months. In no event may a suspension extend beyond 18 months, unless legal proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of the proposed termination of the suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

13. Scope of Suspension. The scope of suspension shall be the same as that for debarment (see subsection 8), except that the procedures of subsection 11 shall be used in imposing suspension.

14. GPO List of Parties Excluded From Procurement Programs.

(a) The debarring and suspending official shall be responsible for compilation, maintenance, revision, and distribution of a list of firms and individuals suspended or debarred to whom contract awards of any nature will not be made, or from whom bids or proposals will not be solicited as provided in this section.

(b) The list shall be distributed monthly to GPO Contracting Officers and shall show at a minimum the following information:

- (1) The name and address of all debarred, suspended, or ineligible contractors, in alphabetical order, with cross-reference when more than one name is involved in a single action;
- (2) The termination date for each listing; and
- (3) The name and telephone number of the point of contact for the action.

15. Grounds for Listing Firms or Individuals. Firms or individuals may be placed on the GPO List of Parties Excluded From Procurement Programs based on the following:

(a) Those listed by the Comptroller General in accordance with section 3 of the Walsh-Healey Public Contracts Act (41 U.S.C. § 37) which have violated any of the agreements or representations of the Act.

(b) Those reported by the Secretary of Labor, and listed by the Comptroller General, to have violated the prevailing wage or overtime provisions of any Federal statute.

(c) Those the Public Printer determines to suspend administratively.

(d) Those the Public Printer determines to debar administratively.

SECTION 12. CONTRACTOR FINANCIAL DIFFICULTY OR BANKRUPTCY

1. General.

(a) When it is determined that a contractor is experiencing financial difficulty or has filed under any of the bankruptcy or insolvency laws, it is essential that prompt action be taken to assure that the Government's rights are protected in any formal proceedings. Terminated contracts as well as any current contracts shall be considered in any contemplated action.

(b) A contractor, who has filed a petition under the Bankruptcy Code, cannot be terminated for default, due to an automatic stay upon any act to obtain possession or control over property of the bankruptcy estate.

2. Procedure. Upon notification that a contractor is experiencing financial difficulty or has filed under any of the bankruptcy or insolvency laws, the Contracting Officer shall proceed as set forth below.

(a) *Contractor experiencing financial difficulty.* First, determine whether the contractor is still capable of meeting the requirements of the contract. Intensive monitoring of the contractor's performance shall be done to determine that satisfactory progress is being made.

(b) *Contractor who has filed for bankruptcy.* Upon notification that a contractor has filed, or is suspected to have filed for bankruptcy, the Contracting Officer shall:

(1) Contact the district court which has jurisdiction in the area of the contractor and obtain confirmation from the bankruptcy clerk of the court. If confirmed, the case number, filing date, and date of the first meeting of creditors shall be obtained and transmitted by telephone, and confirmed in writing, to the appropriate Superintendent, who in turn shall notify the Office of General Counsel and Financial Management Service.

(2) Determine whether the contractor is capable of completing contract performance.

(3) Determine the status of any Government-owned property.

(4) Furnish a copy of each contract and print order affected, through channels, to the Office of General Counsel, and assist in the preparation and processing of any claim.

3. Contractor Decision to Dissolve Its Business. When it is learned that a contractor, for whatever reason, intends to dissolve its business or otherwise to cease operations, the Contracting Officer shall:

(a) Determine the status of any contracts with or claims against the contractor.

(b) Furnish such information through the appropriate Superintendent to the Office of General Counsel and Financial Management Service.

(c) In conjunction with the above, undertake necessary action to obtain performance or resolve claims.

SECTION 13. PATENTS AND COPYRIGHTS

1. Scope. This section prescribes contract clauses and instructions which define and implement policy with respect to patent and copyright infringement liability resulting from work performed for the Government.

2. Explanation of Terms.

(a) *Patent.* A patent is a statutory monopoly granted by the Federal Government for a limited time to an inventor to exclude others from making, using, or selling the invention.

(b) *Copyright.* A copyright is a grant of a monopoly which gives the author or the creator of an artistic work exclusive right to print, reprint, publish, copy, and sell the copyrighted work. Examples of matter which may be copyrighted are books, periodicals, lectures, dramatic and musical compositions, works of art and their reproduction, scientific drawings or plastic works, photographs, computer programs and prints.

3. Authorization and Consent.

(a) Under 28 U.S.C. 1498, any suit for infringement of a United States patent based on the manufacture or use by or for the United States of an invention described in and covered by a patent of the United States by a contractor or by a sub-

contractor (including lower-tier subcontractors) can be maintained only against the Government in the U.S. Court of Federal Claims, and not against the contractor or subcontractor, in those cases where the Government has authorized or consented to the manufacture or use of the patented invention. Accordingly, to insure that work by a contractor or subcontractor under a GPO contract may not be enjoined by reason of patent infringement, authorization and consent shall be given as herein provided. The liability of the GPO for damages in any such suit against it shall, however, ultimately be borne by the contractor or subcontractor in accordance with the terms of the Patent Indemnity clause in GPO Contract Terms (Pub. 310.2).

(b) It is readily conceivable that a patent infringement may result in a lawsuit or injunction against an infringer. In the event of an infringement, the patent owner's only legal remedy is to bring a suit for damages against the Government itself in the U.S. Court of Federal Claims. The owner is thus assured of reasonable compensation for the infringement of the invention.

(c) Since GPO does not include an "Authorization and Consent" clause in PPD contracts, permission to infringe could only be granted to a contractor after award. In order to prevent delay of work on a GPO contract, should such a situation arise, permission may be granted by the Contracting Officer for a contractor to use any invention that was patented by others in the United States. Permission, if granted, shall be by letter. In such cases, GPO would be authorizing the contractor to infringe and, in effect, providing the patent holder the opportunity to bring suit against the Government for damages. However, the contractor who infringes assumes all liability for damages under the Patent Indemnity clause. Contractor requests for authorization to infringe shall be reviewed by the Office of General Counsel and approved by the Manager, PPD.

4. Policy.

(a) *Review of furnished material.* GPO is responsible for insuring that no patented or copyrighted items are purchased or produced without giving consideration to the Government's liabilities resulting from such purchases or production. The initial responsibility rests with all employees reviewing the material furnished by the ordering agency for a patent/copyright number or signature line. Generally, printed material will be subject to a copyright; therefore, careful review of furnished materials is mandatory. The ultimate responsibility for this review rests with the Managers, Regional Printing and Procurement Offices, or the Superintendents, Central Office Printing Procurement Department. In dealing with the ordering agency every attempt should be made to elicit acceptable alternate products since it is the PPD objective to procure all requirements competitively.

(b) *Contracting Officer responsibility.* If it is suspected or determined that a patent/copyright exists, the Contracting Officer shall be responsible for accomplishing the actions set forth below.

(1) Contact the ordering agency, through established procedures, to request all available information relative to the patent/copyright; i.e., if a waiver exists, who holds the patent/copyright, are alternate items acceptable to the agency insisting on this particular item? The ordering agency will be required to respond in writing to the Contracting Officer.

(2) Before any action commences on the procurement, the data will be compiled in report form and submitted to the Manager, PPD for review.

(c) *Manager, PPD responsibility.* After reviewing the furnished information, the Manager shall determine the appropriate action to be taken, as follows:

- (1) Approve action for noncompetitive purchase;
- (2) Approve waiver;
- (3) Approve request to purchase/produce an alternate product; or
- (4) Furnish the necessary information for the preparation of specifications.

5. Applicable Clauses. There are two clauses in GPO Contract Terms (Pub. 310.2) which are applicable to patents and copyrights.

(a) *Notice and assistance regarding the Patent and Copyright Infringement Clause.* This clause makes it mandatory on the contractor to report to the Contracting Officer each notice or claim of patent or copyright infringement based on the performance of the contract. The contractor must report promptly and in written detail. The information shall be used by the Government in defense of any patent or copyright infringement suits brought against it under the contract.

(b) *Patent Indemnity Clause.* Through this clause the contractor is obligated to reimburse the Government for damages incurred by it in the U.S. Court of Federal Claims as the result of a patent infringement suit. However, the indemnity does not apply if the infringement results from written instructions of the Contracting Officer after award of the contract making changes, or additions to, the supplies after performance or delivery by the contractor or the claimed infringement is settled without the contractor's consent, unless required by final decree of a court of competent jurisdiction. Since the Government furnishes the data (manuscript, camera copy, etc.) from which the product will be produced, there is no liability on the part of the contractor for copyright infringement under the contract. The Government assumes full liability. See I-13.4 regarding Contracting Officer responsibility for copyrighted data.

6. Processing Infringement Claims.

(a) *Policy.* Whenever a claim of infringement of privately owned rights in patented inventions or copyrighted works is asserted against GPO, all necessary steps shall be taken to investigate, and to settle administratively, deny, or otherwise dispose of such claim prior to suit against the United States.

(b) *Requirements for filing an administrative claim for patent/copyright infringement.* (1) A patent/copyright infringement claim for compensation asserted against the United States must be actually communicated to and received by GPO. Claims must be in writing and should include the following:

- (i) An allegation of infringement;
- (ii) a request for compensation, either expressed or implied;
- (iii) a citation of the patent/copyright alleged to be infringed;
- (iv) a sufficient identification of the alleged infringing contract such as jacket and/or purchase order numbers;
- (v) as an alternative to (iv) above, a certification that the claimant has made a bona fide attempt to determine the contract which is alleged to infringe, but was unable

to do so, giving reasons and stating a reasonable basis for the belief that the patent/copyright is being infringed.

(2) In addition to the information listed in (1) above, the following material and information is generally necessary in the course of processing a claim of infringement. Claimants are encouraged to furnish this information at the time of filing a claim to permit the most expeditious processing and settlement of the claim.

(i) A copy of the asserted patent/copyright and identification of all claims of the patent/copyright alleged to be infringed.

(ii) Identification of all procurements known to claimant which involve the alleged infringing contract, including the identity of the vendor or contractor and the Government procuring activity.

(iii) A detailed identification of the accused article or process, particularly where the article or process relates to a component or subcomponent of the item procured, an element by element comparison of the representative claims with the accused article or process. If available, this identification should include documentation and drawings to illustrate the accused article or process in suitable detail to enable verification of the infringement comparison.

(iv) Names and addresses of all past and present licensees under the patent/copyright and copies of all license agreements and releases involving the patent/copyright.

(v) A brief description of all litigation in which the patent/copyright has been or is now involved, and the present status thereof.

(vi) A list of all persons to whom notices of infringement have been sent, including all departments and agencies of the Government, and a statement of the ultimate disposition of each.

(vii) A description of Government employment or military service, if any, by the inventor and/or patent/copyright owner.

(viii) A list of all Government contracts under which the inventor, patent/copyright owner, or anyone in privity with him or her performed work relating to the patented/copyrighted subject matter.

(ix) Evidence of title to the patent/copyright alleged to be infringed or other right to make the claim.

(x) A copy of the Patent Office/Copyright Office file of each patent/copyright if available to claimant.

(xi) Pertinent prior art known to claimant, not contained in the Patent/Copyright Office file, particularly publications and foreign art.

In addition to the foregoing, if claimant can provide a statement that the investigation may be limited to the specifically identified accused articles or processes, or to a specific procurement, it may materially expedite determination of the claim.

(3) The Contracting Officer shall acknowledge receipt of the communications alleging infringement. If a communication alleging infringement is received which does not meet the requirements set forth above, the sender shall be advised in writing:

(i) that the claim for infringement has not been satisfactorily presented; and

(ii) of the elements considered necessary to establish a claim.

(4) A communication making a proffer of a license in which no infringement is alleged shall not be considered as a claim for infringement.

(5) All communications received by the Contracting Officer shall be forwarded to the General Counsel through the Manager, PPD. Communications shall be accompanied by all pertinent contract information.

(c) *Notification and disclosure to claimants.* When a claim is denied, the Contracting Officer shall so notify the claimant or the authorized representative and provide the claimant a reasonable rationale of the basis for denying the claim. Disclosure of information or the rationale referred to above shall be subject to applicable statutes, regulations, and directives pertaining to security, access to official records, and the rights of others.

(d) *Settlement of indemnified claims.* Settlement of claims involving payment for past infringement shall not be made without the consent of, and equitable contribution by, each indemnifying contractor involved, unless such settlement is determined to be in the best interests of the Government and is coordinated with the Department of Justice with a view to preserving any rights of the Government against the contractors involved. If consent of and equitable contribution by the contractors are obtained, the settlement need not be coordinated with the Department of Justice.

SECTION 14. BONDS

1. Use of Bonds.

(a) Generally, Contracting Officers shall not require performance bonds for other than construction contracts. However, performance bonds may be used as permitted in (d)(1) through (3) below.

(b) The contractor shall furnish all bonds before receiving a notice to proceed with the work.

(c) No bond shall be required after the contract has been awarded if it was not specifically required in the contract, except as may be determined necessary for a contract modification.

(d) Performance bonds may be required when necessary to protect the Government's interest. The following situations may warrant a performance bond:

(1) Government property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

(2) A contractor sells assets to or merges with another concern, and the Government, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

(3) Substantial progress payments are made before delivery of end items starts.

(e) When a performance bond is required, the solicitation shall specify—

(1) The requirement for the bond(s);

(2) The penal sum of each bond (expressed either as a fixed sum or percentage of the contract price); and

(3) The deadline for submitting acceptable bonds.

(f) The Government may require additional performance bond protection when a contract price is increased.

(g) The Contracting Officer must determine the contractor's responsibility even though a bond has been or can be obtained.

2. Procedure.

(a) When it is determined to require a performance bond, a provision substantially as follows shall be included in the IFB—

PERFORMANCE BOND: The successful bidder will be required to execute and return to the GPO a performance bond on Standard Form 25 in the penal sum of \$—, to insure performance of the contract in accordance with the specifications and conditions set forth herein. Such bond, with good and sufficient surety or sureties acceptable to the Government, must be provided within 2 weeks after the form has been furnished to the contractor by the GPO.

(b) Four copies of SF 25, "Performance Bond" shall be sent to the successful bidder requiring execution and return of all copies to the Contracting Officer within the specified period of time.

(c) Upon receipt of the executed bond, the Contracting Officer shall, in consultation with the Office of General Counsel and the Comptroller, Financial Management Service, review it for completeness, acceptability of the surety(ies), and legal sufficiency. If determined to be acceptable, the bond shall be forwarded to FMCE for safekeeping. RPPO's shall forward the bond direct to FMCE by certified mail, return receipt requested.

(d) The contractor shall not be permitted to proceed with work until notified by the Contracting Officer of acceptance of the performance bond.

(e) When a performance bond is not furnished within the period specified by the terms of the contract, the contract will be subject to termination for default when in the public interest.

3. Sureties on bonds.

(a) *General.* Every bond furnished in connection with the procurement of printing, binding and related services shall be supported by corporate or individual sureties, or any of the types of security authorized by I-14.3(d). IFB's may not preclude bidders from offering any of the types of surety or security authorized by this subsection, unless otherwise authorized by law or regulation.

(b) *Corporate sureties.* (1) In connection with contracts to be delivered or performed in the United States, the Commonwealth of Puerto Rico, and the Virgin Islands, any corporate surety offered for a bond furnished the Government must appear on the list contained in Treasury Department Circular 570, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies." If the penal amount of a bond exceeds a surety's underwriting limit specified in the Department of the Treasury circular, the bond will be acceptable only if the excess over the specified limit is coinsured or reinsured and the amount of such coinsurance or reinsurance does not exceed the underwriting limit of each coinsurer or reinsurer. Coinsurance or reinsurance agreements shall conform to the Department of the Treasury regulations as set forth in 31 CFR 223.10 and 223.11. Where reinsurance is contemplated, the Contracting Officer generally will require reinsurance agreements to be executed and submitted with the bonds before making a final determination on the bonds.

(2) Requests for status of corporate sureties shall be made to the Analysis and Review Staff, which will maintain Treasury Department Circular 570 for the Printing Procurement Department. Requests may be oral and shall include the penal amount of the bond.

(c) *Individual sureties.* (1) It is the responsibility of the Contracting Officer to determine the acceptability of individ-

uals proposed as sureties on bonds. At least two individual sureties must execute the bond and the net worth of each individual must be not less than the penal amount of the bond. The number and amounts of other bonds upon which a proposed individual surety is bound, and the status of the contracts in connection with which such bonds were furnished, must be considered in determining the acceptability of the individual surety. (See also the instructions on the reverse of SF 28, "Affidavit of Individual Surety.")

(2) Each individual surety must execute an SF 28. The information thus provided is helpful in determining the net worth of proposed individual sureties.

(3) In order to ascertain the continuing acceptability of individual sureties, the official executing the certificate of sufficiency on the reverse of SF 28 may be required to execute further certificates, as contemplated by instruction 5 on that form, with such frequency as the agency may deem necessary and appropriate. Further certificates indicating additional assets, or a new surety, may be required to assure protection of the Government's interest.

(d) *Options in lieu of sureties.* Any one or more of the types of security listed in this paragraph may be deposited by the contractor in lieu of furnishing corporate or individual sureties on bonds. Where any such type of security is deposited, a statement shall be incorporated in the bond form pledging such security, and the bond form shall be executed by the contractor as principal. The Contracting Officer shall immediately transmit such security to FMCE assuring that it is protected against loss and shall assure the return of such security or its equivalent when, by its terms, the obligation of the bond has ceased.

(1) *United States bonds or notes.* In accordance with the provisions of the Act of February 24, 1919, as amended (6 U.S.C. 15) and Treasury Department Circular No. 154 dated February 6, 1935 (31 CFR Part 225), any person required to furnish a bond to the Government has the option, in lieu of furnishing a surety or sureties thereon, of depositing certain United States bonds or notes in an amount equal at their par value to the penal sum of the bond, together with a duly executed power of attorney and agreement authorizing the collection or sale of such United States bonds or notes in the event of default of the principal on the bond. The Contracting Officer shall turn these securities over to the Comptroller, Financial Management Service, for safekeeping and/or deposit.

(2) *Certified or cashier's checks, bank drafts, money orders, currency, or irrevocable letters of credit.* Any person required to furnish a bond has the option, in lieu of furnishing surety or sureties thereon, of depositing a certified or cashier's check, a bank draft, a Post Office money order, currency, or an irrevocable letter of credit, in an amount equal to the penal sum of the bond. Certified or cashier's checks, bank drafts, or Post Office money orders shall be drawn to the order of the GPO.

(3) *Consent of surety.* In connection with any amendment, modification, or supplemental agreement with respect to which the waiver of notice to the surety contained in the bond form is inapplicable and which would otherwise effect the release of a surety, or in any other situation as prescribed by each agency, the Contracting Officer shall obtain the written consent thereto of the surety or sureties on the existing bond or bonds (notwithstanding the fact that there may be an additional bond supported by a new surety)

provided, that no such consent need be obtained if there is an increased or additional bond supported by the same surety or sureties.

(4) *Furnishing information to sureties.* The surety on any bond executed in connection with a Government contract, upon its written request, shall be furnished with information as to the progress of the work, payments, and the estimated percentage of completion.

SECTION 15. PROCUREMENT INTEGRITY.

1. General

(a) This section implements section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as amended by section 814 of the Fiscal Year 1990/1991 National Defense Authorization Act, Public Law 101-189, section 815 of the Fiscal Year 1991 National Defense Authorization Act, Public Law 101-510, and section 4304 of the Fiscal Year 1996 National Defense Authorization Act, Public Law 104-106 (hereinafter, the Office of Federal Procurement Policy Act, as amended, is referred to as "the Act"). Supplementation of this Instruction must be approved at a level not lower than the Director, Materials Management Service or Manager, Printing Procurement Department.

(b) Agency employees are reminded that there are other statutes and regulations that deal with the same or related prohibited conduct, for example:

(1) The offer or acceptance of a bribe or gratuity is prohibited by 18 U.S.C. 201, 5 U.S.C. 7353, and GPO Instruction 655.3A;

(2) GPO Instruction 655.3A precludes a Government employee from participating personally and substantially in any particular matter that would affect the financial interests of any person from whom the employee is seeking employment;

(3) Post-employment restrictions on the Public Printer and the Deputy Public Printer are contained in 18 U.S.C. 207, which prohibits certain activities by former Government employees, including representation of a contractor before the Government in relation to any contract or other particular matter involving specific parties on which the former employee participated personally and substantially while employed by the Government;

(4) GPO Instruction 825.12 places restrictions on the release of information related to procurements and other contractor information which must be protected under 18 U.S.C. 1905;

(5) Other laws such as the Privacy Act (5 U.S.C. 552a) and the Trade Secrets Act (18 U.S.C. 1905) may preclude release of information both before and after award (see subsection 5); and

(6) Use of nonpublic information to further an employee's private interest or that of another and engaging in a financial transaction using nonpublic information are covered by GPO Instruction 655.3A.

2. Applicability.

(a) The restrictions at subsection 4(a) and (b) apply beginning January 1, 1997, to the conduct of every Federal agency procurement using competitive procedures for the acquisition of supplies or services from non-Federal sources using appropriated funds.

(b) The requirements of subsection 4(c) apply beginning January 1, 1997, in connection with every Federal agency

procurement using competitive procedures, for a contract expected to exceed \$100,000. Such requirements do not apply after the contract has been awarded or the procurement has been canceled.

(c) The post-employment restrictions at subsection 4(d) apply to any former official of a Federal agency, for services provided or decisions made on or after January 1, 1997.

(d) Former officials of a Federal agency whose employment by a Federal agency ended before January 1, 1997, are subject to the restrictions imposed by 41 U.S.C. 423 as it existed before Public Law 104-106. Solely for the purpose of continuing those restrictions on those officials to the extent they were imposed prior to January 1, 1997, the provisions of 41 U.S.C. 423 as it existed before Public Law 104-106 apply through December 31, 1998.

3. Definitions.

"Agency ethics official" means the attorney within the Office of the General Counsel designated to serve as Ethics Officer, currently the Deputy General Counsel.

"Compensation" means wages, salaries, honoraria, commissions, professional fees, and any other form of compensation, provided directly or indirectly for services rendered. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

"Contract," for purposes of the post-employment restrictions at Section 4(d), includes both competitively awarded and non-competitively awarded contracts.

"Contractor bid or proposal information" means any of the following information submitted to a Federal agency as part of or in connection with a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Cost or pricing data as defined by section 304A(h) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b(h)).

(2) Indirect costs and direct labor rates.

(3) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(4) Information marked by the contractor as "contractor bid or proposal information" in accordance with applicable law or regulation.

(5) Information marked by the contractor as restricted data.

"Decision to award a subcontract or modification of subcontract" means a decision to designate award to a particular source.

"Federal agency" has the meaning provided such term in section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472), and includes the GPO.

"Federal agency procurement" means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds. For broad agency announcements and small business innovative research programs, each proposal received by an agency shall constitute a separate procurement for purposes of the Act.

"In excess of \$10,000,000" means:

(1) The value, or estimated value, at the time of award of the contract, including all options;

(2) The total estimated value at the time of award of all orders under an indefinite-delivery, indefinite-quantity, or requirements contract;

(3) Any multiple award schedule contract unless the Contracting Officer documents a lower estimate;

(4) The value of a delivery order, task order, or an order under a Basic Ordering Agreement;

(5) The amount paid or to be paid in settlement of a claim; or

(6) The estimated monetary value of negotiated overhead or other rates when applied to the Government portion of the applicable allocation base.

“Official” means:

(1) An officer, as defined in 5 U.S.C. 2104.

(2) An employee, as defined in 5 U.S.C. 2105.

(3) A member of the uniformed services, as defined in 5 U.S.C. 2101(3).

(4) A special Government employee, as defined in 18 U.S.C. 202.

“Participating personally and substantially in a Federal agency procurement” is defined as follows:

(1) Active and significant involvement of the individual in any of the following activities directly related to that procurement:

(i) Drafting, reviewing, or approving the specification or statement of work for the procurement.

(ii) Preparing or developing the solicitation.

(iii) Evaluating bids or proposals, or selecting a source.

(iv) Negotiating price or terms and conditions of the contract.

(v) Reviewing and approving the award of the contract.

(2) “Participating personally” means participating directly, and includes the direct and active supervision of a subordinate’s participation in the matter;

(3) “Participating substantially means that the employee’s involvement is of significance to the matter. Substantial participation requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participation may be substantial even though it is not determinative of the outcome of a particular matter. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. However, the review of procurement documents solely to determine compliance with regulatory, administrative, or budgetary procedures, does not constitute substantial participation in a procurement.

(4) Generally, an individual will not be considered to have participated personally and substantially in a procurement solely by participating in the following activities:

(i) Agency level boards, panels, or other advisory committees that review program milestones or evaluate and make recommendations regarding alternative technologies or approaches for satisfying broad agency level missions or objectives;

(ii) The performance of general, technical, engineering, or scientific effort having broad application not directly associated with a particular procurement, notwithstanding that such general, technical, engineering, or sci-

entific effort subsequently may be incorporated into a particular procurement;

(iii) Clerical functions supporting the conduct of a particular procurement; and

(iv) For procurements to be conducted under the procedures of OMB Circular A-76, participation in management studies, preparation of in-house cost estimates, preparation of “most efficient organization” analyses, and furnishing of data or technical support to be used by others in the development of performance standards, statements of work, or specifications.

“Source selection evaluation board” means any board, team, council, or other group that evaluates bids or proposals.

“Source selection information” means any of the following information which is prepared for use by a Federal agency for the purpose of evaluating a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Bid prices submitted in response to a Federal agency invitation for bids, or lists of those bid prices before bid opening.

(2) Proposed costs or prices submitted in response to a Federal agency solicitation, or lists of those proposed costs or prices.

(3) Source selection plans.

(4) Technical evaluation plans.

(5) Technical evaluations of proposals.

(6) Cost or price evaluations of proposals.

(7) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

(8) Rankings of bids, proposals, or competitors.

(9) Reports and evaluations of source selection panels, boards, or advisory councils.

(10) Other information marked as “SOURCE SELECTION INFORMATION—SEE FAR 3.104” based on a case-by-case determination by the head of the agency or designee, or the Contracting Officer, that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

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

(a) *Prohibition on disclosing procurement information (subsection 27(a) of the Act).*

(1) A person described in paragraph (a)(2) of this subsection shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates. (See subsection 5(a).

(2) Paragraph (a)(1) of this subsection applies to any person who:

(i) Is a present or former official of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a Federal agency procurement; and

(ii) By virtue of that office, employment, or relationship, has or had access to contractor bid or proposal information or source selection information.

(b) *Prohibition on obtaining procurement information (subsection 27(b) of the Act).* A person shall not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(c) *Actions required of agency officials when contacted by offerors regarding non-Federal employment (subsection 27(c) of the Act).* If an agency official who is participating personally and substantially in a Federal agency procurement for a contract in excess of \$100,000 contacts or is contacted by a person who is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official shall—

(1) Promptly report the contact in writing to the official's supervisor and to the designated agency ethics official (or designee) of the agency in which the official is employed; and

(2) (i) Reject the possibility of non-Federal employment; or

(ii) Disqualify himself or herself from further personal and substantial participation in that Federal agency procurement (see subsection 6) until such time as the agency has authorized the official to resume participation in such procurement, in accordance with applicable agency regulations, on the grounds that—

(A) The person is no longer a bidder or offeror in that Federal agency procurement; or

(B) All discussions with the bidder or offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(d) *Prohibition on former official's acceptance of compensation from a contractor (subsection 27(d) of the Act)*

(1) A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within a period of 1 year after such former official—

(i) Served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring Contracting Officer, the source selection authority, a member of a source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10,000,000;

(ii) Served as the program manager, deputy program manager, or administrative Contracting Officer for a contract in excess of \$10,000,000 awarded to that contractor; or

(iii) Personally made for the Federal agency—

(A) A decision to award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor;

(B) A decision to establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10,000,000;

(C) A decision to approve issuance of a contract payment or payments in excess of \$10,000,000 to that contractor; or

(D) A decision to pay or settle a claim in excess of \$10,000,000 with that contractor.

(2) Nothing in paragraph (d)(1) of this subsection may be construed to prohibit a former official of a Federal agen-

cy from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in paragraph (d)(1) of this subsection.

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

(a) Except as specifically provided for in this subsection, no person or other entity may disclose contractor bid or proposal information or source selection information to any person other than a person authorized, in accordance with applicable agency regulations or procedures, by the head of the agency or designee, or the Contracting Officer, to receive such information.

(b) Contractor bid or proposal information and source selection information shall be protected from unauthorized disclosure in accordance with applicable law, and agency regulations.

(c) In determining whether particular information is source selection information, see the definition in subsection 3 and consult with agency officials as necessary. Individuals responsible for preparing material that may be source selection information under paragraph (10) of the definition shall mark the cover page and each page that the individual believes contains source selection information with the legend "SOURCE SELECTION INFORMATION—SEE FAR 3.104." Although the information in paragraphs (1) through (9) of the definition in FAR 3.104-3 is considered to be source selection information whether or not marked, all reasonable efforts shall be made to mark such material with the same legend.

(d) Except as provided in paragraph (d)(4) of this subsection, if the Contracting Officer believes that information marked as proprietary is not proprietary, information otherwise marked as contractor bid or proposal information is not contractor bid or proposal information, or information marked in accordance with GPO Instruction 825.12 is inappropriately marked, the contractor that has affixed the marking shall be notified in writing and given an opportunity to justify the marking.

(1) If the contractor agrees that the marking is not justified, or does not respond within the time specified in the notice, the Contracting Officer may remove the marking and the information may be released.

(2) If, after reviewing any justification submitted by the contractor, the Contracting Officer determines that the marking is not justified, the Contracting Officer shall notify the contractor in writing.

(3) Information marked by the contractor as proprietary, otherwise marked as contractor bid or proposal information, or marked in accordance with GPO Instruction 825.12, shall not be released until:

(i) The review of the contractor's justification has been completed; or

(ii) The period specified for the contractor's response has elapsed, whichever is earlier. Thereafter, the Contracting Officer may release the information.

(4) With respect to technical data that are marked proprietary by a contractor, the Contracting Officer shall generally follow the procedures in GPO Instruction 825.12.

(e) Nothing in this section restricts or prohibits—

(1) A contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(2) The disclosure or receipt of information, not otherwise protected, relating to a Federal agency procurement after it has been canceled by the Federal agency, before contract award, unless the Federal agency plans to resume the procurement;

(3) Individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur; or

(4) The Government's use of technical data in a manner consistent with the Government's rights in the data.

(f) Nothing in this subsection shall be construed to authorize—

(1) The withholding of any information pursuant to a proper request from the Congress, any committee or subcommittee thereof, a Federal agency, the Comptroller General, or an Inspector General of a Federal agency, except as otherwise authorized by law or regulation. Any such release which contains contractor bid or proposal information or source selection information shall clearly notify the recipient that the information or portions thereof are contractor bid or proposal information or source selection information related to the conduct of a Federal agency procurement, the disclosure of which is restricted by section 27 of the Act;

(2) The withholding of information from, or restricting its receipt by, the Comptroller General of the United States in the course of a protest against the award or proposed award of a Federal agency procurement contract;

(3) The release of information after award of a contract or cancellation of a procurement if such information is contractor bid or proposal information or source selection information which pertains to another procurement; or

(4) The disclosure, solicitation, or receipt of bid or proposal information or source selection information after award where such disclosure, solicitation, or receipt is prohibited by law. See subsection 1(b)(5).

6. Disqualification.

(a) *Contacts through agents.* Disqualification pursuant to subsection 4(c)(2) may be required even where contacts are through an agent or other intermediary of the agency official or an agent or other intermediary of a bidder or offeror.

(b) *Disqualification notice.* In addition to submitting the contact report required by subsection 4(c)(1), an agency official who must disqualify himself or herself pursuant to subsection 4(c)(2)(ii) shall promptly submit to the head of the contracting activity (HCA), or designee, a written notice of disqualification from further participation in the procurement. Concurrent copies of the notice shall be submitted to the Contracting Officer, the source selection authority if the Contracting Officer is not the source selection authority, and the agency official's immediate supervisor. As a minimum, the notice shall:

(1) Identify the procurement;

(2) Describe the nature of the agency official's participation in the procurement and specify the approximate dates or time period of participation; and

(3) Identify the bidder or offeror and describe its interest in the procurement.

(c) *Resumption of participation in a procurement.*

(1) The individual shall remain disqualified until such time as the agency has authorized the official to resume participation in the procurement in accordance with subsection 4(c)(2)(ii).

(2) Subsequent to a period of disqualification, if an agency wishes to reinstate the agency official to participation in the procurement, the HCA or designee may authorize immediate reinstatement or may authorize reinstatement following whatever additional period of disqualification the HCA determines is necessary to ensure the integrity of the procurement process. In determining that any additional period of disqualification is necessary, the HCA or designee shall consider any factors that might give rise to an appearance that the agency official acted without complete impartiality with respect to issues involved in the procurement. The HCA or designee shall consult with the agency ethics official in making a determination to reinstate an official. Decisions to reinstate an employee should be in writing. It is within the discretion of the HCA, or designee, to determine that the agency official shall not be reinstated to participation in the procurement.

(3) An employee must comply with the provisions of GPO Instruction 655.3A regarding any resumed participation in a procurement matter. An employee may not be reinstated to participate in a procurement matter affecting the financial interest of someone with whom he or she is seeking employment, unless he or she receives a waiver pursuant to GPO Instruction 655.3A or an authorization in accordance with the requirements of GPO Instruction 655.3A, as appropriate.

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

(a) An official or former official of a Federal agency who does not know whether he or she is or would be precluded by subsection 27(d) of the Act (see subsection 4(d)) from accepting compensation from a particular contractor may request advice from the appropriate agency ethics official prior to accepting such compensation.

(b) The request for an advisory opinion shall be submitted in writing, shall be dated and signed, and shall include all information reasonably available to the official or former official that is relevant to the inquiry. As a minimum, the request shall include:

(1) Information about the procurement(s), or decision(s) on matters under subsection 4(d)(1)(ii), involving the particular contractor, in which the individual was or is involved, including contract or solicitation numbers, dates of solicitation or award, a description of the supplies or services procured or to be procured, and contract amount;

(2) Information about the individual's participation in the procurement or decision, including the dates or time periods of that participation, and the nature of the individual's duties, responsibilities, or actions; and

(3) Information about the contractor, including a description of the products or services produced by the division or affiliate of the contractor from whom the individual proposes to accept compensation.

(c) Within 30 days after the date a request containing complete information is received, or as soon thereafter as practicable, the agency ethics official shall issue an opinion as to whether the proposed conduct is proper or would violate subsection 27(d) of the Act.

(d) (1) Where complete information is not included in the request, the agency ethics official may ask the requester to provide any information reasonably available to the requester. Additional information may also be requested from other persons, including the source selection authority, the Contracting Officer, or the requester's immediate supervisor.

(2) In issuing an opinion, the agency ethics official may rely upon the accuracy of information furnished by the requester or other agency sources, unless he or she has reason to believe that the information is fraudulent, misleading, or otherwise incorrect.

(3) If the requester is advised in a written opinion by the agency ethics official that the requester may accept compensation from a particular contractor, and accepts such compensation in good faith reliance on that advisory opinion, then neither the requester nor the contractor shall be found to have knowingly violated subsection 27(d) of the Act. If the requester or the contractor has actual knowledge or reason to believe that the opinion is based upon fraudulent, misleading, or otherwise incorrect information, their reliance upon the opinion will not be deemed to be in good faith.

8. Calculating the period of compensation prohibition.

The 1-year prohibition on accepting compensation (see subsection 4(d)(1)) begins to run as provided in this subsection:

(a) If the former official was serving in one of the positions specified in subsection 4(d)(1)(i) on the date of the selection of the contractor, but not on the date of the award of the contract, the prohibition begins on the date of the selection of the contractor.

(b) If the former official was serving in one of the positions specified in subsection 4(d)(1)(i) on the date of the award of the contract (whether or not they were serving on the date of the selection of the contractor), the prohibition begins on the date of the award of the contract.

(c) If the former official was serving in one of the positions specified in Section 4(d)(1)(ii), the prohibition begins on the last date the individual served in that position.

(d) If the former official personally made one of the decisions specified in subsection 4(d)(1)(iii), the prohibition begins on the date the decision was made.

9. Contract clauses.

(a) The Contracting Officer shall insert the clause at subsection 12, Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity, in solicitations and contracts with a value exceeding \$100,000.

(b) The Contracting Officer shall insert the clause at subsection 13, Price or Fee Adjustment for Illegal or Improper Activity, in solicitations and contracts with a value exceeding \$100,000.

10. Violations or possible violations.

(a) If the Contracting Officer receives or obtains information of a violation or a possible violation of subsections 27 (a), (b), (c), or (d) of the Act (see subsection 4), the Contracting Officer shall determine whether the reported violation or possible violation has any impact on the pending award or selection of the source therefor.

(1) If the Contracting Officer concludes that there is no impact on the procurement, the Contracting Officer shall forward the information concerning the violation or possible violation, accompanied by appropriate documentation supporting that conclusion, to an individual designated in accordance with agency procedures. With the concurrence of that individual, the Contracting Officer shall, without further approval, proceed with the procurement.

(2) If the individual reviewing the Contracting Officer's conclusion does not agree with that conclusion, the individual shall advise the Contracting Officer to withhold award and shall promptly forward the information and documentation to the HCA or designee.

(3) If the Contracting Officer concludes that the violation or possible violation impacts the procurement, the Contracting Officer shall promptly forward the information to the HCA or designee.

(b) The HCA or designee receiving any information describing an actual or possible violation of subsections 27 (a), (b), (c), or (d) of the Act, shall review all information available and take appropriate action in accordance with agency procedures, such as—

(1) Advising the Contracting Officer to continue with the procurement;

(2) Causing an investigation to be conducted;

(3) Referring the information disclosed to appropriate criminal investigative agencies;

(4) Concluding that a violation occurred; or

(5) Recommending an agency head determination that the contractor, or someone acting for the contractor, has engaged in conduct constituting an offense punishable under subsection 27(e) of the Act, for the purpose of voiding or rescinding the contract.

(c) Before concluding that a bidder, offeror, contractor, or person has violated the Act, the HCA or designee may request information from appropriate parties regarding the violation or possible violation when considered in the best interests of the Government.

(d) If the HCA or designee concludes that the prohibitions of section 27 of the Act have been violated, the HCA or designee may direct the Contracting Officer to—

(1) If a contract has not been awarded—

(i) Cancel the procurement;

(ii) Disqualify an offeror; or

(iii) Take any other appropriate actions in the interests of the Government.

(2) If a contract has been awarded:

(i) Effect appropriate contractual remedies, including profit recapture as provided for in the clause at subsection 13, Price or Fee Adjustment for Illegal or Improper Activity, or, if the contract has been rescinded under paragraph (d)(2)(ii) of this subsection, recovery of the amount expended under the contract;

(ii) Void or rescind the contract with respect to which—

(A) The contractor or someone acting for the contractor has been convicted for an offense where the conduct constitutes a violation of subsections 27 (a) or (b) of the Act for the purpose of either:

(1) Exchanging the information covered by such subsections for anything of value; or

(2) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(B) The head of the agency, or designee, has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act; or

(iii) Take any other appropriate actions in the best interests of the Government.

(3) Refer the matter to the agency suspension and debarment official.

(e) The HCA or designee shall recommend or direct an administrative or contractual remedy commensurate with the severity and effect of the violation.

(f) If the HCA or designee receiving information concerning a violation or possible violation determines that award is justified by urgent and compelling circumstances, or is otherwise in the interests of the Government, the HCA may authorize the Contracting Officer to award the contract or execute the contract modification after notification to the head of the agency in accordance with agency procedures.

(g) The HCA may delegate his or her authority under this subsection to an individual at least one organizational level above the Contracting Officer.

11. Criminal and civil penalties, and further administrative remedies.

Criminal and civil penalties, and administrative remedies, may apply to conduct which violates the Act (see subsection 4). Conduct which violates the Act may also form the basis for bid protests. See subsection 10 for administrative remedies relating to contracts.

(a) An official who knowingly fails to comply with the requirements of subsection 4 shall be subject to the penalties and administrative action set forth in subsection 27(e) of the Act.

(b) A bidder or offeror who engages in employment discussion with an official subject to the restrictions of Section 4, knowing that the official has not complied with Section 5(c)(1), shall be subject to the criminal, civil or administrative penalties set forth in subsection 27(e) of the Act.

(c) An official who refuses to terminate employment discussions (see subsection 6) may be subject to agency administrative actions under GPO Instruction 655.3A if the official's disqualification from participation in a particular procurement interferes substantially with the individual's ability to perform assigned duties.

12. Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity.

As prescribed in subsection 9(a) insert the following clause in solicitations and contracts:

CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997).

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the 1996 National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may—

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which—

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27 (a) or (b) of the Act for the purpose of either—

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsections 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

13. Price or Fee Adjustment for Illegal or Improper Activity.

As prescribed in subsection 9(b), insert the following clause:

PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997).

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph b of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27 (a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be—

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;

(3) For cost-plus-award-fee contracts—

(i) The base fee established in the contract at the time of contract award; or

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may—

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

CHAPTER II. PROCUREMENT REPORTING

SECTION 1. GENERAL

The purpose of reporting is to insure adequate control of procurement practices. All reports shall be accurate and timely. The following sections outline the reports required.

SECTION 2. REGIONAL OFFICE WORKLOAD REPORTS

1. Requirement. A monthly report shall be made by the Regional Offices to the appropriate Superintendent, PPR, on the number of jobs received and placed during a report period.

2. Report Form. The information required shall be provided using GPO Form 912. The report may be hand-scribed and shall be made in duplicate with a copy retained for office files. The report shall be forwarded to the appropriate Superintendent, PPR, within 2 workdays following the end of the report period.

SECTION 3. REPORTING FOR THE MASTER PROGRAM LIST

1. Requirement. Regional offices are required to provide a listing of all programs handled in their offices, in order to update the master program list maintained in the Central Office. This information shall be provided by October 15th each year in the format shown in exhibit II-1.

2. Procedure. In completing the form, all programs shall be listed numerically and spaces skipped for missing numbers. For programs containing more than one requisition, e.g., general usage contracts, program numbers shall be listed once with the word "various" placed in the columns headed "Requisition No." and "Jacket No." The original shall be retained by each RPP0; 3 copies shall be submitted to PPR.

CHAPTER III. CONTRACTOR LABOR RELATIONS

SECTION 1. GENERAL

1. Policy.

(a) It is GPO policy to maintain and encourage the best possible relations with industry and labor in order that printing requirements may be obtained without delay and at a reasonable cost.

(b) This is not to imply that GPO will become involved in a contractor's labor problems. A position shall not be taken on the merits of a dispute between private management and labor, nor shall conciliation, mediation, or arbitration actions be undertaken.

2. Contract Administration.

(a) Labor disputes may give rise to work stoppages which cause delays in the timely performance of GPO contracts. The Contracting Officer should impress on contractors that they will be held accountable for delays that are reasonably avoidable. It should be emphasized that the standard clauses dealing with default, excusable delays, etc., do not relieve contractors for delays that are within their control, or their subcontractor's control, such as may be the case with delays precipitated by an unfair labor practice of a contractor.

(b) All printing procurement offices shall cooperate, and encourage contractors to cooperate, with Federal and state agencies responsible for enforcing labor requirements to include health, safety, maximum hours and minimum wages, child and convict labor, and equal pay for women.

SECTION 2. CONVICT LABOR

1. General. The Act of February 23, 1887 (18 U.S.C. 436), prohibits the employment of convict labor in contracts entered into by any Government department or agency.

2. Requirement. In accordance with the policy set forth in the Act, all contracts shall contain a "Convict Labor" clause. This clause provides that the contractor agrees not to employ any person undergoing sentence of imprisonment which has been imposed by any Federal court or court of a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands. Reference the Convict Labor clause in GPO Contract Terms (Pub. 310.2) for contents of the clause.

3. Applicability.

(a) The requirement does not prohibit the employment of persons who:

- (1) are Federal prisoners authorized to work at paid employment;
- (2) are on parole or probation; or
- (3) have been pardoned.

(b) The requirement does not apply to a contract—

(1) subject to the provisions of the Walsh-Healey Act which contains its own provisions relating to the use of convict labor;

(2) for the purchase of supplies and services from Federal Prison Industries, Inc.; or

(3) for the purchase of finished supplies manufactured in a state prison and which could be secured in the open market.

SECTION 3. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (OTHER THAN CONSTRUCTION CONTRACTS)

1. Requirements of the Act.

(a) The Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–334) provides that wages for every laborer and mechanic be computed on the basis of a standard workweek of 40 hours. Work in excess of the standard hours is permissible provided the employee is compensated at the rate of time and one-half the regular wage in excess of the standard hours.

(b) The contractor is also liable for any wages it has failed to pay and for additional liquidated damages in the amount of \$10 per day per employee who has not been paid the required overtime. These amounts may be withheld from any payments due the contractor from the Government.

(c) See the Contract Work Hours and Safety Standards Act clause in GPO Contract Terms (Pub. 310.2) for contents of the clause.

2. Applicability. The Act applies to all types of contracts, which involve the use of mechanics or laborers, including apprentices, trainees, watchmen, and guards, except:

(a) Contracts to be performed in foreign countries or territories of the United States except the District of Columbia, Puerto Rico, Virgin Islands, Outer Continental Shelf Lands, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, and Johnson Island;

(b) Contracts for the sale of supplies in connection with which the use of laborers is merely incidental;

(c) Contracts for materials usually bought in the open market;

(d) Contracts subject to the provisions of the Walsh-Healey Act; and

(e) Contracts of \$2,500 or less.

SECTION 4. WALSH-HEALEY PUBLIC CONTRACTS ACT

1. Statutory requirements.

Except for the exemptions at subsection 3, all contracts subject to the Walsh-Healey Public Contracts Act (41 U.S.C. 35–45) (Act) and entered into by any executive department, independent establishment, or other agency or instrumentality

of the United States, or by the District of Columbia, or by any corporation (all the stock of which is beneficially owned by the United States) for the manufacture or furnishing of materials, supplies, articles, and equipment (referred to in this section as supplies) in any amount exceeding \$10,000, shall include or incorporate by reference the stipulations required by the Act pertaining to such matters as minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions. See the clause “Walsh-Healey Public Contracts Act” in GPO Contract Terms (Pub. 310.2).

2. Applicability.

The requirements in subsection 1 apply to contracts (including for this purpose, indefinite-delivery contracts, basic ordering agreements, and blanket purchase agreements) for the manufacture or furnishing of supplies that are to be performed within the United States, Puerto Rico, or the Virgin Islands, and which exceed or may exceed \$10,000, unless exempted under subsection 3.

3. Exemptions.

(a) *Statutory exemptions.* Contracts for acquisition of the following supplies are exempt from the Act: Any item in those situations where the Contracting Officer is authorized by the express language of a statute to purchase “in the open market” generally or where a specific purchase is made under conditions where immediate delivery is required by the public exigency.

(b) *Regulatory exemptions.* (1) Contracts for the following acquisitions are fully exempt from the Act (see 41 CFR 50-201.603):

(i) Supplies manufactured outside the United States, Puerto Rico, or the Virgin Islands.

(ii) Purchases against the account of a defaulting contractor where the stipulations of the Act were not included in the defaulted contract.

(iii) Newspapers, magazines, or periodicals, contracted for with sales agents or publisher representatives, which are to be delivered by the publishers thereof.

(c)(1) Upon the request of the Public Printer, the Secretary of Labor may exempt specific contracts or classes of contracts from the inclusion or application of one or more of the Act’s stipulations; provided, that the request includes a finding by the Public Printer stating the reasons why the conduct of Government business will be seriously impaired unless the exemption is granted.

(2) Those requests for exemption that relate solely to safety and health standards shall be transmitted to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, DC 20210. All other requests shall be transmitted to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.

4. Rulings and interpretations of the Act.

As authorized by the Act, the Secretary of Labor has issued rulings and interpretations concerning the administration of the Act (see 41 CFR 50-206). The substance of certain rulings and interpretations is as follows:

(a) If a contract for \$10,000 or less is subsequently modified to exceed \$10,000, the contract becomes subject to the Act for work performed after the date of the modification.

(b) If a contract for more than \$10,000 is subsequently modified by mutual agreement to \$10,000 or less, the contract

is not subject to the Act for work performed after the date of the modification.

(c) If a contract awarded to a prime contractor contains a provision whereby the prime contractor is made an agent of the Government, the prime contractor is required to include the stipulations of the Act in contracts in excess of \$10,000 awarded for and on behalf of the Government for supplies that are to be used in the construction and equipment of Government facilities.

(d) If a contract subject to the Act is awarded to a contractor operating Government-owned facilities, the stipulations of the Act affect the employees of that contractor the same as employees of contractors operating privately owned facilities.

(e) Indefinite-delivery contracts, including basic ordering agreements and blanket purchase agreements, are subject to the Act unless it can be determined in advance that the aggregate amount of all orders estimated to be placed thereunder for 1 year after the effective date of the agreement will not exceed \$10,000. A determination shall be made annually thereafter if the contract or agreement is extended, and the contract or agreement modified if necessary.

5. Procedures.

(a) *Award.* When a contract subject to the Act is awarded, the Contracting Officer, in accordance with regulations or instructions issued by the Secretary of Labor, shall furnish to the contractor DOL publication WH-1313, Notice to Employees Working on Government Contracts.

(b) *Breach of stipulation.* In the event of a violation of a stipulation required under the Act, the Contracting Officer shall notify the appropriate regional office of the DOL, Wage and Hour Division (see subsection 6), and furnish any information available.

6. Regional jurisdictions of the Department of Labor, Wage and Hour Division.

Geographic jurisdictions of the following regional offices of the DOL, Wage and Hour Division, are shown here, and are to be contacted by Contracting Officers in all situations required by this section, unless otherwise specified.

(a) The Region I office located in Boston, MA, has jurisdiction for Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut.

(b) The Region II office located in New York, NY, has jurisdiction for New York, New Jersey, Puerto Rico, and the Virgin Islands.

(c) The Region III office located in Philadelphia, PA, has jurisdiction for Pennsylvania, Maryland, Delaware, Virginia, West Virginia, and the District of Columbia.

(d) The Region IV office located in Atlanta, GA, has jurisdiction for North Carolina, South Carolina, Kentucky, Tennessee, Mississippi, Alabama, Georgia, and Florida.

(e) The Region V office located in Chicago, IL, has jurisdiction for Ohio, Indiana, Michigan, Illinois, Wisconsin, and Minnesota.

(f) The Region VI office located in Dallas, TX, has jurisdiction for Louisiana, Arkansas, Oklahoma, Texas, and New Mexico.

(g) The Region VII office located in Kansas City, MO, has jurisdiction for Missouri, Iowa, Nebraska, and Kansas.

(h) The Region VIII office located in Denver, CO, has jurisdiction for North Dakota, South Dakota, Montana, Wyoming, Colorado, and Utah.

(i) The Region IX office located in San Francisco, CA, has jurisdiction for Arizona, California, Nevada, Hawaii, and Guam.

(j) The Region X office located in Seattle, WA, has jurisdiction for Washington, Oregon, Idaho, and Alaska.

SECTION 5. SERVICE CONTRACT ACT OF 1965

1. Basic Requirements. The Service Contract Act of 1965 (41 U.S.C. §§ 351, et seq.) requires all contractors holding a Federal service contract to pay their employees engaged in such work not less than the minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. §§ 201–219) as amended. If a service contract is in excess of \$2,500, the contract shall specify the fringe benefits, working conditions and minimum wages that service employees will receive in accordance with determinations made by the Secretary of Labor. The clause set forth in XVI-4.1 shall be included in all service contracts.

2. Application. The Service Contract Act applies to contracts which have as their principal purpose the furnishing of services rather than products. Infrequently, the Printing Procurement Department will have a requirement which is subject to the Act. These requirements typically involve either data capture or mailing and distribution services. However, the de-

termination of whether a particular requirement is or is not subject to the Act is often difficult and involves the interpretation of regulations promulgated by the U.S. Department of Labor.

3. Procedure.

(a) When the Contracting Officer has reason to believe that a requirement will be subject to the Act, he or she shall consult with the Analysis and Review Staff and the Office of General Counsel as to its application. If the Contracting Officer's judgment is affirmed, the proposed procurement shall be referred to the CRB for review.

(b) When it is determined that the requirement is subject to the Act, a Standard Form 98, "Notice of Intention to make a Service Contract and Response to Notice," shall be filed with the Office of Special Wage Standards, Employment Standards Administration, Department of Labor, 30 days prior to any solicitation or commencement of negotiations. When it is not possible to comply with this requirement, the Standard Form 98 shall be filed with the Department of Labor as soon as possible. Award of a contract shall not be delayed awaiting receipt of a wage and benefit determination from the Department of Labor. If the Department of Labor subsequently issues such a determination, the contract shall be modified accordingly.

CHAPTER IV. SOCIOECONOMIC PROGRAMS

SECTION 1. SET-ASIDE PROGRAM FOR SMALL DISADVANTAGED BUSINESSES

Printing Procurement Department Instruction 347.1C, Set-Aside Program for Small Disadvantaged Businesses, is incorporated by reference with the same effect as if appearing in full text.

SECTION 2. ACQUISITION FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

1. Scope of Section. This section prescribes the policies and procedures for implementing the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c), referred to in this section as "the Act," and the rules of the Committee for Purchase from People Who Are Blind or Severely Disabled (41 CFR part 51).

2. Definitions.

"Allocation" means an action taken by a central nonprofit agency to designate the workshops that will produce definite quantities of supplies or perform specific services upon receipt of orders from ordering offices.

"Central nonprofit agency" means the National Industries for the Blind (NIB), which has been designated to represent workshops serving blind individuals; or the National Industries for the Severely Handicapped (NISH), which has been designated to represent workshops serving severely disabled individuals other than blind.

"Committee" means the Committee for Purchase From People Who Are Blind or Severely Disabled.

"Government" or "entity of the Government" means any entity of the legislative or judicial branch, any executive agency, military department, Government corporation, or independent establishment, the U.S. Postal Service, or any nonappropriated-fund instrumentality of the Armed Forces.

"Ordering office" means any activity in an entity of the Government that places orders for the purchase of supplies or services.

"Procurement List" means a list of supplies (including military resale commodities) and services that the Committee has determined are suitable for purchase by the Government under the Javits-Wagner-O'Day Act.

"Workshop for the blind" or "workshop for the other severely handicapped" (referred to jointly as workshops) means a qualified nonprofit agency for the blind or for the other severely disabled approved by the Committee to produce a commodity for or provide a service to the Government under the Act.

3. General. The Committee is an independent Government activity with members appointed by the President of the United States. It is responsible for—

(a) Determining those supplies and services to be purchased by all entities of the Government from workshops for the blind and other severely disabled;

(b) Establishing prices for the supplies and services; and
(c) Establishing rules and regulations to implement the Act.

4. Procurement List. The Committee publishes a Procurement List of all the supplies and services required to be purchased from the workshops. The List is available through the A.& R. Staff.

5. Purchase Priorities. The Act requires the Government to purchase supplies or services on the Procurement List, at prices established by the Committee, from qualified workshops if they are available within the period required.

6. Procedures.

(a) *General.* Ordering offices shall obtain supplies and services on the Procurement List from the central nonprofit agency or its designated workshops.

(b) *Compliance with Orders.* (1) When a workshop fails to perform under the terms of an order, the ordering office shall make every effort to resolve the noncompliance with the workshop involved and to negotiate an adjustment before taking action to cancel the order. If the problem cannot be resolved with the workshop, the ordering office shall refer the matter for resolution first to the central nonprofit agency and then, if necessary, to the Committee.

(2) When, after complying with the preceding paragraph, the ordering office determines that it must cancel an order, it shall notify the central nonprofit agency and, if practical, request a reallocation of the order. When the central nonprofit agency cannot reallocate the order, it shall grant a purchase exception permitting use of commercial sources, subject to approval by the Committee when the value of the purchase exception is \$2,500 or more.

7. Purchase Exceptions.

(a) Ordering offices may acquire supplies or services listed on the Procurement List from commercial sources only if the acquisition is specifically authorized in a purchase exception granted by the designated nonprofit agency.

(b) The central nonprofit agency shall promptly grant purchase exceptions when—

(1) The workshops cannot provide the supplies or services within the time required, and commercial sources can provide them earlier in the quantities required; or

(2) The quantity required cannot be provided economically by the workshops.

(c) The central nonprofit agency granting the exception shall specify the quantity and delivery or performance period covered by the exception.

(d) When a purchase exception is granted, the Contracting Officer shall—

(1) Initiate purchase action within 15 days following the date of the exception or any extension granted by the central nonprofit agency; and

(2) Provide a copy of the solicitation to the central nonprofit agency when it is issued.

(e) The Committee may also grant a purchase exception under any circumstances it considers appropriate.

8. Prices.

(a) The prices on the Procurement List are fair market prices established by the Committee.

(b) Prices for supplies are normally adjusted semiannually. Prices for services are normally adjusted annually.

(c) The Committee may request PPD, through the A.& R. Staff, to assist it in establishing or revising the fair market price. The Committee has the authority to establish prices without prior coordination with a responsible contracting office.

(d) Price changes shall normally apply to all orders received by the workshop on or after the effective date of the change. In special cases, after considering the views of the ordering office, the Committee may make price changes applicable to orders received by the workshop prior to the effective date of the change.

(e) Ordering offices may make recommendations to the Committee at any time for price revisions for supplies and services on the Procurement List.

9. Quality of Merchandise. Supplies and services provided by workshops shall comply with the applicable Government specifications and standards cited in the order. When no specifications or standards exist—

(a) Supplies shall be of the highest quality and equal to similar items available on the commercial market; and

(b) Services shall conform to good commercial practices.

10. Quality Complaints.

(a) When the quality of supplies received from workshops is unsatisfactory, address complaints to the workshop involved, with a copy to the appropriate central nonprofit agency.

(b) When quality problems cannot be resolved by the workshop and the ordering office, the ordering office shall first contact the central nonprofit agency and then, if necessary, the Committee for resolution.

11. Specification Changes.

(a) The ordering office shall notify the workshop and appropriate central nonprofit agency of any change in specifications or descriptions. In the absence of such written notification, the workshop shall produce the supplies or provide the services under the specification or description cited in the order.

(b) The ordering office shall provide 60-days advance notification to the Committee and the central nonprofit agency on actions that affect supplies on the Procurement List and shall permit them to comment before the action is taken, particularly when it involves—

(1) Changes that require new national stock numbers or item designations;

(2) Deleting items from the supply system;

(3) Standardization; or

(4) Developing new items to replace items on the Procurement List.

(c) When, in order to meet its emergency needs, an ordering office is unable to give the 60-day notification required by paragraph (b), the contracting office shall, at the time it places the order or change notice, inform the workshop and the central nonprofit agency in writing of the reasons that it cannot meet the 60-day notification requirement.

12. Optional Acquisition of Supplies and Services.

(a) Ordering offices may acquire supplies and services not included on the Procurement List from a workshop that is the low responsive, responsible offeror under a solicitation issued by other authorized acquisition methods.

(b) Ordering offices should forward solicitations to workshops that may be qualified to provide the supplies required.

13. Communications with the Central Nonprofit Agencies and the Committee. Any matter requiring referral to the Committee or central nonprofit agencies shall be coordinated with the A.& R. Staff.

14. Replacement Commodities. When a commodity on the Procurement List is replaced by another commodity which has not been previously acquired, and a qualified workshop can produce the replacement commodity in accordance with the Government's quality standards and delivery schedules and at a fair market price, the replacement commodity is automatically on the Procurement List and shall be acquired from the workshop designated by the Committee. The commodity being replaced shall continue to be included on the Procurement List until there is no longer a requirement for that commodity.

SECTION 3. RECOVERED MATERIALS

Procurement Instruction 312.1B, Use of Recovered Materials, dated July 22, 1996, is incorporated by reference with the same effect as if appearing in full text.

CHAPTER V. TRANSPORTATION AND TRAFFIC MANAGEMENT

SECTION 1. DEFINITIONS

1. F.O.B. Contractor's City. The term "f.o.b. contractor's city" means (a) on board the indicated type of conveyance of carrier, free of expense to the Government, at a named point in the commercial zone in which the contractor's plant is located and from which the shipment will be made, (b) delivered by the contractor, free of expense to the Government, to any Government-designated point located within the same commercial zone (as prescribed by the Interstate Commerce Commission) as the contractor indicated as the shipping point in its offer. All shipments made outside the designated shipping point will be made at Government expense.

2. F.O.B. Destination. The term "f.o.b. destination" means on board the conveyance of carrier, free of expense to the Government, at a specified delivery point where the consignee's facility is located, including delivery to specific rooms when so specified. The term "facility" means plant, warehouse, store, lot, or other location to which shipment can be made. All transportation expenses incurred in the delivery of the finished product shall be borne by the contractor.

SECTION 2. LIABILITY

1. F.O.B. Contractor's City. The contractor shall be liable for insuring safe delivery of all items delivered within the contractor's commercial zone. The Government shall be liable for the safe delivery of all other shipments, provided that the contractor has met all requirements of the contract relative to packing and shipping.

2. F.O.B. Destination. The contractor shall be liable for insuring safe delivery of all items delivered to the point(s) of destination specified in the contract.

SECTION 3. DETERMINATION OF F.O.B. STATUS

1. General. Contracts for which definite delivery information and instructions are available shall be designated as "f.o.b. destination" except:

(a) When the requisition is accompanied by Government bills of lading (GBL) or whenever the requisition indicates that GBL's will be furnished by the ordering agency.

(b) Orders for which the distribution list is not available at the time the specifications are written.

(c) Orders that are classified, sensitive, or require exclusive use of a vehicle.

(d) All bulk shipments for the military, regardless of weight, that ship to overseas or foreign destinations, and a foreign or overseas consignment, for any agency, that exceeds 20,000 pounds to a single destination.

(e) Shipments that exceed 20,000 pounds to a single destination, unless, in the opinion of the Contracting Officer:

(1) evaluation of f.o.b. contractor's city offers would result in delay of award; or

(2) there is inadequate time to issue GBL's for an at-destination procurement.

(f) GBL's will be furnished for any shipments designated to ship f.o.b. contractor city, except for shipments to deliver to a point within the same commercial zone as the contractor indicated as the shipping point in its offer. If, however, the Contracting Officer deems it advisable and desirable to order certain or all shipments made by parcel post or small parcel carrier, and the contractor is so directed, all costs thereof must be prepaid by the contractor. The contractor shall be reimbursed for such costs upon presentation with the voucher of parcel post or small-parcel carrier receipts, properly filled out, stamped or receipted by the Postal Service or small-parcel carrier. Refer to the Payments on Purchase Order clause in GPO Contract Terms (Pub. 310.2). The method of shipping will be furnished with each order. Instructions for the preparation and distribution of GBL's will be furnished with the GBL's. The contractor's contractual obligations will not be considered satisfied until it has complied with these instructions.

SECTION 4. CHANGE IN F.O.B. STATUS

1. General. If, after contract award, the Contracting Officer makes a change in the contractor's f.o.b. status, the procedures in this section shall be followed.

2. Change From F.O.B. Contractor's City to F.O.B. Destination. Should a contract which was awarded with delivery terms of f.o.b. contractor's city be changed to f.o.b. destination, the Transportation Management Section, Contract Management Division, shall be notified immediately. The contractor shall be advised to return any GBL's that have been issued. The contractor will be reimbursed for the incurred additional shipping costs not included in the original bid. The Contracting Officer shall request from the contractor a submission of the additional transportation charges incurred by the change to f.o.b. destination. Additionally, the Contracting Officer shall request from Transportation Management Section an estimate of the transportation costs for the order. Upon receipt, these two sets of charges shall be compared. If the contractor's charges are less than or equal to the estimate, the Contracting Officer shall issue a contract modification in an amount equal to the contractor's claim for the additional transportation charges. If the contractor claims the charges are greater than the amount estimated, additional documentation will be necessary to verify the accuracy of the charges. If, with assistance from Transportation Management Section, the additional charges are deemed to be fair and reasonable, a contract modification shall be issued for the amount claimed. However, if there is still doubt about the legitimacy of the charges, the Contracting Officer may request an audit of the

charges. Prior to the audit, a contract modification less than or equal to the estimate may be issued and then an adjustment made, if needed, following the audit report. The Contracting Officer shall insure that the Government receives consideration for changes made at the contractor's request. The Chief, Transportation Management Section shall furnish the specific information upon which the estimate is based when requested by the Contracting Officer, (i.e. ICC tender numbers, carriers, prices, etc.).

3. Change From F.O.B. Destination to F.O.B. Contractor's City

(a) *General.* In the event the contractor has quoted prices f.o.b. destination, the Contracting Officer may, at his or her option, order material shipped f.o.b. contractor's city and furnish GBL's for such shipments. GBL's shall be ordered for the contractor through Transportation Management Section in accordance with VI-6.

(b) *Primary Method.* In cases where the Contracting Officer changes f.o.b. destination to f.o.b. contractor's city, a deduction of the cost will be made from the contractor's voucher. If shipments are ordered by parcel post, or any premium method, a deduction of the applicable published commercial freight cost will be made from the voucher, and adjustment will be made for any premium shipping costs prepaid by the contractor upon presentation with the voucher of parcel post receipts properly filled out, stamped, or receipted by the post office; freight receipts indicating the actual pickup date and the signature of the carrier; or any other receipt form evidencing payment of postage or shipping costs which may be acceptable to the Contracting Officer. Parcel post charges or freight charges must be included on Standard Form 1034 as a separate item, supported by the paid receipts. Such receipts cannot be returned as they become a permanent part of the contract file.

(c) *Alternate Method.* A contract change of this nature would require the Contracting Officer to obtain from the contractor a breakdown of the transportation charges contained in its original bid. The amount of the purchase order reduction shall be determined by comparing the transportation costs as indicated on the issued GBL's to the transportation cost breakdown submitted by the contractor. If the claim of the contractor is equal to or greater than the GBL charges, the purchase order shall be reduced in the amount of the claim. If the claim is less than the amount of the GBL's, the Contracting Officer can require an audit or any other additional documentation necessary to reach a fair and reasonable settlement. A contract modification shall be issued by the Contracting Officer reflecting the negotiated reduction in contract price. The Chief, Transportation Management Section shall furnish the specific information upon which the GBL charges are based when requested by the Contracting Officer (i.e. ICC tender numbers, carriers, prices, etc.).

SECTION 5. REQUEST FOR FREIGHT RATES

Freight rate requests needed in the certification and award process to determine the lowest overall bidder, shall be made to Transportation Management Section on a local form, and in a manner similar to that shown in exhibit V-1. The results of telephonic freight rate requests to Transportation Section from RPPO's shall also be recorded on such form which shall serve as a permanent record in the contract file. The request

to Transportation Section shall include two copies of the form, specifications, and distribution lists. The Chief, Transportation Management Section shall furnish the specific information upon which the freight rates are based when requested by the Contracting Officer (i.e. ICC tender numbers, carriers, prices, etc.).

SECTION 6. ORDERING BILLS OF LADING

1. General. All GBL's required by PPD shall be ordered through Transportation Management Section. The only exception shall be those GBL's furnished with the requisition by, and in the name of, the ordering agency. The ordering agency shall assume full responsibility for those GBL's which they furnish. They shall be furnished to the contractor by PPD personnel. For those GBL's processed through Transportation Section, they shall furnish instructions to the contractor as to how to complete the GBL and distribute the various copies thereof. Transportation Section shall furnish the GBL's directly to the contractor by certified mail (return receipt requested) or overnight carrier.

2. Procedure. GBL's shall be ordered from Transportation Section by completing GPO Form 583, "Request for Bills of Lading." Transportation Section shall be furnished the completed GPO Form 583, any GBL's furnished by the ordering agency, along with two copies of the specifications, two copies of distribution lists, and a certified label/return receipt addressed to the supplier to whom award was made (GPO Form 711, "Receipt—U.S. Government Printing Office," may be substituted for the certified label/return receipt). A copy of the requisition (SF-1) shall be furnished when the order is classified or upon request of Transportation Management Section. Transportation Section shall mail the GBL's to the contractor and the return receipt shall serve as PPD's record of receipt or the Transportation Section may use overnight carrier.

3. Air Shipments. The Contracting Officer shall assure that all postaward agency requests for air shipments are transmitted to Transportation Section for carrier selection. Air-freight forwarders shall not be used unless specifically instructed. All offices, central or regional, in need of priority movement of any shipment by air must request a routing from the Transportation Section. Telephone number (202) 512-2015 has been established specifically for this purpose.

4. Programs. Due to a change in the appropriation number for the Department of Defense at the beginning of each fiscal year, those contractors that have any unused blank (incomplete) GBL's at the end of the fiscal year shall be required to return them to the Transportation Section for cancellation. All unused blank bills of lading will be returned at the end of each program year.

5. Classified and Sensitive Material. As shipments of classified and/or sensitive material require special procedures not within the common knowledge of most contractors, all requests for GBL's for the transportation of material of these types will be forwarded direct to the Chief, Transportation Management Section.

**SECTION 7. "CERTIFICATE OF CONFORMANCE,"
GPO Form 712**

1. General. The use of GPO Form 712 shall be required in conjunction with Postal Service Form 3615 "Application to Mail Without Affixing Postage Stamps," on all one-time procurements and term contracts that require the use of Government furnished permit imprint (penalty) mailing.

2. Procedures. To assure the correct disposition of permit imprint (penalty) mail by suppliers and reimbursement to the Postal Service for mailing services, the following applies:

(a) The customer agency will obtain a mailing permit imprint from the Postal Service for the class of mail intended to be used and forward a completed P.S. Form 3615 to GPO attached to the requisition.

(b) IFB's for procurements requiring suppliers to use permit imprint mail shall include:

(1) That permit imprint class or rate endorsement is correctly described.

(2) The statement "Bidder must specify in the bid the address of the post office which will be used."

(3) The clause:

Certificate of Conformance: When using "Permit imprint" labels the contractor must use GPO Form 712, "Certificate of Conformance," in conjunction with P.S. Form 3615 "Applications to Mail Without Affixing Postage Stamps" which shall be supplied by the GPO. Two copies of this certificate of conformance must accompany the contractor's billing. Mailings shall be made in accordance with "Certificate of Conformance—Terms and Conditions," which appear on the back of GPO Form 712. Failure to submit this certificate will delay payment.

EXHIBIT V-1

REQUEST FOR FREIGHT RATES

Please furnish the shipping costs to be applied in determining the low bid on Jacket 123-456 shipped f.o.b. contractor's city in accordance with the attached shipping instructions.

Please return to printing procurement by JULY 9, 1986.

Product BOOKS

	No. 1	No. 2	No. 3	No. 4
Paper	1500 lbs/M			
Contractor's City	HOUSTON, TX	ATLANTA, GA		
Bid Price	\$150,000 ⁰⁰	\$151,600 ⁰⁰		
Discount	1,500 ⁰⁰	3,532 ⁰⁰		
Net Bid	148,500 ⁰⁰	148,068 ⁰⁰		
Shipping Printed Material				
Total				

	No. 5	No. 6	No. 7	No. 8
Paper				
Contractor's City				
Bid Price				
Discount				
Net Bid				
Shipping Printed Material				
Total				

J. N. DOE
Certifier

Traffic Section

CHAPTER VI. CONTRACT FINANCING

SECTION 1. CONTRACT COST PRINCIPLES AND PROVISIONS

1. Scope. This section describes the applicability of the cost principles and provisions.

2. Definitions. When used in cost principles and provisions, the following terms shall have the meaning contained in this section:

“Accrued benefits cost method” means an actuarial cost method under which units of benefit are assigned to each cost accounting period and are valued as they accrue; i.e., based on the services performed by each employee in the period involved. The measure of normal cost under this method for each cost accounting period is the present value of the units of benefit deemed to be credited to employees for service in that period. The measure of the actuarial liability at a plan’s inception date is the present value of the units of benefit credited to employees for service prior to that date. (This method is also known as the unit credit cost method.)

“Accumulating costs” means collecting cost data in an organized manner such as through a system of accounts.

“Actual cash value” means the cost of replacing damaged property with other property of like kind and quality in the physical condition of the property immediately before the damage.

“Actuarial assumption” means a prediction of future conditions affecting pension costs; e.g., mortality rate, employee turnover, compensation levels, pension fund earnings, and changes in values of pension fund administrative expenses, and which assigns the cost of such benefits and expenses to cost accounting periods.

“Actuarial gain and loss” means the effect on pension cost resulting from differences between actuarial assumptions and actual experience.

“Actuarial liability” means pension cost attributable, under the actuarial cost method in use, two years before the date of a particular actuarial valuation. As of such date, the actuarial liability represents the excess of the present value of the future benefits and administrative expenses over the present value of future contributions, for the normal cost for all plan participants and beneficiaries. The excess of the actuarial liability over the value of the assets of a pension plan is the unfunded actuarial liability.

“Actuarial valuation” means the determination, as of a specified date, of the normal cost, actuarial liability, value of the assets of a pension fund, and other relevant values for the pension plan.

“Allocate” means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

“Automatic data processing equipment (ADPE),” as used in this part means:

(a) Digital and analog computer components and systems, irrespective of type of use, size, capacity, or price;

(b) All peripheral, auxiliary, and accessorial equipment used in support of digital and/or analog computers, either cable connected, or “self standing,” and whether selected or acquired with the computers or separately;

(c) Punched card machines (PCM) and systems used in conjunction with or independently of digital or analog computers; and

(d) Digital and analog terminal and conversion equipment that is acquired solely or primarily for use with a system which employs a computer or punched card machine.

“Business unit” means any segment of an organization, or an entire business organization, which is not divided into segments.

“Compensated personal absence” means any absence from work for reasons such as illness, vacation, holidays, jury duty, military training, or personal activities for which an employer pays compensation directly to an employee in accordance with a plan or custom of the employer.

“Cost input” means the cost, except general and administrative (G&A) expenses, which for contract costing purposes is allocable to the production of goods and services during a cost accounting period.

“Cost objective,” as used in this part means a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

“Cost of capital committed to facilities” means an imputed cost determined by applying a cost of money rate to facilities capital.

“Deferred compensation” means an award made by an employer to compensate an employee in a future cost accounting period or periods for services rendered in one or more cost accounting periods before the date of receipt of compensation by the employee. This definition shall not include the amount of year-end accruals for salaries, wages, or bonuses that are to be paid within a reasonable period of time after the end of a cost accounting period.

“Defined-benefit pension plan” means a pension plan in which the benefits to be paid, or the basis for determining such benefits, are established in advance and the contributions are intended to provide the stated benefits.

“Defined-contribution pension plan” means a pension plan in which the contributions to be made are established in advance and the benefits are determined thereby.

“Directly associated cost” means any cost which is generated solely as a result of the incurrence of another cost, and which would not have been incurred had the other cost not been incurred.

“Estimating costs” means the process of forecasting a future result in terms of cost, based upon information available at the time.

“Expressly unallowable cost” means a particular item or type of cost which, under the express provisions of an applicable law, regulation, or contract, is specifically named and stated to be unallowable.

“Facilities capital” means the net book value of tangible capital assets that are subject to amortization.

“Final cost objective” means a cost objective that has allocated to it both direct and indirect costs and, in the contractor’s accumulation system, is one of the final accumulation points.

“Fiscal year,” as used in this part, means the accounting period for which annual financial statements are regularly prepared, generally a period of 12 months, 52 weeks, or 53 weeks.

“General and administrative (G&A) expense” means any management, financial, and other expense which is incurred by or allocated to a business unit and which is for the general management and administration of the business unit as a whole. G&A expense does not include those management expenses whose beneficial or causal relationship to cost objectives can be more directly measured by a base other than a cost-input base representing the total activity of a business unit during a cost accounting period.

“Home office” means an office responsible for directing or managing two or more, but not necessarily all, segments of an organization. It typically establishes policy for, and provides guidance to, the segments in their operations. It usually performs management, supervisory, or administrative functions, and may also perform service functions in support of the operations of the various segments. An organization which has intermediate levels, such as groups, may have several home offices which report to a common home office. An intermediate organization may be both a segment and a home office.

“Immediate-gain actuarial cost method” means any of the several actuarial cost methods under which actuarial gains and losses are included as part of the unfunded actuarial liability of the pension plan, rather than as part of the normal cost of the plan.

“Indirect cost pools,” as used in this section means grouping of incurred costs identified with two or more cost objectives, but not identified specifically with any final cost objective.

“Insurance administration expenses” means the contractor’s costs of administering an insurance program; e.g., the costs of operating an insurance or risk-management department, processing claims, actuarial fees, and service fees paid to insure companies, trustees, or technical consultants.

“Intangible capital asset” means an asset that has no physical substance, has more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the benefits it yields.

“Labor cost at standard” means a preestablished measure of the labor element of cost, computed by multiplying labor-rate standard by labor-time standard.

“Labor-rate standard” means a preestablished measure, expressed in monetary terms, of the price of labor.

“Labor-time standard” means a preestablished measure, expressed in temporal terms, of the quantity of labor.

“Material cost at standard” means a preestablished measure of the material elements of cost, computed by multiplying material-price standard by material-quantity standard.

“Material-price standard” means a preestablished measure, expressed in monetary terms, of the price of material.

“Material-quantity standard” means a preestablished measure, expressed in physical terms, of the quantity of material.

“Moving average cost” means an inventory costing method under which an average unit cost is computed after each acquisition by adding the cost of the newly acquired units to the cost of the units of inventory on hand and dividing this figure by the new total number of units.

“Normal cost” means the annual cost attributable, under the actuarial cost method in use, to years subsequent to a particular valuation date.

“Original complement of low cost equipment” means a group of items acquired for the initial outfitting of a tangible capital asset or an operational unit, or a new addition to either. The items in the group individually cost less than the minimum amount established by the contractor for capitalization for the classes of assets acquired but in the aggregate they represent a material investment. The group, as a complement, is expected to be held for continued service beyond the current period. Initial outfitting of the unit is completed when the unit is ready and available for normal operations.

“Pay-as-you-go cost method” means a method of recognizing pension cost only when benefits are paid to retired employees or their beneficiaries.

“Pension plan” means a deferred compensation plan established and maintained by one or more employers to provide systematically for the payment of benefits to plan participants after their retirements, provided that the benefits are paid for life or are payable for life at the option of the employees. Additional benefits such as permanent and total disability and death payments, and survivorship payments to beneficiaries of deceased employees may be an integral part of a pension plan.

“Pension plan participant” means any employee or former employee of an employer or any member or former member of an employee organization who is or may become eligible to receive a benefit from a pension plan which covers employees of such employer, or members of such organization who have satisfied the plan’s participation requirements or whose beneficiaries are receiving or may be eligible to receive any such benefit. A participant whose employment status with the employer has not been terminated is an active participant of the employer’s pension plan.

“Pricing” means the process of establishing a reasonable amount or amounts to be paid for supplies or services.

“Profit center,” as used in this part means the smallest organizationally independent segment of a company charged by management with profit and loss responsibilities.

“Projected average loss” means the estimated long-term average loss per period of comparable exposure to risk of loss.

“Projected benefit cost method” means any of the several actuarial cost methods which distribute the estimated total cost of all the employees’ prospective benefits over a period of years, usually their working careers.

“Proposal” means any offer or other submission used as a basis for pricing a contract, contract modification, or termination settlement, or for securing payment thereunder.

“Residual value” means the proceeds, less removal and disposal cost, if any, realized upon disposition of a tangible

capital asset. It usually is measured by the net proceeds from the sale or other disposition of the asset, or its fair value if the asset is traded in on another asset. The estimated residual value is a current forecast of the residual value.

“Segment” means one or two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service. The term includes Government-owned contractor-operated (GOCO) facilities, and joint ventures and subsidiaries (domestic and foreign) in which the organization has a majority ownership. The term also includes those joint ventures and subsidiaries (domestic and foreign) in which the organization has less than a majority of ownership, but over which it exercises control.

“Self-insurance” means the assumption or retention of the risk of loss by the contractor, whether voluntarily or involuntarily. Self-insurance includes the deductible portion of purchased insurance.

“Self-insurance charge” means a cost which represents the projected average loss under a self-insurance plan.

“Service life” means the period of usefulness of a tangible capital asset (or group of assets) to its current owner. The period may be expressed in units of time or output. The estimated service life of a tangible capital asset (or group of assets) is a current forecast of its service life and is the period over which depreciation cost is to be assigned.

“Spread-gain actuarial cost method” means any of the several projected benefit actuarial cost methods under which actuarial gains and losses are included as part of the current and future normal costs of the pension plan.

“Standard cost” means any cost computed with the use of preestablished measures.

“Tangible capital asset” means an asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the services it yields.

“Termination gain or loss” means an actuarial gain or loss resulting from the difference between the assumed and actual rates at which pension plan participants separate from employment for reasons other than retirement, disability, or death.

“Unallowable cost” means any cost which, under the provisions of any pertinent law, regulation, or contract, cannot be included in prices, cost reimbursements, or settlement under a Government contract to which it is allocable.

“Variance” means the difference between a preestablished measure and an actual measure.

“Weighted average cost” means an inventory costing method under which an average unit cost is computed periodically by dividing the sum of the cost of beginning inventory plus the cost of acquisition by the total number of units included in these two categories.

3. Applicability.

(a) *Fixed-price contracts.* Cost principles shall be used (1) in pricing negotiated fixed-price contracts, subcontracts, and modifications to contracts and subcontracts for supplies or services whenever cost analysis is performed, or (2) when a fixed-price contract clause requires the determination or negotiation of costs. However, application of cost principles to fixed-price contracts and subcontracts shall not be construed as a requirement to negotiate agreement on individual ele-

ments of cost in arriving at agreement on the total price. The final price accepted by the parties reflects agreement only on the total price. Further, notwithstanding the mandatory use of cost principles, the objective will continue to be to negotiate prices that are fair and reasonable, cost and other factors considered.

(b) *Additional.* The Contracting Officer shall also use the cost principles as a basis for:

- (1) Proposing, negotiating, or determining costs under terminated contracts;
- (2) Price redetermination of price redetermination contracts.
- (3) Pricing changes and other contract modifications; and
- (4) Settlement of claims arising out of contracts.

4. Cost Accounting Standards (CAS) Requirements. The standards and regulations of the Cost Accounting Standards Board (CASB) are not applicable to GPO printing procurement contracts. However, certain cost principles do incorporate specific CAS, or portions of standards, for the purpose of determining allowability of costs on GPO printing procurement contracts. Contractors are subject to these CAS only to that extent.

5. Cost Principles. GPO Instruction 305.9, Contract Cost Principles and Procedures dated May 25, 1999, is incorporated by reference with the same force and effect as if presented in full text.

SECTION 2. PROGRESS PAYMENTS

1. Scope. This section covers matters generally relevant before contract award, but does not preclude postaward unanticipated circumstances arising during contract performance.

2. Considerations for Progress Payments.

(a) Progress payments may be made on the basis of paper costs or predelivery expenditures incurred by the contractor as work progresses under the contract. This form of contract financing does not include—

- (1) Payments based on the percentage of completion accomplished;
- (2) Payments for partial deliveries accepted by the Government; or
- (3) Partial payments for a contract termination proposal.

(b) Subject to paragraph c below, the Contracting Officer may provide for progress payments if the contractor (1) will not be able to bill for the first delivery of products, or other performance milestones, for a substantial time after work must begin, and (2) will make expenditures for contract performance during the predelivery period that have a significant impact on the contractor’s working capital. Progress payments may also be authorized, particularly for small suppliers, if the contractor demonstrates actual financial need or the unavailability of private financing.

(c) To reduce undue administrative effort and expense, the Contracting Officer generally should not provide for progress payments on contracts of less than \$50,000 unless—

- (1) The contractor is a small business concern and the contract will involve approximately \$30,000 or more; or
- (2) The contractor will perform a group of small contracts at the same time and the total impact on working capital is equivalent to a single contract of \$50,000 or more.

3. Solicitation clause. The following language shall be included in solicitations where progress payments are anticipated:

PROGRESS PAYMENTS—Upon request of the contractor, progress payments shall be made to the contractor for purchased paper in amounts approved by the Contracting Officer upon the following terms and conditions:

(1) *Computation of amounts.* Each progress payment for paper will be made upon the submission of paid invoices or vouchers evidencing the actual cost of paper to which the contractor has gained title.

(2) *Recovery of progress payments.* Vouchers or invoices submitted by the contractor for payment shall be satisfied less the amount of progress payments paid for the quantity of paper required to produce the items delivered until such items as the total of all progress payments has been recovered.

(3) *Reduction or suspension.* The Government reserves the right to withhold or reduce progress payments if in the opinion of the Contracting Officer the contractor is in such unsatisfactory financial condition or has so failed to make progress as to endanger contract performance and recoupment of progress payments.

(4) *Title to material and work.* When any progress payment is made under the contract, title to paper acquired and work performed under the contract shall vest in the Government, and title to all like property thereafter acquired or produced by the contractor and properly chargeable to the contract under generally accepted accounting principles shall vest in the Government. The contractor shall repay to the Government an amount equal to that portion of the progress payments allocable to material lost, stolen, destroyed, or damaged. Upon completion of performance of all obligations of the contractor under the contract, title to all property and work not delivered to and accepted by the Government under the contract and to which title had vested in the Government under the contract shall vest in the contractor.

(5) *Records and reports.* The contractor shall maintain reasonable controls for proper administration of this clause and shall furnish such statements and information as may reasonably be requested by the Contracting Officer. The Government shall be afforded reasonable opportunity to examine the contractor's books, records, and accounts.

(6) *Default.* If a contract is terminated for default, the contractor shall, upon demand, pay to the Government the amount of progress payments, less any amount payable to the contractor in accordance with the default clause.

(7) *Reservation of rights.* The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

4. Post Award Determinations.

(a) Unanticipated circumstances arising during contract performance amending a contract and warranting progress payments include, but are not limited to—

(1) The Government's failure to furnish GFP in conformance with the contract.

(2) A unilateral contract modification temporarily suspending performance exceeding 1 month.

(b) Circumstances in which the contractor requests post award progress payments which result in an amended contract shall require consideration from the contract in the form of:

(1) Monetary consideration by reduction of the contract price, or

(2) A nonmonetary consideration giving the government a benefit.

(c) Supplemental agreements providing for progress payments in (a) above shall state in part:

This supplemental agreement to jacket _____, Purchase Order _____ is to (1) adjust the shipping schedule and (2) amend the Payments on Purchase Order and Partial Payment clauses in GPO Contract Terms (Pub. 310.2) to provide limited payment prior to shipment, all in consideration of the Government's failure to deliver Government furnished (name supplies) in accordance with contract requirements. Accordingly, it is agreed that:

(1) The ship complete date is changed from _____, to "within ___ workdays from the receipt of Government furnished (name supplies)."

(2) The Partial Payment clause in GPO Contract Terms (Pub. 310.2) is amended to include: "Upon completion of all printing operations but prior to packing and shipment, payment will be made for 80% of the costs incurred as follows:

Bid price	\$ _____
Less cartons, packing, and shipping	\$ _____
Total ...	\$ _____ × .80 = _____

(3) When limited payment is made under this contract, title to all work produced and material acquired shall vest in the Government. Notwithstanding the foregoing, the contractor shall bear the risk of loss of property, title to which vests in the Government pursuant to this clause. In the event of the loss or damage to, or destruction of, any such property prior to delivery to and acceptance by the Government, the contractor shall promptly replace such property at no additional cost to the Government or upon demand return any partial payment made pursuant to this clause.

The foregoing provides a full and complete adjustment for any and all claims whatsoever resulting from changes ordered.

SECTION 3. CONTRACT DEBTS

1. General. Contract debts arise in various ways. The following are some examples:

(a) Damages or excess costs related to defaults in performance.

(b) Breach of contract obligations concerning progress payments, or Government furnished property.

(c) Government expense of correcting defects.

(d) Overpayments related to errors in quantity or billing or deficiencies in quality.

2. Definition. "Responsible official" means the Contracting Officer or Comptroller designated to administer the collection of contract debts and applicable interest.

3. Responsibilities and cooperation among GPO officials.

(a) To protect the Government's interests, Contracting Officers, disbursing officials, and auditors shall cooperate fully with each other to—

(1) Discover promptly when a contract debt arises;

(2) Ascertain the correct amount of the debt;

(3) Act promptly and effectively to collect the debt;

(4) Administer deferment of collection agreements; and

(5) Provide up-to-date information on the status of the debt.

(b) For most kinds of contract debts, the Comptroller has the primary responsibility for determining the amounts of and collecting contract debt.

4. Debt determination and collection.

(a) If any indication of a contract debt arises, the responsible official shall determine promptly whether an actual debt is due the Government and the amount. Any unwarranted delay may contribute to—

(1) Loss of timely availability of the funds to the jacket for which the funds were initially provided;

(2) Increased difficulty in collecting the debt; or

(3) Actual monetary loss to the Government.

(b) In determining the amount of any contract debt, the responsible official shall fairly consider both the Government's claim and any contract claims by the contractor against the

Government. This determination does not constitute a settlement of such claims, nor is it a Contracting Officer's final determination.

(c) Control records for each contract debt and procedures for tax credit, contract debt negotiation, pricing agreement with refund, payment demand of contract debt, withholding and setoff, collection deferment, and interest charges and credits shall be established and administered by the Comptroller.

SECTION 4. CONTRACT FUNDING

1. Policy. No Contracting Officer or employee may create or authorize an obligation in excess of the funds available or in advance of appropriations, unless otherwise authorized by law.

2. General.

(a) Firm fixed-price, negotiated, and term contracts are fully funded from obligated funds.

(b) Multiyear contracts may cross fiscal years as authorized in subsection 3 below.

3. Contracts Conditioned upon Availability of or Limitation on Funds.

(a) *Firm Fixed-Price Contracts.* (1) Contracting actions on proposed firm fixed-price contracts may be initiated and properly chargeable unless:

(i) The authorizing SF-1 contains conditions limiting funds, or

(ii) The IFB contains a clause estimating the quantity, subject to a plus or minus percentage, that will be determined at time of award because of funding constraints.

(2) After bid opening and prior to award, the Contracting Officer shall inform the customer agency of the low responsive bid to—

(i) determine if additional funds will be allotted should bids exceed those funds authorized in (a)(1)(i),

(ii) ascertain an exact quantity within any plus or minus percentage.

(b) *Multiyear Procurement.* (1) The Contracting Officer shall not accept supplies or services under a contract conditioned upon the availability of funds until the Contracting Officer has given the contractor notice, to be confirmed in writing, that funds are available.

(2) When a contract contains the clause "Limitation of Performance," the Contracting Officer, prior to the end of the fiscal year, shall notify the contractor in writing that—

(i) Additional funds have been allotted,

(ii) The contract is not to be further funded and that the contractor should submit a proposal for an adjustment of fee, if any, based on work completed in relation to total work called for under the contract;

(iii) The contract is to be terminated; or

(iv) (A) The Government is considering whether to allot additional funds or increase the estimated cost, (B) the contractor is entitled by the contract terms to stop work when the funding or cost limit is reached, and (C) any work beyond the funding or cost limit will be at the contractor's risk.

(3) Upon learning that a partially funded contract will receive no further funds, the Contracting Officer shall promptly give the contractor written notice of the decision not to provide funds.

4. Clauses (See XVI-3. Multiyear Procurement).

SECTION 5. ASSIGNMENT OF CLAIMS

1. General. The Assignment of Claims Act of 1940, as amended, (31 U.S.C. 3727, 41 U.S.C. 15) permits contractors to assign their claims against the Government for moneys due or to become due to a bank, trust company, or other financing institution. The Act further provides that an assignee receiving payment under an assignment is not, because of any liability of the assignor to the United States or any department or agency of the Government, whether arising from or independently of the assigned contract, liable or obligated to make restitution, refund, or repayment to the United States.

2. Conditions Governing the Assignment of Claims.

(a) The Act permits the assignment of funds due under a contract providing:

(1) the contract provides for payment aggregating \$1,000 or more;

(2) the payments are assigned to a bank, trust company, or other financing institution, including any Federal lending agency; and

(3) the contract does not forbid assignment.

(b) An assignment may be made to only one party and shall cover all amounts payable under the contract which have not already been paid. Any assignment may be made to one party as agent or trustee for two or more parties participating in the financing. In accordance with the statute, there shall be no further assignment unless expressly permitted by the contract. The Assignment of Claims clause in GPO Contract Terms (Pub. 310.2) permits further assignment or reassignment.

(c) When there is a valid assignment, the assignee must give written notice of the assignment, together with a copy of the instrument of assignment, to the Contracting Officer, the Comptroller, and the surety or sureties upon the bonds, if any.

3. Contract Clause. The Assignment of Claims clause is applicable to all contracts by reference.

4. Forms for Notice of Assignment. The format shown in exhibit VI-1 is suggested for use by the assignee in providing the notice of the assignment as required by VI-5.2(c).

5. Filing Notice of Assignment. The assignee is required to send four signed copies of the notice, one for each party specified in VI-5.2(c), together with one true copy of the instrument of the assignments (a certified true duplicate or a photostatic copy of the original).

6. Procedures upon Receipt of Notice of Assignment.

(a) All assignment papers are to be sent to the Contracting Officer who awarded the contract on behalf of the GPO. Any assignment mistakenly sent to Commercial Examination and Billing Branch (FMCE) should be forwarded to the Contracting Officer in the Central Office or to the appropriate Superintendent, Regional Operations for regional offices.

(b) All assignment papers are to be date-stamped on the reverse side immediately upon receipt.

(c) The Contracting Officer is to examine the notice of assignment, instrument of assignment, and the contract involved to determine that the assignment is in proper form, has been properly executed, and that the contractor is empowered

under the contract to make the assignment (see PPR VI-5.2). If the assignment is not in order, or if postaward payment processing has been initiated by FMCE on single bid purchase orders, return all the assignment papers to the assignee with an explanation of the objections to the proposed assignment. A record of payments in process is accessible on Voucher Processing and Payment System (VOPPS) using transaction code JAPQ.

(d) If the assignment is in order, the Contracting Officer is to document the contract file to indicate that an assignment has been sent to GPO for acceptance and enter the assignment in the office logbook designated for this purpose. Each Superintendent shall ensure that such a logbook is maintained current for every area of their procuring activity.

(e) The Contracting Officer shall then forward the assignment papers with a covering memorandum (see paragraph (g)) to the Office of General Counsel to review for legal sufficiency. If General Counsel has a legal objection, the Contracting Officer shall return all assignment papers to the assignee with an explanation of the objection to the proposed assignment. If legally sufficient, General Counsel will return the material to the Contracting Officer with a notation of "No legal objection." The Contracting Officer shall then forward the assignment papers with covering memorandum (see paragraph (g)) to the Comptroller, FMCE through the appropriate Superintendent.

(f) If the assignment is in order, an employee of FMCE, designated by the Chief Financial Officer, will notify the Contracting Officer that the assignment has been accepted and processed. FMCE will enter the assignment information into VOPPS. A record of the action is accessible using transaction code JAPQ. The Contracting Officer will send an acknowledgement of assignment to the assignee upon receipt of notice of acceptance and processing from FMCE. If FMCE is unable to process the assignment, all assignment papers are to be returned to the Contracting Officer with the appropriate explanation.

(g) The following memoranda are suggested for use when forwarding assignments to the Office of General Counsel and Comptroller:

Subject: Assignment of Claim

Contract:

Contractor:

Assignee:

To: Office of General Counsel

The attached assignment of claim was submitted to me by the assignee. I have reviewed this assignment, the contract, and chapter VI, section 5 of the *Printing Procurement Regulation*. The conditions for assignment have been met and the assignment is in proper form.

I believe the assignee to be a bank, trust company, or other financing institution, and will request confirmation by the Comptroller prior to acceptance of the assignment.

Please review this material and return to me with a notation of legal objection, if any.

CONTRACTING OFFICER

Attachment

Subject: Assignment of Claim

Contract:

Contractor:

Assignee:

To: Comptroller

The attached assignment of claim was submitted to me by the assignee. I have reviewed this assignment, the contract, and chapter VI, section 5 of the *Printing Procurement Regulation*. The conditions for assignment have been met and the assignment is in proper form.

I believe the assignee to be a bank, trust company, or other financing institution, and request your confirmation prior to acceptance of the assignment.

This material has been reviewed by the Office of General Counsel and returned with no legal objection.

Please notify me when you have processed this assignment request so that the assignee may be informed that the assignment has been accepted.

CONTRACTING OFFICER

Attachment

7. Further Assignment and Reassignment. Contracts which permit assignment of claims also permit the further assignment and reassignment by the assignee to another bank, trust company, or other financing institution under the Assignment of Claims clause. Copies of a written notice of further assignment and reassignment and the copy of the instrument shall be processed in the same manner as the initial notice of assignment.

8. Examination of Assignment. In reviewing an assignment to determine if it is in proper form, properly executed, and one that the contractor is entitled to make under the contract, the Contracting Officer shall ascertain that the conditions set forth below have been satisfied.

(a) The contract has been duly executed (see chapter XII). Notices of assignment of claims for moneys due or to become due under a contract received prior to execution of the contract shall be immediately returned to the assignee unacknowledged.

(b) The contract is one under which claims may be assigned under the provisions of the Act. In rare cases, SECRET or CONFIDENTIAL contracts will contain provisions prohibiting assignment of claims thereunder. It should be noted that assignment of claims under SECRET or CONFIDENTIAL contracts, permitting the assignment thereof, should not be acknowledged by Contracting Officers until adequate steps have been taken to protect the interest of the Government.

(c) The assignment covers all amounts payable under the contract, and not already paid, and is not made to more than one person, and the assignee is a bank, trust company, or other financing institution, including any Federal lending agency. Financial Management Service will further review for this criteria considering the payment provisions.

(d) The assignment shall cover only claims for moneys due or to become due under the contract involved. It must not cover any of the obligations or duties of the contractor under the contract. The Contracting Officer shall be sure that the copy of the instrument of assignment which is submitted is a duplicate of the original instrument, or has been certified as a true copy, acknowledged as such before a notary public or other officer authorized by law to administer oaths. Care shall also be taken to ascertain that the assignment has been properly executed.

(1) Assignments by corporations should be executed by an authorized representative, attested by the secretary or assistant secretary of the corporation, with the seal of the corporation impressed upon the assignments or in lieu of such seal, accompanied by a certified copy of a resolution of the corporation board of directors authorizing the representative involved to execute the assignment.

(2) If the contractor is a partnership, the instrument of assignment may be signed by one partner, provided that it is accompanied by a duly acknowledged certificate to the effect that the signer is a general partner of the partnership.

(3) If the contractor is an individual, the assignment must be signed by such individual, and duly acknowledged before a notary public or other person authorized to administer oaths.

(e) If there have been previous assignments of claims under the contract, unless assignments to more than one person thereunder are permitted by the contract provisions, the previous assignments have been fully released. Note that further assignment and reassignment is authorized as pointed out in VI-5.7.

9. Release of an Assignment. The release of an assignment is required whenever there has been a further reassignment or where further payments to the contractors are anticipated

under the contract after the contractor-assignor's obligation to the original assignee has been satisfied.

10. Transfer of Businesses and Corporate Mergers. Transfers of an entire business, corporate mergers, and assignments by the operation of law, each of which may affect the assignment of claims under a contract, are not prohibited by the Federal statutes and hence do not depend upon the Assignment of Claims Act of 1940, as amended, for their validity. However, in the case of transfer of a business or corporate mergers, notices of assignment of claims under the contract made by the transferee or successor corporation should not be acknowledged until the transferee or successor corporation involved has been recognized by GPO as the lawful successor in interest of the Government contract. Similarly, before acknowledging an assignment made by a party who is a transferee by operation of law, the Contracting Officer should require the submission of a certified copy of the document evidencing the transfer by operation of law. Procedures for novation agreements are covered in XIII-3.

EXHIBIT VI-1

NOTICE OF ASSIGNMENT

Date

To: (Address to one of the parties specified in VI-5.2(c))

This has reference to Contract No. _____ dated _____, entered into between (contractor's name and address) and (Government Agency, Name of Office, and address), for (describe nature of the contract).

PLEASE TAKE NOTICE that moneys due or to become due under the contract described above have been assigned to the undersigned pursuant to the provisions of the Assignment of Claims Act of 1940, as amended. 54 Stat. 1029; 65 Stat. 41 (31 U.S.C. 3727, 41 U.S.C. 15).

A true copy of the instrument of assignment executed by the contractor on _____ (Date) is attached to the original hereof.

Payments due or to become due under such contract should be made to the undersigned assignee.

Please return to the undersigned the three enclosed copies of this notice with appropriate notations showing the date and hour of receipt and duly signed by the person.

Receipt is hereby acknowledged of the addressee.

Very truly yours,

(Name of assignee)

By:

(Signature of signing officer)

Title:

(Title of signing officer)

(Address of assignee)

ACKNOWLEDGMENT

Receipt is hereby acknowledged of the above notice and a copy of the above mentioned instrument of assignment. These were received at _____ a.m. (p.m.) on _____, 19 _____.

(Signature)

(Title)

On behalf of

(Name of addressee of this notice)

CHAPTER VII. CONTRACTING METHODS

SECTION 1. SEALED BIDDING, INVITATION FOR BIDS (IFB)

1. Sealed bids. Sealed bidding is the preferred method for procurements that cannot be made through the small purchase procedure. Written specifications and a bidders list of 20 or more suppliers, if available, shall be prepared. The number of potential suppliers invited shall depend upon the value and complexity of the procurement. IFB's shall be mailed and, schedule permitting, 15 days shall be allowed for submission of bids for one-time procurements and 30 days for term contracts. A provision may be included in the specifications authorizing facsimile or telegraphic (including mailgrams) response in lieu of sealed bids. Bids shall be opened publicly at the designated hour and date.

2. Term contracts.

(a) This type of contract is used when repetitive orders are anticipated during the contract period. When requirements can be forecast with relative accuracy, such as for a periodical, and when one contractor can satisfy the total requirement, a single award is made.

(b) Depending upon the size of the procurement, as many as 50 suppliers may be solicited. The multiple-award term contract differs from the single-award contract in that quite often a single contractor would be unable to supply all of the Government's requirements and the requirements are less specific and less constant. However, the solicitation process is the same as for single-award contracts.

3. Print orders (GPO Form 2511).

(a) An agency requisition received for products that meet the requirements of an existing term contract may be converted to a print order and offered to suppliers in accordance with the established sequence of bidders. The sequence may be established for the term of the contract through an estimate of the requirements called the basis of award, or a sequence established for each print order through abstracting each bidder's offered price against the requirements of that order.

(b) In converting requisitions to term contract print orders, the economy of the procurement must be a consideration; e.g., long-run jobs should not be placed on short-run contracts.

4. Display bids. Complex procurements requiring suppliers to inspect Government furnished property (GFP) should be made through this technique. Written specifications shall be developed and, along with the bidding forms, may either be mailed to potential suppliers or may be picked up when the GFP is inspected. Suppliers should be cautioned that inspection of the GFP is a part of the specifications and that no additional payment will be allowed for the correction of errors due to failure to examine the GFP. Available potential suppliers to a maximum of 20 shall be invited to bid.

SECTION 2. MULTIYEAR TERM CONTRACTS AND TERM CONTRACTS WITH OPTION PROVISIONS

1. General

(a) Multiyear contracts and the use of options are contracting methods limited to single-award programs and used to acquire printing services and supplies covering more than 1 year but not more than 5 years.

(b) The GPO revolving fund, which is available without fiscal year limitation, is authorized by 44 U.S.C. 309(a). Further, GPO is authorized annually to enter into contracts and to make commitments without regard to fiscal year limitations.

2. Policy

Use of multiyear and option contracting is recommended to take advantage of one or more of the following:

- (a) Lower costs.
- (b) Enhancement of standardization.
- (c) Reduction of administrative burden in the placement and administration of contracts.
- (d) Substantial continuity of production or performance, thus avoiding annual startup costs, preproduction testing costs, make-ready expenses, and phaseout costs.
- (e) Stabilization of contractor work forces.
- (f) Avoidance of the need for establishing quality control techniques and procedures for a new contractor each year.
- (g) Broadening the competitive base with opportunity for participation by firms not otherwise willing or able to compete for lesser quantities, particularly in cases involving high startup costs.
- (h) Providing incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.

3. Procedure.

(a) The Contracting Officer may enter into multiyear or option contracts if it is determined that—

- (1) The need for the supplies or services is reasonably firm and continuing over the period of the contract; and
- (2) A multiyear or option contract will serve the best interests of the Government by encouraging full and open competition or promoting economy in administration, performance, and operation of PPD programs.

(b) Multiyear and option contracts shall be divided into periods of one year each.

(c) Multiyear or option contracts may be initiated either by:

- (1) ordering agency written requests; or
- (2) the contracting officer.

(d) Approval of the Printing Procurement Department Manager shall be obtained when a multiyear contract is contemplated. Written justification, in the form of a D&F, shall be submitted to the Manager through the appropriate Super-

intendent. The Manager's approval is not required to solicit a contract with options.

(e) By issuing an annual requisition, the ordering agency's funds are obligated and thus made available to GPO. Funds for each print order, as they are issued against the contract, are obligated in the GPO revolving fund. In the event funds are not made available by the ordering agency for any succeeding fiscal year, cancellation shall be effected.

(f) In order to assure that all potential bidders are thoroughly aware of how multiyear and option contracting is accomplished, use of presolicitation conferences may be advisable.

4. Contract Clauses. Multiyear and option contracts shall include the following as appropriate:

(a) A clause, substantially as follows and prominently displayed on page 1 of solicitations for multiyear contracts:

CONTRACT TERM—The term of this contract is for _____ years (or _____ months). Special attention is directed to the following clauses in this contract: "Economic Price Adjustment," "Paper Price Adjustment," "Limitation of Performance and Contractor Obligations" and "Notification".

(b) A clause, substantially as follows and displayed on page 1 of solicitations for option contracts:

CONTRACT TERM—The term of this contract is for 1 year (base year) and _____ option year(s). Attention is directed to the clauses "Economic Price Adjustment," "Paper price Adjustment," and "Option to Extend the Contract Term"

(c) The following clause in solicitations for option contracts:

OPTION TO EXTEND THE CONTRACT TERM. The Government may extend the term of this contract by written notice to the contractor not later than 30 days before the contract expires. If the Government exercises an option, the extended contract shall be considered to include this clause. The duration of this contract, including the exercise of any options under this clause, shall not exceed *[insert time period]*.

Notwithstanding the above, and at the request of the Government, the term of the contract may be further extended (*e.g.* unforeseen delay or protest precludes making award on follow-on contract) for such period of time as may be mutually agreeable to the GPO and the contractor.

(d) The clauses "Economic Price Adjustment," "Limitation of Performance and Contractor Obligations," and "Notification," as set forth in XVI-3.

5. Solicitations. Solicitations for multiyear contracts shall reflect all the factors to be considered for evaluation, specifically including the following:

(a) The requirements, by item or service, for the—

(1) First program year; and

(2) First program year and for the multiyear contract including the requirements for each program year.

(b) When previous acquisitions of the item or service have been made with competition, a provision that a price may be submitted—

(1) For the total requirements of the first program year, or for the total multiyear requirements, or both; or

(2) Only for the total multiyear requirement, and that prices on a single-year basis will not be considered when (i) competition in future acquisitions would be impracticable after award of a contract covering the first program year requirement and (ii) it is necessary to prevent a first program year "buy-in."

(c) When previous acquisitions for the item or service have been made without competition, and a first program year "buy-in" is not anticipated, include—

(1) A provision that a price must be submitted for the first program year requirements, that a price may be submitted for the total multiyear requirements, and that an offer on only the multiyear requirements will be nonresponsive; and

(2) A provision that if only one offer on the multiyear requirements is received that is both responsive and from a responsible offeror, the Government reserves the right to disregard the offer on the multiyear requirements and make an award only for the first program year requirements; or

(d) When competition after the first program year would be impracticable after award of a contract covering the first program year requirement, and it is necessary to prevent a first program year "buy-in," include—

(1) A provision that a price may be submitted only on the total multiyear requirement and that prices on a single-year basis will not be considered for the purpose of award.

(2) A provision that if only one offer on the multiyear requirements is received that is both responsive and from a responsible offeror, the Government reserves the right to cancel the solicitation and resolicit on a single-year basis by whatever procedures are then appropriate.

(e) A provision that the unit price of each item or service in the multiyear requirement shall be the same for all program years (level unit price) included. (Note that the use of an economic price adjustment clause might effect the level unit price.)

(f) Criteria for comparing the lowest evaluated submission on the first program year's requirement against the lowest evaluated submission on the multiyear requirements.

(g) Criteria for evaluation factors other than price where the acquisition is on the basis of price and other factors.

(h) A provision that if the Government determines before award that only the first program year requirements are needed, the Government may evaluate offers and make award solely on the basis of price offered on that year's requirements.

(i) A provision specifying a separate cancellation ceiling (on a percentage or dollar basis) and dates applicable to each program year subject to a cancellation.

(j) A prominently placed provision directing attention to the multiyear features of the solicitation, and to—

(1) The clause, Limitation of Price and Contractor Obligations, which limits the payment obligation of the Government to the requirements of the first program year and to those requirements of succeeding program years funded by the Government;

(2) The clause Cancellation of Items, which allows the Government to cancel by a specific date or within a specific period, all remaining program years: and

(3) The cancellation ceiling set forth in the schedule.

(k) A statement that award will not be made on less than the first program year requirements.

(l) In the event the solicitation is only for supplies and delivery destinations are unknown—

(1) A definite place or places as the point to which transportation costs will be computed (but only for the purpose of evaluation); and

(2) Insert a provision, Destination Unknown.

(m) If Government administrative costs are to be used as a factor in evaluation, the dollar amount of those costs. Unless Government administrative costs incident to annual contracting and administration can be reasonably established, they shall not be used as a factor for evaluation.

(n) When Government property is provided, it may be used on a rent-free basis. The solicitation shall then contain detailed procedures for eliminating competitive advantage.

6. Evaluation. In addition to the factors in subsection 5, the contracting officer shall comply with the following:

(a) Evaluation of offers shall involve (1) determination of the lowest overall evaluated cost to the Government for both the multiyear and the first program year acquisition, and (2) comparison of the cost of buying the total requirement under a multiyear acquisition with the cost of buying the total requirement in successive independent acquisitions.

(b) The cancellation ceiling shall not be a factor for evaluation.

(c) If Government property is provided, the contracting officer shall, for evaluation purposes, add an amount for the use of such property computed to eliminate competitive advantage to each offeror's unit price for the first program year requirement and the unit price for the multiyear requirements.

(d) When the solicitation only provides for submission of prices for the total multiyear quantity, submission of prices for the single-year quantity will be disregarded but will not render the offer nonresponsive as to any alternative multiyear submission by the offeror.

(e) To determine the lowest evaluated unit price, the contracting officer shall compare the lowest evaluated offer on the first program year alternative against the lowest evaluated offer on the multiyear alternative as follows:

(1) Multiply the evaluated unit price for each item of the lowest evaluated offer on the first program year alternative by the total number of units of that item required by the multiyear alternative.

(2) Add the total amount for all the items to the dollar amount of any administrative costs identified in the solicitation.

(3) Compare this result against the total evaluated price of the lowest offer on the multiyear alternative.

(4) Where the multiyear acquisition is being computed on a basis other than price alone, the contracting officer shall conduct the evaluation based on the evaluation factors contained in the solicitation.

(5) The evaluation procedures contained in this paragraph may be modified if necessary to meet the unique circumstances of a particular acquisition.

7. Exercise of Options.

(a) When making a determination to exercise or not to exercise an option, contracting officers shall:

(1) Assure that funds are or will be available;

(2) confirm that the option requirement is still needed; and

(3) conduct an informal analysis of prices or examine the marketplace for indications that the option price is either the more advantageous offer or not.

(b) The factors leading to the decision to exercise an option valued at over \$50,000 shall be documented in the form of a D&F and in a less formal manner for under \$50,000. All documentation shall be placed in the contract file folder.

(c) Contractors shall be notified a minimum of 30 days before the end of the current contract of the decision to exercise or not to exercise an option.

SECTION 3. TWO-STEP FORMAL ADVERTISING

1. General. Two-step formal advertising is designed to obtain the benefits of formal advertising without adequate specifications and is conducted in two steps:

(a) Step 1 consists of the request for submission, evaluation, and discussion (if necessary) of a technical proposal. Price is expressly disregarded.

(b) Step 2 incorporates the submission of sealed bids by those firms whose technical proposals were deemed acceptable by the Government in step 1. Bids are evaluated and award made according to chapter XII.

2. Conditions

(a) Two-step formal advertising shall be used in preference to negotiation when all of the following conditions are present:

(1) Available specifications or purchase descriptions are not definite or complete or may be too restrictive to permit full and free competition without technical evaluation, and any necessary discussion, of the technical aspects of the requirement to ensure mutual understanding between each source and the Government.

(2) Definite criteria exist for evaluating technical proposals.

(3) More than one technically qualified source is expected to be available.

(4) Sufficient time will be available for use of the two-step method.

(5) A firm-fixed-price contract or a fixed-price contract with economic price adjustment will be used.

(b) Multiyear contracting does not preclude the use of two-step formal advertising.

3. Procedures

(a) *Step one.* (1) Requests for technical proposals shall be distributed to qualified sources and shall be published in the Commerce Business Daily. The request must include, as a minimum, the following:

(i) A description of the supplies or services required.

(ii) A statement of intent to use the two-step method.

(iii) The requirements of the technical proposal.

(iv) The evaluation criteria.

(v) A statement that the technical proposals shall not include prices or pricing information.

(vi) The date, or date and hour, by which the proposal must be received.

(vii) A statement that, (A) in the second step, only bids based upon technical proposals determined to be acceptable, either initially or as a result of discussions, will be considered for award, and (B) each bid in the second step must be based on the bidder's own technical proposals.

(viii) A statement that (A) offerors should submit proposals that are acceptable without additional explanation or information, (B) the Government may make a final determination regarding a proposal's acceptability solely on the basis of the proposal as submitted, and (C) the Government may proceed with the second step without requesting further information from any offeror; however, the Government may request additional information from offerors of

proposals that it considers reasonably susceptible of being made acceptable, and may discuss proposals with their offerors.

(ix) A statement that a notice of unacceptability will be forwarded to the offeror upon completion of the proposal evaluation and final determination of unacceptability.

(x) A statement either that only one technical proposal may be submitted by each offeror or that multiple technical proposals may be submitted. When specifications permit different technical approaches, it is generally in the Government's interest to authorize multiple proposals.

(2) Information on delivery or performance requirements may be of assistance to bidders in determining whether or not to submit a proposal and may be included in the request. The request shall also indicate that the information is not binding on the Government and that the actual delivery or performance requirements will be contained in the invitation issued under step two.

(3) Upon receipt, the Contracting Officer shall—

(i) Safeguard proposals against disclosure to unauthorized persons;

(ii) Observe disclosure and use of data restrictions; and

(iii) Remove any reference to price or cost.

(4) The Contracting Officer shall establish a time period for evaluating technical proposals. The period may vary with the complexity and number of proposals involved. However, the evaluation should be completed quickly.

(5)(i) Evaluations shall be based on the criteria in the request for proposals and not consideration of responsibility. Proposals shall be categorized as—

(A) Acceptable;

(B) Reasonably susceptible of being made acceptable; or

(C) Unacceptable.

(b) Any proposal which modifies or fails to conform to the essential requirements or specifications of the request for technical proposals shall be considered nonresponsive and categorized as unacceptable.

(6)(i) The Contracting Officer may proceed directly with step two if there are sufficient acceptable proposals to ensure adequate price competition under step two, and if further time, effort, and delay to make additional proposals acceptable and thereby increase competition would not be in the Government's interest. If this is not the case, the Contracting Officer shall request bidders whose proposals may be made acceptable, to submit additional clarifying or supplementing information. The Contracting Officer shall identify the nature of the deficiencies in the proposal or the nature of the additional information required. The Contracting Officer may also arrange discussions for this purpose. No proposal shall be discussed with any offeror other than the submitter.

(ii) In initiating requests for additional information, the Contracting Officer shall fix an appropriate time for bidders to conclude discussions, if any, submit all additional information, and incorporate such additional information as part of their proposals submitted. Such time may be extended at the discretion of the Contracting Officer. If the additional information incorporated as part of a proposal within the final time fixed by the Contracting Officer establishes that the proposal is acceptable, it shall be so categorized. Otherwise, it shall be categorized as unacceptable.

(7) When a technical proposal is found unacceptable (either initially or after clarification), the Contracting Officer shall promptly notify the offeror of the basis of the determination

and that a revision of the proposal will not be considered. Upon written request, and as soon as possible after award, the Contracting Officer shall debrief unsuccessful offerors.

(8) Late technical proposals are governed by GPO Contract Terms (Pub. 310.2) Solicitation Provisions.

(9) If it is necessary to discontinue two-step formal advertising, the Contracting Officer shall include a statement of the facts and circumstances in the contract file. Each offeror shall be notified in writing. When step one results in no acceptable technical proposal or only one acceptable technical proposal, the acquisition may be continued by negotiation under the authority of VII-8.

(b) *Step two.* (1) Formal advertising procedures shall be followed except that invitations for bids will—

(i) Be issued only to those offerors submitting acceptable technical proposals in step one;

(ii) Include the provision "Step 2 of Two-Step Formal Advertising";

(iii) Prominently state that the bidder shall comply with the specifications and the bidder's technical proposal; and

(iv) Not be synopsisized in the Commerce Business Daily as an acquisition opportunity nor publicly posted.

(2) The names of firms that submitted acceptable proposals in step one will be listed in the Commerce Business Daily for the benefit of prospective subcontractors.

SECTION 4. SMALL PURCHASES

1. Legal effect of Quotations

(a) A quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract. Therefore, issuance by the Government of an order for supplies or services in response to a supplier's quotation does not establish a contract. The order is an offer by the Government to the supplier to buy certain supplies or services upon specified terms and conditions. A contract comes into being when the supplier accepts the offer.

(b) When appropriate, the Contracting Officer may request the supplier to indicate acceptance of an order by notification to the Government, preferably in writing. In other circumstances, the supplier may indicate acceptance by furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.

(c) If the Government issues an order resulting from a quotation, the Government may (by written notice to the supplier, at any time before acceptance occurs) withdraw, amend or cancel its offer.

2. Procedures.

(a) This subsection prescribes policies and procedures for the acquisition of supplies and nonpersonal services, from commercial sources, the aggregate amount of which does not exceed \$50,000.

(b) *Competition and price reasonableness.* (1) Sufficient competition shall be obtained when making small purchases to assure that the procurement is reasonable, considering price and other factors including administrative costs of the purchase. If known, the previous supplier shall be invited to make a quotation.

(2) All Requests for Quotations (RFQ) must be rotated among qualified available sources. RFQs shall not be solicited on a preferential basis.

(3) Adequacy of price competition for a given procurement shall be based on whether the foregoing conditions are satisfied. Generally, in making this judgment, the smaller the number of quotations, the greater the need for close evaluation.

(4) If the order is for an amount not greater than \$2,500, and the price quoted is fair and reasonable, only one quotation is required. Such purchases shall be rotated among qualified suppliers. Records of these purchases shall include a justification as to how the price was determined to be fair and reasonable. The justification may be in the form of an estimate, previous or similar procurements, or any other method of substantiating a fair market price.

(5) To provide competition, generally three or more quotations shall be requested for small purchases over \$2,500. While each RFQ may not result in a quotation, efforts should be directed to obtain a reasonable number of quotations. When only one quotation is received, or if the price variance between quotations appears to reflect a lack of true competition, documentation shall be included in the contract file setting forth the basis for the determination by the Contracting Officer that the price is fair and reasonable. The contract file shall include all sources solicited and all quotations received.

(c) The responsible firm with the lowest acceptable quotation shall be issued a purchase order, signed by the Contracting Officer.

3. Documentation. When oral or faxed price quotations are obtained, records, handwritten or otherwise, shall be established which clearly reflect the propriety of the order. At a minimum, the contract file shall include: (a) company and personnel names of the sources solicited; (b) date, time, and manner of communication; (c) company and personnel name and title from any source submitting a quotation or other response; (d) price(s) and other terms such as payment discounts quoted by each; (e) name of person calling out each solicitation; and (f) name of the person receiving each quotation. GPO Form 908, Small Purchase Abstract of Quotations, or GPO Form 143A, Invitation to Bid and Abstract shall be used for these purposes throughout the Department.

4. Purchase Order Forms. GPO Form 2676 shall be issued for books, pamphlets, cut forms, or specialty items and GPO Form 2675 shall be issued for multi-part forms. Both of these purchase orders include an area for detailed specifications. The entire purchase order may be completed with ballpoint pen. Typing is not required. Distribution shall be as indicated on each copy. These two purchase order forms shall be used for small purchase awards only. When used as the request for quotations prior to award, the information required on the purchase order forms shall be completed and included in the request for quotations.

SECTION 5. NEGOTIATION FOR PUBLIC EXIGENCY

1. Deviation from Negotiation Procedures.

(a) *Determination.* A determination and findings (D&F), in the format of exhibit VII-1 and signed by the Contracting Officer, shall be placed in the contract file folder.

(b) *Solicitation.* When possible, at least three qualified suppliers shall be solicited. However, that number shall be increased as necessary to assure adequate competition. A list

of prospective offerors and written specifications shall be developed. Time permitting, the written specifications shall be provided to the prospective offerors (e.g., by facsimile). They shall be afforded adequate time in which to submit their offers. Where time does not permit, and the specifications are not too complex, the printing specialist will carefully read the specifications to the suppliers via telephone or transmit via facsimile. Suppliers shall be advised that (1) offers will be accepted until a specific time and date, and (2) telegraphic offers must be promptly confirmed in writing, and (3) GPO Contract Terms (Pub. 310.2) and the representations and certifications on the reverse of the bid form (Form 910) apply. Also, facsimile bids are acceptable with the insertion of the provision "Facsimile Bids" in GPO Pub. 310.2, Contract Terms (rev. 5-99).

(c) *Award.* If applicable, the purchase order shall reference that the bid was made in response to a telephone solicitation and that the written specifications are precedent.

SECTION 6. NONCOMPETITIVE PURCHASES

1. Deviation From Negotiation Procedures.

(a) *Presolicitation.* (1) The Contracting Officer shall first be satisfied that the requirement is validly noncompetitive. To aid in this judgment, justification must be obtained from the requesting agency adequate to support a noncompetitive determination. Justification should be provided in writing before the Contracting Officer takes any further action. In urgent situations, the justification may be obtained orally, documented for the file using GPO Form 714 or similar documentation, and subsequently confirmed in writing by the agency. If the item is deemed or suspected to be proprietary, the requirements of I-13 shall also be satisfied.

(2) Once satisfied that competition cannot be obtained, the Contracting Officer shall prepare a memorandum to the Manager, PPD setting forth the facts, to include an estimate of the cost of the item and recommended action. This memorandum shall be supported by the following documentation, as a minimum:

- (i) a copy of the requisition;
- (ii) the agency justification;
- (iii) a D&F, if required (see exhibit VII-2);
- (iv) other pertinent information.

The memorandum shall be forwarded through the Contracting Officer's Superintendent for review and then to the Manager, PPD for approval. No solicitation shall be issued until approval has been obtained.

(3) If the noncompetitive procurement is estimated to exceed \$50,000 two copies of a D&F shall be prepared, using the format in exhibit VII-2. Both copies shall be signed by the Contracting Officer. The Manager, PPD will indicate approval on the D&F and return the original to the Contracting Officer. The signed original shall be placed in the official contract file.

(b) *Solicitation.* (1) A solicitation document, including specifications, shall be prepared and forwarded to the supplier. The form and format of the currently used "Invitation for Bid" may be employed. The supplier shall be provided GPO Form 910, "Bid," on which to submit its offer.

(2) In urgent circumstances, a telegraphic or facsimile solicitation and offer may be authorized.

(3) The solicitation shall specify a closing date for receipt of the supplier's offer. The maximum possible time for preparation and submission of the offer shall be allowed.

(4) An offer received for a noncompetitive procurement shall not be publicly opened. No information contained in the offer shall be made available to the public, or to anyone within the Government who does not have a legitimate interest in the offer.

SECTION 7. NEGOTIATION AFTER ADVERTISING

1. Deviation from Negotiation Procedures.

(a) *Resolicitation.* (1) If an advertised solicitation fails because of unreasonable bid prices received or the lack of receiving any responsive bids, the Contracting Officer shall first consider readvertising for the requirement, provided that time or other circumstances permit. If an IFB is to be canceled and resolicited because of unreasonable prices, CRB approval is required (see I-10.4(a)). If no responsive bids were received, the Contracting Officer shall have a new bidders mailing list developed which will provide reasonable assurance of responses.

(2) If time or other circumstances do not allow for readvertising, the Contracting Officer may negotiate for the requirement under the authority of this section, provided that, the Contracting Officer believes adequate competition and reasonable prices can be obtained through negotiation.

(b) *Approval for negotiation.* If the Contracting Officer is convinced that negotiation after advertising is the appropriate method by which to procure the requirement, he or she shall so recommend to the Manager, PPD by memorandum. The memorandum shall set forth the pertinent circumstances of the case (e.g., why readvertisement is not feasible, how prices were determined to be unreasonable, etc.), and shall be supported by the case file and any other pertinent information. Two copies of a D&F shall be prepared to accompany the memorandum, using the format in exhibit VII-3. The Manager, PPD will sign both copies if approved. The signed original will be returned to the Contracting Officer to be placed in the official contract file.

(c) *Notification to bidders.* Upon receipt of the signed D&F approving negotiation, the Contracting Officer shall promptly notify each responsible supplier who submitted a bid (in the case of unreasonable prices) or each supplier on the bidders mailing list (in the case of no responsive bids received) of the Government's intent to negotiate the instant requirement and afford them the opportunity to participate in negotiations. Their responses shall be documented and included in the contract file. Those suppliers who submitted bids will be considered as the basis for beginning negotiation. They will be afforded an opportunity to submit modifications to their initially submitted bids at this time. When no bids have been received, the suppliers who wish to participate in the negotiation will be advised that they should submit their offers based on the IFB as originally issued (or as amended). A closing date for receipt of offers or modifications will be established and provided to the interested suppliers. They shall also be advised at that time that offers or modifications received after the close of business on that specified date will be processed in accordance with the provision "Late Bids, Late Modification of Bids, or Late Withdrawal of Bids," in GPO Contract Terms (GPO Pub. 310.2). Additionally, all interested sup-

pliers will be advised of the possibility that award may be made without further discussion.

SECTION 8. COMPETITIVE NEGOTIATION

1. Scope. This section covers policies and procedures governing contracting by negotiation except small purchases and two-step formal advertising.

2. General. Compared to formal advertising, negotiation is a more flexible procedure that includes the receipt of proposals from offerors, permits bargaining, and usually affords offerors an opportunity to revise their offers before award of a contract. Bargaining—in the sense of discussion, persuasion, alteration of initial assumptions and positions, and give-and-take—may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.

3. Use of Negotiation.

(a) Procurement may be accomplished by negotiation pursuant to any of the authorities specified. However, procurement shall continue to be made by sealed bid procedures when practicable, even though existing conditions and circumstances would otherwise satisfy the requirements of this chapter.

(b) When procurement is to be accomplished by use of negotiation, offers shall be solicited from the maximum number of qualified sources consistent with the nature and requirements of the item(s) to be procured.

(c) Negotiated procurements shall be on a competitive basis to the maximum practicable extent.

(d) Each purchase order issued pursuant to this section shall include a statement, indicating the authority under which the procurement was made, as follows:

Negotiated pursuant to the authority of (insert authority).

4. Authorization and Approval. No contract shall be entered into as a result of negotiation unless—

(a) The contemplated contract action comes under one of the authorizations permitting negotiation;

(b) All required determinations and findings have been made; and

(c) All required clearances and approvals have been obtained.

5. Negotiation Authorities.

(a) *Small Purchases.* (1) *Authority.* Purchases not in excess of \$50,000 are accomplished by negotiation pursuant to the authority of 41 U.S.C. 5(1).

(2) *Application.* Small purchase procedures are designed to reduce the administrative costs associated with the procurement of comparatively low-dollar-value printing requirements and sufficiently simple to allow telephone description in enough detail to permit intelligent quotations.

(3) *Limitations.* (i) The small purchase limitation under this authority shall not exceed \$50,000.

(ii) Negotiations initiated under another authority shall be cited as the negotiation authority for any resulting contract even though the contract is for less than the small purchase limitation.

(b) *Public Exigency.* (1) *Authority.* Pursuant to the authority of 41 U.S.C. 5(2), purchases of printing, binding, and related services may be negotiated in lieu of formal advertising, when the public exigency will not permit delay occasioned by advertising.

(2) *Application.* This method of procurement shall be used on an emergency basis only. In order for this authority to be used, the need must be compelling and of unusual urgency, as when the Government would be seriously injured, financially or otherwise, if the supplies or services contracted for were not furnished by a certain time and when they could not be procured by that time by means of formal advertising.

(3) *Limitations.* (i) Contracts negotiated under this authority shall be supported by a D&F justifying its use, signed by the Contracting Officer, and approved by the appropriate Superintendent.

(ii) This authority shall not be used when negotiation is authorized for purchases not in excess of the applicable small purchase limitation.

(c) *Noncompetitive Purchase.* (1) *Authority.* Pursuant to the authority of 41 U.S.C. 5(3), purchases and contracts may be negotiated when only one source of supply is available.

(2) *Application.* Illustrative circumstances in which this authority may be used are:

(i) When supplies or services can be obtained only from one person or firm ("sole source of supply").

(ii) When competition is precluded because of the existence of patent rights, copyrights, secret processes, control of basic raw material, or similar circumstances (however, the mere existence of such rights or circumstances does not in and of itself justify the use of this authority).

(iii) When it is impossible to draft adequate specifications or any other adequately detailed description of the required supplies or services.

(3) *Limitations.* Contracts negotiated under this authority shall be supported by a D&F justifying its use, signed by the Contracting Officer and approved by the Manager.

(d) *Negotiation After Advertising.* (1) *Authority.* Authority to accomplish purchases of printing by negotiation after formal advertising was given by the JCP by letter of November 30, 1979. Such purchases may be made if:

(i) the bid prices received after advertising are unreasonable as to all or part of the requirement;

(ii) the bid prices were not independently reached in open competition (i.e., were collusive); or

(iii) "no bid" responses were received.

(2) *Application.* This authority is designed to cope with cases where bids received after advertising are too high, although not actually identical or apparently collusive, cases of indicated possible collusive bidding, or where "no bid" responses are received. Indications of possible violation of anti-trust laws or collusive bidding are to be reported in accordance with I-4.2. Where, after advertising, some of the bids do not appear reasonable, and the reasonable bids do not cover the full quantity required, the Contracting Officer may, at his or her discretion, accept the reasonable bids. Negotiation for the balance of the quantity required is subject to the requirements of paragraph (3) below.

(3) *Limitations.* This authority, supported by a D&F, shall not be used unless the Manager, PPD has determined that the bid prices received after advertising are unreasonable, were not independently reached in open competition, or that "no bid" responses were received. After determination by the Manager, PPD and the rejection of all bids, no contract shall be negotiated unless:

(i) In the case of unreasonable prices, each responsible bidder who submitted a bid, or in the case of no bids received, each supplier on the bidder's mailing list is notified

of the intent to negotiate and is given a reasonable opportunity to negotiate; and

(ii) the negotiated price is the lowest negotiated price offered by a responsible bidder.

(iii) The negotiated price is lower than the lowest rejected bid price of a responsible bidder, as determined by the Manager, PPD.

(e) *Competitive Negotiation.* (1) *Authority.* Pursuant to the authority of 44 U.S.C. 311, the Public Printer may negotiate purchases and contracts for supplies or services for which the Public Printer determines that it is impracticable to secure competition by advertising.

(2) *Limitations.* The Public Printer may not award a contract under this section unless the justification (D&F) for this use of negotiation is in writing and a certification is made as to the accuracy and completeness of the justification. The justification shall set out facts and circumstances that clearly and convincingly establish that advertising would not be practicable for such contract. This justification is final and a copy thereof shall be maintained in GPO for at least 6 years after the date of the determination. The Public Printer has designated the Director, Procurement Services, Manager, PPD, and Director, MMS to sign the D&F (see exhibit VII-4) and certify as to the accuracy and completeness of the justification.

6. Determination and Finding (D&F).

(a) *Definition.* A determination and finding (D&F) constitutes a special form of approval or exercise of judgment required as a prerequisite to taking certain actions by procurement officials. A D&F must stand alone on its own merits and should ideally be confined to a single page, containing all available findings, concisely stated, to support the determinations.

(b) *General.* (1) D&F's are required to (i) justify authority to enter into negotiated contracts, (ii) make advance or progress payments, (iii) determine the type of contract to be used, (iv) waive a requirement for submission of cost or pricing data, (v) mistakes in bid, (vi) noncompetitive purchases, (vii) authorizing award notwithstanding a GAO protest, and (viii) nonresponsibility determinations.

(2) The customary form of a D&F contains:

(i) A title or heading.

(ii) An identifying number.

(iii) An opening statement of authorization.

(iv) A series of numbered findings under the subhead "Findings".

(v) One or more determinations under the subhead "Determination".

(3) The approval to negotiate granted by a D&F is restricted to the procurements reasonably described in that D&F. D&F's may provide for a reasonable degree of flexibility, if such flexibility is not inconsistent with the negotiation authority involved. Furthermore, in the application of an approved D&F to a negotiation situation, reasonable variations in estimated quantities or prices are permitted, unless the D&F specifies otherwise.

(4) When an option is anticipated, the D&F shall state the approximate quantity to be awarded initially and the extent of the increase to be permitted by the option.

(c) *Supersession, modification, and cancellation.* (1) If a D&F is superseded by another D&F, that action shall not render invalid any action taken under the original D&F.

(2) A modification of the D&F will not require cancellation of the solicitation if the D&F, as modified, supports negotiation under any applicable authority.

(3) If a D&F is canceled, but the facts continue to support negotiation under an authority for which a D&F is not required, cancellation of the solicitation is not required.

7. Receipt of requisition and presolicitation

(a) *Responsibilities.* (1) The Contracting Officer, or authorized representatives acting within the scope of their authority, are the exclusive agents of the GPO to enter into and modify contracts in accordance with GPO directives and procedures. The Contracting Officer is responsible for the performance of all administrative actions necessary for effective contracting. Contracting Officers shall avail themselves of all appropriate organizational tools such as the advice of specialists in the fields of contracting, finance, law, contract audit, traffic management, and cost/price analysis.

(2) To the extent services of specialists are utilized in the negotiation of contracts, Contracting Officers must coordinate a team of experts, requesting advice, evaluating counsel, and availing themselves of their skills. Contracting Officers shall not, however, transfer their own responsibilities to them. Thus, determination of the suitability of the contract price to the Government always remains the responsibility of the Contracting Officer.

(3) Upon review of Standard Form 1 (SF-1), the Contracting Officer shall assure that the following applicable considerations have been addressed:

- (i) Adequate description of the tasks and objectives involved in the procurement;
 - (ii) analysis of cost or price estimates and determination of available funding;
 - (iii) evidence of any necessary special approvals or clearances (including D&F's);
 - (iv) suggested technical evaluation and testing criteria;
- or
- (v) recommendation to obtain equipment by lease or purchase applying to both the initial procurement of equipment and the renewal or extension of equipment leases.

(4) The Contracting Officer shall also—

- (i) Select the appropriate contract type;
- (ii) Appoint (in writing) a Contracting Officer's Representative (COR) when applicable;
- (iii) Develop and issue the solicitation document; and
- (iv) Conduct preproposal conferences when necessary.

8. Solicitation and Receipt of Proposals.

(a) Requests for proposals (RFP's) are used in negotiated acquisitions to communicate Government requirements to prospective contractors and to solicit proposals from them. Contracting Officers shall issue written solicitations which shall contain the information necessary to enable prospective contractors to prepare proposals properly. Solicitation provisions and contract clauses may be incorporated into solicitations and contracts by reference.

(b) Contracting Officers shall furnish identical information concerning a proposed procurement to all prospective contractors. Government personnel shall not provide the advantage of advance knowledge concerning a future solicitation to any prospective contractor.

(c) A proposal received in response to an RFP is an offer that can be accepted by the Government to create a binding

contract, either following negotiations or, when authorized, without discussion. Contracting Officers should normally issue RFP's when they consider it reasonable to expect prospective contractors to respond with offers, even though they anticipate negotiations after receipt of offers.

9. Presolicitation Notices and Conferences.

(a) *General.* Presolicitation notices and conferences may be used as preliminary steps in negotiated procurements in order to—

- (1) Develop or identify interested sources;
- (2) Request preliminary information based on a general description of the supplies or services involved;
- (3) Explain complicated specifications and requirements to interested sources; and
- (4) Aid prospective contractors in later submitting proposals without undue expenditure of effort, time, and money.

(b) *Presolicitation notices.* (1) When presolicitation notices are used, the Contracting Officer shall prepare and issue the notice to potential sources and shall synopsise the notice in the Commerce Business Daily.

(2) Each presolicitation notice shall—

- (i) Define as explicitly as possible the information to be furnished in the response;
- (ii) Indicate whether it is contemplated that the presolicitation notice will be followed by a conference and a formal solicitation; and
- (iii) Request an expression of interest in the contemplated procurement by a specified date.

(3) In complex procurements, the presolicitation notice may also request information pertaining to management, engineering, and production capabilities. Detailed drawings, specifications, or plans will not normally be included with a presolicitation notice.

(4) The Contracting Officer shall furnish copies of the solicitation to (i) all those responding affirmatively to the presolicitation notice and (ii) other prospective contractors upon their request except debared, suspended, and ineligible contractors.

(c) *Presolicitation conferences.* (1) The presolicitation conference may be used only when approved by the Manager. It shall not be used as a method for prequalification of offerors.

(2) The Contracting Officer shall—

- (i) Advise all firms responding to the presolicitation notice of the details of any pending presolicitation conference;
- (ii) Conduct the conference and arrange for technical and legal personnel to attend, as appropriate; and
- (iii) Furnish copies of the solicitation to all organizations attending the conference, unless they decline to participate in the procurement.

10. Preparing Requests for Proposals (RFP's).

(a) *Uniform contract format.* (1) Contracting Officers shall prepare solicitations and resulting contracts using the uniform contract format outlined in the table below. The format facilitates preparation of the solicitation and contract, as well as reference to and use of those documents by offerors and contractors.

(2) Solicitations to which the uniform contract format applies shall include Parts I, II, III, and IV. Upon award, Contracting Officers shall not physically include Part IV in the

resulting contract, but shall retain in their contract file Section K, Representations, certifications, and other statements of offerors, as completed by the contractor. Award by acceptance of a proposal on the award portion of the contract form incorporates Section K by reference in the resultant contract. Contracts requiring a bilateral document shall incorporate Section K by reference in the signed contract.

UNIFORM CONTRACT FORMAT

Section	Title
Part I—The Schedule	
A	Solicitation/contract form
B	Supplies or services and prices/costs
C	Description/specifications/work statement
D	Packaging and marking
E	Inspection and acceptance
F	Deliveries or performance
G	Contract administration data
H	Special contract requirements
Part II—Contract Clauses	
I	Contract clauses
Part III—List of Documents, Exhibits, and Other Attachments	
J	List of documents, exhibits, and other attachments
Part IV—Representations and Instructions	
K	Representations, certifications, and other statements of offerors
L	Instructions, conditions, and notices to offerors
M	Evaluation factors for award

11. Solicitation Provisions. The Contracting Officer shall insert in the solicitation the following applicable provisions in addition to those contained in GPO Contract Terms (Pub. 310.2) as referenced.

UNNECESSARILY ELABORATE PROPOSALS

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the offeror's lack of cost consciousness. Elaborate art work, expensive paper and bindings, and expensive visual and other presentation aids are neither necessary nor wanted.

AUTHORIZED NEGOTIATORS

The offeror represents that the following persons are authorized to negotiate on its behalf with the Government in connection with this request for proposals: *[list names, titles, and telephone numbers of the authorized negotiators]*.

RESTRICTION ON DISCLOSURE AND USE OF DATA

Offerors who include in their proposals data that they do not want disclosed to the public for any purpose or used by the Government except for evaluation purposes, shall—

(a) Mark the title page with the following legend:

“This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of—or in connection with—the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government’s right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets *[insert numbers or other identification of sheets]*”; and

(b) Mark each sheet of data it wishes to restrict with the following legend:

“Use or disclosure of data contained on this sheet is subject to the restriction of the title page of this proposal”.

12. Preproposal Conferences.

(a) A preproposal conference may be held to brief prospective offerors after a solicitation has been issued but before offers are submitted. Generally, the Government uses these conferences in complex negotiated procurements to explain or clarify complicated specifications and requirements.

(b) The Manager, PPD shall decide if a preproposal conference is required. The Contracting Officer will make the necessary arrangements, including the following:

(1) If notice was not in the solicitation, give all prospective offerors who received the solicitation adequate notice of the time, place, nature, and scope of the conference.

(2) If time allows, request prospective offerors to submit written questions in advance. Prepared answers can then be delivered during the conference.

(3) Arrange for technical and legal personnel to attend the conference, if appropriate.

(c) The Contracting Officer or a designated representative shall conduct the preproposal conference, furnish all prospective offerors identical information concerning the proposed procurement, make a complete record of the conference, and promptly furnish a copy of that record to all prospective offerors. Conferees shall be advised that—

(1) Remarks and explanations at the conference shall not qualify the terms of the solicitation; and

(2) Terms of the solicitation and specifications remain unchanged unless the solicitation is amended in writing.

13. Receipt of Proposals.

(a) The procedures for receipt and handling of proposals in negotiated procurements should be similar to the receipt and safeguarding of bids in sealed bidding.

(b) After receipt, proposals shall be forwarded, unopened, to the Contracting Officer for safeguarding from unauthorized disclosure. None of the information contained in them or concerning the number or identity of offerors shall be made available to the public or to anyone in the Government not having a legitimate interest.

(c) During the preaward or preacceptance period of a negotiated procurement, only the Contracting Officer, the Contracting Officer’s superiors having contractual authority, and others specifically authorized shall transmit technical or other information and conduct discussions with prospective contractors. Information shall not be furnished to a prospective contractor if, alone or together with other information, it may afford the prospective contractor an advantage over others. However, general information that is not prejudicial to others may be furnished upon request.

(d) Prospective contractors and subcontractors may place restrictions on the disclosure and use of data in proposals. Contracting Officers shall not exclude proposals from consideration merely because they restrict disclosure and use of data, nor shall they be prejudiced by the restriction. The portions of the proposal that are so restricted (except for information that is also obtained from another source without restriction) shall be used only for evaluation and shall not be disclosed outside the Government without permission of the prospective contractor.

14. Source Selection.

(a) *Definitions.* “Clarification” means communication with an offeror for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the pro-

posal. It is achieved by explanation or substantiation, either in response to Government inquiry or as initiated by the offeror. Unlike discussion (see definition below), clarification does not give the offeror an opportunity to revise or modify its proposal, except to the extent that correction of apparent clerical mistakes results in a revision.

“Deficiency” means any part of a proposal that fails to satisfy the Government’s requirements.

“Discussion” means any oral or written communication between the Government and an offeror (other than communications conducted for the purpose of minor clarification), whether or not initiated by the Government, that (a) involves information essential for determining the acceptability of a proposal, or (b) provides the offeror an opportunity to revise or modify its proposal.

“Source selection authority” means the Government official in charge of selecting the source. This title is most often used when the selection process is formal and the official is someone other than the Contracting Officer.

(b) *Applicability.* (1) This subpart applies to negotiated contracting when source selection is based on—

(i) Cost or price competition between proposals that meet the Government’s minimum requirements stated in the solicitation; or

(ii) Competition involving an evaluation and comparison of cost or price and other factors.

(2) This subpart does not apply to small purchases.

(c) *Purpose.* Source selection procedures are designed to—

(1) Maximize competition;

(2) Minimize the complexity of the solicitation, evaluation, and the selection decision;

(3) Ensure impartial and comprehensive evaluation of offerors’ proposals; and

(4) Ensure selection of the source whose proposal has the highest degree of realism and whose performance is expected to best meet stated Government requirements.

(d) *Responsibilities.* (1) The Public Printer, or designee, is responsible for source selection.

(2) The cognizant technical official is responsible for the technical requirements related to the source selection process.

(3) The Contracting Officer is responsible for contractual actions related to the source selection process, including—

(i) Issuing solicitations;

(ii) Conducting or coordinating cost or price analyses;

(iii) Conducting or controlling all negotiations concerning cost or price, technical requirements, and other terms and conditions; and

(iv) Selecting the source for contract award, unless another official is designated as the source selection authority.

(e) *Evaluation Factors.* (1) The factors that will be considered in evaluating proposals should be tailored to each procurement and include only those factors that will have an impact on the source selection decision.

(2) The evaluation factors that apply to a procurement and the relative importance of those factors are within the broad discretion of procurement officials. However, price or cost to the Government shall be included as an evaluation factor in every source selection. Other evaluation factors that may apply to a particular procurement are cost realism, technical excellence, management capability, personnel qualifications, experience, past performance, schedule, and any other relevant factors.

(3) While the lowest price or lowest total cost to the Government is properly the deciding factor in many source selections, in certain procurements the Government may select the source whose proposal offers the greatest value to the Government in terms of performance and other factors. The primary consideration should be which offeror can perform the contract in a manner most advantageous to the Government, as determined by evaluation of proposals according to the established evaluation criteria.

(4) The solicitation shall clearly state the evaluation factors, including price or cost and any significant subfactors, that will be considered in making the source selection and their relative importance. Numerical weights, which may be employed in the evaluation of proposals, need not be disclosed in solicitations. The solicitation shall inform offerors of minimum requirements that apply to particular evaluation factors and significant subfactors.

(f) *Changes in Government Requirements.* (1) When, either before or after receipt of proposals, the Government changes, relaxes, increases, or otherwise modifies its requirements, the Contracting Officer shall issue a written amendment to the solicitation. When time is of the essence, oral advice of changes may be given if the changes involved are not complex and all firms to be notified (see (f)(2) below) are notified as near to the same time as possible. The Contracting Officer shall make a record of the oral advice and promptly confirm that advice in writing.

(2) In deciding which firms to notify of a change, the Contracting Officer shall consider the stage in the procurement cycle at which the change occurs and the magnitude of the change, as follows:

(i) If proposals are not yet due, the amendment shall be sent to all firms that have received a solicitation.

(ii) If the time for receipt of proposals has passed but proposals have not yet been evaluated, the amendment should normally be sent only to the responding offerors.

(iii) If the competitive range has been established, only those offerors within the competitive range shall be sent the amendment.

(iv) If a change is so substantial that it warrants complete revision of a solicitation, the Contracting Officer shall cancel the original solicitation and issue a new one, regardless of the stage of the procurement. The new solicitation shall be issued to all firms originally solicited and to any firms added to the original list.

(3) If the proposal considered to be most advantageous to the Government (as determined according to the established evaluation criteria) involves a departure from the stated requirements, the Contracting Officer shall provide all offerors an opportunity to submit new or amended proposals on the basis of the revised requirements; *provided*, that this can be done without revealing to the other offerors the solution proposed in the original departure or any other information that is entitled to protection.

(g) *Disclosure of Mistakes Before Award.* (1) Contracting Officers shall examine all proposals for minor informalities or irregularities and apparent clerical mistakes. Communication with offerors to resolve these matters is clarification, not discussion. However, if the resulting communication prejudices the interest of other offerors, the Contracting Officer shall not make award without discussions with all offerors within the competitive range.

(2) Mistakes not covered in (g)(1) above are usually resolved during discussion.

(h) *Proposal Evaluation.* (1) Proposal evaluation is an assessment of both the proposal and the offeror's ability (as conveyed by the proposal) to successfully accomplish the prospective contract. Competitive proposals shall be evaluated solely on the factors specified in the solicitation.

(i) *Cost or price evaluation.* The Contracting Officer shall use cost or price analysis to evaluate the cost estimate or price, not only to determine whether it is reasonable, but also to determine the offeror's understanding of the work and ability to perform the contract. The Contracting Officer shall document the cost or price evaluation.

(ii) *Technical evaluation.* If any technical evaluation is necessary beyond ensuring that the proposal meets the minimum requirements in the solicitation, the cognizant technical official, in documenting the technical evaluation, shall include—

(A) The basis for evaluation;

(B) An analysis of the technically acceptable and unacceptable proposals, including an assessment of each offeror's ability to accomplish the technical requirements;

(C) A summary, matrix, or quantitative ranking of each technical proposal in relation to the best rating possible; and

(D) A summary of findings.

(2) All proposals received in response to a solicitation may be rejected if the Manager, PPD determines in writing that—

(i) All otherwise acceptable proposals received are at unreasonable prices;

(ii) The proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or

(iii) For other reasons, cancellation is clearly in the Government's interest.

(3) Prompt payment discounts are not evaluated for award in negotiated acquisitions from competitive proposals.

(i) *Competitive Range.* (1) The Contracting Officer shall determine which proposals are in the competitive range for the purpose of conducting written or oral discussion. The competitive range shall be determined on the basis of cost or price and other factors that were stated in the solicitation and shall include all proposals that have a reasonable chance of being selected for award. When there is doubt as to whether a proposal is in the competitive range, the proposal should be included.

(2) If the Contracting Officer, determines that a proposal no longer has a reasonable chance of being selected for contract award, it may no longer be considered for selection.

3) The Contracting Officer shall notify in writing an unsuccessful offeror at the earliest practicable time that its proposal is no longer eligible for award.

(j) *Written or Oral Discussion.* (1) The requirement in (j)(2) below for written or oral discussion need not be applied in procurements—

(i) In which prices are fixed by law or regulation; or

(ii) In which it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of the most favorable initial proposal without discussion would result in the lowest overall cost to the Government at a fair and reasonable price; *provided, That—*

(A) The solicitation notified all offerors of the possibility that award might be made without discussion; and

(B) The award is in fact made without any written or oral discussion with any offeror.

(2) Except as provided in (j)(1) above, the Contracting Officer shall conduct written or oral discussion with all responsible offerors who submit proposals within the competitive range. The content and extent of the discussions is a matter of the Contracting Officer's judgment, based on the particular facts of each procurement.

(3) The Contracting Officer shall—

(i) Control all discussions;

(ii) Advise the offeror of deficiencies in its proposal so that the offeror is given an opportunity to satisfy the Government's requirements;

(iii) Attempt to resolve any uncertainties concerning the technical proposal and other terms and conditions of the proposal;

(iv) Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information concerning other offerors' proposals or the evaluation process; and

(v) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its proposal that may result from the discussions.

(4) The Contracting Officer and other Government personnel involved shall not engage in—

(i) Technical leveling (i.e., helping an offeror to bring its proposal up to the level of other proposals through successive rounds of discussion, such as by pointing out weaknesses resulting from the offeror's lack of diligence, competence, or inventiveness in preparing the proposal);

(ii) Technical transfusion (i.e., Government disclosure of technical information pertaining to a proposal that results in improvement of a competing proposal); or

(iii) Auction techniques, such as—

(A) indicating to an offeror a cost or price that it must meet to obtain further consideration;

(B) Advising an offeror of its price standing relative to another offeror (however, it is permissible to inform an offeror that its cost or price is considered by the Government to be too high or unrealistic); and

(C) Otherwise furnishing information about other offerors' prices.

(k) *Best and Final Offers.* (1) Upon completion of discussions, the Contracting Officer shall issue to all offerors still within the competitive range a request for best and final offers. Oral requests for best and final offers shall be confirmed in writing.

(2) The request shall include—

(i) Notice that discussions are concluded;

(ii) Notice that this is the opportunity to submit a best and final offer;

(iii) A common cutoff date and time that allows a reasonable opportunity for submission of written best and final offers; and

(iv) Notice that if any modification is submitted, it must be received by the date and time specified and is subject to the Late Submissions, Modifications, and Withdrawal of Proposals provision of the solicitation.

(3) After receipt of best and final offers, the Contracting Officer should not reopen discussions unless it is clearly in the Government's interest to do so (e.g., it is clear that infor-

mation available at that time is inadequate to reasonably justify contractor selection and award based on the best and final offers received). If discussions are reopened, the contracting officer shall issue an additional request for best and final offers to all offerors still within the competitive range.

(4) Following evaluation of the best and final offers, the Contracting Officer (or other designated source selection authority) shall select that source whose best and final offer is most advantageous to the Government, considering price and the other factors included in the solicitation.

(1) *Formal Source Selection.* (1) *General.* A source selection process is considered “formal” when a specific evaluation group structure is established to evaluate proposals and select the source for contract award. As prescribed in Procurement Instruction PPD 346.1, Formal Proposal Evaluation and Source Selection, or PPD 346.2, Streamlined Proposal Evaluation and Source Selection, this approach is generally used in high-dollar-value acquisitions and may be used in other acquisitions as prescribed. The source selection organization typically consists of an evaluation board, advisory council, and designated source selection authority at a management level above that of the Contracting Officer.

(2) *Responsibilities.* When using formal source selection, the Public Printer, or designee, shall ensure that—

(i) The official to be responsible for the source selection is formally designated as the source selection authority;

(ii) The source selection authority formally establishes an evaluation group structure appropriate to the requirements of the particular solicitation; and

(iii) Before conducting any presolicitation conferences or issuing the solicitation, the source selection authority approves a source selection plan.

(3) *Source Selection Plan.* As a minimum, the plan shall include—

(i) A description of the organization structure;

(ii) Proposed presolicitation activities;

(iii) A summary of the procurement strategy;

(iv) A statement of the proposed evaluation factors and their relative importance;

(v) A description of the evaluation process, methodology, and techniques to be used; and

(vi) A schedule of significant milestones.

(4) *Source Selection Decision.* The source selection authority shall use the factors established in the solicitation to make the source selection decision.

(i) The source selection authority shall consider any rankings and ratings, and, if requested, any recommendations prepared by evaluation and advisory groups.

(ii) The supporting documentation prepared for the selection decision shall show the relative differences among proposals and their strengths, weaknesses, and risks in terms of the evaluation factors. The supporting documentation shall include the basis and reasons for the decision.

(5) *Safeguarding information.* Particular care shall be exercised to protect source selection information on a strict need-to-know basis.

(i) During the selection process, approval by the source selection authority shall be obtained before any release of source selection data. After the source selection, releasing authority shall be as prescribed.

(ii) Government personnel shall not contact or visit a contractor regarding a proposal under source selection eval-

uation, without the prior approval of the source selection authority.

15. Price Negotiation. The following prescribes cost and price negotiation procedures applicable to initial and revised pricing of (a) negotiated prime contracts (including sub-contract pricing under them when required) and (b) contract modifications (including modifications to contracts awarded by sealed bidding.)

(a) *Definitions.* “Cost analysis” means the review and evaluation of the separate cost elements and proposed profit of (1) an offeror’s or contractor’s cost or pricing data and (2) the judgmental factors applied in projecting from the data to the estimated costs, in order to form an opinion on the degree to which the proposed costs represent what the contract should cost, assuming reasonable economy and efficiency.

“Cost or pricing data” means all facts as of the time of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly.

“Audit” means a review and evaluation of the contractor’s or subcontractor’s proposal by any or all audit personnel.

“Price” means cost plus any fee or profit applicable to the contract type.

“Price analysis” means the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

“Technical analysis” means the examination and evaluation by personnel having specialized knowledge, skills, experience, or capability in engineering, science, or management of proposed quantities and kinds of materials, labor, processes, special tooling, facilities, and associated factors set forth in a proposal in order to determine and report on the need for and reasonableness of the proposed resources assuming reasonable economy and efficiency.

(b) *Policy.* (1) Under certain circumstances, prime contractors or any subcontractors shall be required to submit and certify cost or pricing data. Specifications shall include clauses that provide for reduction of the contract price by any significant amounts that such price was increased because of submission of contractor or subcontractor defective cost or pricing data.

(2) Contracting Officers shall—

(i) Purchase supplies and services from responsible sources at fair and reasonable prices;

(ii) Price each contract separately and independently and not (A) use proposed price reductions under other contracts as an evaluation factor or (B) consider losses or profits realized or anticipated under other contracts; and

(iii) Not include in a contract price any amount for a specified contingency to the extent that the contract provides for price adjustment based upon the occurrence of that contingency.

(c) *General.* (1) Since information from sources other than an offeror’s or contractor’s records may significantly affect the Government’s negotiating position, Government personnel shall not disclose to an offeror or contractor any conclusions, recommendations, or portions of the Contracting Officer or auditor reports regarding the offeror’s or contractor’s proposal without the concurrence of the Contracting Officer responsible for negotiation. This prohibition does not preclude disclosing discrepancies or mistakes of fact (such as duplications, omissions, and errors in computation) contained in the cost or pricing data supporting the proposal.

(2) Before issuing a solicitation, the Contracting Officer shall (when feasible to do so) develop an estimate of the proper price level or value of the supplies or services to be purchased. Estimates can range from simple budgetary estimates to complex estimates based on inspection of the product itself and review of such items as drawings, specifications, and prior data.

(3) Price negotiation is intended to permit the Contracting Officer and the offeror to agree on a fair and reasonable price. Price negotiation does not require that agreement be reached on every element of cost. Reasonable compromises may be necessary, and it may not be possible to negotiate a price that is in accord with all the contributing specialists' opinions or with the Contracting Officer's prenegotiation objective. The Contracting Officer is responsible for exercising the requisite judgement and is solely responsible for the final pricing decision. The recommendations and counsel of contributing specialists, including auditors, are advisory only. However, the Contracting Officer should include comments in the price negotiation memorandum when significant audit or other specialist recommendations are not adopted.

(4) The Contracting Officer's primary concern is the price the Government actually pays; the contractor's eventual cost and profit or fee should be a secondary concern. The Contracting Officer's objective is to negotiate a contract of a type and with a price providing the contractor the greatest incentive for efficient and economical performance. The negotiation of a contract type and a price are related and should be considered together with the issues of risk and uncertainty to the contractor and the Government. Therefore the Contracting Officer should not become preoccupied with any single element and should balance the contract type, cost, and profit or fee negotiated to achieve a total result and price fair and reasonable to both the Government and the contractor. If, however, the contractor insists on a price or demands a profit or fee that the Contracting Officer considers unreasonable and the Contracting Officer has taken all authorized actions (including determining the feasibility of developing an alternative source) without success, the Contracting Officer shall then refer the contract action to higher authority. Disposition of the action by higher authority should be documented.

(d) *Requiring Certified Cost or Pricing Data.* (1)(i) Except as provided in subparagraph (e); certified cost or pricing data are required before accomplishing any of the following actions:

(A) The award of any negotiated contract expected to exceed \$500,000.

(B) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) when the modification involves a price adjustment expected to exceed \$500,000. (For example, a \$150,000 modification resulting from a reduction of \$350,000 and an increase of \$200,000 is a pricing adjustment exceeding \$500,000). This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification.

(C) The award of a subcontract at any tier, if the contractor and each higher tier subcontractor have been required to furnish certified cost or pricing data, when the subcontract is expected to exceed \$500,000.

(D) The modification of any subcontract covered by subdivision (C) above, when the price adjustment (see subdivision (B) above) is expected to exceed \$500,000.

(ii) If cost or pricing data are needed for pricing actions over \$50,000 and not in excess of \$500,000, certified cost or pricing data may be obtained. There should be relatively few instances where certified cost or pricing data and inclusion of defective pricing clauses would be justified in awards between \$50,000 and \$500,000. The amount of data required to be submitted should be limited to that data necessary to allow the Contracting Officer to determine the reasonableness of the price. Whenever certified cost or pricing data are required for pricing actions of \$500,000 or less, the Contracting Officer shall document the file to justify the requirement. When awarding a contract of \$50,000 or less, the Contracting Officer shall not require certified cost or pricing data.

(2) When certified cost or pricing data are required, the Contracting Officer shall require the contractor or prospective contractor to submit to the Contracting Officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

(i) The cost or pricing data.

(ii) A certificate of current cost or pricing data (in a format to be furnished), certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of final agreement on price.

(e) *Exemptions From or Waiver of Submission of Certified Cost or Pricing Data.* (1) *General.* Except as provided, the Contracting Officer shall not require submission or certification of cost or pricing data when the Contracting Officer determines that prices are—

(i) Based on adequate price competition;

(ii) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(iii) Set by law or regulation.

(2) *Claiming and granting exemption.* To receive an exemption; the offeror must claim for exemption from submission of certified cost or pricing data when the total proposed amount exceeds \$500,000 and more than one catalog item for which an exemption is claimed exceeds \$50,000. When an exemption is claimed for more than one item in a proposal, a separate claim is required for each such item exceeding \$50,000 except as otherwise provided in the solicitation. The Contracting Officer may grant an exemption and need not require the submission of a claim when—

(i) The Government has acted favorably on an exemption claim for the same item or similar items within the past year. In that case, except as otherwise directed by the Contracting Officer, the offeror may furnish a copy of the prior claim and related Government action. The offeror must also submit a statement to the effect that to its knowledge since the prior submission, except as expressly set forth in the statement, there have been no changes in the catalog price or discounts, volume of actual sales, or the ratio of sales for Government end use to sales in other categories which would cause a cumulative change in price exceeding \$50,000;

(ii) Special arrangements for the submission of exemption claims have been made in anticipation of repetitive acquisitions of catalog items; or

(iii) There is evidence, before solicitation, that the item has an acceptable established catalog or market price or a price set by law or regulation. Evidence may include (i) recent submissions by offerors or (ii) the Contracting Officer's knowledge of market conditions, prevailing prices, or sources.

(3) *Verification.* (i) When a prospective contractor requests exemption from submission of certified cost or pricing data, the Contracting Officer shall ensure that criteria applicable to either paragraph (1)(ii) or (1)(iii) above, as appropriate, are satisfied before issuing the exemption.

(ii) *Waiver for exceptional cases.* The Director, Procurement Services may, in exceptional cases, waive the requirement for submission of certified cost or pricing data. The authorization for the waiver and the reasons for granting it shall be in writing. This authority may be delegated.

(f) *Certificate of Current Cost or Pricing Data.* (1) When certified cost or pricing data are required, the Contracting Officer shall require the contractor to execute a Certificate of Current Cost or Pricing Data, shown below, and shall include the executed certificate in the contract file. Only one certificate shall be required; the contractor shall submit it as soon as practicable after price agreement is reached.

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, the cost or pricing data submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of _____* are accurate, complete, and current as of _____.**. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm _____
 Name _____
 Title _____
 Date of execution*** _____

*Identify the proposal, quotation, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).

**Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

***Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

(2) The certificate does not constitute a representation as to the accuracy of the contractor's judgment on the estimate of future costs or projections. It does apply to the data upon which the judgment or estimate was based. This distinction between fact and judgment should be clearly understood. If the contractor had information reasonably available at the time of agreement showing that the negotiated price was not based on accurate, complete, and current data, the contractor's responsibility is not limited by any lack of personal knowledge of the information on the part of its negotiators.

(3) Closing or cutoff dates should be included as part of the data submitted with the proposal. Certain data may not be reasonably available before normal periodic closing dates (e.g., actual indirect costs). Before agreement on price, the contractor shall update all data as of the latest dates for which information is reasonably available. Data within the contractor's or a subcontractor's organization on matters significant to contractor management and to the Government will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition.

(4) Possession of a Certificate of Current Cost or Pricing Data is not a substitute for examining and analyzing the contractor's proposal.

(5) Even though the solicitation may have requested cost or pricing data, the Contracting Officer shall not require a Certificate of Current Cost or Pricing Data when the resulting award is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(6) The exercise of an option at the price established in the initial negotiation in which certified cost or pricing data were used does not require recertification.

(7) Negotiated final pricing actions (such as termination settlements and total final price agreements for fixed price incentive and redeterminable contracts) are contract modifications requiring certified cost or pricing data if (i) the total final price agreement for such settlements or agreements exceeds \$500,000 or (ii) the partial termination settlement plus the estimate to complete the continued portion of the contract exceeds \$500,000.

(g) *Defective Cost or Pricing Data.* (1) If, before agreement on price, the Contracting Officer learns that any cost or pricing data submitted are inaccurate, incomplete, or noncurrent, the Contracting Officer shall immediately bring the matter to the attention of the prospective contractor, whether the defective data increase or decrease the contract price. The Contracting Officer shall negotiate, using any new data submitted or making satisfactory allowance for the incorrect data. The price negotiation memorandum shall reflect the revised facts.

(2) If, after award, cost or pricing data are found to be inaccurate, incomplete, or noncurrent as of the date of final agreement on price given on the contractor's or subcontractor's Certificate of Current Cost or Pricing Data, the Government is entitled to a price adjustment, including profit or fee, of any significant amount by which the price was increased because of the defective data. This entitlement is ensured by including in the contract the following clauses when it is contemplated that cost or pricing data will be required:

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

SUBCONTRACTOR COST OR PRICING DATA

(a) Before awarding any subcontract expected to exceed \$500,000 when entered into, or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$500,000, the contractor shall require

the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is—

- (1) Based on adequate price competition;
- (2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
- (3) Set by law or regulation.

(b) The Contractor shall require the subcontractor to certify that, to the best of its knowledge and belief, the data submitted under paragraph (a) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds \$500,000 when entered into, the Contractor shall insert either—

(1) The substance of this clause, including this paragraph (c), if paragraph (a) above requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause Subcontractor Cost or Pricing Data—Modifications.

SUBCONTRACTOR COST OR PRICING DATA—MODIFICATIONS

(a) The requirements of paragraphs (b) and (c) of this clause shall (1) become operative only for any modification to this contract involving a pricing adjustment expected to exceed \$500,000 and (2) be limited to such modifications.

(b) Before awarding any subcontract expected to exceed \$500,000 when entered into, or pricing any subcontract modification involving a pricing adjustment expected to exceed \$500,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is—

- (1) Based on adequate price competition;
- (2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
- (3) Set by law or regulation.

(c) The Contractor shall require the subcontractor to certify that, to the best of its knowledge and belief, the data submitted under paragraph (b) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds \$500,000 when entered into.

(3) The clauses give the Government the right to a price adjustment for defects in cost or pricing data submitted by the contractor, a prospective subcontractor, or an actual subcontractor. In arriving at a price adjustment under the clause, the Contracting Officer shall consider—

(i) The time by which the cost or pricing data became reasonably available to the contractor;

(ii) The extent to which the Government relied upon the defective data; and

(iii) Any understated cost or pricing data submitted in support of price negotiations, up to the amount of the Government's claim for overstated pricing data arising out of the same pricing action (for example, the initial pricing of the same contract or the pricing of the same change order). Such offsets need not be in the same cost groupings (e.g., material, direct labor, or indirect costs).

(4) If, after award, the Contracting Officer learns or suspects that the data furnished were not accurate, complete, and current, or were not adequately verified by the contractor as of the time of negotiation, the Contracting Officer shall request an audit to evaluate the accuracy, completeness, and currency of the data. Only if the audit reveals that the data certified by the contractor were defective may the Government evaluate the profit-cost relationships. The Contracting Officer shall not reprice the contract solely because the profit was greater than forecast or because some contingency specified in the submission failed to materialize.

(5) For each advisory audit received based on a postaward review which indicates defective pricing, the Contracting Officer shall make a determination as to whether or not the data

submitted were defective and relied upon. Before making such a determination, the Contracting Officer should give the contractor an opportunity to support the accuracy, completeness, and currency of the data in question. The Contracting Officer shall prepare a memorandum indicating (i) the Contracting Officer determination as to whether or not the submitted data were accurate, complete, and current as of the certified date and whether or not the Government relied on the data, and (ii) the results of any contractual action taken. The Contracting Officer shall send one copy of this memorandum to the auditor and, if the contract has been assigned for administration, one copy to the Administrative Contracting Officer (ACO). The Contracting Officer shall notify the contractor by copy of this memorandum, or otherwise, of the determination.

(6) If (i) both contractor and subcontractor submitted and (ii) the contractor certified cost or pricing data, the Government has the right, under the Price Reduction for Defective Cost or Pricing Data clause to reduce the prime contract price if it was significantly increased because a subcontractor submitted defective data. This right applies whether these data supported subcontract cost estimates or supported firm agreements between subcontractor and contractor.

(7) If Government audit discloses defective subcontractor cost or pricing data, the information necessary to support a reduction in prime contract and subcontract prices may be available only from the Government. To the extent necessary to secure a prime contract price reduction, the Contracting Officer should make this information available to the prime contractor or appropriate subcontractors upon request. If release of the information would compromise Government security or disclose trade secrets or confidential business information, the Contracting Officer shall release it only under conditions that will protect it from improper disclosure. Information made available under this paragraph shall be limited to that used as the basis for the prime contract price reduction. In order to afford an opportunity for corrective action, the Contracting Officer should give the prime contractor reasonable advance notice before determining to reduce the prime contract price.

(8) When a prime contractor includes defective subcontract data in arriving at the price but later awards the subcontract to a lower priced subcontractor (or does not subcontract for the work), any adjustment in the prime contract price due to defective subcontract data is limited to the difference (plus applicable indirect cost and profit markups) between (i) the subcontract price used for pricing the prime contract and (ii) either the actual subcontract price or the actual cost to the contractor, if not subcontracted, provided the data on which the actual subcontract price is based are not themselves defective.

(9) Under cost-reimbursement contracts and under all fixed-price contracts except (i) firm-fixed-price contracts and (ii) contracts with economic price adjustment, payments to subcontractors that are higher than they would be had there been no defective subcontractor cost or pricing data shall be the basis for disallowance or nonrecognition of costs under the prescribed clauses. The Government has a continuing and direct financial interest in such payments that is unaffected by the initial agreement on prime contract price.

16. Proposal Analysis.

(a) *General.* (1) The Contracting Officer, exercising sole responsibility for the final pricing decision, shall, as appropriate, coordinate a team of experts and request and evaluate the advice of specialists in such fields as contracting, finance, law, contract audit, packaging, quality control, engineering, traffic management, and contract pricing. The Contracting Officer should have appropriate specialists attend the negotiations when complex problems involving significant matters will be addressed. The Contracting Officer may assign responsibility to a negotiator or price analyst for (i) determining the extent of specialists' advice needed and evaluating that advice, (ii) coordinating a team of experts, (iii) consolidating pricing data and developing a prenegotiation objective and (iv) conducting negotiations.

(2) When cost or pricing data are required, the Contracting Officer shall make a cost analysis to evaluate the reasonableness of individual cost elements and should make a price analysis to ensure that the overall price offered is fair and reasonable. When cost or pricing data are not required, the Contracting Officer shall make a price analysis to ensure that the overall price offered is fair and reasonable.

(3) The Contracting Officer shall require prospective contractors to perform (i) price analysis for all significant proposed subcontracts and purchase orders and (ii) cost analysis when the prospective subcontractor is required to submit cost or pricing data or the contractor is unable to perform an adequate price analysis.

(b) *Price Analysis.* The Contracting Officer is responsible for selecting and using whatever price analysis techniques will ensure a fair and reasonable price. One or more of the following techniques may be used to perform price analysis:

(1) Comparison of proposed prices received in response to the solicitation.

(2) Comparison of prior proposed prices and contract prices with current proposed prices for the same or similar end items.

(3) Application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.

(4) Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.

(5) Comparison of proposed prices with independent Government cost estimates.

(c) *Cost Analysis.* The Contracting Officer shall, as appropriate, use the techniques and procedures outlined in paragraphs (1) through (6) below to perform cost analysis:

(1) Verification of cost or pricing data and evaluation of cost elements, including—

(i) The necessity for and reasonableness of proposed costs, including allowances for contingencies;

(ii) Projection of the offeror's cost trends, on the basis of current and historical cost or pricing data;

(iii) A technical appraisal of the estimated labor, material, tooling, and facilities requirements and of the reasonableness of scrap and spoilage factors; and

(iv) The application of audited or negotiated indirect cost rates, labor rates, and cost of money or other factors.

(2) Evaluating the effect of the offeror's current practices on future costs. In conducting this evaluation, the Contracting Officer shall ensure that the effects of inefficient

or uneconomical past practices are not projected into the future. In pricing production of recently developed, complex equipment, the Contracting Officer should make a trend analysis of basic labor and materials even in periods of relative price stability.

(3) Comparison of costs proposed by the offeror for individual cost elements with—

(i) Actual costs previously incurred by the same offeror;

(ii) Previous cost estimates from the offeror or from other offerors for the same or similar items;

(iii) Other cost estimates received in response to the Government's request;

(iv) Independent Government cost estimates by technical personnel; and

(v) Forecasts or planned expenditures.

(4) Verification that the offeror's cost submissions are in accordance with the contract cost principles and procedures and, when applicable, the requirements and procedures of Cost Accounting Standards.

(5) Review to determine whether any cost or pricing data necessary to make the contractor's proposal accurate, complete, and current have not been either submitted or identified in writing by the contractor. If there are such data, the Contracting Officer shall attempt to obtain them and negotiate, using them or making satisfactory allowance for the incomplete data.

(6) Analysis of the results of any make-or-buy program reviews, in evaluating subcontract costs.

(d) *Technical Analysis.* When cost or pricing data are required, the Contracting Officer should generally request a technical analysis of proposals, asking that requirements, logistics, or other appropriate qualified personnel review and assess, as a minimum—

(1) The quantities and kinds of material proposed;

(2) The need for the number and kinds of labor hours and the labor mix;

(3) The special tooling and facilities proposed;

(4) The reasonableness of proposed scrap and spoilage factors; and

(5) Any other data that may be pertinent to the cost or price analysis.

(e) *Audit.* (1)(i) When cost or pricing data are required, Contracting Officers shall request the Office of Inspector General—Audits to conduct an audit before negotiating any contract or modification resulting from a proposal in excess of \$500,000, except as otherwise authorized, unless information available to the Contracting Officer is considered adequate to determine the reasonableness of the proposed cost or price. When available data are considered adequate for a reasonableness determination, the Contracting Officer shall document the contract file to reflect the basis of the determination.

(ii) Audits are intended to give the Contracting Officer a detailed analysis of the proposal, for use in contract negotiations. Audit personnel include, but are not limited to, administrative contracting officers, contract auditors, price analysts, quality assurance personnel, engineers, and small business and legal specialists.

(iii) Contracting Officers should not request audits for proposed contracts or modifications of an amount less than that specified in subparagraph (1)(i) above. An exception may be made when a reasonable pricing result cannot be established,

because of (A) lack of knowledge of the particular contractor, (B) sensitive conditions, or (C) an inability to evaluate the price reasonableness through price or cost analysis of existing data.

(2)(i) When initiating audits, the Contracting Officer shall (A) prescribe the extent of the audit, (B) state the specific areas for which input is required, (C) include the information necessary to perform the review (such as the offeror's proposal and the applicable portions of the solicitation, particularly those describing requirements and delivery schedules), and (D) assign a realistic deadline for receipt of the audit.

(ii) Assignment of unrealistically short deadlines may reduce the quality of the audit and may make it impossible to establish the fairness and reasonableness of the price.

(3) Only the auditor shall have general access to the offeror's books and financial records. This limitation does not preclude the Contracting Officer or his representatives from requesting any data from or reviewing offeror records necessary to the discharge of their responsibilities. The duties of auditors and those of other specialists may require both to evaluate the same elements of estimated costs. They shall review the data jointly or concurrently when possible, the auditor rendering services within the audit area of responsibility and the other specialists rendering services within their own areas of responsibility. The auditor shall orally notify the Contracting Officer immediately of data provided that is so deficient as to preclude review and any denial of access to records or to cost or pricing data considered essential to the performance of satisfactory review. The oral notification shall be promptly confirmed in writing to the Contracting Officer describing the deficient or denied data or records, with copies of the deficient data if requested by the Contracting Officer, the need for the evidence, and the costs unsupported as a result of the denial. The Contracting Officer shall review the written notification and shall take immediate action to obtain the data needed. If the offeror still persists in refusing to provide the needed data or to take corrective action, the Contracting Officer shall withhold the award or price adjustment and refer the contract action to higher authority, including details of the attempts made to resolve the matter and a statement of the practicability of obtaining the supplies or services from another source.

(4) The auditor shall begin the audit as soon as possible after receiving the Contracting Officer's request. The auditor is responsible for the scope and depth of the audit. As a minimum, the audit report shall include the following:

(i) The findings on specific areas listed in the Contracting Officer's request.

(ii) An explanation of the basis and method used by the offeror in proposal preparation.

(iii) An identification of the original proposal and of all subsequent written formal and other identifiable submissions by which cost or pricing data were either submitted or identified.

(iv) A description of cost or pricing data coming to the attention of the auditor that were not submitted but that may have a significant effect on the proposed cost or price.

(v) A list of any cost or pricing data submitted that are not accurate, complete and current and of any cost representations that are unsupported. When the result of deficiencies is so great that the auditor cannot perform an audit or considers the proposal unacceptable as a basis for negotiation, the Contracting Officer shall be orally notified so

that prompt corrective action may be taken. The auditor will immediately confirm the notification in writing, explaining the deficiencies and the cost impact on the proposal.

(vi) The originals of all technical analyses received by the auditor and a quantification of the dollar effect of the technical analysis findings.

(vii) If the auditor believes that the offeror's estimating methods or accounting system are inadequate to support the proposal or to permit satisfactory administration of the contract contemplated, a statement to that effect.

(viii) A statement of the extent to which the auditor has discussed discrepancies or mistakes of fact in the proposal with the offeror.

(5) The auditor shall not discuss auditor conclusions or recommendations on the offeror's estimated or projected costs with the offeror unless specifically requested to do so by the Contracting Officer.

(6) The auditor shall send the completed audit report directly to the Contracting Officer by the assigned date. Audit reports shall be made a part of the official contract file.

(7) If any information is disclosed after submission of a proposal that the Contracting Officer believes may significantly affect the audit findings, the Contracting Officer shall require the offeror to provide the information to the auditor who will be requested to immediately review the disclosed information and orally report the findings to the Contracting Officer, followed by a supplemental report when considered necessary by the Contracting Officer.

(8) The prime contractor or higher tier subcontractor is responsible for conducting appropriate cost analyses before awarding subcontracts. However, the Contracting Officer may request an audit to analyze and evaluate the proposal of a subcontractor at any tier (notwithstanding availability of data or analyses performed by the prime contractor) if the Contracting Officer believes that such support is necessary to ensure reasonableness of the total proposed price. This step may be appropriate when, for example—

(i) There is a business relationship between the contractor and subcontractor not conducive to independence and objectivity;

(ii) The contractor is a sole source and the subcontract costs represent a substantial part of the contract cost;

(iii) The contractor has been denied access to the subcontractor's records; or

(iv) The Contracting Officer determines that, because of factors such as the size of the proposed subcontractor price, audit for a subcontract or subcontracts at any tier is critical to a fully detailed analysis of the prime contract proposal.

(9) When the Contracting Officer requests the auditor to review a subcontractor's cost estimates, the request shall include, when available, a copy of any review prepared by the prime contractor or higher tier subcontractor, the subcontractor's proposal, cost or pricing data provided by the subcontractor, and the results of the prime contractor's cost or price analysis.

(10) When the Government performs the subcontract analysis, the Government shall furnish to the prime contractor or higher tier subcontractor, with the consent of the subcontractor reviewed, a summary of the analysis performed in determining any unacceptable costs, by element, included in the subcontract proposal. If the subcontractor withholds consent, the Government shall furnish a range of unacceptable costs

for each element in such a way as to prevent giving away subcontractor proprietary data.

(f) *Subcontract Pricing Considerations.* (1) Subcontractors must submit to the contractor or higher tier subcontractor cost or pricing data or claims for exemption from the requirement to submit them. The contractor and higher tier subcontractor are responsible for (i) conducting price analysis and, when the subcontractor is required to submit cost or pricing data or if the contractor or higher tier subcontractor is unable to perform an adequate price analysis, cost analysis for all subcontracts and (ii) including the results of subcontract reviews and evaluations as part of their own cost or pricing data submission.

(2) Except when the subcontract prices are based on adequate price competition or on established catalog or market prices of commercial items sold in substantial quantities to the general public or are set by law or regulation, any contractor required to submit certified cost or pricing data also shall obtain certified cost or pricing data before awarding any subcontract or purchase order expected to exceed \$500,000 or issuing any modification involving a price adjustment expected to exceed \$500,000. To waive subcontractor cost or pricing data, follow the procedures of the paragraph "Waiver for exceptional cases."

(3) The requirements in paragraphs (1) and (2) above, modified to relate to higher tier subcontractors rather than to the prime contractor, shall apply to lower tier subcontracts for which subcontractor cost or pricing data are required.

(g) *Pre negotiation Objectives.* (1) The process of determining pre negotiation objectives helps the Contracting Officer to judge the overall reasonableness of proposed prices and to negotiate a fair and reasonable price or cost and fee. In setting the pre negotiation objectives, the Contracting Officer shall analyze the offeror's proposal, taking into account any audit report, technical analysis and other pertinent data such as independent Government cost estimates and price histories. This process may include fact-finding sessions with the offeror when the Contracting Officer deems appropriate.

(2) The Contracting Officer shall establish pre negotiation objectives before the negotiation of any pricing action. The scope and depth of the analysis supporting the objectives should be directly related to the dollar value, importance, and complexity of the pricing action. When cost analysis is required, the analysis shall address (i) the pertinent issues to be negotiated, (ii) the cost objectives, and (iii) a profit or fee objective.

(3) The Government's cost objective and proposed pricing arrangement directly affect the profit or fee objective. Because profit or fee is only one of several interrelated variables, the Contracting Officer shall not agree on profit or fee without concurrent agreement on cost and type of contract. Specific agreement on the exact values or weights assigned to individual profit-analysis factors is not required during negotiations and should not be attempted.

(h) *Price Negotiation Memorandum.* At the conclusion of each negotiation of an initial or revised price, the Contracting Officer shall promptly prepare a memorandum of the principal elements of the price negotiation. The memorandum shall be included in the contract file and shall contain the following minimum information:

(1) The purpose of the negotiation.

(2) A description of the acquisition, including appropriate indentifying numbers (e.g., RFP No.).

(3) The name, position, and organization of each person representing the contractor and the Government in the negotiation.

(4) The current status of the contractor's purchasing system when material is a significant cost element.

(5) If certified cost of pricing data were required, the extent to which the Contracting Officer—

(i) Relied on the cost or pricing data submitted and used them in negotiating the price; and

(ii) Recognized as inaccurate, incomplete, or noncurrent any cost or pricing data submitted; the action taken by the Contracting Officer and the contractor as a result; and the effect of the defective data on the price negotiated.

(6) If cost or pricing data were not required in the case of any price negotiation over \$500,000, the exemption or waiver used and the basis for claiming or granting it.

(7) If certified cost or pricing data were required in the case of any price negotiation under \$500,000, the rationale for such requirement.

(8) A summary of the contractor's proposal, the audit recommendations, and the reasons for any pertinent variances from the audit recommendations.

(9) The most significant facts or considerations controlling the establishment of the pre negotiation price objective and the negotiated price including an explanation of any significant differences between the two positions.

(10) The basis for determining the profit or fee pre negotiation objective and the profit or fee negotiated.

17. Preaward, Award and Postaward Notifications, Protests, and Mistakes.

(a) *Notifications to Unsuccessful Offerors.* (1) *General.* The Contracting Officer shall promptly notify each offeror whose proposal is determined to be unacceptable or whose offer is not selected for award, unless disclosure might prejudice the Government's interest.

(2) *Preaward notices.* When the proposal evaluation period for a solicitation is expected to exceed 30 days, or when a limited number of offerors have been selected as being within the competitive range, the Contracting Officer, upon determining that a proposal is unacceptable, shall promptly notify the offeror. The notice shall at least state (i) in general terms the basis for the determination and (ii) that a revision of the proposal will not be considered.

(3) *Postaward notices.* (i) Promptly after award of contracts, the Contracting Officer shall notify unsuccessful offerors in writing, unless preaward notice was given under paragraph (2) above. The notice shall include—

(A) The number of offerors solicited;

(B) The number of proposals received;

(C) The name and address of each offeror receiving an award;

(D) The items, quantities, and unit prices of each award (if the number of items or other factors makes listing unit prices impracticable, only the total contract price need be furnished; and

(E) In general terms, the reason the offeror's proposal was not accepted, unless the price information in (D) above readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(ii) Upon request, the Contracting Officer shall also furnish the information described in (A) through (E) above to the successful offeror.

(b) *Notification to Successful Offeror.* The Contracting Officer shall award a contract with reasonable promptness to the successful offeror by transmitting written notice of the award to that offeror.

(c) *Debriefing of Unsuccessful Offerors.* (1) When a contract is awarded on a basis other than price alone, unsuccessful offerors, upon their written request, shall be debriefed and furnished the basis for the selection decision and contract award.

(2) Debriefing information shall include the Government's evaluation of the significant weak or deficient factors in the proposal; however, point-by-point comparisons with other offerors' proposals shall not be made. Debriefing shall not reveal the relative merits or technical standing of competitors or the evaluation scoring. Moreover, debriefing shall not reveal any information that is not releasable under the Freedom of Information Act; for example—

(i) Trade secrets;

(ii) Privileged or confidential manufacturing processes and techniques; and

(iii) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information.

(3) The Contracting Officer shall include a summary of the debriefing in the contract file.

(d) *Protests Against Award.* Protests against award in negotiated acquisitions shall be treated substantially the same as in sealed bidding.

(e) *Discovery of Mistakes.* For treatment of mistakes in an offeror's proposal that are discovered before award, see XII-6.2 and 3. Mistakes in a contractor's proposal that are disclosed after award shall be processed in accordance with XII-6.4.

SECTION 9. SIMPLIFIED PURCHASE AGREEMENTS

1. Scope.

This section prescribes policies and procedures for establishing and using Simplified Purchase Agreements (SPA). These agreements are established between the Government Printing Office and individual vendors and are to be used to place individual work orders not to exceed \$2,500 for originating office copies by agency or GPO personnel. See subsection 4 for conditions of use.

2. Definitions.

“Contractor” means a supplier/vendor certified by the GPO to perform on a SPA.

“Originating office” means an entity of a Federal agency that places work orders for printing and related services.

“Proposal” means a supplier/vendor response to a SPA solicitation.

“Purchase order” means a numbered letter or form issued by GPO establishing an agreement between GPO and certified contractors.

“Quotation” means a contractor offer in response to an originating office work order solicitation.

“Supplier/vendor” means a company capable of furnishing printing and related services.

“Work order” means a signed document issued to a certified contractor by an authorized representative within an originating office describing the product or service to be furnished. Copies of a work order are used as delivery tickets and as vouchers for billing.

3. Simplified Purchase Agreements.

(a) A simplified purchase agreement (SPA) is a simplified method of filling anticipated non-repetitive needs for printing and related services by establishing the functional equivalent of charge accounts by GPO with qualified sources. It is a written instrument of agreement, established between the GPO and a contractor, that contains—

(1) terms and clauses such as Contract Terms, GPO Publications 310.1, 310.2 and 310.3 which will be a part of each order placed under the SPA, and

(2) a contractor listing of printing and/or related services to be provided including description, as specific as practicable, where warranted.

(b) SPAs are designed to reduce administrative costs in accomplishing small purchases through the use a simplified vehicle for direct agency purchase of printed products or related services up to the purchase limitation established by the SPA.

(c) SPAs shall be established with contractors who are likely to provide competitive quotations.

(d) SPAs should be used by an appropriate level of authority responsible for providing printing and printing related services for offices, installations, projects, or functions. Such levels, for example, may be organized supply points, independent or detached field units, or one-person posts or activities.

(e) A contract is formed under the SPA when the contractor begins substantial performance on a work order placed under the SPA.

(f) Modifications within SPA limits are to be handled by the originating office. The modification will be accomplished by annotating the original work order with a summary of the change and its cost. Furnish a copy of the annotated work order to the contractor and to the GPO Contracting Officer in the same manner as the initial work order.

(g) Only a GPO Contracting Officer may modify an individual order after placement under a SPA when the modification makes the order exceed the SPA limit (\$2,500.00 cost limit per order to the originating office).

(h) Each SPA shall provide for discontinuing its future applicability upon 30 days written notice by either the contractor or GPO.

(i) Discontinuing or modifying a SPA shall not affect any prior contract incorporating the SPA.

(j) A SPA shall not—

(1) Cite appropriations or obligate funds;

(2) State or imply any agreement by the Government to place future contracts or orders with the contractor; or

(3) Be used in any manner to restrict competition.

4. Authorizing use of Simplified Purchase Agreements.

The following are circumstances under which GPO Contracting Officers may authorize the use of Simplified Purchase Agreements and subsequently execute a memorandum of agreement between the originating office and the GPO:

(a) When a variety of printing or related services are to be purchased on a simplified basis and the circumstances are not conducive to the establishment of a requirements contract.

(b) If there is a need to provide direct commercial sources of supply for one or more originating office in a given area that do not otherwise have the authority to purchase.

(c) In any other case in which the writing of numerous purchase orders can be avoided through the use of this procedure.

5. Establishment of Simplified Purchase Agreements.

(a) SPAs are to be established between GPO and supplier/vendors. GPO will issue a purchase order number for each certified contractor.

(b) SPAs shall not cite accounting and appropriation data.

(c) SPAs will be made with supplier/vendors that are capable of providing the products or services offered to be ordered under the SPA.

(1) SPAs shall include a provision that supplier/vendors specify in their proposal the printed products and/or related services which they are capable of providing under the SPA.

(2) To the extent practicable, SPAs for services and/or products of the same type should be placed concurrently with more than one supplier. All competitive sources should be given an equal opportunity to furnish products or services under SPAs.

(d) SPAs shall contain the following requirements and statements:

(1) *Description of agreement.* (i) A requirement for the contractor to describe in its proposal the products or services that are proposed to be supplied under the SPA. Such descriptions may include a checklist of products or services.

(ii) A statement that the contractor is obligated to provide a list of individuals authorized to provide quotations and commit the contractor to terms of individual orders under the SPA. This list must be provided to the GPO with the proposal in response to the government's request for proposal.

(iii) A statement that the contractor shall provide a quotation and delivery commitment for supplies or services when requested by an authorized agency representative. Contractors, at their option, may propose an alternate schedule or respond with a "no quote".

(iv) A statement that GPO will provide contractors notice of individuals authorized to solicit quotations and place work under the SPA. This will be a list of individuals identified by name and position title and shall be furnished to the contractor by the Contracting Officer and updated on a regular basis.

(2) *Extent of obligation.* A statement that the Government is obligated only to the extent of purchases actually made under the SPA.

(3) *Pricing.* A statement that the prices to the Government shall be as low or lower than those charged the contractor's most favored customer for comparable quantities under similar terms and conditions, in addition to any discounts for prompt payment. Superintendent of Document copies are to be priced at an added rate exclusive of preliminary or makeready costs.

(4) *Purchase limitation.* A statement specifying that the dollar limitation for each work order under the SPA is \$2,500 for printed products or related services, exclusive of copies ordered by the Superintendent of Documents.

(5) *Work order.* A requirement that all shipments or deliveries shall be accompanied by a copy of the work order which shall be used as a delivery ticket. The work order cum delivery ticket shall contain the following minimum information:

(i) Name of supplier.

(ii) SPA number.

(iii) Date of purchase.

(iv) Purchase order number.

(v) Work order number.

(vi) Jacket number.

(vii) Itemized list of supplies or services furnished.

(viii) Quantity and price for the originating office copies plus a separate quantity and price for Superintendent of Documents copies if ordered.

(ix) Discount and discount effective period (in days).

(x) Date of delivery or shipment.

(xi) Address of delivery.

An originating office may use a work order of their own development to meet their specific requirements. However, all work orders must contain the elements in (i) through (xi) above.

6. Purchases under Simplified Purchase Agreements.

(a) The use of a SPA does not authorize purchases that are not otherwise authorized by law or regulation.

(b) No SPA is to be established in lieu of a viable direct deal term contract established by GPO where such contract is the best vehicle to obtain the products and services to be ordered under the contract.

(c) The existence of a SPA does not justify purchasing from only one source. Purchases at fair and reasonable prices under \$1,000.00 may be made without competition. Purchases over \$1,000.00 require solicitation with three or more vendors.

(d) *Order Placement.* Orders are to be placed on the basis of best value. Best value will be determined on the basis of the quotation that conforms to the job requirements and is the most advantageous to the government, price and other factors considered. Other factors that will be considered are responsiveness, business practices, convenience, courtesy, attention to detail and elements of past performance including work quality, reliability, and schedule compliance.

(e) If SPA available sources are insufficient to provide competition for a particular order, the Contracting Officer shall—

(1) solicit agreements from additional sources to expand the contractor base, or

(2) acquire the requirement using another acquisition procedure.

(f) Documentation of purchases under SPAs shall be limited to essential information and forms, as follows:

(1) Purchases under SPAs may be made orally. A work order shall be issued to ensure that the vendor and the purchaser agree concerning the transaction.

(2) When direct delivery is made, the work order shall show the date delivery was made and the services that were performed. The receipt and acceptance of supplies or services shall be documented by signature and date on the work order by the authorized Government representative after verification and notation of any exceptions. For jobs delivered to a common carrier for delivery, the work order shall be documented by signature and date by the authorized rep-

representative of the carrier who will obtain his customary receipt from the Government at the time of delivery.

7. Review procedures.

(a) Authorized originating office personnel shall review a sufficient random sample of the SPA files at least annually to ensure that authorized procedures are being followed.

(b) The GPO Contracting Officer that entered into the SPA shall—

(1) Ensure that each SPA is reviewed at least annually and, if necessary, updated at that time;

(2) Maintain awareness of changes in market conditions, sources of supply, and other pertinent factors that may warrant making new agreements with different suppliers or modifying existing agreements; and

(3) Shall ensure that the procedures in paragraph (a) above are being followed.

8. Completion of Simplified Purchase Agreements. An individual SPA is considered complete when cancelled by either party by written notice (also see 3(h) of this section).

EXHIBIT VII-1

AUTHORITY TO NEGOTIATE AN INDIVIDUAL CONTRACT FOR THE PUBLIC EXIGENCY

DETERMINATION AND FINDINGS

Upon the basis of the following findings and determination, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 41 U.S.C. 5(2).

FINDINGS

1. The Government Printing Office proposes to procure by negotiation Requisition Number (1) which was received on (2) and which is required for the (3). The estimated cost of the proposed procurement is \$ (4) and the required ship date is (5).
2. The purpose of this procurement is: (4).

3. The use of formal advertising for the proposed contract is impracticable because it would delay the (3) approximately (6) days in performing its mission during such period.

DETERMINATION

The proposed contract is one for which the public exigency will not permit the delay incident to formal advertising.

Date: _____
Contracting Officer (Signature)

APPROVED:

Date: _____
Superintendent (Signature)

Description of Requisition

- Notes:
- (1) Requisition Number.
 - (2) Date requisition was received.
 - (3) Name of agency requesting procurement.
 - (4) State the purpose of the procurement for example, to provide IRS with new tax forms due to changes in tax legislation.
 - (5) Required ship date.
 - (6) Estimated number of days delay expected if formally advertised.

EXHIBIT VII-2

AUTHORITY TO NEGOTIATE A NONCOMPETITIVE PURCHASE

DETERMINATION AND FINDINGS

Upon the basis of the following findings and determination, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of 41 U.S.C. 5(3).

FINDINGS

The Government Printing Office proposes to procure by negotiation (insert description, quantity and estimated cost of product or service) from (insert name of supplier). Procurement by negotiation of the above described (insert name of product or service) is necessary because (provide explanation/reason why procurement must be noncompetitive).

DETERMINATION

The proposed contract is for property for which competition is impossible.

Contracting Officer	Date
Manager, Printing Procurement Department	Date

Approved:

EXHIBIT VII-3

AUTHORITY TO NEGOTIATE AN INDIVIDUAL CONTRACT AFTER ADVERTISING

DETERMINATION AND FINDINGS

Upon the basis of the following findings and determination, which I hereby make as Manager, Printing Procurement Department, the proposed contract described below may be negotiated without formal advertising pursuant to the authority of the Joint Committee on Printing letter dated November 30, 1979.

FINDINGS

The Government Printing Office proposes to procure by negotiation (insert description, quantity of product or service).

Procurement by negotiation of the above described (insert description of product or service) is necessary because (insert reason, e.g., "bid prices received after formal advertising are unreasonable," "bid prices received after formal advertising were not independently reached," or "no responsive bids were received after formal advertising." Also, provide explanation as to how conclusion was reached, e.g., number of bidders solicited; number of responsive bids received and bid; price of each; reasons for determination of each nonresponsive bid; how bid prices were determined to be unreasonable or indications of collusive prices; or other information pertinent to the procurement).

DETERMINATION

The proposed contract is for property or services for which (bid prices received after formal advertising are unreasonable or—bid prices received after formal advertising were not independently reached—or no responsive bids were received after formal advertising).

Manager, Printing Procurement Department	Date
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EXHIBIT VII-4

**AUTHORITY FOR COMPETITIVE NEGOTIATION WHEN IMPRACTICABLE TO SECURE
COMPETITION BY ADVERTISING**

DETERMINATION AND FINDINGS

Authority to negotiate an individual contract upon the basis of the following findings and determination, the proposed contract described below may be negotiated without sealed bidding pursuant to the authority of 44 U.S.C. 311(b).

FINDINGS

The Government Printing Office proposes to procure by competitive negotiation (describe procurement). The estimated cost of this system is (give estimate).

Procurement by competitive negotiation of the above described system is necessary because the functional/performance requirements dictate that offerors explain in detail how they will comply with the specifications, including in-depth discussions of the strengths and weaknesses of offers. Without such discussion it would be impossible to ascertain which offer best suits the Government's needs. Because of the impossibility of drafting detailed specifications or any other adequate description of the required services, it is impractical to secure competition by sealed bidding.

DETERMINATION

I determine that the proposed contract is for property and services for which it is impracticable to obtain competition by sealed bidding. I certify that this Determination and Findings is essentially accurate and complete.

Manager, Printing Procurement Department Date

CHAPTER VIII. PRELIMINARY PROCUREMENT PROCEDURES

SECTION 1. REQUISITION PROCESSING

1. Scope. This section sets forth the responsibilities and procedures for the review, acceptance, recording, and processing of printing and binding requisitions.

2. Authority. The authority and responsibility for requisition processing in the Central Office comes under Customer Services. In the Regional Printing Procurement Offices (RPPO's) this responsibility rests with the individual managers. Therefore, unless noted otherwise, the procedures contained herein are directed to the managers and personnel of the regional offices. The term Regional Printing Procurement Offices includes regional satellite offices.

3. General.

(a) *Office files.* Each manager shall maintain current files of requisitions, forms, procedures, and laws pertaining to public printing and binding.

(b) *Agency responsibilities and procedures.* The responsibilities of, and procedures to be followed by, agencies in the requisitioning of printing through GPO are described in GPO Publication 305.1, Agency Procedural Handbook.

(c) *Assistance to customer agencies.* RPPO employees shall make themselves available to agency personnel for consultation and technical advice about requisitioning and printing problems. Visits from the agencies are to be encouraged. Visits with the agencies will be made to make yourselves known and to give assistance where necessary. The availability and advice of GPO personnel will help to resolve and prevent problems of printing requisitioning before the jobs are placed.

(d) *Assistance from Central Office.* All requests for assistance from Central Office organizations shall be submitted by the regional manager, or a duly authorized representative, through the appropriate Superintendent, Regional Operations Office (PPR).

(e) *Simultaneous or progressive procurements.* Requisitions which, in the opinion of the manager, should be procured simultaneously or progressively in one or more regions or by the Central Office, shall be referred immediately to the appropriate Superintendent, PPR, for a determination of the procedure to be followed. The manager may, at the same time, submit a proposed plan for the procurement.

4. Requisition Forms.

(a) *Standard Forms 1 and 1c.* Standard Forms 1 and 1c, Printing and Binding Requisition, are the basic forms used to requisition printing and binding services from the GPO Central Office or from RPPO's. The use of the prescribed requisition forms are required: (1) to request individual (one-time) requirements; (2) to request the establishment of, or fiscal year renewal of, a term contract; (3) to place work on an existing term contract which was established for use by another agency, providing such placement does not interfere with the contract schedules for work normally placed under

that contract; and, (4) to request waivers. The forms provide appropriate spaces where basic information and a complete description of the requirements are entered. If additional information or more detailed specifications and distribution are necessary, they may be attached. The requisition must be signed by an authorized agency representative. Copy, negatives, art, electronic media, and related material must accompany the requisition when it concerns an individual (one-time) requirement. While requisitions may be used to request that work be placed under term contracts, actual placement requires the development of a print order from the requisition.

(b) *Standard Forms 1a and 1b.* Standard Form 1a, Binding Instructions, and Standard Form 1b, List of Books To Be Bound, are supplemental instruction forms only. Submission by an agency of either or both of these forms must be accompanied by one of the prescribed forms.

(c) GPO Form 2511, Print Order is used to place orders on term contracts. If a determination is made that a requisitioned printing requirement should be procured under a term contract, a print order must be developed from the requisition before such placement can be made.

(d) *Requisition numbers.* Agency requisition numbers may not exceed 18 alphanumeric characters.

5. Documentation.

(a) *Time stamping and recording of requisitions.* Each requisition and print order, upon receipt, will be time stamped and the jacket number entered on the requisition. The following will be recorded by fiscal year in the requisition register which shall be indexed by agency:

- (1) Requisition/Print Order Number (If print order, include Program Number.)
- (2) Jacket Number
- (3) Date Received
- (4) Program/One Time.

(b) Part 3 of print orders shall be time stamped upon receipt.

6. Assignment of Jacket Numbers.

(a) *Strapped jackets.* Requisitions shall be reviewed to identify an agency's individual requirements that may be ideally grouped together (strapped). Examples of requirements with strapping potential include: Same trim size, paper, binding, etc.; similar substrates such as metals or plastics; "check digit" numbering; or GFP common to multiple jobs. Requisitions from different customer agencies exhibiting similar job characteristics may be strapped only upon documented justification that economy will be realized and with the approval of the appropriate Superintendent.

(b) *One-time and small purchase procurements.* One jacket number shall be assigned to each requisition regardless of the number of riders except:

(1) When the requirements of the requisition are to be solicited separately (e.g. composition separately from printing and binding); or

(2) When dividing an IRS requirement according to distribution.

On such occasions, separate jackets will be assigned to each aspect of the procurement and will carry a modification of the original requisition number thus: Assume original requisition No. 6-01035—modify on subsequent jackets as 0-01035-86, 1-01035-86, 2-01035-86, etc., by changing the first numeric and adding -86 (dash and year).

(c) *Term contracts (open jackets)*. Each requisitioning agency or bureau which has been given authority to place print orders under a term contract will be assigned an open jacket number for that contract. Open jacket numbers shall not be assigned to rider requisitions or to requisitions from bureaus that route their print orders through their central printing officer. These requisitions will use the same jacket number assigned to the ordering agency. Open jacket numbers remain active for one fiscal year.

(d) *Regional Office jacket numbers*. Jacket numbers in the 500, 600, and 700 series have been reserved for exclusive use by the RPPO's. One series is to be used for one fiscal year and the others the following two fiscal years. This procedure is to continue on an alternating basis. It is each manager's responsibility to reserve enough jacket numbers for use in program work. Each manager is to notify the appropriate Superintendent, PPR, of the number of jackets reserved for assignment as open program jackets for the upcoming periods. Jacket numbers reserved for program use are to be taken from the beginning of a respective series.

7. Review of Requisition and Preparation of Specifications

(a) *Agency authorization and billing information*. It is the responsibility of the RPPO manager that the appropriate boxes in the requisition heading have been filled in, that the six-digit billing address code and complete billing address are furnished, and that it contains the proper authorization. The six-digit address code is used by the Treasury Department to transfer funds from the customer agency printing appropriation to the GPO account through an automated billing system called SIBACS, "Simplified Intergovernmental Billing and Collecting System."

(b) *Printing requirements resulting from contracts for equipment and services and grants*. Qualified agents of requiring agencies such as contractors for equipment and services and grantees wishing to purchase Government-related printing shall request their grantor agency to submit a printing and binding requisition (SF-1) to GPO. Upon performance of the service, GPO will bill the grantor agency.

(c) *Presidential seal or signature*. Requests for printing that require the reproduction of the President's or Vice President's signature must be submitted to the Superintendent, Departmental Account Representative Division through the appropriate Superintendent, for approval. Such approval must also be gained for the reproduction of the Presidential Seal, Vice Presidential Seal, or the Coat of Arms of the Executive Office of the President.

(d) *Production and shipping instructions*. (1) *Completeness of requisition*. Requisitions should be reviewed to make certain that all appropriate production requirements are noted. This includes submission by the agency of folding or perfora-

tion dummies or the like, when possible ambiguities may exist.

(2) *Copy preparation*. Copy received shall be reviewed for any additional preparation. If the copy is not fully prepared, a determination must be made as to whether such additional preparation is to be performed by the GPO or to be made a part of the specifications.

(3) *Reprint orders*. Requisitions for reprint orders should include two sample copies or one set of reproducibles from the previous printing.

(4) *Distribution lists*. At least four sets of complete distribution instructions shall accompany the requisition. One set is to be attached to the requisition and retained in the contract file, one set is sent to the contractor, and the remaining two sets are for ordering bills of lading. The machine tape used to verify distribution shall be attached to the copy retained in the contract file.

(5) *Bills of lading*. When requested by the department or agency, shipment may be made on GPO or departmental bills of lading. This requirement should be indicated on the requisition. When bills of lading are to be issued by the agency, it is the responsibility of the manager to furnish the agency information necessary to issue the bills of lading immediately following award.

(e) *Superintendent of Documents, Sales, Depository, and File copies*. (1) *Responsibility*. It is the responsibility of RPPO's, on an individual requisition or print order basis, to determine whether the Superintendent of Documents (Supt. Docs.) shall be contacted for consideration of sales, depository, and file copies. For assistance in these determinations, the following guidelines are provided by the Director, Library and Statutory Distribution Service (LSDS):

Publications to be submitted for Supt. Docs. consideration:

Unclassified technical and informational reports

Bibliographies

National forest descriptive folders

Publications in numbered series

Anything on popular interest subjects; i.e., energy, taxes, history, parks and forests, home economics, outdoor recreation, public lands, etc.

Bureau reports

Annual reports

Maps

Military manuals of public interest

Publications not to be submitted:

Forms

Memos and letters

Local installation telephone directories

Classified security information

(2) *Submission to Supt. Docs*. All requests for Supt. Docs. consideration shall be properly documented on GPO Form 3868, Notification of Intent to Publish. This form is to be submitted via remote telecopier directly to the Library Programs Service (LPS). Telecopier number is 202-512-1190. LPS will answer such requests within 24 hours of receipt. All requests will be answered even if there is no requirement for Superintendent of Documents' copies. If a response is not provided within 24 hours, telephone inquiries can be made at 202-512-1586 or 1071. It is possible that LPS did not receive the original transmission from the RPPO. Each RPPO shall maintain a log showing sequentially numbered requests sent to Supt. Docs.

(3) *Processing Supt. Docs. requirements.* Once LPS has established total Supt. Docs. requirements, quantities for each are documented on GPO Form 2712 and returned via remote copier to the RPPO. This information shall be used to establish the distribution and to incorporate the Supt. Docs. requirements into the specifications. (Requests for sales copies require the submission by Supt. Docs. of a rider requisition. However, orders may be processed on a "requisition to come" basis.)

(4) *Determination of Supt. Docs. requirements for publications procured under term contracts.* It is the responsibility of the RPPO manager to obtain Supt. Docs. requirements for term contracts at the time the contracts are being established or renewed. This responsibility, however, only applies to term contracts under which all the products to be ordered can be identified prior to program commencement. For general usage term contracts or for term contracts under which miscellaneous publications will be ordered, Supt. Docs. requirements must be obtained on an individual print order basis.

(5) *GPO Form 3868, "Notification of Intent to Publish."* When an agency desires to have a publication sold by Supt. Docs., it must submit a GPO Form 3868 with the requisition. In addition, a copy of the requisition and GPO Form 3868 should be sent simultaneously to Superintendent of Documents, Sales Service, Documents Control Branch, Government Printing Office, Washington, DC 20401.

(f) *Agency requests or limitations.* (1) *Requests for specific contractors or for particular categories of contractors.* Occasionally a requisition will contain a request to include a particular contractor or to restrict bidding to a specific category of contractors (e.g., small business or minority-owned firms). In such circumstances, where it is felt that these requests cannot be totally honored, the manager should: (i) determine the origin and reasons for such requests, (ii) explain GPO's obligation to employ competitive bidding, (iii) indicate what efforts will be made to satisfy the spirit of the request (e.g., including such contractors on the bid list); and (iv) encourage agencies to recommend additional firms that could be furnished questionnaires and thus become potential bidders. In no case should these requests be disregarded. If agreement with the agency cannot be reached, it should be brought to the attention of the appropriate Superintendent, PPR, for resolution.

(2) *Geographical limitations.* It is GPO policy to provide for maximum competition consistent with the requirements of the items to be procured. An important element of this policy is to use no geographical limitations on solicitation, unless justifiable reasons exist for doing so. Restricted solicitation areas should be used only when absolutely necessary. When an agency requisition contains a requirement for a restriction, the agency should be contacted and a concerted effort made to obtain relief from the requested restriction. The most desirable result is the elimination of the restriction entirely. If, however, it cannot be eliminated, the agency should be encouraged to permit the use of a competitive area as wide as possible through the use of the following provision to be included in the invitation for bid:

PRODUCTION AREA: It is assumed that all production facilities used in the manufacture of the product(s) ordered under this contract will be located (insert assumed production area). Any bidder intending to use production facilities outside of this area must furnish information, with the bid, which will on its face demonstrate the bidder's ability to meet the schedule requirements. The determination by the Govern-

ment of the acceptability of this information in no way relieves the successful bidder of the responsibility for compliance with these schedule requirements.

If the agency insists on retaining the restriction due to the need for onsite inspections and time or budgetary constraints, and properly justifies its request, the following provision will be included in the invitation for bids:

RESTRICTION ON LOCATION OF PRODUCTION FACILITIES:
All production facilities used in the manufacture of the product(s) ordered under this contract must be located (insert production area).

Both provisions deal with the question of contractor responsibility. The result of the contact with the agency should be documented, to include the date of contact and the person contacted, and made a part of the contract file. An invitation for bid containing an area restriction shall not be issued unless approved by the appropriate Superintendent. A request for small purchase quotations with an area restriction may be issued without the Superintendent's approval.

(3) *Dollar limitations.* Whenever a requisition includes a requirement that the agency is to be notified if the bid price exceeds a stated dollar limit, it is the responsibility of all Contracting Officers, before solicitation, to:

- (i) determine whether the quantity ordered is in line with the stated dollar limit (this may be accomplished through estimates, comparison to similar previous procurements, etc.);
- (ii) contact the agency when the quantity appears to be too large or the ship date too short and encourage the agency to either reduce the quantity or extend the ship date; and
- (iii) document the contract file with a record of all contacts, including the persons contacted and the results of that effort.

8. Schedules.

(a) Schedules shall not be approved unless all materials for the work are available, or will be made available, to meet such schedules. When proofs or prior-to-production samples are required, no work shall be accepted specifying a shipping or delivery date unless the schedule of performance requested contains a statement of the amount of time the department will require for the review of proofs or samples.

(b) A print order schedule, when placed against a term contract shall not deviate from the contract schedule. Any print order not conforming to a contract schedule shall be procured through sealed bid or small purchase procedures.

9. Open requisitions.

(a) *New term contracts.* Upon receipt of a requisition for the establishment of a new term contract, it shall be processed in accordance with the applicable procedures prescribed in subsections 5, 6, and 7 of this section. In addition, it is the printing specialist's responsibility to:

- (1) review all furnished materials, including the "Term Contract Requirements" form, to assure that the information necessary to prepare the specifications is complete;
- (2) establish whether the contract will be for multiple or single award;
- (3) assign a program number through the Superintendent's office;
- (4) determine the effective date (at least three months in advance, where possible);

(5) establish the procurement area (see VIII-1.7(f)(2)) and assess the sufficiency of adequate potential contractors;

(6) determine whether the contract is to be GPO-handled or direct deal; and

(7) coordinate any suggested changes or requests for additional information with the agency's designated contact.

(b) *Fiscal year renewal of term contracts.* It is the responsibility of RPPO's to maintain current files of all open requisitions and to notify agencies, at least 4 months prior to the end of the fiscal year, when new requisitions for the next fiscal year are required. Upon receipt of new requisitions, new jacket numbers must be assigned and files updated. All necessary information must then be furnished to the agency for its records.

10. Requests for waivers. Waiver requests submitted to RPPO's will be forwarded to the Manager, PPD, through the appropriate Superintendent, PPR, for determination. Such requests must be on, or accompanied by, a properly completed requisition.

11. Changes to Requisitions. No changes will be made by an employee of the GPO in requisitions, print orders, or any other type of printing and binding specifications or instructions unless such changes are properly authorized. The name of the individual authorizing the change and any memoranda pertinent to the change shall be attached to or written upon the requisition. Any changes shall be initialed and dated in red by the person making the change.

SECTION 2. ECONOMIC PRICE ADJUSTMENT

1. General. The fixed-price contract with an economic price adjustment provision is designed to provide for the upward and downward revision of contract price(s) upon the occurrence of certain contingencies which are specifically defined in the Economic Price Adjustment clause in the contract. Use of this type of contract is appropriate when serious doubt exists as to the stability of market or labor conditions which will exist during an extended period of contract performance and when contingencies which would otherwise be included in the contract price(s) can be identified and covered separately by a price adjustment clause. Price adjustments based on established prices should normally be restricted to industrywide contingencies and price adjustments based on labor or material costs should be limited to contingencies beyond the control of the contractor. Price adjustments are based on an increase or decrease from specified labor or material cost standards or indices made applicable to the contract.

2. Application. The Economic Price Adjustment clause in XVI-3.3 shall be included in all multiyear term contracts (unless otherwise exempted by the Manager, PPD) and as otherwise deemed necessary by the Contracting Officer but only with the approval of the Manager, PPD.

SECTION 3. COMPETITION TO THE MAXIMUM EXTENT PRACTICABLE

1. Scope. This section prescribes policies and procedures to promote competition to the maximum extent practicable in the acquisition process.

2. Applicability.

This section applies to all acquisitions except—

(a) Contract modifications that are within the scope and under the terms of an existing contract (but see 6(c));

(b) Print orders placed under requirements contracts or definite-quantity contracts; or

(c) Print orders placed under indefinite-quantity contracts that were entered into pursuant to this section when the contract was awarded and all responsible sources were realistically permitted to compete for the requirements contained in the order.

(d) The placement of simplified purchase agreement (SPA) orders, provided that all responsible sources were permitted to compete.

3. Definitions.

“Competition to the maximum extent practicable,” when used with respect to the contract action, means that all responsible sources are permitted to compete.

“Sole source acquisition” means a contract for the purchase of supplies or services that is entered into or proposed to be entered into after soliciting and negotiating with only one responsible source.

4. Policy.

(a) Contracting Officers shall promote and provide for competition to the maximum extent practicable in soliciting bids and offers and awarding Government contracts.

(b) Contracting Officers shall provide for competition through the use of the competitive procedure or combination of competitive procedures that is best suited to the circumstances of the contract action. Contracting Officers must use good judgment in selecting the procedure that best meets the needs of the Government.

5. Use of competitive procedures.

The competitive procedures available for use in fulfilling the requirement for competition are as follows:

(a) Sealed bids (see VII-1).

(b) Competitive negotiation (see VII-8).

(1) Small purchases (see VII-4).

(2) Public exigency (see VII-5).

(3) Negotiation after advertising (see VII-7).

(c) Simplified purchase agreements (see VII-9).

(d) *Combination of competitive procedures.* If sealed bids are not appropriate, Contracting Officers may use any combination of competitive procedures (e.g., two-step sealed bidding (see VII-3))

6. Circumstances permitting competition other than to the maximum extent practicable.

(a) *Only one responsible source and no other supplies or services will satisfy requirements.* When the supplies or services required are available from only one responsible source (see VII-8.5(c)).

(b) *Public exigency.* When the need for supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless permitted to limit the number of sources from which bids or proposals are solicited, competition to the maximum extent practicable need not be provided for (see VII-8.5(b)).

(c) *Duplication of cost not expected to be recovered through competition.* Notwithstanding paragraph 2(a), modifications to increase up to 50 percent of the purchase or print order quantity are permitted to preclude duplicate prepress and makeready costs. Increases greater than 50 percent of the

purchase or print order quantity shall be submitted to the Contract Review Board for concurrence with a justification in the form of a Determinations and Finding signed by the Contracting Officer.

(d) Other cardinal changes negotiated in accordance with these regulations.

SECTION 4. BIDDERS MAILING LIST

1. General. A bidders mailing list, which is a file of commercial contractors who are eligible to bid on GPO printing procurement actions, shall be maintained by the Printing Procurement Department.

2. Eligibility. A commercial printing contractor who submits a properly completed and signed GPO Form 2524, Solicitation Mailing List Application, will be placed on the bidders mailing list. The contractor will be classified as to what type of procurements the firm is capable of producing based upon the information disclosed in its application.

3. Contractor codes.

(a) All contractors on the bidders mailing list are to be assigned an eight-digit contractor's code. The last five digits are to be unique to a given contractor and the first three digits indicate in what state or U.S. territory the contractor is located. The three digit codes and their corresponding States and territories are:

010	Alabama	270	Nevada
015	Alaska	280	New Hampshire
020	Arizona	290	New Jersey
030	Arkansas	300	New Mexico
040	California	310	New York
050	Colorado	320	North Carolina
060	Connecticut	330	North Dakota
070	Delaware	340	Ohio
080	District of Columbia	350	Oklahoma
090	Florida	360	Oregon
100	Georgia	370	Pennsylvania
105	Hawaii	380	Rhode Island
110	Idaho	390	South Carolina
120	Illinois	400	South Dakota
130	Indiana	410	Tennessee
140	Iowa	420	Texas
150	Kansas	430	Utah
160	Kentucky	440	Vermont
170	Louisiana	450	Virginia
180	Maine	460	Washington
190	Maryland	470	West Virginia
200	Massachusetts	480	Wisconsin
210	Michigan	490	Wyoming
220	Minnesota	500	Canal Zone
230	Mississippi	510	Puerto Rico
240	Missouri	520	Virgin Islands
250	Montana	530	Wake
260	Nebraska	540	Guam

(b) Before any number is assigned, ensure that the contractor's application is properly completed.

(c) Check the deletion list and the list of current contractor code numbers. Do not assign any number that appears on either of the lists.

(d) Assign the number that will place the contractor's name in alphabetical order or as close in order as is practicable.

(e) If the contractor requests that its solicitation be sent to an address different than the one listed in block one then the solicitation mailing address should be given a "000" State code and the contractor's manufacturing specialties should be entered into the automated bid list system (ABLS)

under that "000" listing. In addition, the address in block one should receive the proper State code and no manufacturing specialties.

(f) If the addresses in blocks 1 and 2 on the contractor's mailing list application are the same then no "000" should be given—only the appropriate State code with the contractor's manufacturing specialties entered into the ABLS under that listing.

(g) If a contractor has multiple locations, all of those locations should have the same 5-digit contractor code number except as noted in paragraph (h).

(h) If a contractor has more than one location in one State then the second, third, etc. listings should use the same code number plus one. Example:

- 190 24678 (1st location)
- 190 24679 (2nd location—same state)
- 190 24680 (3rd location—same state)

If the next number is not available, then use the first one that is. If a contractor requests that certain locations only receive solicitations from a particular region, then the "900" state code applicable to that region should be assigned to the contractor along with the five-digit number.

(i) Contractor's manufacturing specialties should only be listed under one code number unless specifically requested otherwise by the contractor in the application.

(j) No two contractors should receive the same five-digit contractor code number. The fact that their State code numbers may differ is irrelevant.

(k) After assigning a new contractor code number, record it on the master bidders list along with the contractor's name and address.

(l) Contractor code numbers can be assigned to contractors that have not submitted a mailing list application. They are to be assigned using the same criteria as mentioned in paragraphs (c), (d), (g), (j), and (k), of this subsection, and should only be given to GPO personnel that request a number be issued and not directly to a contractor who requests one. If a contractor, already on the bidders list, requests its own contractor code number, that information may be released.

4. Responsibility.

(a) The Superintendent of Contract Management Division (PPS) shall:

- (1) Maintain a bidders mailing list of all contractors eligible to bid on GPO printing procurements.
- (2) Assign contractor codes.
- (3) Classify contractors according to their production capabilities.
- (4) Update contractor applications currently on file to reflect any status changes.
- (5) Forward copies of applications which have been classified and assigned contractor codes; and any update information to the appropriate Superintendent, PPD to be forwarded to the appropriate RPPO.
- (6) Prepare bid lists for individual procurements in accordance with X-1 using contractors from the appropriate classification of the current bidders mailing list.

(b) The appropriate Superintendent, PPR shall:

- (1) Have each RPPO maintain a bidders mailing list.
- (2) Forward applications originally received by an RPPO to PPS for assignment of contractor codes and for production classification. Update information will also be forwarded to PPS if originally received in an RPPO.

(3) Forward to the appropriate regional offices, contractor applications and updates which have been assigned contractor codes and have been classified by PPS.

(4) Have each RPPO prepare bid lists for their individual procurement actions in accordance with X-1.

5. Contractor Complaints. A copy of each letter responding to contractor complaints about a lack of bid invitations shall be provided to the Bid Section, PPS, for attachment to the appropriate contractor application.

6. Parties Excluded From Procurement Programs. A list of debarred/suspended contractors shall be maintained by the Analysis and Review staff and furnished to PPD Superintendents. This list is to be reviewed prior to issuance of each solicitation to insure that none are sent to any listed firm or individual.

SECTION 5. PUBLICIZING PROCUREMENT ACTIONS

1. Scope. This section prescribes policies and procedures for publicizing procurement opportunities and award information other than publicizing those opportunities via the internet at <http://www.gpo.gov/procurement>.

2. General. The "Commerce Business Daily, Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards" (CBD) is published daily, except Saturdays, Sundays, and holidays, by the U.S. Department of Commerce, Chicago, IL. The primary purpose of the CBD is to provide industry with information concerning current Government contracting opportunities, including information as to the identity and location of Government contracting offices and prime contractors having a current or potential need for certain types of products or services. The CBD is available on an annual subscription basis through Supt. Docs. and can be purchased at any Department of Commerce office.

3. Responsibility. Regional Managers and the Superintendents of Purchase and Term Contract Divisions are responsible for bid and award synopses. A copy of each synopsis (or amendment) shall be placed in the contract file folder.

4. General Requirements. The following items should be published in the CBD:

(a) Proposed term contracts for which the total value for the term of the contract is estimated to exceed \$50,000.

(b) Contracts that were awarded for \$50,000 or more.

(c) Any proposed sealed-bid or competitively negotiated procurements that can be anticipated in sufficient time to allow potential offerors an opportunity to request a solicitation, except procurements not able to meet the time constraints in subsection 5(a).

(d) Names of suppliers submitting acceptable proposals in step 1 of a two-step procurement.

Note: Items which are classified and meet the above requirements shall be published unless the publication would reveal any classified material pertaining to the procurement.

5. Time of Publicizing.

(a) To allow contractors who are not on the current bidders mailing list time to request and receive solicitations, proposed procurements shall be publicized in the CBD 15 days before the issuance of solicitations.

(b) Procurement awards should be published as soon as the information becomes available.

(c) Corrections to any already published advertisement should be made as soon as possible, but only if there is a major change in the solicitation and there is sufficient time to publish the corrections.

6. General Notices and Announcement. Matters such as business fairs, pre-bid/pre-proposal conferences, meetings, availability of draft specifications or solicitations for review, etc. are to be prepared in the following format:

(a) *Style and spacing.* Use conventional typing with upper and lower case letters, standard punctuation, and common abbreviations. Type text lines flush left, except paragraph beginnings, using double spacing. Begin paragraphs five spaces from left margin.

(b) *Contract office and address.* Begin the name, address, and telephone number of the contracting office on the first line of text. Do not abbreviate except for names of states. The address shall include an attention phrase that identifies the person(s) to contact for further information.

(c) *Description of matter to be announced.* Include a clear, complete description of the matter to be published.

7. Synopses Preparation and Transmittal.

(a) *Transmittal.* Contracting Officers shall transmit synopses of actions to the Commerce Business Daily by the most expeditious and reliable means available.

(1) *Electronic transmission.* All synopses transmitted by electronic means shall be in ASCII Code.

(2) *Hard copy transmission.* When electronic transmission is not feasible, synopses should be sent to the CBD via mail or other physical delivery of hard copy and should be addressed to:

Commerce Business Daily
U.S. Government Printing Office
PO Box 77880
Washington, DC 20013-8880

(b) *Format.* The Contracting officer shall prepare the synopsis in the following style and format to assure timely processing of the synopsis by the Commerce Business Daily.

(1) *General.* Format for all synopses shall employ conventional typing with abbreviations, capitalization, and punctuation all grammatically correct. Each synopsis shall include all 17 format items. Do not include the title for the format item.

(2) *Spacing.* Begin each line flush left and use double spaced lines between each format item. If more than one synopsis is to be sent at one time, separate each synopsis with four line spaces and begin each synopsis with format number 1.

(3) *Abbreviations.* Minimize abbreviations or acronyms to those that are commonly recognized.

(4) *Standard format.* Prepare each synopsis in the following format. Begin each format item with the number of the item followed by a period (*i.e.*, 1.). Then make two spaces after the period. Next, type the appropriate information for each format. Then conclude each format item with two exclamation points (*i.e.*, !!). Conclude each complete synopsis, following format item 17, with five asterisks (*i.e.*, *****).

(c) *Format items:*

(1) *Action code.* (A single alphabetic character denoting the specific action related in the synopsis. Choices are lim-

ited to the following: P=Presolicitation notice/Procurement; A=Award announcement; M=Modification of a previously announced procurement action (a correction to a previous CBD announcement); R=Sources sought; F=Foreign procurement announcement or tender. If none of the standard codes apply, enter "N/A".)

(2) *Date.* (Date on which the synopsis is transmitted to the CBD for publication. Use a four digit number indicating month in two digits and day in two digits (MMDD). All four spaces must be used with preceding 0 for months January thru September. Format: 0225 for February 25.)

(3) *Year.* (Two numeric digits denoting the calendar year of the synopsis. Format: 86 for 1986.)

(4) *Government Printing Office (GPO) Billing Account Code.* (The originating office's account number used by the GPO for billing and collection purposes. The field length is nine alpha-numeric characters. The first three characters entered are "GPO" and then the following six characters are the numeric account number.)

(5) *Contracting office ZIP code.* (The geographic zip code for the contracting office. Up to nine characters may be entered. When using a nine digit zip code, separate first five digits and the last four digits with a dash. Format: 00000-0000.)

(6) *Classification code.* (The code for printing and publication services is an upper case "T".)

(7) *Contracting office address.* (The complete name and address of the contracting office. Field length is open, but generally not expected to exceed 90 alpha-numeric characters.)

(8) *Subject.* (Use classification code "T" followed by a dash (two hyphens) and then a brief title (e.g. Offset printing, Microfiche, Composition, etc.).)

(9) *Proposed solicitation number.* (Jacket or program number if a solicitation, N/A if not.)

(10) *Opening/closing response date.* (For solicitations, if not a solicitation, enter N/A. Deadline for receipt of bids, proposals or responses. Use a six digit date. Format: MMDDYY. Explanation may appear in text of synopsis in item 17.)

(11) *Contact point/contracting officer.* (Include name and telephone number of contact and contracting officer if different.)

(12) *(Contract award and solicitation number.* For awards; if not an award, enter N/A.)

(13) *(Contract award dollar amount.* For awards use whole dollars only. N/A if not an award. A ten digit numeric field. Output will be preceded by a dollar sign (\$).)

(14) *Contract line item number.* (N/A.)

(15) *Contract award date.* (For awards use six digits. Format: MMDDYY. If not an award, N/A.)

(16) *Contractor.* (For awards; if not an award, N/A.)

(17) *Description.* (Should be brief and concise with each element separated by dashes. Elements to be considered are:

Security provisions (if applicable)—term of contract or ship date—ordering agency—production area restriction—copy pickup or mail entry point—trim size—number of copies—number of pages—composition (if required)—type of binding—GFP furnished—who supplies paper—bid opening date—quality level.

(d) *Nonapplicable format items.* When a format item is not applicable, type the item number, a period, two blank spaces, and "N/A" (e.g., 10., N/A!!).

(e) The following is an illustrative solicitation synopsis format:

1. P!!
2. 0104!!
3. 87!!
4. GPO150003!!
5. 90650-3136!!
6. T!!
7. Los Angeles Regional Printing Procurement Office, U.S. Government Printing Office, 12501 E. Imperial Highway, Suite 110, Norwalk, CA 90650-3136!!
8. T—Offset printing!!
9. Program 2908S!!
10. 091786!!
11. Contact (name and phone number), Contracting Officer (name and phone number)!!
12. N/A!!
13. N/A!!
14. N/A!!
15. N/A!!
16. N/A!!
17. Single award term contract for period 00/00/00 to 00/00/00. For U.S. Postal Service. Nationwide production area. Pamphlets. Approx. 12 orders per year of 8-, 12-, or 16-pages. 8 1/2 x 11". Approx. 8,500 copies per order. Operations include copy pickup, composition, films, proofs, printing, binding, packing, delivery. 15 workday production schedule. Quality attributes level III. Bid request on firm's letterhead.*****

CHAPTER IX. QUALITY ASSURANCE

SECTION 1. QUALITY ASSURANCE PROGRAM

1. Scope. This section describes PPD policy regarding the quality of commercially procured printed products. It further describes the primary components, functions, and responsibilities of the Quality Assurance Program.

2. Policy. The quality of products procured through the Printing Procurement Department shall conform to the requirements of the specifications agreed to with the customer agencies.

3. General.

The PPD Quality Assurance Program is designed to ensure that the agreed upon quality requirements of the customer agency are achieved in a consistent and a cost-effective manner. It encompasses the entire procurement process, from receipt of the requisition through final acceptance of the finished product. The basic purposes of the Quality Assurance Program are to:

(1) Provide for consistency in the review and consideration of customer requested quality requirements, levels of quality, and quality assurance procedures;

(2) ensure that any recommended changes to customer requests are properly coordinated with, and agreed to, by the customer;

(3) provide for conveyance of these requirements to industry through properly prepared specifications;

(4) ensure that awards are made only to responsible contractors who have demonstrated their ability to produce the required quality;

(5) provide guidance in the performance of specified post-award quality assurance functions;

(6) provide guidance in the gathering of samples for inspection;

(7) ensure prompt, effective action in response to product rejections by GPO and to complaints of product quality by customer agencies; and

(8) ensure full documentation of all actions taken.

(b) *Quality Assurance Through Attributes Program (QATAP).* The QATAP forms an integral part of PPD's Quality Assurance Program. Its primary function is to describe quality in terms of definable and measurable attributes. This allows for quality requirements to be quantitatively stated in specifications and for products to be assessed as defective or non-defective based on objective measurements. These measurements, in turn, form the basis for acceptance or rejection of the product and are used as a guide for determining the applicable discount to be taken from the contract price should the customer agency decide to accept defective items.

(c) *Documents of Reference.* The QATAP was developed under the framework of PPD's Quality Assurance Program. Therefore, much of the documentation which describes the various aspects of the QATAP also prescribes the basic func-

tions, authorities, responsibilities, and procedures for quality assurance generally. This documentation is contained in the various publications listed below. To avoid having to repeat their contents in this section, you are encouraged to read and understand these publications and to retain them for future reference.

(1) *GPO Technical Report No. 26.* This document explains the principles of using quality attributes in a graphic arts quality assurance program, and the applicability of these principles to products procured by GPO.

(2) *Selecting Product Quality Levels for Printing and Binding, an Enclosure to Circular Letter #163.* This document provides criteria for use by ordering agencies in selecting appropriate product quality levels.

(3) *QATAP Technical Manual, GPO Pub. 355.1.* This document describes how to perform the various tasks in the program, and explains the reasons for some of the methods.

(4) *QATAP Procedures Manual, GPO Pub. 350.1.* This document describes who performs what tasks and the sequence in which the tasks are to be performed.

(5) *Quality Assurance Through Attributes Contract Terms, GPO Pub. 310.1.* This document is incorporated by reference into most contracts of procured products. It specifies the attributes and their allowable tolerances and includes the methods for assessing product quality.

(6) *Mil-Std-105D, Sampling Procedures and Tables for Inspection by Attributes.* This document provides the sampling plans by which products will be inspected for acceptance or rejection.

4. Functions, Authorities, Responsibilities, and Procedures. The purpose here is to describe the primary components of the Quality Assurance Program, emphasize their importance, and provide coverage of the aspects of quality assurance not specifically addressed in the above-listed publications. When any of the above publications do have direct application, specific reference will be made to them.

(a) *Initial Determination of Required Quality.* Customer agencies are the best judges of their quality requirements. They have the authority to include on the requisition any special requests concerning the quality requirements of product components and production processes. They may also request special quality assurance measures (e.g., samples, proofs, press sheet inspections) they may deem necessary to ensure that their requirements are met. All quality requests by customer agencies are subject to review and acceptance by GPO. (Specific guidance on how to make determinations of required quality has been provided to agencies in the publication entitled "Selecting Product Quality Levels for Printing and Binding.")

(b) *Review of Requisitions.* Requisitions shall be reviewed for evaluation of quality requests by customer agencies and

for establishing quality requirements in the absence of such requests. The primary considerations for assessing the quality requirements of a given product include:

- (1) The intended end use of the product (e.g., permanence requirements, fidelity of illustrations, etc.);
- (2) the nature and quality of the Government furnished materials to be used in the production of the product;
- (3) production economies;
- (4) schedule;
- (5) stated limitations (e.g., dollar and geographical limits);
- (6) potential of restricting competition unnecessarily; and
- (7) what, if any, quality assurance requirements are necessary.

In no case shall the requested quality requirements of the customer agency be ignored or changed until agreement with such changes is obtained from the agency printing authority. (More specific guidance for determinations of required quality is contained in the QATAP Technical Manual. The QATAP Procedures Manual, in turn, prescribes the appropriate authorities and procedures for quality determinations and for resolving disputes with agencies over quality levels.)

(c) *Specification Development.* Specifications shall be developed to explicitly prescribe quality requirements to industry. Every effort shall be made to define specific tolerances, endurance requirements, etc., for each product component. In situations where quality requirements cannot be explicitly defined, reference shall be made to the Quality clause in GPO Contract Terms (Pub. 310.2).

- (1) *Primary Considerations in Specification Development:*
- (i) Precise descriptions of required quality;
 - (ii) inclusion of all required post-award quality assurance requirements (e.g., bid samples, press sheet inspections, etc.);
 - (iii) inclusion of any specified standards against which the quality of the finished product will be evaluated;
 - (iv) methods for drawing inspection samples when the contractor is required to draw them; and,
 - (v) incorporation of the actions the Government will take in the event of noncompliance with the quality requirements.

(2) *Incorporation of Quality Assurance Through Attributes Contract Terms.* Specific guidance for the inclusion of Quality Assurance Through Attributes terms in applicable specifications is contained in the QATAP Technical Manual. The authorities for resolving problems and for ensuring fulfillment of the necessary procedures involved are prescribed in the QATAP Procedures Manual.

(d) *Solicitation and Award.* The production requirements of any given product have a direct bearing on which vendors are to be included in the bidders' list. Therefore, in the development of bidders' lists for products having special quality requirements, only those firms who have the potential to produce the required quality shall be included on the lists. Also included shall be any eligible vendors requested for inclusion by the customer agency.

(e) *Production Quality Control.* The control of the quality of a product during manufacture is the responsibility of the commercial contractor.

(f) *Post-Award Quality Assurance Requirements.* All specified quality assurance requirements shall be administered or performed by the Printing Procurement Department. While the customer agency has the authority to participate in these

activities (e.g., the review of bid or prior-to-production samples, participation in press sheet inspections, etc.), such participation shall be at the direction of the Printing Procurement Department. The Contracting Officer shall make the final determination as to conformance to specifications.

(g) *Assistance from other Departments.* When the Printing Procurement Department is unable to make a proper determination as to whether items submitted or produced by contractors in response to quality assurance requirements are equal to the specifications, they shall request assistance from other sources. However, the final determination as to conformance with the specifications rests with the Contracting Officer.

(h) *Retention of Products, Product Components, Press Sheets, etc.* In many instances the items approved under quality assurance requirements will be later used for comparison against the quality of the finished product. Approved products and approval documentation shall be retained by the Quality Assurance Section, PPD, and in the contract file.

(i) *Inspection and Tests.* The inspection and test of products procured under GPO contracts shall be performed in accordance with the Inspection and Tests clause in GPO Contract Terms (Pub. 310.2).

(j) *Gathering of Inspection Samples.* The various methods by which samples may be obtained and specifics as to how they are to be drawn are contained in the QATAP Technical Manual.

(k) *Basic Inspection Procedures.* The basic procedures to be followed when performing acceptance sampling of products produced under GPO contracts shall be as follows:

- (1) Sample copies shall first be visually examined for apparent defects;
- (2) if no defects are found, the product shall be determined to be acceptable and no further action shall be taken other than the documentation of the inspection results;
- (3) if defects are detected, the defects shall be measured against the specifications to determine the acceptability of the product;
- (4) if, after such measurements, the product is determined to be non-rejectable, this fact shall be so documented and no further action shall be taken;
- (5) if the extent of the defects are determined to be cause for rejection of the product, these findings shall be properly documented, and both the affected contractor and customer agency shall be promptly notified;
- (6) once a product is determined to be rejectable, all actions taken to resolve the contractual aspects of the rejection shall be in accordance with the agency's recommendation to have the defects corrected; have the product reprinted; or, to accept the defective items at an appropriate reduction in the contract price.

Specific guidance for the inspection and tests of finished products is contained in the QATAP Technical Manual. Procedures for reporting inspection results, and the appropriate actions to be taken in the event of a rejection, are contained in the QATAP Procedures Manual.

(l) *Inspection of Two Sample Copies.* Under selected printing and binding contracts, the contractor is required to submit at least two sample copies of the product produced. In all instances, these two samples shall be inspected for conformance to specifications. (Specific instructions on the inspection of two sample copies, and the procedures to be followed in

the event of rejection, are contained in the QATAP Procedures Manual.)

(m) *Departmental Random Copies (blue label) Procedure.* Within the limitations of the contract, every order, except orders for products listed below, shall contain instructions to the contractor to draw random samples and place them in a container indentified by a blue label. Customer agencies shall be instructed that the container should accompany any quality complaint submitted to the GPO and that it should be the last container to be distributed. This procedure does not replace the need for either the two samples requested in paragraph (l) above or the random samples required for QATAP in paragraph (k) above. Exceptions to this procedure are orders for marginally punched continuous forms, classified work, microfiche, numbered products, and jobs of such small quantity that sampling is impracticable. Notwithstanding the exceptions and the minimum requirements, Contracting Officers may invoke this procedure for any order they deem appropriate.

(n) *Documentation.* Appropriate documentation shall be kept of all actions taken in regard to the quality of products produced under GPO contracts. Such documentation shall include records and results of all telephone conversations, copies of all correspondence, change orders, etc. This documentation shall be made a part of the contract file and the contractor compliance file.

5. Customer Agency Quality Complaints.

(a) Departmental random copies shall accompany an agency's complaint (GPO form 1815) in the original shipping con-

tainer in an unopened state. Containers that have been opened or tampered with shall bear a statement from the agency or departmental account representative, explaining the reason for its condition and attest that the contents have not been disturbed. The statement shall be attached to the complaint document.

(b) The shipping container contents shall be examined by the Quality Assurance Section to insure compliance with the selection plan and that a completed certificate (GPO form 917) is enclosed. Samples will be inspected in accordance with QATAP, and the results furnished to the departmental account representative.

(c) In the event the tested samples do not support the complaint, a further sampling may be conducted by either agency or GPO personnel under a plan furnished by the Quality Assurance Section. Expertise in the form of knowledge of the contractors' quality performance history, Contracting Officer's judgment, and quality personnel experience shall be utilized in the resolution of the complaint under such further sampling.

(d) Documentary evidence pertaining to samples suspected of not being gathered according to the selection plan shall be filed and maintained for a period of 1 year. Subsequent occurrences of the same nature by the same contractor, within the 1-year period, shall be brought to the attention of the appropriate Superintendent for further action.

CHAPTER X. SOLICITATION

SECTION 1. BIDDER SELECTION

1. Bidder Selection Lists.

(a) *Purpose.* This subsection provides guidance in the selection of prospective bidders.

(b) *Policy.* The policy for bidder selection is to—

(1) afford all bidders an opportunity to bid by rotating the bid list;

(2) assure that “no bid” responses are minimized by judiciously selecting a portion of the bid list;

(3) include bidders suggested by customer agencies;

(4) include previously successful bidders; and

(5) assure that competition to the maximum extent practicable is maintained.

(c) *Master bidders list.* Each RPPO shall have in its files of prospective vendors a list of the eligible printing firms located within its region. The Superintendent, PPS shall maintain the master bidders list on the automated bid list system (ABLS).

(d) *Review procedures.* (1) Specifications. Upon receipt, specifications shall be reviewed by the bid desk operator to determine:

(i) The appropriate size of the proposed bidders list consistent with the nature and value of the procurement (see X-2.1);

(ii) the predominant production requirement. This determination establishes the appropriate bid category from which the prospective bidders shall be selected.

(iii) the Product Quality Level (PQL). When the procurement includes quality attributes, quality shall be a consideration when determining prospective bidders' capability to meet the specified requirements;

(iv) whether any geographical restrictions are included (see VIII-1.7(f)(2));

(v) if there are any unusual requirements within the predominant production requirement which may further restrict the number of firms capable of producing the product (e.g., large fold-ins, process color, etc.); and

(vi) whether distribution could affect the choice of vendors to be included on the list (e.g., large quantities delivered to one or two destinations could be cause for including mostly those firms near the destinations).

(2) Operations Checklist (GPO Form 2761) and requisitions. These forms, where applicable, shall be reviewed for:

(i) previous jacket number on reprints;

(ii) any special requests for the inclusion of particular firms; and

(iii) any special agency requests to include a particular category of firms (see VIII-1.7(f)(1)).

(3) Written Requests. Determine if any firms have requested, in writing, to be included on the bidders list.

(e) *Bid list development.* (1) The bid desk operator shall compile a separate bid list for each:

(i) Separate jacket,

(ii) aspect of a separated procurement, or

(iii) set of strapped jackets.

(2) The bid list shall be compiled by:

(i) Including the previous successful vendor if the job has been procured before;

(ii) including all eligible firms which have requested a solicitation in writing;

(iii) including all eligible firms requested for inclusion by the customer agency; and

(iv) complete the bidders list from ABLS.

(f) *Geographical restrictions.* If a geographical restriction has been approved, the list is developed as stated above except that in completing the list from ABLS, the bid desk operator shall include only those firms located within the geographically restricted area. Selection of such firms may be accomplished by utilizing regional cost codes, State codes, or ZIP codes or in the case of IRS bid lists, the three (west, central, east) or five (western, north central, south central, northeast, southeast) regional codes may be used.

(g) *Bid list review.* Once the desired quantity of prospective bidders is selected, the bid desk operator shall review the list to assess, based on experience, the probability of receiving bids. If it is determined that there is a high probability of receiving bids, then the bid list is complete. If it is determined that the bid list does not contain enough prospective bidders, the bid desk operator shall decide how many bidders are needed to provide adequate protection against “no bid” responses.

(h) *Exceptions to bidder selection procedures.* Any variation to bid list development procedures shall be documented and approved by the Superintendent, PPS.

SECTION 2. PREPARATION OF SOLICITATIONS

1. Number Solicited. The number of firms solicited shall depend on the complexity and value of the procurement. The previous supplier shall be invited to bid on procurements of reprints and term contracts. The following may be used as a general guide:

(a) *Sealed Bids.* Bids in this category require 20 invitations, if available, or more depending upon the dollar value of the procurement. Term contracts also require the solicitation of at least 20 suppliers if available. The number may be increased for large volume contracts.

(b) *Display bids and pickup specifications.* Between 10 and 20 firms should be solicited depending upon the value and complexity of the procurement.

(c) *Small Purchases.* Generally, three probable suppliers are adequate to solicit quotations over \$2,500. Additional firms may be added to ensure competition.

(d) *Competitive Negotiation.* Requests for proposals (RFP) shall be solicited from source lists prepared by the Source

Selection Evaluation Board (SSEB) in compliance with PPD 346.1, Formal Proposal Evaluation and Source Selection, or PPD 346.2, Streamlined Evaluation and Source Selection, as appropriate.

(e) *Simplified Purchase Agreements*. Furnish solicitations to the maximum practicable number of sources.

2. Procedures.

(a) The list of prospective bidders shall be typed or printed on GPO Form 143A, "Invitation to Bid and Abstract."

(b) The jacket or program number, issue date of IFB, type of procurement (display bid, normal bid) and the bid desk operator's initials shall be indicated at the top of the Form 143A. The bid opening date and hour shall be entered at the bottom. For each vendor solicited, include the code number, name, address, and phone number.

(c) Each IFB will consist of the following:

- (1) A copy of the specifications.
- (2) GPO Form 910, "Bid" (3-part multiform).
- (3) GPO Form 184, bid return envelope.

(d) The bid opening time and date shall be stamped on GPO Forms 910 and 184.

3. Pre-bid conference.

A pre-bid conference may be used, generally in a complex acquisition, as a means of briefing prospective bidders and explaining complicated specifications and requirements to them as early as possible after the invitation has been issued and before the bids are opened. It shall never be used as a substitute for amending a defective or ambiguous invitation. The conference shall be conducted in accordance with the procedure prescribed in VII-8.9.

SECTION 3. AMENDMENT AND CANCELLATION OF IFB

1. Amendments.

(a) If, after issuance of an IFB but before the time set for opening of bids, it becomes necessary to make changes in specifications such as quantities, delivery schedules, correction of errors or ambiguities, opening dates, etc., such changes shall be accomplished by issuance of an amendment and the bid opening date extended if necessary. The amendment shall be sent to each firm to whom the IFB's have been furnished and shall be posted in the bid room.

(b) Before issuing an amendment to an IFB, the period of time remaining until the time set for opening and the need for extending this period must be considered. Where only a short time remains before the time set for opening, consideration should be given to an extension of the opening date.

(c) Each amendment issued to an IFB shall:

- (1) be serially numbered, using a separate series of numbers for each IFB;
- (2) include the jacket or program number, department name and requisition number;
- (3) clearly state the changes made and the extension of the opening date, if any. If no extension of the time set for opening is involved, the amendment shall so state; and
- (4) include instructions to potential suppliers for acknowledging receipt of the amendment and information concerning the effect of failure to acknowledge or return the amendment. Amendments may be acknowledged by written or telegraphic notice or by facsimile (when authorized in the solicitation) and must be received in the office

designated in the IFB not later than the exact time set for bid opening.

(d) If any information given to a prospective supplier concerning an IFB is necessary to other prospective suppliers in submitting bids on the invitation or if the lack of such information would be prejudicial to uninformed suppliers, such information shall be furnished promptly to all other prospective suppliers as an amendment to the invitation. No award shall be made unless the amendment has been issued in sufficient time to permit receipt and consideration by all prospective bidders.

2. Cancellation Prior to Bid Opening.

(a) Cancellation of an IFB usually involves the loss of time, effort, and money spent by GPO and prospective bidders. IFB's should not be canceled unless cancellation is clearly in the public interest, such as where there is no longer a requirement for the material or service or where amendments to the invitation would be of such magnitude that a new invitation is desirable. When an invitation is canceled, bids which have been received shall be returned unopened to the bidders and a written notice of the cancellation shall be sent to all prospective bidders to whom IFB's were issued.

(b) The notice of cancellation shall identify the IFB, briefly explain the reason the invitation is being cancelled, and where appropriate, assure prospective bidders of an opportunity to bid on any resolicitation of bids or any future requirements for the type of material or services involved.

SECTION 4. BID OPENINGS

1. Receipt of Bids. Bids received prior to the time of bid opening shall be time-stamped and stored unopened in a locked cabinet or safe to prevent the possibility of loss or tampering. Where possible, only one employee, plus minimum backup personnel, should be designated to receive, time-stamp, and handle bids. Telegraphic and facsimile bids permitted by the IFB shall be sealed in an envelope. Facsimile machines should be in a secured, restricted access area. The jacket/program number and bid opening date and time shall be written on the envelope.

2. Modification or Withdrawal of Bids. Bids may be modified or withdrawn by written or telegraphic notice or by facsimile (when authorized in the solicitation) and must be received in the office designated in the IFB not later than the exact time set for opening of bids. Bidders shall be informed that, in the case of modifications or withdrawals sent by mail, the IFB must be identified on the envelope. A telegraphic modification or withdrawal of a bid received by telephone from the telegraph office not later than the time set for opening of bids shall be considered. However, the telephone bid must be confirmed by the telegraph company by sending to the procurement office a copy of the written telegram which formed the basis for the telephone call. Modifications received by telegram (including a record of those telephoned by the telegraph company) shall be sealed in an envelope by the proper official who shall write thereon: the date and time of receipt, by whom sent, the IFB number, and his or her signature. No information contained therein shall be disclosed before the time set for bid opening. A bid may be withdrawn in person by a bidder or authorized representative, if proper identification is made and a signed receipt for the bid is ob-

tained, but only if the withdrawal is prior to the exact time set for opening of bids.

3. Opening and Recording of Bids.

(a) Bids shall be publicly opened. At the exact hour set for opening, bids shall be opened by the bid opening official or designee who shall read the bids aloud and display duplicate bids for examination by interested persons while carefully safeguarding the original. Original copies of bids may be examined by the public only under the immediate supervision of the bid opening official and under conditions that preclude the possibility of destruction, substitution, or alteration of the bid. GPO Form 143A shall be completed as soon after bid opening as practicable. A "no bid" submitted by a bidder shall be indicated by the figure "4". The certifier processing the procurement must initial and date the abstract attesting to its accuracy.

(b) Unidentified bids may be opened solely for the purpose of identification but only by an authorized official. If a sealed bid is opened by mistake, the person opening the bid will immediately write his or her signature and position title on the envelope and deliver it to the Contracting Officer. The Contracting Officer shall annotate the envelope with an explanation of the opening, the date and time opened, and his or her signature. Bids opened by mistake or for identification purposes shall be resealed in the envelope and the information contained therein shall not be disclosed prior to the public bid opening. They shall then be reopened at the correct time set for opening bids.

4. Attendee Registration. All non-Federally employed persons attending bid openings must register in a log. The attendees shall sign their name and the name of the firm they represent.

5. Review Listing. Each procurement office shall have a listing of each day's bid results available for review. The listing shall include the jacket or program number, each bidder's offer, and discount. The listing shall be:

- (a) Available for examination by the public;
- (b) kept on file for a period of 1 year; and
- (c) filed in chronological order—latest date on top.

6. Availability of Bid Results.

(a) Bid results are public information and may be given to anyone requesting them. However, certain rules apply:

(1) Bid results may be made public any time after bid opening on IFB's with a designated day and hour for opening; i.e., sealed bids and display bids.

(2) Potential bidders shall not be told who or how many they are competing against until after bid opening.

(b) Small purchase quotations, the number of prospective suppliers solicited, and their standing (high, low, etc.) in sequence, shall not be divulged prior to the Contracting Officer's signature on the purchase order.

7. Postponing Bid Openings.

(a) A bid opening may be postponed even after the time scheduled for bid opening (but otherwise in accordance with X-4.3) and—

(1) The Contracting Officer has reason to believe that the bids of an important segment of bidders have been delayed in the mails for causes beyond their control and without their fault or negligence (e.g., flood, fire, accident, weather conditions, or strikes); or

(2) Emergency or unanticipated events interrupt normal governmental processes so that the conduct of bid openings as scheduled is impractical.

(b) At the time of a determination to postpone a bid opening under (a)(1) above, an announcement of the determination shall be publicly posted. If practical before issuance of a formal amendment of the invitation, the determination shall be otherwise communicated to prospective bidders who are likely to attend the scheduled bid opening.

(c) In the case of (a)(2) above, the Contracting Officer may proceed with the bid opening as soon as practical after the time scheduled for opening without prior amendment to the invitation for bids or notice to bidders, whenever the delay incident to the amendment or notice is not in the Government's interest. In such cases, the time of actual bid opening shall be deemed to be the time set for bid opening for the purpose of determining "late bids" under Section 5. A note should be made on the abstract of bids or otherwise added to the file explaining the circumstances of the postponement.

SECTION 5. LATE BIDS, LATE MODIFICATION OF BIDS, OR LATE WITHDRAWAL OF BIDS

1. General. Bids received in the office designated in the IFB after the exact time set for opening are "late bids."

(a) A late bid, modification of bid, or withdrawal of bid shall not be considered unless received before contract award, and either—

(1) It was sent to a contracting office by registered or certified mail not later than 5 calendar days before the bid receipt date specified;

(2) It was sent by mail (or, if authorized by the solicitation, was sent by telegram or via facsimile) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(3) It was sent to a contracting office by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee not later than 5 p.m. at the place of mailing 2 working days prior to the date specified for receipt of bids. The term working days excludes weekends and Federal holidays.

(b) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent to a contracting office either by registered or certified mail is a U.S. Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date, or the bid, modification, or withdrawal shall be deemed to have been mailed late. (The term postmark means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. Postal Service. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope and wrapper.)

(c) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of such installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

(d) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by U.S.

Postal Service Express Mail Next Day Service—Post Office to Addressee is the date entered by the post office receiving clerk on the “Express Mail Next Day Service—Post Office to Addressee” label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. “Postmark” has the same meaning as defined in paragraph (b) of this subsection. Therefore, bidders should request the postal clerks to place a legible hand cancellation bull’s-eye postmark on both the receipt and the envelope or wrapper.

(e) Notwithstanding the above, a late modification of an otherwise successful bid which makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

2. Notification To Late Bidders. When a bid, modification of bid, or withdrawal of bid is received late and it is clear from available information that it cannot be considered, the Contracting Officer shall promptly notify the bidder accordingly. However, when a late bid, modification of bid, or withdrawal of bid, is transmitted to a contracting office by registered or certified mail or by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee and is received before award, the bidder shall be promptly notified substantially as follows:

Your bid in response to Jacket (or Program) number _____ dated _____ for _____ [*insert product*] was received after the time for opening specified in the Invitation. Accordingly, your bid will not be

opened or considered for award unless there is received from you by _____ [*insert date*] the original post office receipt for (insert one of the following as appropriate):

(a) Registered or certified mail showing a date of mailing not later than the fifth calendar day before the date specified for opening (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier); or

(b) U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee showing a date of mailing not later than 5 p.m. two Federal working days prior to the date specified for opening.

3. Disposition of Late Submissions. Late bids, modification of bids, or withdrawal of bids that are not considered for award shall be held unopened, unless opened for identification, until after award and then retained with other unsuccessful bids. However, any bid bond or guarantee shall be returned.

4. Records. The following shall, if available, be included in the contract file folder with respect to each late bid, modification of bid, or withdrawal of bid:

(a) A statement of the date and hour of mailing, filing, or delivery;

(b) A statement of the date and hour of receipt;

(c) The determination, with supporting facts, as to whether or not the late bid was considered for award;

(d) A statement of the disposition of the late bid; and

(e) The envelope, or other covering, if the late bid was considered for award.

CHAPTER XI. PREAWARD SURVEY

SECTION 1. GENERAL

1. Policy. It is GPO policy that contracts be awarded only to responsible contractors as set forth in chapter I, section 5. To ascertain that a contractor is responsible, the Contracting Officer needs all the pertinent information that can be furnished concerning prospective contractors. One of the best sources of such information is furnished by a properly conducted on-site preaward survey. An on-site preaward survey shall be conducted when the Contracting Officer deems necessary.

2. Definition. A preaward survey is an evaluation of a prospective contractor's capability to perform under the terms of a proposed contract. Such evaluation is used by the Contracting Officer in determining the prospective contractor's responsibility. The evaluation may be accomplished by use of: (a) data on hand; (b) data from another Government agency or commercial source; (c) on-site inspection of plant and facilities to be used for performance on the proposed contract; (d) any combination of the foregoing.

3. Importance of Surveys. Preaward surveys serve the Government's interests in several important ways. They help the Government obtain the economical benefits of doing business with capable bidders and avoid the diseconomies of dealing with nonresponsible bidders. They promote public confidence and help foster the integrity of Government procurement. Most importantly, sound awards lead to the timely delivery of quality supplies and services at reasonable prices which promote the national interest.

4. Contracting Officer's Role. A preaward survey provides vital information to the Contracting Officer leading to a decision whether to execute a contract on behalf of the Government. The term "Contracting Officer" as used throughout this chapter shall mean both Central Office and RPPPO Contracting Officers. It is the duty of the Contracting Officer to award contracts to responsible contractors only. The Contracting Officer's determination of the responsibility or nonresponsibility of a prospective contractor must be supported by the facts of the particular case and reflect the pertinent conditions and circumstances existing at the time of award. When the Contracting Officer is unable to determine the responsibility of a contractor due to insufficient information, he or she may use any appropriate means necessary, including an on-site preaward survey to obtain additional information. The Contracting Officer has broad discretion in deciding whether the prospective contractor is responsible and this discretion extends not only to a bidder's financial capability, but to the firm's judgment, skill, capacity, and integrity. A prospective contractor must demonstrate affirmatively its responsibility. Approval of the preaward survey shall be confirmed by signature of the Contracting Officer as the head, preaward survey board.

5. Preaward Survey Team's Role. By implication, the preaward survey team has the duty to report the facts about a contractor's capability, and has broad discretion in making recommendations to the Contracting Officer relative to the proposed award. However, it is emphasized that such recommendations must be based on the pertinent facts existing at the time of the survey, and not on mere wishful thinking, suspicion, distrust or dislike. A preaward survey requires in-depth knowledge of various technical areas in order to make the necessary professional judgments regarding a contractor's capability to perform in accordance with the terms and conditions of a proposed contract. The completion of a successful preaward survey necessarily involves expertise in several areas, such as finance, production, quality assurance, transportation/packaging, and safety.

6. Noncompetitive Procurement. The fact that a requirement is to be procured noncompetitively should not influence the findings and recommendations of the persons performing the survey.

7. Time Available for Conducting Survey.

(a) Preaward surveys shall normally be conducted within 3 workdays after receipt of the request. A maximum of 5 workdays is allowed. In the event that a report is required in less than 3 workdays, the request should be processed as soon as possible.

(b) If the preaward survey cannot be accomplished within the time allowed, the purchasing office will be so notified. If the date is not extended, the office performing the survey will supply a definite recommendation by the date required based on the material at hand or developed by that time. The basis for the recommendation and the factors for which no data or only partial data could be obtained will be indicated.

8. Repetitive Survey Requests. Where the previous, complete, favorable preaward survey on a contractor has been forwarded to the Contracting Officer and there follows repetitive requests for determining capability to perform, a complete preaward survey of a prospective contractor need not be resubmitted if the previous recommendation was for "complete award." Instead, only the GPO Form 707, part I, should be transmitted to the Contracting Officer if it is mutually determined that this satisfies the need.

SECTION 2. INITIATION OF THE PREAWARD SURVEY REQUEST

1. Request Forms. GPO Form 707, Preaward Survey of Prospective Contractor and, when appropriate, GPO Form 2685, Preaward Survey of Prospective Microform Contractor Facilities, are the approved forms for requesting and reporting the results of preaward surveys. The request will indicate the scope of the survey and those factors to be investigated will be identified by the purchasing office in part I, section III,

of GPO Form 707. A survey may be requested by telephone and immediately confirmed on Form 707. A copy of the specifications shall be furnished with the request by the purchasing office.

2. Unsatisfactory Performance. The purchasing office will also furnish with the request for a preaward survey available information regarding unsatisfactory performance by the contractor.

SECTION 3. PART I, GENERAL

1. Section I—Request. This section of the form is prepared by the office requesting the survey. It constitutes the formal request for a survey of a prospective contractor and it is normally sent, through the appropriate Superintendent, PPR, to the RPPO having cognizance of the prospective contractor, unless Central Office PPD performs the survey. The form shall be submitted in quadruplicate with a copy of the specifications.

2. Section II—Data. This section is not used by Printing Procurement Department.

3. Section III—Factors to be Investigated. The requesting office shall indicate the factors that it desires to be investigated by checking the appropriate box(es) in column (a) of this section. The preaward survey team will indicate the results of the investigation by checking the applicable box(es) in columns (b) or (c).

(a) *Technical capability.* Determination is established by completion of part II, section II.

(b) *Production capability.* Determination is established by completion of part II, sections VI through X.

(c) *Plant facilities and equipment.* Determination is established by completion of part II, sections IV and V.

(d) *Financial capability.* Determination is established by completion of part IV.

(e) *Quality assurance capability.* Determination is established by completion of part III.

(f) *Transportation.* Determination is established by completion of part II, section IV.

(g) *Security clearance.* Determination is established by completion of part II, section IV.

(h) *Labor resources.* Determination is established by completion of part II, section II and section III.

(i) *Performance Record.* Determination is established by completion of part II, section IX.

(1) A "Satisfactory" or "Unsatisfactory" entry will be made after evaluation of the contractor's current contract delinquency rate. The evaluation should include consideration of the causes for the delinquencies and a list of the number of jobs shipped, the number delinquent and the percentage which is delinquent should be recorded.

(2) In addition, consideration should be given to the action which has been taken by the contractor to correct the delinquencies.

(j) *Ability to meet required schedule.* Determination is established by completion of part II, sections VI through X, and all other blocks which contain a time element. The recommendation shall be based on the prospective contractor's ability to meet the contract schedule.

(k) *Other.* If the proposed contract contains any unusual requirements, a determination of the contractor's ability to

provide them is established by completion of part I, section III, block 12.

SECTION 4. PART II, PRODUCTION

1. Procedures. The preaward survey team should review the past performance of the contractor.

(a) If the procurement will involve any significant or unusual elements, these elements should be discussed with the survey team by the printing specialists or Contracting Officer.

(b) From a production standpoint, an evaluation will be made of the proposed contractor's available facilities and its capability to meet the requirements of the procurement under consideration.

2. Production Capability.

(a) *Interview with management.* (1) *Background.* The survey team printing specialist should conduct an interview with the management of the company. During the interview the company's background and history should be reviewed to obtain evidence of its stability and reputation.

(2) *Review of specifications.* The specifications will be reviewed with the bidder to assure understanding of the requirements. Experience has demonstrated that a misinterpretation of the specifications has often resulted in delinquent contracts and defaults. Any unresolved, significant misinterpretations should be brought to the attention of the Contracting Officer for resolution.

(3) *Personnel.* Availability of necessary personnel should be reviewed with the bidder's personnel staff. Information regarding labor relations and expirations of any bargaining agreements should be reported.

(4) *Inspection of plant facilities.* Such factors as storage, layout, production equipment, special processing equipment, material handling equipment, receiving and shipping facilities, fire prevention equipment, general housekeeping, and plant facilities should be considered. The survey should include a review of the accessibility of the plant to railroad, freight or air terminals and the availability of packing and packaging facilities.

(5) *Related previous production.* In a narrative supplement, state whether the contractor's performance has been satisfactory, marginal or unsatisfactory. Also indicate the number of Government contracts which the contractor holds and the number which is delinquent or in default. Actual and potential delinquencies and defaults as well as previous delinquencies and defaults shall be identified. Include the causes and the corrective actions which have been taken or planned. This will permit the Contracting Officer to determine if the causes are attributable to the contractor or Government.

(6) *Current production.* In this section the current backlog of Government and civilian contracts utilizing the same equipment/personnel is related to the production and delivery requirements of the specifications.

(7) *Delivery schedule.* The delivery schedule of the proposed contract will be discussed with production and material control personnel. The company's plan for meeting this delivery schedule should be evaluated.

(8) *Capacity.* The production backlog will be evaluated to determine the amount of Government and commercial business that is currently in the firm's possession. Capacity is disclosed by comparing the production backlog with the delivery schedule of the contract and other business that the contractor

reasonably expects to obtain. If the contractor's production backlog is incompatible with the delivery schedule of the contract, a "no award" shall be recommended.

SECTION 5. PART III, QUALITY ASSURANCE CAPABILITY

1. Quality Assurance Preaward Survey Team Member. Individuals conducting the quality assurance review must be familiar with the quality control systems employed by contractors and the quality control requirements set forth in the specifications.

2. Quality Control Considerations. The recommendation in the quality assurance report provides buyers with information on the prospective contractor's quality control capabilities. In making a recommendation, the quality assurance participant will consider all appropriate factors of quality control. These factors generally involve the following areas:

- (a) The nature and quantity of the items being procured or serviced.
- (b) The contractor's experience with items identical or similar to those being procured or serviced.
- (c) The history of the contractor regarding quality control both as a commercial and Government supplier.
- (d) The contractor's understanding of the specifications, and requirements for inspection, testing, and control of product quality.
- (e) The degree to which the contractor employs sound commercial quality control practices.

3. Analysis of Contractor's Quality Assurance System. The survey team must ascertain if the quality control system employed by the contractor will assure the quality of workmanship required by the Quality clause in GPO Contract Terms (Pub. 310.2). In addition, the team shall determine the quality levels (1 through 5) which the contractor is capable of producing. This shall be indicated in the "Remarks" block of part I, section III.

4. Conducting a Quality Assurance Survey. When a survey of quality assurance is required, the quality assurance team member is responsible for the accuracy of the information obtained concerning the firm's inspection or quality control system. The plant survey should include an interview with the contractor's quality control management personnel.

(a) The quality assurance team member will contact the appropriate level of quality control management at the facility. The purpose of the review will be clearly explained and the quality requirements of the procurement discussed. The company's history will be reviewed to provide evidence of the integrity and reputation of its inspection and quality control operation.

(b) The quality assurance team member will review the quality assurance aspects of the proposed contract with the prospective contractor to assure that the contractor is familiar with the requirements. Misunderstandings of quality requirements, which cannot be satisfactorily resolved between the contractor and the quality assurance team member, will be brought to the attention of the team leader. The team leader will contact the buying activity for guidance on the quality requirements in issue, and thereby clear up any misunderstandings.

5. Concluding the Survey. Any shortcomings observed in the contractor's quality control system will be discussed with the contractor by the quality assurance team member. The objective of this discussion will be the improvement or correction of deficiencies.

6. Quality Control Evaluation and Recommendation. The quality assurance recommendation will be based upon facts obtained from historical data and/or upon the on-site survey. The basis for the recommendation shall be provided in the report. The information required by Form 707, part III, covers the basic quality control factors. If a detailed analysis is required, Form 707 should be supplemented by additional information.

SECTION 6. PART IV, FINANCIAL CAPABILITY

1. Value of Financial Information. An essential factor in a preaward survey is the analysis of a contractor's financial status. Such an analysis indicates whether a prospective contractor is capable of financing the proposed contract.

2. Procedures. The following guides set forth topics of primary interest when making a financial analysis but they do not attempt to prescribe detailed, technical, and analytical procedures.

(a) *General.* (1) The purpose of making a financial analysis of a company prior to awarding a contract is to avoid placing contracts with financially unstable companies and to minimize costly and time-consuming delays in performance.

(2) The scope of a financial analysis can vary. In some cases, a sound decision may be made after a relatively simple review of a company's financial position and production commitments. Other cases may necessitate a thorough study of financial statements, evaluation of credit resources and personal interviews with management, creditors and financing institutions. The scope of an analysis should vary with the degree of financial stability of the contractor. The normal processing period allowed for a preaward survey precludes an exhaustive analysis of every case.

(3) The use of basic, analytical techniques usually indicates the financial integrity and strength of most companies. Applied on a uniform basis, this approach serves as an effective means of ferreting out the marginal or complex cases which require more detailed study.

(4) Information suitable for measuring financial integrity and strength can be developed from financial statements, credit agency reports, financial institutions and creditors. If the bidder is unable or unwilling to comply with requests for financial information, the financial analyst will recommend "No Award".

(b) *Rates and ratios.* (1) A quantitative measure of strength can be obtained through the use of rates and ratios. The availability of funds to meet current obligations can be determined, in part, through the application of the current ratio. The current ratio equals current assets divided by current liabilities. A high current ratio is more favorable than a low current ratio.

(2) In addition to knowing the dollar amount of assets available to meet financing requirements, it is equally important to know whether these assets represent a ready source of adequate cash. Through the construction of turnover rates for noncash current assets, the relative liquidity of such items may be determined.

(3) Working capital, which is the excess of current assets over current liabilities, is an important factor. In addition to serving as a basis for measuring ability to meet current financing requirements, working capital represents a primary means of estimating the financial ability of a company regarding future commitments.

(4) Another measure of prospective financial capability is derived from the relationship of the amount of funds provided by owners to that provided by creditors. In general, the greater the capital contribution by owners, the stronger the financial position.

(5) These ratios can be used to develop some insight and understanding of a company's financial position.

(c) *Trends.* (1) Use of the above procedures and other related factors provide evidence of the financial condition of a company. Financial stability is best disclosed by means of trends. A comparison of significant elements taken from a series of financial statements will indicate trends and may indicate items which merit further study.

(2) Some of the most important elements for which trends should be developed are cash, current assets, current liabilities, working capital, total liabilities, net worth, sales and profit.

(3) The discovery of conflicting or counter trends may indicate a matter which merits further study. If the profit trend reveals an increase in earnings and, conversely, working capital is steady or decreasing, it may be desirable to prepare a statement showing the source and application of funds to determine the manner in which funds are being employed.

(d) *Backlog.* (1) The goal of a financial capability analysis is to judge whether the financial resources of a company will

be adequate for the volume of business expected during the performance of the proposed contract.

(2) A statement of backlog will be obtained from the company showing the total value of unfilled orders, a breakdown of the total between Government and commercial orders and the scheduled monthly average of production computed in dollars.

(3) Every effort will be made to obtain maximum cooperation from contractors when obtaining backlog information.

(e) *Credit agency reports.* Full use of credit agency reports (e.g. Dun and Bradstreet) is encouraged where information maintained on a company does not provide an adequate basis for a decision.

(f) *Additional analysis.* The preliminary analysis will usually indicate that the company is financially capable. However, if the preliminary analysis discloses that the company may not be financially capable, a comprehensive analysis should be performed.

3. Loss Contract. If, in the course of conducting a financial examination as to the prospective contractor's financial ability to perform the proposed work, it becomes apparent that a loss contract would ensue, a comment should be made on the company's ability to withstand the loss.

SECTION 7. "NO AWARD" OR "PARTIAL AWARD"

If "No Award" or "Partial Award" is recommended, the basis for the recommendation must be explained. All recommendations shall be submitted to the Contracting Officer.

CHAPTER XII. CERTIFICATION AND AWARD

SECTION 1. EVALUATION OF BIDS

1. Procedure. After opening and abstracting bids, printing specialists shall evaluate all responses to determine the lowest responsive bid, the responsibility of the low responsive bidder, and whether the price bid is fair and reasonable to the Government. In the case of term contracts, determinations shall be made as to reasonableness of all prices offered by each supplier to whom award is recommended. In addition, the printing specialist shall accomplish the actions listed below.

(a) Check jacket numbers, solicitation numbers, and other workpapers to make certain that they are in agreement as to identification data (jacket No., requisition No., etc.).

(b) Review the solicitation and bids to assure that bidders have taken no exception to the specifications.

(c) Compare the bid price with the unit price(s) from each bid received to insure accuracy of extension. Check the additional rate to insure that it is reasonably lower than the actual unit rate. The additional rate should exclude all preliminary costs.

(d) In evaluating bids, Government transportation costs, if applicable, for shipment of Government furnished material and shipment of the printed product shall be added to each supplier's bid price.

(e) For evaluation purposes, deduct from the bid price prompt payment discounts of 20 days or more.

(f) Determine that the bid is signed and that the price is fair and reasonable. Consider conducting a preaward survey (see chapter XI).

(g) If bid samples are required by the IFB, send the number required together with two copies of the specifications to Quality Control and Technical Department for evaluation (in RPPO's, send samples and specifications to the appropriate Superintendent, PPR. If the bid samples were required by a request from the ordering agency, samples shall also be sent to the agency for consideration. Since test results have a direct bearing on the responsiveness of the bid, the Contracting Officer shall review all negative test results to assure the applicability of the tests in accordance with the specifications.

(h) If bid samples are not required by the IFB, but samples are furnished with a bid, they will be disregarded, unless it is clear from the bid or accompanying papers that it was the bidder's intention to so qualify the bid. Where a bid is so qualified, the samples shall be processed in accordance with paragraphs (g), (i), and (j) of this subsection provided that it can be determined that the samples conform to the specifications without complex and time-consuming tests. If a positive determination that the samples conform to the specifications cannot be made the bid may be rejected.

(i) If the evaluation of the low bid is favorable, initial and date at the bottom of each copy of the successful bid. Circle the successful supplier with red pencil on both copies of invitation to bid and abstract.

(j) If the evaluation is unfavorable and award is not recommended to the low bidder for any reason, attach a statement as to the reason for nonaward to the face of the next low responsive bid received from the responsible bidder to whom award is recommended.

(k) Consider the requirements for Contract Review Board actions at this point in the certification process (See I-10).

(l) If Government bills of lading are required, complete GPO Form 583, Request for Bills of Lading and furnish to Transportation Management Section with two copies of specifications and distribution lists along with a certified label and registered receipt addressed to the vendor to whom award is being made.

(m) Furnish a written estimate to the agency.

(n) (1) Issue a purchase order (GPO Forms 2669, 2675 or 2676) containing the following:

(i) Contracting Officer's signature.

(ii) Object class.

(iii) State and contractor codes.

(iv) Cost (estimated if term contract and some one-time procurements such as: composition, aggregate, and marginally punched continuous (1026) awards).*

(v) Date the order was prepared.

(vi) Name and address of supplier.

(vii) Shipping instructions (per specifications).

(viii) Date of shipment/delivery.

(ix) Jacket number, department name and requisition number.

(x) Quantity (including allowable variation in quantity if applicable) and description (books, forms, etc.).

(xi) Unit and total prices.

(xii) Payment discount.

(xiii) The statement, "In strict accordance with your ('quotation' if small purchase or 'bid' if sealed bid) No. ___ dated ___ and our specifications." Include a reference to bid samples if the award was made in accordance with the supplier's samples.

(2) When circumstances require that specifications be transmitted to a contractor electronically (i.e., telegram, mailgram, fax), a statement substantially as follows shall be included in the resulting purchase order:

GPO (telegram/mailgram/fax Number _____) dated _____, which was previously furnished and a photocopy of which is attached hereto, is by reference incorporated into this contract and made a part hereof, as are the supplementary specifications attached hereto.

Supplementary specifications and a photocopy of the electronic transmission shall be attached to the purchase order.

(o) Furnish the successful supplier with:

(1) Parts 1 and 2 of the purchase order.

(2) Two copies of the solicitation including any amendments.

*Not to appear on Part 1 (contractor's copy) for term contracts.

(3) "Public Voucher for Purchases and Services Other Than Personal," SF 1034 (1 copy) and SF 1034a (3 copies).

(4) Government furnished material (camera copy, negatives, samples, electronic media, etc.).

(5) Requisite number of GPO Forms 712, "Certificate of Conformance" (only if postage and fees paid labels are furnished) (see chap. XVII).

(6) Proof, preproduction, and/or shipping labels as applicable.

These items shall be furnished to the contractor by a means (e.g., certified mail, return receipt requested, or GPO Form 711 "Receipt") that will insure a return receipt to the Government.

SECTION 2. CANCELLATION OF INVITATION AFTER OPENING

1. Procedure. The following applies to the cancellation of a solicitation after bid opening.

(a) Preservation of the integrity of the competitive bid system and prevention of unnecessary exposure of bid prices dictate that, after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation. Wherever possible, changes in requirements shall be made prior to bid opening.

(b) IFB's may be canceled after opening but prior to award and all bids rejected, only where such action is clearly in the best interest of the Government. Approval of the Contract Review Board (see I-10) shall, in some instances, be obtained prior to cancellation of the IFB. The following are examples of circumstances which may justify cancellation of an IFB after opening:

(1) Inadequate, ambiguous, or otherwise deficient specifications were cited in the IFB.

(2) The supplies or services are no longer required.

(3) The IFB did not provide for consideration in the evaluation of bids of all costs to the Government, such as the cost of transporting Government furnished property to the successful bidder's plant.

(4) Bids received indicate that the needs of the Government can be satisfied by a less expensive article than the one specified in the IFB.

(5) All otherwise acceptable bids received are at unreasonable prices.

(6) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith.

(7) For other reasons cancellation is clearly in the Government's interest.

(c) When it is determined that all bids should be rejected, the Contracting Officer shall notify each bidder who responded of the rejection and state the reason for such action.

SECTION 3. REJECTION OF INDIVIDUAL BIDS

1. Procedure. The following applies to rejection of individual bids.

(a) Any bid which fails to conform to the essential requirements of the IFB such as specifications, shall be rejected as nonresponsive.

(b) Ordinarily, a bid shall be rejected where conditions are imposed by the bidder which would modify requirements of

the IFB or limit liability to the Government so as to provide an advantage over other bidders. For example, bids shall be rejected in which the bidder:

(1) Attempts to protect against future changes in conditions such as increased costs.

(2) Fails to state a price and, in lieu thereof, states that price shall be "price in effect at time of delivery."

(3) States a price but qualifies such price as being subject to "price in effect at time of delivery."

(4) Where not authorized by the invitation, qualifies the bid contingent on receipt or nonreceipt of award under a separate procurement.

(5) Limits rights of Government under any contract clause.

(c) A low bidder may be requested to delete objectionable conditions from the bid if these conditions do not affect the substance, as distinguished from the form of the bid. A condition affects the substance of a bid when it changes price, quantity, quality or delivery of the items offered.

(d) Any bid may be rejected if the Contracting Officer determines in writing that it is unreasonable as to price.

(e) Bids received from parties excluded from procurement programs shall be rejected if the period of suspension, debarment, or ineligibility has not expired as of the bid opening date.

(f) Low bids received from firms determined to be non-responsible shall be rejected.

(g) A bid will be rejected on which the name or signature of someone authorized to sign bids is merely a facsimile. The bid will be declared nonresponsive unless a properly signed and executed document containing an effective authorization for executing documents by facsimile signature precedes or accompanies each bid for which the contractor wishes to be considered. The term facsimile does not include facsimiles transmitted and reproduced on electronic equipment.

(h) The original copies of all rejected bids, and any written findings with respect to such rejections, shall be preserved with the papers relating to the procurement.

(i) When a determination has been made to reject all bids, the Contracting Officer shall notify each bidder that all bids have been rejected, stating the reason for such action.

SECTION 4. MINOR INFORMALITIES OR IRREGULARITIES IN BIDS

1. Definition. A minor informality or irregularity is one which is merely a matter of form and not of substance, or pertains to some immaterial or inconsequential defect or variation of a bid from the exact requirement of the IFB, the correction or waiver of which would not be prejudicial to other bidders. The defect or variation in the bid is immaterial and inconsequential when its effect on price, quantity, quality, or delivery is trivial or negligible when contrasted with the total cost or scope of the supplies or services being procured. The Contracting Officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive such deficiency, whichever is to the advantage of the Government. Examples of minor informalities or irregularities include:

(a) Failure of bidder to return the number of copies of signed bids required by the IFB.

(b) Failure to furnish required information as to whether or not the bidder is a large or small business.

(c) Failure of bidder to sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid document, such as the submission of a bid guarantee, or a letter signed by the bidder with the bid referring to and clearly identifying the bid itself.

(d) Failure of a bidder to acknowledge receipt of an amendment to an IFB but only if:

(1) The bid received clearly indicates that the bidder received the amendment, such as where the amendment added another item to the IFB and the bidder submitted a bid thereon; or

(2) The amendment involves only a matter of form or is one which has either no effect or merely a trivial or negligible effect on price, quantity, quality or delivery of the item bid upon.

SECTION 5. EQUAL LOW BIDS

1. General. When two or more low bids are received which are equal in all respects, taking into consideration costs of transportation, payment discounts, and any factors properly to be considered for bid evaluation purposes, award is to be made to the equal low bidder as determined by the following sequence:

(a) Small business concerns which are also labor surplus area concerns.

(b) Other small business concerns.

(c) Other business concerns which are also labor surplus area concerns.

(d) Other business concerns.

(e) If two or more bidders still remain equally eligible for award, award shall be made by drawing of lots. A written statement shall be included in the contract file as to how lots were drawn, by whom, and who witnessed the drawing.

SECTION 6. MISTAKES IN BID

1. General. After the opening of bids, the Contracting Officer shall examine all bids for mistakes. In cases of apparent mistake and in cases where the Contracting Officer has reason to believe that a mistake may have been made, the bidder shall be advised of the suspected mistake and requested to verify the bid. If the bidder alleges a mistake, the matter shall be processed in accordance with this section. Such actions shall be taken prior to award.

2. Apparent Clerical Mistakes.

(a) Any clerical mistake, apparent on its face in the bid, may be corrected by the Contracting Officer before award. The Contracting Officer shall first obtain from the bidder a verification of the bid intended. Examples of apparent mistakes are—

(1) Obvious misplacement of a decimal point;

(2) Obviously incorrect discounts (for example, 1 percent 10 days, 2 percent 20 days, 5 percent 30 days);

(3) Obvious reversal of the price f.o.b. destination and price f.o.b. origin; and

(4) Obvious mistake in designation of unit.

(b) Correction of the bid shall be effected by attaching the verification to the original bid and a copy of the verification to the duplicate bid. Correction shall not be made on the face of the bid; however, it shall be reflected in the award document.

3. Other Mistakes Disclosed Before Award.

(a) The Chairperson, CRB is authorized to make the administrative determinations described in this subsection in connection with mistakes in bids alleged after opening of bids but before award. The authority to permit correction of bids is limited to bids which, as submitted, are responsive to the IFB, and may not be used to permit correction of bids to make them responsive.

(b) If a bidder requests permission to correct a mistake (see exhibit XII-1) and clear and convincing evidence establishes both the existence of the mistake and the bid actually intended, the CRB Chairperson may make a determination permitting the bidder to correct the mistake; *provided*, that if correction would result in displacing one or more lower bids, such a determination shall not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself.

(c) If (1) a bidder requests permission to withdraw a bid (see exhibit XII-2) rather than correct it, (2) the evidence is clear and convincing both as to the existence of a mistake and as to the bid actually intended, and (3) the bid, both as uncorrected and as corrected, is the lowest received, the Chairperson, CRB may make a determination to correct the bid and not permit its withdrawal.

(d) If, under paragraphs (b) or (c) of this subsection, (1) the evidence of a mistake is clear and convincing only as to the mistake but not as to the intended bid, or (2) the evidence reasonably supports the existence of a mistake but is not clear and convincing, the CRB Chairperson may make a determination permitting the bidder to withdraw the bid.

(e) If the evidence does not warrant a determination under paragraphs (b), (c), or (d) of this subsection, the CRB Chairperson may make a determination that the bid be neither withdrawn nor corrected.

(f) Suspected or alleged mistakes in bids shall be processed as follows. A mere statement by contracting officers that they are satisfied that an error was made is insufficient.

(1) The Contracting Officer shall immediately request the bidder to verify the bid. Action taken to verify bids must be sufficient to reasonably assure the Contracting Officer that the bid as confirmed is without error, or to elicit the allegation of a mistake by the bidder. To assure that the bidder will be put on notice of a mistake suspected by the Contracting Officer, the bidder should be advised as appropriate—

(i) That its bid is so much lower than the other bids or the Government's estimate as to indicate a possibility of error;

(ii) Of important or unusual characteristics of the solicitation specifications;

(iii) Of changes in requirements from previous purchases of a similar item; or

(iv) Of any other information, proper for disclosure, that leads the Contracting Officer to believe that there is a mistake in bid.

(2) If the bid is verified as correct, the Contracting Officer shall consider the bid as originally submitted. If the time for acceptance of bids is likely to expire before a decision can be made, the Contracting Officer shall request all bidders whose bids may become eligible for award to extend the time for acceptance of their bids. If the bidder whose bid is believed erroneous does not (or cannot) grant an extension of time, the bid shall be considered as origi-

nally submitted (but see subparagraph (4) below). If the bidder alleges a mistake, the Contracting Officer shall advise the bidder to make a written request to withdraw or modify the bid. The request must be supported by statements (sworn statements, if possible) and shall include all pertinent evidence such as the bidder's file copy of the bid, the original worksheets and other data used in preparing the bid, subcontractors' quotations, if any, published price lists, and any other evidence that establishes the existence of the error, the manner in which it occurred, and the bid actually intended.

(3) When the bidder furnishes evidence supporting an alleged mistake, the Contracting Officer shall refer the case, by memorandum, to the CRB Chairperson, together with the following data:

- (i) A signed copy of the bid involved.
- (ii) A copy of the invitation for bids and any specifications or drawings relevant to the alleged mistake.
- (iii) An abstract or record of the bids received.
- (iv) The bidder's written request to withdraw or modify the bid, together with the bidder's written statement and supporting evidence.
- (v) A written statement by the Contracting Officer setting forth—
 - (A) A description of the supplies or services involved;
 - (B) The expiration date of the bid in question and of the other bids submitted;
 - (C) Specific information as to how and when the mistake was alleged;
 - (D) A summary of the evidence submitted by the bidder;
 - (E) In the event only one bid was received, a quotation of the most recent contract price for the same or similar supplies or services involved or, in the absence of a recent comparable contract, the Contracting Officer's estimate of a fair price for the supplies or services;
 - (F) Any additional pertinent evidence; and
 - (G) A recommendation that either the bid be considered for award in the form submitted, or the bidder be authorized to withdraw or correct the bid.
- (vi) A D&F for the CRB Chairperson to sign, conforming to the recommendation of the Contracting Officer.

(4) Where the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, the Contracting Officer shall consider the bid as submitted unless (i) the amount of the bid is so far out of line with the amounts of other bids received or with the amount estimated by the Contracting Officer or determined by the Contracting Officer to be reasonable, or (ii) there are other indications of error so clear, as to reasonably justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders. If the circumstances in (i) and (ii) of this paragraph prevail, the Contracting Officer shall recommend the bid be rejected. Attempts made to obtain the information required and the action taken with respect to the bid shall be fully documented.

(g) Each contract file folder shall contain copies of all determinations made in accordance with this subsection, the facts involved, and the action taken in each case.

4. Disclosure of Mistakes After Award.

(a) When a mistake in a contractor's bid is not discovered until after the award, the mistake may be corrected by contract modification if correcting the mistake would be favorable to the Government without changing the essential requirements of the contract.

(b) In addition to the case contemplated in paragraph (a), the CRB Chairperson is authorized to make a determination—

- (1) To rescind a contract;
- (2) To reform a contract (i) to delete the items involved in the mistake; or (ii) to increase the price if the contract price, as corrected, does not exceed that of the next lowest acceptable bid under the original invitation for bids; or

(3) That no change shall be made in the contract as awarded, if the evidence does not warrant a determination under paragraphs (b)(1) or (2) of this subsection.

(c) Determinations under paragraphs (b)(1) and (2) above may be made only on the basis of clear and convincing evidence that a mistake in bid was made. In addition, it must be clear that the mistake was (1) mutual, or (2) if unilaterally made by the contractor, so apparent as to have charged the Contracting Officer with notice of the probability of the mistake.

(d) Each proposed determination shall be sent to the Office of General Counsel, for concurrence.

(e) Mistakes alleged or disclosed after award shall be processed as follows:

(1) The Contracting Officer shall request the contractor to support the alleged mistake by submission of written statements and pertinent evidence, such as (i) the contractor's file copy of the bid, (ii) the contractor's original worksheets and other data used in preparing the bid, (iii) subcontractors' and suppliers' quotations, if any, (iv) published price lists, and (v) any other evidence which will serve to establish the mistake, the manner in which it occurred, and the bid actually intended.

(2) The case file concerning the alleged mistake shall be referred to the CRB Chairperson and contain the following:

- (i) All evidence furnished by the contractor in support of the alleged mistake.
- (ii) A signed statement by the Contracting Officer—

- (A) Describing the supplies or services involved;
- (B) Specifying how and when the mistake was alleged or disclosed;

(C) Summarizing the evidence submitted by the contractor and any additional evidence considered pertinent;

(D) Quoting, in cases where only one bid was received, the most recent contract price for the supplies or services involved or, in the absence of a recent comparable contract, the Contracting Officer's estimate of a fair price for the supplies or services and the basis for the estimate;

(E) Setting forth the Contracting officer's opinion whether a bona fide mistake was made and whether the Contracting Officer was, or should have been, on constructive notice of the mistake before the award, together with the reasons for, or data in support of, such opinion;

(F) Setting forth the course of action with respect to the alleged mistake that the Contracting Officer considers proper on the basis of the evidence, and if other than a change in contract price is recommended, the

manner by which the supplies or services will otherwise be acquired; and

- (G) Disclosing the status of performance and payments under the contract, including contemplated performance and payments.
 - (iii) A signed copy of the bid involved.
 - (iv) A copy of the invitation for bids and any specifications or drawings relevant to the alleged mistake.
 - (v) An abstract of written record of the bids received.
 - (vi) A written request by the contractor to reform or rescind the contract, and copies of all other relevant correspondence between the Contracting Officer and the contractor concerning the alleged mistake.
 - (vii) A copy of the contract and any related change orders or supplemental agreements.
 - (viii) A determination and findings.
- (f) A record of (1) all determinations made in accordance with this subsection, (2) the facts involved, and (3) the action taken in each case shall be included in the contract file.

5. Mistakes in Quotation on Small Purchases.

(a) A written offer submitted on a term contract or normal bid differs contractually from an oral quotation on a small purchase. A written offer, if responsive to the solicitation and submitted by a responsible offeror becomes an effective contract upon acceptance by the Government. The contract is bilateral since the parties have indicated their mutual assent. A request for quotations and a quotation in response, such as occurs with small purchases, becomes an effective unilateral contract when the contractor who has been issued the purchase order (the Government's offer) signs the order or begins work on the requirement (the contractor's acceptance). The distinction between bilateral and unilateral contracts as to the effective contract date, affects the administrative procedures utilized in handling a claim of mistake in quotation. The procedures used for a bilateral contract mistake-in-bid claim have been previously discussed in this section. Claims of mistakes in oral small purchase quotations fall into the following categories.

(1) *Suspected mistakes in quotation.* Whenever the Contracting Officer suspects that a mistake may have been made in a small purchase quotation, the supplier shall be

requested to review and confirm the accuracy of its quotation. The requirement shall be orally repeated if the original request for quotation was delivered orally. The contractor shall not be notified of the percentage or dollar difference between the low quotation and next low quotation.

(2) *Mistakes claimed prior to the issuance of a purchase order.* Should the contractor claim a mistake in quotation at this point the Contracting Officer may take any one of three actions:

- (i) allow the contractor to withdraw its quotation;
- (ii) accept a corrected quotation; or
- (iii) negotiate a change in quotation.

(3) *Mistakes claimed after the issuance of a purchase order but prior to contractor performance.* Technically, in this area the Contracting Officer can take actions similar to those described in the preceding paragraph within the following guidelines:

(i) Cancel the purchase order. If the claim of mistake does not appear fair and reasonable or the integrity of the competitive system is jeopardized, the Contracting Officer may cancel the purchase order. The procurement then could be offered to the next lowest supplier or re-solicited.

(ii) Allow the contractor to correct its quotation up to an amount not greater than the next low quotation, providing the Contracting Officer determines that any upward correction is fair and reasonable.

(4) *Mistakes after the contractor has begun performance.* Mistakes falling into this category shall be handled in the same manner as any post-award mistake in bid as covered previously in this section.

(b) *Special considerations.* If a small purchase is of a particularly critical nature or the prospective contractor has a history of claiming mistakes in quotation, the Contracting Officer can require the awarded contractor to return a signed copy of the purchase order as verification of the contractor's acceptance of the order. This will lessen the delay in procuring the requirement, should there be a claim of mistake in quotation, by establishing an effective contract date as early as possible.

EXHIBIT XII-1

PERMISSION TO CORRECT

DETERMINATION AND FINDINGS

In accordance with PPR XII-6 (GPO Pub. 305.3) and upon the basis of the findings set forth below, I hereby make the following administrative determination.

Findings

ABC Company has requested permission to correct its bid under IFB No. 00000, Program 000-S, because of a mistake discovered before award.

Clear and convincing evidence has been presented that ABC Company made a bona fide error in bid under IFB No. 00000, Program 000-S.

Clear and convincing evidence has been presented as to the bid actually intended.

Determination

ABC Company shall be permitted to correct its bid.

Chairperson, Contract Review Board

Date

EXHIBIT XII-2

PERMISSION TO WITHDRAW

DETERMINATION AND FINDINGS

In accordance with PPR XII-6 (GPO Pub. 305.3) and upon the basis of the findings set forth below, I hereby make the following administrative determination.

Findings

ABC Company has requested permission to withdraw its bid under IFB No. 00000, Program 000-S, because of a mistake discovered before award.

The evidence presented reasonably supports the existence of a mistake.

Clear and convincing evidence has not been presented as to the bid actually intended.

Determination

ABC Company is permitted to withdraw its bid from consideration.

Chairperson, Contract Review Board

Date

CHAPTER XIII. CONTRACT ADMINISTRATION AND COMPLIANCE

SECTION 1. TERM CONTRACTS

1. General. Term contracts are established to facilitate agency requirements that are recurrent over a period of time, normally one year. GPO Form 2511, Print Order is used to place orders against a term contract. Placement of print orders can be handled in one of two ways: by GPO personnel or directly by customer agencies. Term contracts which allow customer agencies to place print orders directly with the contractor are commonly known as “direct-deal term contracts.” However, emphasis should always be placed on the fact that these are GPO contracts and all associated administrative functions, except those specifically delegated to the customer agency, are the responsibility of GPO. All requests for direct-deal authority from the customer agency shall be thoroughly evaluated to ensure they meet the conditions as set forth in this section.

2. Direct-Deal Term Contracts.

(a) *Purpose.* The purpose of direct-deal term contracts is to ensure that agency printing needs are met in the most effective and efficient manner possible.

(b) *Granting Direct-Deal Authority.* It is the responsibility of the Contracting Officer to grant direct-deal authority to customer agencies for specific term contracts. Before direct-deal authority shall be granted the Contracting Officer must be convinced that print order placement cannot be handled through GPO. Granting of direct-deal authority is limited to the following conditions:

(1) *Schedule.* The schedule demanded by the agency would be adversely affected by requiring material to be submitted through GPO.

(2) *Location.* The remote location of the customer agency justifies direct placement of print orders with contractors within the area.

(3) *Special Handling.* Some furnished material may be bulky, fragile, or classified, necessitating special handling. In such instances, direct-deal authority may be granted to avoid excessive handling of the material.

If direct-deal authority is required for any other reason, it must be approved by the appropriate Superintendent.

(c) *Renewal of direct-deal authority.* It is the responsibility of the Contracting Officer to review direct-deal term contract for adherence to the above listed conditions for granting direct-deal authority prior to issuance of the agency term-contract renewal letter. The review shall include, as a minimum: The placement of orders and adherence to contract schedules and specifications. If the Contracting Officer is not convinced that direct-deal authority should be continued, the customer agency shall be notified that upon expiration of the current term contract, direct-deal authority shall be rescinded. Approval must be obtained from the appropriate Superintendent before direct-deal authority can be rescinded from a customer agency. After approval is received from the Superintendent

for Term Contracts Division, the notice shall be issued through the Customer Service Department.

3. Direct Deal/Direct Bill Term Contracts.

(a) *Purpose.* Direct deal/direct bill contracts are the result of an interagency agreement for duplicating/copying as defined in paragraph 2-1 of JCP Government Printing and Binding Regulations No. 25 (1987). Payment under this type of contract is made directly by the ordering agency upon presentation of vouchers by the contractor.

(b) *GPO Activity.* When presented a SF-1 for duplicating/copying, Term Contracts Division and RPPO's shall develop specifications, advertise the requirement, and award the contract. The contract shall then be turned over to the ordering agency for its day-to-day execution while the respective GPO office retains overall administrative control.

(c) *Renewal.* Notices of renewal shall be issued as directed in paragraph 2(c) above.

4. Program Setup Procedures. The printing specialist shall certify the program in accordance with chapter XII. In addition, the steps listed below shall be followed for setting up programs in order to place print orders against term contracts:

(a) A purchase order shall be prepared for approved contractors in accordance with XII-1.1. The purchase order number and date shall be written within the bottom margin of the original and duplicate copies of the bid form of the successful bidder.

(b) A transmittal letter to the agency shall be prepared in sufficient number of copies for distribution and shall contain required information and any special instruction as appropriate. In the Term Contract Division, the letter to the agency is issued by the Customer Service staff.

(c) An appropriate letter is forwarded to successful contractors.

(d) For contracts that are utilized by multiple agencies, a block of print order numbers shall be assigned to each agency to assure accurate and efficient administration of the program.

(e) GPO Form 2654, Program Check List, shall be prepared to provide a summary of pertinent information for use and assistance in the control of print orders.

(f) A review of the contract file shall be made to assure that all pertinent data is in the file, i.e., bid specifications, requisition, CRB memo, abstract, letter of award or sequence letter, etc.

5. Print Order Processing.

(a) *Print Orders Placed by GPO.* (1) Agencies submit print orders to GPO when printing and binding services are required. Upon receipt of the print order a review shall be made by the printing specialist and/or the procurement assistant (program operator) to determine that the work is within the scope of the contract and that the print order is properly filled out to include the following information:

(i) Department, title of publication, and contractor's name (if single award; if multiple award contract, add after placement of print order).

(ii) Date, print order and jacket numbers, shipping date (ensuring compliance with contract schedule), object class, state and contractor's codes, program and requisition numbers. If single award contract, the purchase order number, state and contractor's codes should be included. In multiple award contracts, this information shall be added after placement of the print order.

(iii) Complete proof information including proof schedule when date can be determined.

(iv) Color of ink(s), number of pages for cover and text (estimated pages when actual number cannot be determined), kind of paper, number and size of foldins, amount and kind of material furnished to contractor, method of binding and stock property number when paper is furnished by GPO.

(v) Total number of copies (including depository, file, sales or other rider distribution when required) and trim size.

(vi) Quantity breakdown with complete delivery instructions for each increment to each destination.

(vii) Signature and title of person(s) duly authorized to sign. Authorization shall be on file with Central Office and RPPO's.

(2) When the above requirements have been satisfied, the order may be placed. In the case of a single award contract, the order is automatically placed with the successful contractor. Under a multiple award contract, the lowest contractor in the sequence is solicited first. If the required ship date cannot be met, the second low contractor is then solicited. If that contractor cannot meet the ship date, the program operator shall continue to solicit in the established sequence until the order is placed, or any cut-off point is reached. The date the order is mailed to, or picked up by (or made available to), the contractor must be entered on the print order.

(3) If the order is submitted and contains an item not included in the schedule of prices, and does not change the basic product, it may be placed on the contract with the approval of the Contracting Officer. The solicitation shall be made but the item not covered by the contract must have a price submitted for it by the contractor. The contractor must offer a price for this additional work and the printing specialist must assure that an analysis is made to determine that the price is fair and reasonable. Once this determination has been made and a total price has been reached, a contract modification shall be issued incorporating the additional item and its price in the contract, and the program operator shall place the order with the contractor.

(4) Contractors refusing to accept an order with the requested ship date on multiple award term contracts shall be required to provide the best date that can be met. Program operators shall document the name of the contractor's representative and "best date." When an order has been solicited to the entire approved listing and the original ship date is not accepted, the agency shall be contacted and advised of the range of dates that can be met. The agency shall be requested to identify the latest possible date it can accept. The order shall again be solicited with the new date, in sequence, until it is placed. In individually abstracted orders, the solicitation shall be made only to those contractors whose prices are determined to be fair and reasonable. In the event the or-

dering agency still insists on the original ship date, or one which is unacceptable to all approved contractors on the listing, the order may be procured as a one-time sealed bid or small purchase.

(5) Procurement personnel shall identify and document (in the award sequence): date; company and representative to whom the solicitation was made; contractor's best date if refused because of schedule; and agency authority changing shipping/delivery date if required.

(b) *Print Orders Placed by Agencies.* (Direct Deal Term Contract). (1) As detailed in (a)(1) of this subsection, each print order received by GPO shall be reviewed by the program operator for (i) completeness and (ii) compliance to the contract specifications. Each direct-deal term contract shall be reviewed by the program operator on a quarterly basis (at the minimum), to assure that agencies are not deviating from these contracts and are following procedures for making solicitations to contractors on multiple-award contracts. For example, print orders shall be carefully reviewed to determine if there is a pattern of awards to other than the low contractor(s) in the established sequence. If the program operator determines that there is such a pattern, the Contracting Officer shall be notified and the customer agency's log, as required by the transmittal letter, shall be requested for review. If the review of the log does not justify the placement pattern, then the low contractor shall be contacted to ascertain why they have not accepted orders. All telephone conversations shall be documented for the file. (Note: In the Term Contracts Division, the agency's log shall be requested through the Customer Service staff.)

(2) If the review of any print order or the quarterly review reveals infractions of the terms of the contract or the procedures stated in the transmittal letter to the customer agency (except clerical errors, unless of a recurring nature), a letter of warning shall be issued to the customer agency. For the Term Contract Division, this letter shall be issued by the departmental account representative as a result of information provided by the Contracting Officer. If additional infractions are found after the warning letter has been issued, the Contracting Officer shall initiate the necessary actions to rescind the customer agency's direct-deal authority. Final revocation by the Contracting Officer requires the approval of his or her Superintendent.

(3) On request, accompanied by adequate justification of future compliance, the Contracting Officer may reinstate direct-deal authority.

(c) *All Print Orders.* (1) Immediately after order placement as detailed in paragraph (a) of this subsection, or after receipt and review of print orders placed by agencies as detailed in paragraph (b) of this subsection, enter print order information into the Procurement Information Control System (PICS).

(2) The following applies when a voucher is received prior to PICS entry. Request the originating agency to immediately submit the print order. Enter the print order within 3 days of when the Comptroller posts a voucher and print order as received without a PICS entry. If necessary, use the information posted by the Comptroller for PICS entry. In addition to reviewing the print order received from the agency as detailed in paragraph (b) of this subsection, check to assure that the agency submitted print order is the same as the print order received from the contractor with the voucher.

6. Estimating. All print orders shall contain an estimate from the schedule of prices. This estimate shall be typed or hand-written on parts 3 through 7 before distribution is made. The surcharge shall not be included. In no event shall the contractor's copy, parts 1 and 2, include an estimate. Should additional copies be required by the procurement office, they may be reproduced locally.

SECTION 2. CONTRACT MODIFICATIONS

1. General.

(a) *Definition.* Contract modifications are defined as any changes to an existing contract. They include alterations in the specifications,* delivery point, rate of delivery, contract period, price, quantity, or other provision of the contract. Modifications can be accomplished by a written bilateral agreement or by a written unilateral action in accordance with a contract clause. Examples of contract clauses that give the Government a unilateral right to change a contract are "Changes" and "Paper Price Adjustment."

(b) *Contracting Officer decision.* It is not mandatory for the Contracting Officer to make the requested change and modify the contract. When the Contracting Officer deems that it would be in the best interest of the Government, such as where the modification would significantly change the product, the Contracting Officer has the option to terminate the original contract for the convenience of the Government and readvertise with revised specifications. In such cases, the termination shall be made in accordance with XIV-2.

(c) *Bilateral Agreements, Unilateral Actions, and Administrative Changes.* (1) Bilateral agreements are required when the proposed modifications affect substantial or material aspects of the contract not covered in the original contract. Substantial or material aspects of the contract include, but are not limited to, quantity, contract provisions, contract period, etc. To consummate the bilateral agreement a *supplemental agreement* shall be issued requiring the signature of both the Contracting Officer and the contractor. A *supplemental agreement* shall include a description of the modified or additional requirement and the agreed upon consideration for its performance.

(2) If the modification is authorized by a contract clause, the Contracting Officer has the unilateral right to issue a *change order*. Before issuing a *change order* under the "Changes" clause, the Contracting Officer shall try to reach an equitable adjustment and issue a *supplemental agreement* in accordance with (c)(1) above. If an equitable adjustment cannot be reached, two documents shall be issued: (i) the *change order* and (ii) the *supplemental agreement* once equitable adjustment has been reached. *Change orders* require the signature of the Contracting Officer only. The contractor is required to comply with the requested change regardless of whether a bilateral agreement has been reached. If a significant cost increase could result from a modification, and time does not permit negotiation of a price, at least a maximum price shall be negotiated and included in the modification.

(3) Administrative changes, such as correction of a typographical error on the purchase order, which do not materially affect the contract, are also unilateral actions. They are effected through issuance of a *change order*.

* Specification—a technical description which defines the material, product, or service being procured. The specification may be a design, functional, or performance specification or a combination of all three

2. Processing.

(a) *CRB concurrence.* All modifications meeting the criteria under I.10.4(b)(3) are to be submitted to the CRB.

(b) *GPO Form 913.* All contract modifications shall be issued by the Contracting Officer in writing on GPO Form 913, Contract Modification, except those described in XV-2 or approved by General Counsel. Each regional office is designated with an identifying letter as follows: Boston-a, Philadelphia-b, New York-c, Hampton-e, Atlanta-f, Chicago-g, Columbus-h, St. Louis-j, Dallas-k, Denver-m, Los Angeles-n, San Francisco-p, and Seattle-r.

(c) *Description of Modification.* All contract modifications shall include a complete description of the change.

(d) *Modification Number.* Each contract modification shall contain a modification number which is to be entered into PICS (Procurement Information and Control System) with other descriptive data.

(e) *Checkboxes on GPO Form 913.* The appropriate box shall be checked to distinguish between a *change order* and *supplemental agreement* on Form 913. The authority for issuing the *change order/supplemental agreement* shall be stated on the appropriate line. *Change orders* may be issued pursuant to the Changes clause or other contract clause. *Supplemental agreements* are entered into pursuant to mutual agreement.

(f) *Oral Notification.* If oral notice of the modification is made to a contractor the conversation shall be documented on GPO Forms 714 or 914 and placed in the contract file. The written modification shall be issued without delay.

3. Supplemental Agreement for Late Shipments.

(a) *General.* The decision to extend a delivery schedule rather than terminating for default is made only where it is determined to be in the best interest of the Government. Such decisions are at the discretion of the Contracting Officer in the administration of the contract. It must be clearly understood that use of this procedure is a limited alternative course of action, and is not a policy for circumventing termination for default procedures.

(b) *Justification for Issuing Supplemental Agreements for Late Shipments.* The following are circumstances which may make it practical, and in the best interest of the Government, for a Contracting Officer to extend a delivery date:

(1) The supplies are not available from alternative sources; or

(2) Termination and repurchase action will unduly delay the receipt of urgently needed supplies.

(c) *Consideration.* (1) Delivery schedules may be extended only when an equitable adjustment is obtained. Consideration will be in the form of:

(i) Reduction in the contract price; or

(ii) Improvement in the terms of the contract which will provide the Government with an advantage not previously called for by the basic contract.

(2) In determining consideration, the following factors should be evaluated to the extent information is available:

(i) The probable reduction in bid price(s) if the delivery period, as extended, had originally been called for in the IFB;

(ii) The probable damages suffered by the Government because of the delay; and

(iii) the value of the extension to the contractor in terms of:

- (A) Savings in contract performance; and
- (B) Potential damages if default action had been taken.

(3) No precise formula can be developed for determining the consideration which should be obtained in all cases. This is a matter of individual judgment and can only be handled on a case-by-case basis. Delivery schedules should be extended only when the consideration obtainable is realistic and equitable under the existing circumstances, and is of such significance as to clearly substantiate the fact that it is the policy of the Government to protect the integrity of the competitive bidding system by insisting on timely contract performance.

(4) When monetary considerations are agreed upon to extend delivery in lieu of termination, the consideration shall be documented by *supplemental agreement*. This may be accomplished by either one of two methods:

- (i) By agreement on a lump sum to be paid by the contractor to the Government; or
- (ii) By a reduction in the contract price.

(5) The statement "This supplemental agreement is not to be construed as a waiver of any rights or remedies the Government may have under the contract as a result of any further delinquency" will be included in all such supplemental agreements.

4. Contract File. The contract file shall contain:

(a) Copy of the *supplemental agreement* containing the signatures of the Contracting Officer and the contractor or a copy of the *change order* containing the Contracting Officer's signature. If the contractor acknowledges the *change order*, the copy containing the contractor's signature shall be placed in the file;

(b) A memorandum justifying the issuance of the modification;

(c) Evidence supporting costs which may be comprised of previous same or similar prices, GPO estimate, or other acceptable documentation;

(d) Copy of GPO Forms 714 or 914, documenting all conversations with the contractor regarding the change;

(e) Any other related documents.

5. Examples of Contract Modifications (not all inclusive).

(a) *Change Order*. (1) Shipping destination has changes using GBL's.

(2) To correct spelling of contractor's name on the purchase order.

(3) Notification to a contractor that the price allowed for paper has increased under the "Paper Price Adjustment" clause.

(b) *Supplemental Agreement*. (1) Quantity has been increased.

(2) An equitable adjustment has been reached after issuance of a *change order*.

(3) An extension of shipping schedules beyond those authorized under the terms of the contract.

6. PICS Update. Schedule changes authorized by contract modification shall be entered in PICS under compliance or regional update.

SECTION 3. NOVATION AND CHANGE OF NAME AGREEMENTS

1. Scope. This section prescribes the policies and procedures for the (a) recognition of a successor in interest to a GPO

contract(s) when such interests are acquired as the result of a transfer of all assets of a contractor or any part of those assets that may be involved in the performance of the contract and (b) a change of a name of a contractor.

2. Agreement to Recognize a Successor in Interest.

(a) The transfer of a GPO contract is prohibited. If it is in the best interest of the Government, GPO may recognize a third party as the successor in interest to a GPO contract when the third party's interest in the contract arises out of the transfer of all the assets of the contractor or of all of that part of the contractor's assets involved in the performance of the contract. Examples include, but are not limited to the following:

(1) Sale of such assets, with appropriate provisions for assumption of liabilities;

(2) Transfer of such assets pursuant to a merger or a consolidation of a corporation; and

(3) Incorporation of a proprietorship or partnership, or formation of a partnership.

(b) The GPO is generally not so much interested in what assets are transferred or in what manner the transfer of property or interest is accomplished. When requested to concur in a novation agreement, the GPO's main concerns are:

(1) Whether the proposed transfer is, in fact, a successor in interest to the GPO contract; and

(2) Whether it is consistent with GPO's interest to concur in the novation agreement.

Accordingly, the GPO has the discretion to either treat the contract as annulled by the assignment or recognize the assignment if it is in the GPO's best interests.

(c) A novation agreement is the legal instrument executed by the contractor (transferor), the successor in interest (transferee), and GPO by which, among other things, the contractor guarantees performance of the contract, the successor assumes all obligations under the contract, and GPO recognizes the transfer of assets. GPO's recognition of a third party as the successor in interest to a GPO contract is signified by the Contracting Officer's execution of the novation agreement which sets forth the obligations of the parties as the result of transferring the assets related to the GPO contract. The successor's obligation to perform a given contract is further set forth in a modification to the contract.

(d) When a contractor requests that the GPO recognize a successor in interest, the contractor shall be required to provide four signed copies of the proposed novation agreement to the GPO and one copy of any of the following that the Contracting Officer deems appropriate:

(1) A properly authenticated copy of the instrument by which the transfer of assets was effected; for example: bill of sale, certificate of merger, official copy of transfer, or court decree;

(2) A list of all affected contracts and purchase orders which have not been finally settled between the contractor and the GPO, showing the contract number, the name and address of the office handling the contract, the total dollar value of each contract as amended and the balance remaining unpaid;

(3) A certified copy of the resolutions of each of the boards of directors of the corporate parties authorizing the transfer of assets;

(4) A properly authenticated copy of the certificate and articles of incorporation of the transferees if such corpora-

tion was formed for the purpose of receiving the assets involved in the performance of the GPO contracts;

(5) Opinion of legal counsel for the contractor and the successor regarding the effective date of the transfer and that the transfer was properly effected in accordance with applicable law;

(6) Evidence of the capability of the successor to perform the contracts;

(7) A certified copy of the minutes of any stockholders' meetings of the corporate parties necessary to approve the transfer of assets;

(8) Consent of sureties on all the contracts where bonds have been furnished or a statement from the contractor that no bond is required.

(e) When it is in the best interest of the GPO to recognize a successor in interest to a Government contract, the Contracting Officer shall execute an agreement with the contractor and the successor which shall ordinarily provide in part that:

(1) The successor assumes all the contractor's obligations under the contract;

(2) The contractor waives all rights under the contract against the GPO;

(3) The contractor guarantees performance of the contract by the successor (a satisfactory performance bond may be accepted in lieu of such guarantee);

(4) Nothing shall relieve the contractor and the successor from compliance with any Federal law; and

(5) A format for such an agreement, for use when the transferor and transferee are corporations and all the assets of the transferor are transferred, is set forth in exhibit XIII-1. This format may be adapted to fit specific cases and may be used as a guide in preparing similar agreements for use in other situations.

3. Agreement to Recognize Change of Name of Contractor.

(a) When only a change of name is involved so that the rights and obligations of the parties remain unaffected, an agreement shall be executed between the parties to reflect the contractor's change of name. Four signed copies of the change of name agreement and one copy of each of the following shall be forwarded by the contractor to GPO:

(1) A copy of the document by which the change of name was effected, authenticated by a proper official of the State having jurisdiction;

(2) Opinion of legal counsel for the contractor regarding the effective date of the change of name and that the change of name was properly effected in accordance with applicable law; and

(3) A list of all affected contracts and purchase orders which have not been finally settled between the contractor and the GPO showing the contract number, the name and address of the office handling the contract, the total dollar value of each contract as amended and the balance remaining unpaid.

(b) A format for an agreement which may be used or adapted for specific cases is set forth in exhibit XIII-2. A formal agreement is required only when there are unsettled contracts in being. When no such contracts exist, the contractor shall be required to submit only a revised GPO Form 2524, Bidders Mailing List Application to assure that the master inventory of bidders is maintained current.

4. Processing.

(a) When on notice that a novation or change of name is contemplated or proposed, the Contracting Officer shall furnish four copies of the appropriate agreement format (exhibit XIII-1 or 2) to the contractor, accompanied by necessary instructions for completion of the form. The instructions shall provide, as a minimum:

(1) that an original and three copies of the proposed agreement be completed, signed by the concerned parties, and returned to the Contracting Officer; and

(2) the identification of the information to accompany the proposed agreement, as required by the Contracting Officer pursuant to subsections 2(d) or 3 of this section, as appropriate.

(b) The Contracting Officer processing a proposed agreement shall contact those procurement offices identified as having contracts with the contractor to determine if there are any objections to the proposed agreement. Any objections shall be resolved before an agreement is executed.

(c) All novation agreements and change of name agreements, prior to execution shall be reviewed by the Office of General Counsel for legal sufficiency.

(d) Executed agreements shall be distributed as follows:

(1) The signed original copy shall be retained by the Contracting Officer executing the agreement.

(2) The duplicate signed copy shall be provided to the contractor.

(3) A copy shall be provided to each procurement office identified as having a contract with the contractor.

(e) After execution and distribution, each affected procurement office shall execute a contract modification for each contract identified, incorporating a summary of the agreement.

SECTION 4. PRIOR-TO-PRODUCTION SAMPLES

1. Scope. This section prescribes policies and processing procedures for solicited and unsolicited prior-to-production samples.

2. Solicited Samples. Prior-to-production samples furnished to the Contracting Officer as required by the contract shall be processed as set forth below.

(a) Verification shall be made that the samples are as required, including the correct number of copies.

(b) If samples meet the general requirements of the specifications through visual inspection, their receipt shall be recorded showing date received and identification data such as Jacket/Program number. If samples are not as required and additional ones are requested from the contractor, the period for approval/disapproval by the Government as indicated in the specifications shall not begin until proper samples are received by the Contracting Officer.

(c) An appropriate number of samples (minimum of two), properly identified, plus one copy of the specifications shall be forwarded to the Quality Control and Technical Department for testing. Quality Control shall evaluate the samples for conformance with specifications and report their findings to the Contracting Officer. RPPO Contracting Officers shall forward samples through the appropriate Superintendent, PPR, to Quality Control.

(d) If the customer agency's requisition indicates that they shall be furnished prior-to-production samples, the Con-

tracting Officer shall send the requested number through the Customer Service Department. The customer's samples shall be sent simultaneously with those sent to Quality Control. In RPPO's, samples for the customer shall be sent directly to the address shown on the requisition.

(e) If the samples are approved by Quality Control, and the customer, if applicable, the Contracting Officer shall notify the contractor immediately by telephone. The telephone approval shall be confirmed by letter referencing the date of the approval.

(f) If the samples are found to be not equal to specifications, the contractor shall be notified immediately by telephone (and confirmed in writing) of the area(s) of deficiency and requested to furnish additional samples for testing unless:

(1) The Contracting Officer determines that the procurement is critical and furnishing additional samples would jeopardize shipping on schedule or;

(2) Customer agency samples are approved and Quality Control tested samples contain deficiencies (or vice versa);

(g) If the Contracting Officer conditionally waives further samples as permitted in (f)(1) and (2) the contractor shall be advised: (1) of the area(s) of deficiency; (2) that further samples are not required; and (3) that approval is conditioned upon the delivered product being equal to the specifications in all areas. Written conditional approval shall be sent to the contractor.

3. Unsolicited Samples. Prior-to-production samples not required under the terms of the contract shall be returned to the contractor as prescribed below.

(a) Upon receipt of unsolicited samples the Contracting Officer shall notify the contractor immediately, by telephone, that the samples will be returned. Except as provided in 3(b) below, the samples shall not be tested and shall be returned to the contractor by return mail and a record of such action shall be placed in the contract file.

(b) Unsolicited samples may be tested at the request of the contractor. However, the contractor shall be advised that there will be no extension of the shipping schedule due to such testing by GPO. The samples shall be tested by Quality Control in accordance with the procedures in this section. Unsolicited samples shall not be sent to the customer for testing unless there is compelling reason to do so. The results of test findings shall be given to the contractor by telephone and confirmed in writing.

SECTION 5. CONTRACT COMPLIANCE

1. Scope. This section deals with the performance of contractors in complying with the requirements of contracts and purchase orders primarily relating to shipping/delivery. Nothing in this section shall supersede the Contracting Officer's responsibility for assuring that GPO is contracting with responsible contractors (see I-5). Contracting Officers shall continue to exercise judgment based upon the particular circumstances of each case.

2. Extension of Schedules.

(a) All adjustments in schedules must be supported by adequate documentation and processed in accordance with the Notice of Compliance with Schedules clause.

(b) Automatic extensions (paragraph (c)(1) of the clause) shall be documented by receipts or notations recorded on GPO forms 714 or 907 for GFP or proofs.

(c) Negotiated extensions (paragraphs (c)(2) through (c)(5) of the clause) shall be documented by contractor correspondence or signed copies of modifications.

3. GPO Forms 714 and 907.

(a) When complete, both forms shall document:

(1) Government caused delays, such as late furnished GFP,

(2) contracts placed on "hold" or "limbo," pending disposition of contractor initiated inquiries, or

(3) potential delivery problems encountered during contract performance.

(b) Adequate notes shall also be recorded, such as:

(1) The date problem or question arose,

(2) date of resolution, and

(3) name of individuals involved.

(c) The appropriate compliance activity should be notified at the time of the delay and whenever any order is removed from a "hold" or "limbo" status. The appropriate schedule adjustment will then be entered into PICS by the compliance activity.

4. Contractor Shipping/Delivery Reporting.

(a) Contractor information on shipping/delivery status received via toll free WATS line in central office or GPO form 138 or telephone in regional offices shall be entered in PICS under the appropriate heading.

(b) *Daily Exception Report.* All orders that have not been reported to the compliance activity by the contractor will appear in the Daily Exception Report. The compliance activity will call each contractor that appears in the report to obtain the shipping/delivery status.

5. Monthly Compliance Letters.

(a) All shipping related data must be entered into PICS not later than the third workday of the month following the month to be reported.

(b) To emphasize the importance GPO places on schedule compliance, letters, using the following criteria, shall be sent to contractors experiencing delinquencies during the report month:

(1) Category 1, delinquency rate of up to 4% (three or more items), or

(2) category 2, delinquency rate of 5% to 15% (three or more items) or any late for one or two items total; or

(3) category 3, delinquent over 15% (three or more items).

6. Procedures.

(a) Using data entered into PICS prior to the third workday of the month, Data Systems Service will generate all letters which shall be mailed upon signature of the central office compliance officer.

(b) The Contract Compliance Section will have copies of monthly compliance letters available.

(c) Replies from contractors, regarding disputed items in the compliance letters, shall be directed to the regional or central office from which the original purchase order was issued. Each regional or central office compliance section shall update PICS upon finding for the contractor on a disputed item.

(d) Once the contractor's letter of response has been processed and the PICS has been updated, the contractor will be sent a completed GPO Form 2713, Acknowledgment Card. The card, which when completed, will inform the contractor

of the current status of our compliance records after the processing of his letter.

7. Delinquency Verification.

(a) Upon receipt of vouchers for payment, Financial Management Service copies the accompanying shipping documents using the voucher imaging system.

(b) The Compliance section will randomly access this imaging system for discrepancies (late orders) between the promised date entered in PICS and the actual date indicated by the shipping documents; and will inform the appropriate compliance activity of discrepancies.

(c) Contractors shall be contacted on each delinquent order to confirm promised/actual dates as reflected in the delinquency verification. Complete GPO form 714.

(d) If the same contractor appears in another delinquency verification:

(1) For the second and third occurrences within 6 months of the first verification, issue form letter No. 1 (exhibit XIII-3).

(2) For the fourth occurrence within 3 months of the first verification and after the second issuance form letter No. 1, issue form letter No. 2 (exhibit XIII-4).

(3) for the fifth occurrence within 3 months of the first verification and after the issuance of form letter No. 2, issue form letter No. 3 (exhibit XIII-5).

(e) When a contractor confirms the actual date as identified in the delinquency verification, each compliance activity shall update PICS under the "actual ship" date.

(f) The purpose of the letters is to emphasize to contractors the importance of supplying correct information and to put them on written notice of the change that is being made in contract compliance records. The criteria for each letter is outlined above but this is not intended to supersede the use of judgment in the determination of the administrative action initiated by a Contracting Officer in response to each individual situation.

8. Recording of shortages as delinquent.

If a contractor ships any order with a shortage, that order shall be recorded in PICS as having shipped late. The date to be used is either the date that the department gives its approval for the shortage or the date that the contractor ships the shortage copies, whichever is appropriate. Further, it shall be recorded on the order's comment screen in PICS that the order is counted as late due to a shortage.

SECTION 6. CUSTOMER COMPLAINTS

1. Scope. This section sets forth policy, responsibility, and procedures for the processing of official customer agency complaints regarding contractor performance under GPO printing and binding contracts.

2. Policy. It is the policy of the Printing Procurement Department to act quickly and responsibly in regard to the resolution of complaints received from customer agencies. The goal is to reduce such complaints to a minimum by taking appropriate action to resolve potential problems before they reach the customer.

3. Authority. In the Central Office the authority for the initial receipt, documentation, and distribution of official customer complaints rests with the Departmental Account Representa-

tive Division. In the RPPOs, this authority rests with the managers or their designated representatives.

4. Complaints Processing.

(a) *Customer agencies.* Complaints from customer agencies shall be submitted in writing, through the appropriate printing officer, to the proper GPO authority. This requirement does not, however, preclude agencies from notifying GPO by telephone of problems requiring immediate attention, providing such notifications are made to the proper GPO authority who concurs in the urgency. In such cases, immediate action shall be taken to resolve the problem. The telephone complaint shall be fully documented on GPO Form 714, "Record of Visit/Conference/Telephone Call," which becomes the official complaint correspondence, subject to letter confirmation by the agency printing authority.

(b) *Central Office.* All customer complaints regarding contractor performance shall be forwarded from the Departmental Account Representative Division to the appropriate Superintendent, PPD. There the complaints shall be documented in the complaints record book with the following:

Jacket/Program Number	Name of Section/Person who will handle the complaint
Print Order Number (when applicable)	Date for resolution supplied by Customer Service Department
Agency Name	
Contractor Name	
Nature of Complaint	

A copy of the complaint correspondence shall be filed in a separate file under the date for resolution supplied by Customer Service Department. This copy shall be annotated with the name of the section and person designated to resolve the complaint. This file shall be referenced daily to determine which complaints remain unresolved.

(c) *RPPO's.* Complaints received in the RPPO's shall be processed in the same manner as described in 4(b) of this subsection, except that they shall be received directly from the customer agency and directed to the attention of the RPPO manager or designee. (In RPPO's, the manager determines the date for resolution of the complaint.)

(d) *Unresolved Complaints.* Every effort shall be made to resolve complaints prior to the predetermined resolution date. Complaints not resolved by the designated date shall be brought to the attention of the appropriate Superintendent or RPPO manager, who shall determine the appropriate course of action. Any extension of the date for resolution shall be properly communicated to the customer agency. Complaints which cannot be resolved in a timely manner shall be brought to the attention of the Manager, PPD, through the appropriate Superintendent.

(e) *Documentation.* Copies of the complaint correspondence and all documents pertinent to complaint resolution shall be made a part of the contract file and the contractor compliance file. Such information shall be readily available to the Contracting Officer for assistance in responsibility determinations. In addition, a permanent record (ledger book) shall be maintained of all complaints received, including the date of resolution and notification of the agency. This information will be used for, among other things, analyzing complaint trends.

EXHIBIT XIII-1**AGREEMENT**

This Agreement entered into as of _____, 19__ by and between _____, a corporation duly organized and existing under the laws of the State of _____, (hereinafter referred to as the "Transferor") _____, a corporation duly organized and existing under the laws of the State of _____ with its principal office in the City of _____ (hereinafter referred to as the "Transferee"); and the United States of America (hereinafter referred to as the "Government").

WITNESSETH THAT

1. WHEREAS, The Government, represented by various Contracting Officers of the United States Government Printing Office, has entered into certain contracts and purchase orders with the Transferor, namely _____, and the term "the contracts" as hereafter used means the above contract purchase orders and print orders, and all other contracts and purchase orders, including modifications thereto, heretofore made between the Government, represented by various Contracting Officers of the above named agency and Transferor (whether or not performance and payment have been completed and releases executed, if the Government or the Transferor has any remaining rights, duties, or obligations thereunder), and including modifications thereto hereafter made in accordance with the terms and conditions of such contracts and purchase orders between the Government and the Transferee;

2. WHEREAS, as of _____, 19__, the Transferor assigned, conveyed, and transferred to the Transferee all the assets of the Transferor by virtue of a Bill of Sale between the Transferor and Transferee;

3. WHEREAS, as of _____, 19__, the Transferee, by virtue of said assignment, conveyance, and transfer, has acquired all the assets of the Transferor;

4. WHEREAS, by virtue of said assignment, conveyance, and transfer, the Transferee has assumed all the duties, obligations, and liabilities of the Transferor under the contracts;

5. WHEREAS, the Transferee is in a position fully to perform the contracts and such duties and obligations as may exist under the contracts;

6. WHEREAS, it is consistent with the Government's interest to recognize the Transferee as the successor party to the contracts;

7. WHEREAS, there has been filed with the Government evidence of said assignment, conveyance, and transfer;

NOW THEREFORE, in consideration of these premises, the parties hereto agree as follows:

1. The Transferor hereby confirms said assignment, conveyance, and transfer to the Transferee and does hereby release and discharge the Government from, and does hereby waive, any and all claims, demands, and rights against the Government which it now has or may hereafter have in connection with the contracts.

2. The Transferee hereby assumes, agrees to be bound by, and undertakes to perform each and every one of the terms, covenants, and conditions contained in the contracts. The Transferee further assumes all obligations and liabilities of and all claims and demands against the Transferor under the contracts, in all respects as if the Transferee were the original party to the contracts.

3. The Transferee hereby ratifies and confirms all actions heretofore taken by the Transferor with respect to the contracts with the same force and effect as if the action had been taken by the Transferee.

4. The Government hereby recognizes the Transferee as the Transferor's successor in interest in and to the contracts. The Transferee hereby becomes entitled to all right, title, and interest of the Transferor in and to the contracts in all respects as if the Transferee were the original party to the contracts. The term "Contractor" as used in the contracts shall be deemed to refer to the Transferee rather than to the Transferor.

5. Except as expressly provided herein, nothing in this Agreement shall be construed as a waiver of any rights of the Government against the Transferor.

6. Notwithstanding the foregoing provisions, all payments and reimbursements heretofore made by the Government to the Transferor and all other actions heretofore taken by the Government pursuant to its obligations under any of the contracts shall be deemed to have discharged pro tanto the Government's obligations under the contracts. All payments and reimbursement made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to said Transferee and shall constitute a complete discharge of the Government's obligations under the contracts, to the extent of the amounts so paid or reimbursed.

7. The Transferor and the Transferee hereby agree that the Government shall not be obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any increases therein, directly or indirectly arising out of or resulting from (a) said assignment, conveyance and transfer or (b) this Agreement, other than those which the Government, in the absence of said assignment, conveyance, and transfer, or this Agreement, would have been obligated to pay or reimburse under the terms of the contracts.

8. The Transferor hereby guarantees payment of all liabilities and the performance of all obligations which the Transferee (a) assumes under this Agreement, or (b) may hereafter undertake under the contracts as they may hereafter be amended or modified in accordance with the terms and conditions thereof, and the Transferor hereby waives notice of and consents to any such amendment or modification.

9. Except as herein modified, the contracts shall remain in full force and effect.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA,

By _____

Title _____

_____(Transferor)

By _____

Title _____

(corporate seal)

_____(Transferee)

By _____

Title _____

(corporate seal)

EXHIBIT XIII-2

CHANGE OF NAME AGREEMENT

This Agreement entered into as of _____, 19__ by and between the _____ (hereinafter referred to as the "Contractor"), a corporation duly organized and existing under the laws of the State of _____, and the United States of America (hereinafter referred to as the "Government").

WITNESSETH THAT

1. WHEREAS, the Government, represented by various Contracting Officers of the Government Printing Office, has entered into certain contracts and purchase orders with the contractor as set forth in the attached list marked "Exhibit A" to this Agreement and herein incorporated by reference and the term "the contracts" as hereinafter used means the above contracts and purchase orders, and all other contracts and purchase orders, including modifications thereto, entered into between the Government, represented by various Contracting Officers of the Government Printing Office and the Contractor whether or not performance and payment have been completed and releases executed, if the Government or the Contractor has any remaining rights, duties, or obligations thereunder;

2. WHEREAS, the _____, by an amendment to its certificate of incorporation dated _____, has changed its corporate name to _____;

3. WHEREAS, a change of corporate name only is accomplished by said amendment, so that rights and obligations of the Government Printing Office and of the Contractor under the contracts are unaffected by said change; and

4. WHEREAS, there has been filed with the Government Printing Office documentary evidence of said change in corporate name.

NOW THEREFORE, in consideration of the premises, the parties hereto agree that the contracts covered by this Agreement are hereby amended by deleting therefrom the name "_____" wherever it appears in the contracts and substituting therefor the name "_____."

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA,

By _____

Title _____

By _____

Title _____

(corporate seal)

CERTIFICATE

I, _____, certify that I am the Secretary of _____, named above, that _____ who signed this agreement on behalf of said corporation was then _____ of said corporation and that this Agreement was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

Witness my hand and the seal of said corporation this ___ day of _____, 19__.

(corporate seal)

By _____

EXHIBIT XIII-3

FORM LETTER #1

Dear _____:

Your firm has failed to ship the requirements for _____ in accordance with the scheduled contract date. This order was previously reported as shipped on _____; however when you submitted your voucher for payment, the shipping document you enclosed indicated a shipping date of _____.

We wish to express our dissatisfaction with your performance; more importantly, we want to emphasize our disappointment that representatives of your firm furnished erroneous information concerning the status of the requirement.

A written explanation of your non-compliance and erroneous information and the steps you intend to take to preclude such matters from occurring in the future is requested by _____.
Address your reply to the undersigned, U.S. Government Printing Office, PPS, Washington, DC 20401.

Sincerely,

Contracting Officer
Compliance Section

EXHIBIT XIII-4

FORM LETTER #2

Dear _____ :

Your firm has failed to ship the requirements for _____ in accordance with the scheduled contract date. The failure to meet this schedule has inconvenienced and embarrassed an agency of the United States Government.

This order was previously reported as shipped on _____; however when you submitted your voucher for payment, the shipping document you enclosed indicated a shipping date of _____.

We wish to express our dissatisfaction with your performance and your continued disregard for your contractual obligations. More importantly, we want to emphasize our disappointment that representatives of your firm have repeatedly supplied erroneous information concerning the status of Government Printing Office orders. Please be advised that the penalty for making false statements to the Government is prescribed in 18 USC 1001.

It has been brought to your attention that erroneous shipping information has been furnished by representatives of your firm on the following dates and orders:

- (Jacket or Prog. w/P.O. #) per our letter dated _____.
- (Jacket or Prog. w/P.O. #) per our letter dated _____.

In all cases these discrepancies have been confirmed by letter addressed to your attention.

Delivery of a product when required and under the conditions specified are essential provisions of any contract and are obligations a contractor must meet. Furnishing erroneous information, intentionally, or unintentionally, certainly reflects on the integrity of a contractor.

A copy of this letter will be included in your contract compliance file and the substance will be considered whenever your firm is in line for award.

A written explanation of your non-compliance and erroneous information and the steps you intend to take to preclude such matters from occurring in the future is requested by _____. Address your reply to the undersigned, U.S. Government Printing Office, _____.

Sincerely,

Contracting Officer
Compliance Section

EXHIBIT XIII-5

FORM LETTER #3

Dear _____:

It has been brought to your attention that erroneous shipping information has been furnished by representatives of your firm on the following dates and orders:

(Jacket # or Prog. w/P.O. #) per our letter dated _____.

(Jacket # or Prog. w/P.O. #) per our letter dated _____.

In all cases, these discrepancies have been confirmed by letters addressed to the attention of _____. To date, the only letter which you have responded to is our letter dated _____.

(Repeat or summarize the steps that the contractor claimed they were going to implement to correct problem)

Unfortunately, since the time that I received your letter, another case of erroneous information has been discovered. (Jacket or Prog. w/P.O. #) was previously reported as shipped on _____; however when you submitted your voucher for payment the shipping document you enclosed indicated a shipping date of _____.

It appears that the problem of erroneous information supplied by your firm may go beyond the cases which we have brought to your attention thus far. In order to accurately determine what your compliance record is for the months of _____, I am enclosing a list of the orders which were due to ship for these _____ months and I am requesting copies of your shipping receipts for each of these orders.

As per our telephone conversation regarding this matter, I will expect these documents by _____. Address your reply to the undersigned, U.S. Government Printing Office, PPS, Washington, DC 20401.

A copy of this letter will be included in your Contract Compliance file and the substance will be considered whenever your firm is in line for award.

Sincerely,

Contracting Officer
Compliance Section

CHAPTER XIV. CONTRACT TERMINATIONS

SECTION 1. TERMINATION FOR DEFAULT

1. Scope. This section sets forth policies and procedures for the utilization and application of the Default clause in GPO Contract Terms (Pub. 310.2).

2. General.

(a) Termination for default is the exercise of a contractual right of the Government to terminate the contract in whole or in part by reason of the contractor's failure, actual or anticipatory, to perform its obligations under the contract.

(b) If, after issuance of a notice of termination for default, it is determined that the contractor was not in default or that the default was excusable, the clause provides that a termination for default shall be deemed to have been a termination for convenience, and that the rights and obligations of the parties shall be governed accordingly.

(c) Notwithstanding the determination in (b), the contract may be reinstated by mutual agreement where the Contracting Officer determines that such reinstatement is in the best interest of GPO.

(d) In addition to the termination rights and remedies provided in the Default clause, the GPO may, in appropriate cases, pursue termination or cancellation rights and remedies provided by law.

3. Termination of Contracts for Default.

(a) *GPO's right to terminate for default.* The GPO has the right, subject to the notice requirements of the clause, to terminate the whole, or any part of the contract for default if the contractor (1) fails to make delivery of the supplies or to perform the services within the time specified in the contract, (2) fails to perform any other provision of the contract, or (3) fails to make progress so as to endanger performance of the contract.

(b) *Effect of termination for default.* (1) Under a termination for default the Government is not liable for the contractor's costs on undelivered work, and is entitled to the repayment of progress payments, if any, applicable to such work. Pursuant to paragraph (e) of the Default clause, the GPO may elect to require the contractor to transfer title and deliver to the GPO completed articles and materials, in the manner and to the extent directed by the Contracting Officer. The Contracting Officer shall not use the Default clause as authority to acquire any completed articles or materials unless he has made certain the GPO does not already have title under some other provision or clause of the contract. In the event materials are to be acquired by the GPO under the authority of the Default clause for the purpose of furnishing the materials to any other contractor, the Contracting Officer shall take such action only after giving due consideration to the difficulties that such contractor may encounter in making use of the materials.

(2) Subject to the provisions of (b)(3), the GPO shall pay to the contractor the contract price for any completed sup-

plies, and the amount agreed upon by the Contracting Officer and the contractor for any materials acquired by the GPO pursuant to the Default clause.

(3) To protect GPO from overpayment for any completed articles or materials that might result from failure to make provisions for the GPO's potential liability to laborers and those who provide supplies to the contractor for lien rights outstanding against such articles or materials after the GPO has paid the contractor, the Contracting Officer shall take one or more of the following measures before making the payment referred to in (b)(2):

(i) Determine whether the payment bonds, if any, furnished by the contractor are adequate to satisfy all lienors' claims; or whether it is feasible to obtain similar bonds to cover outstanding liens;

(ii) require the contractor to furnish appropriate statements from laborers and materialmen disclaiming any lien rights they may have to the supplies and materials;

(iii) obtain appropriate agreement by the GPO, the contractor and lienors assuring release of GPO from any potential liability to the contractors or lienors;

(iv) withhold from the amount otherwise due for the supplies or materials such amount as the Contracting Officer determines to be necessary to protect the GPO's interest, but only if the measures set forth in (i), (ii) and (iii) cannot be accomplished or are otherwise deemed inadequate;

(v) take any other action the Contracting Officer deems appropriate considering the particular circumstances and the degree of the contractor's solvency.

(4) The contractor is liable for any excess costs incurred in procuring supplies and services similar to those terminated for default and for any other damages, whether or not repurchase is effected.

(c) *Procedure.* (1) Paragraph (a)(1) of the Default clause covers situations where the contractor has in fact defaulted by failure to make delivery of the supplies or to perform the services within the time specified by the contract or any authorized extension thereof. In such situations, no notice of failure by the contractor or of the possibility of termination for default is required by the terms of the clause to be sent to the contractor prior to the actual notice of termination. However, it is recommended that where practicable, the contractor should be given an opportunity to explain the failure before any termination for default is made. In this case, a "Show Cause" notice should be issued (see exhibit XIV-1 for sample). Normally, the Show Cause notice should allow at least 10 calendar days for receipt of a response from the contractor; however, where there exist more pressing circumstances, a shorter response time may be allowed which shall include sufficient mailing time. If the Government has taken any action which might be construed as a waiver of the contract delivery schedule date, a preliminary notice shall be sent to the contractor setting a new date by which the con-

tractor will be permitted to make delivery or complete performance, reserving the GPO's right under the Default clause. Dependent upon the circumstances in each case, such a preliminary notice (i) shall call the contractor's attention to its contractual liabilities should the contract be terminated for default under subparagraph (a)(1) of the clause, (ii) may request an explanation of the contractor's failure, (iii) may state that failure of the contractor to present such explanation may be taken as an admission that no valid explanation exists and (iv) may invite the contractor to discuss the matter at a conference.

(2) Subparagraph (a)(2) of the Default clause covers situations in which the contractor fails to perform any of the other provisions of the contract (such as not furnishing a required performance bond) or fails to make progress so as to endanger performance of the contract in accordance with its terms. In either of such situations, the Contracting Officer must formally notify the contractor of such failure and allow a period of time which is determined to be reasonable for cure of the failure before issuing a notice of termination. Normally this period should be at least 10 calendar days. If the Contracting Officer determines that a shorter period is reasonable, and sufficient time remains in the contract delivery schedule, such shorter period may be authorized, provided the determination is supported and documented in the contract file. If the time remaining in the contract delivery schedule is not sufficient to permit a realistic "cure" period, the "Cure Notice" shall not be issued. If it is determined that termination is in the best interest of the Government, the termination shall be processed in accordance with XIV-1.3(c)(1) above. The Cure Notice shall set forth in concise but complete form all of the provisions of the contract which the contractor has failed to meet or a summary of the findings which have demonstrated that the contractor has failed to make acceptable progress in the performance of the contract, or both. The extent of detail to be included will vary depending upon the nature and amount of previous correspondence with the supplier; but any such previous correspondence relied upon shall be specifically referenced in the preliminary notice (see exhibit XIV-2 for sample letter). The preliminary notice: (i) shall state that a notice of termination for default may be issued upon expiration of the 10-day period (or other period the Contracting Officer determines to be reasonable) unless the failure to perform or to make adequate progress in performance has been cured; (ii) shall call the contractor's attention to the contractual liabilities in the event the contract is terminated for default; (iii) shall request an explanation of the contractor's failure to perform the contract; (iv) may state that failure of the contractor to present such explanation may be taken as an admission that no valid explanation exists; and (v) may invite the contractor to discuss the matter at a conference.

(3) The Contracting Officer shall consider the following factors in determining whether to terminate a contract for default:

- (i) The terms and conditions of the contract and applicable laws and regulations;
- (ii) The specific failure of the contractor and the excuses, if any, made by the contractor for such failure;
- (iii) The availability of the supplies or services from other sources;
- (iv) The urgency of the need for the supplies or services and the period of time which would be required to obtain

sources as compared with the time in which delivery could be obtained from the delinquent contractor;

(v) The effect of a termination for default upon the contractor's capability as a supplier under other contracts;

(vi) The effect of a termination for default on the ability of the contractor to liquidate progress payments;

(vii) The availability of funds to finance repurchase costs which may prove to be uncollectable from the defaulted contractor, and the availability of funds to finance termination costs if the default is determined to be excusable; and

(viii) Any other pertinent facts and circumstances.

(4) If, after compliance with the procedures in subparagraphs 3(c)(1)-(3) above and the CRB requirements of I-10.4(b)(1), the Contracting Officer determines that termination for default is proper, a notice of termination shall be issued (see exhibits XIV-3 and 4 for sample) which shall:

(i) Set forth the contract number and date;

(ii) Describe the acts or omissions constituting the default;

(iii) State that the contractor's right to proceed with performance of the contract (or a specified portion of the contract) is terminated;

(iv) State that the supplies or services terminated may be procured against the contractor's account, and that the contractor may be held liable for any excess costs;

(v) State that the GPO reserves all rights and remedies provided by law or under the contract, in addition to charging excess costs; and

(vi) State that the notice constitutes a final decision of the Contracting Officer, that the contractor is in default as specified and that the contractor has the right to appeal under the Disputes clause set forth in GPO Contract Terms (Pub. 310.2).

(5) The termination notice shall receive the same distribution as the contract. In addition, a copy shall be furnished to the surety, if any, and Financial Management Service shall be advised of the default by memorandum. FMS shall withhold further payments under the terminated contract pending instructions which shall be given when sufficient information is available.

(6) If the contractor is in default and the Contracting Officer has not been able to determine, prior to issuance of the notice of termination, whether the contractor's failure to perform arose from causes beyond the control and without the fault or negligence of the contractor, the Contracting Officer shall make a written decision on that point as soon as possible after issuance of the notice of termination. Such decision shall be delivered promptly to the contractor with a notification of the right to appeal the decision as specified in the Disputes clause.

(d) *Procedure in lieu of termination for default.* The following courses of action, among others, are available to the Contracting Officer in lieu of termination for default, when in the best interest of the GPO:

(1) Permit the contractor, the surety, or the guarantor to continue performance of the contract, with consideration, under a revised delivery schedule;

(2) Permit the contractor to continue performance of the contract by means of a subcontract or other business arrangement with an acceptable third party, provided the rights of the GPO are adequately preserved; or

(3) Execute a no-cost termination settlement agreement, if the requirement for the supplies and services specified in the contract no longer exists and the contractor is not liable to the GPO for damages as provided below.

(e) *Documentation in contract file.* In all cases where a contract is terminated for default or where a procedure authorized by the above is followed, the contract file shall be well documented to explain fully the reasons for the action taken. As minimum the memorandum should contain the following:

(1) Synopsis of events which caused termination of the contract. Refer to documents in the contract file folder which contain detailed information: i.e., "Cure Notice" or "Show Cause" notice.

(2) A statement on disposition of all Government furnished property and Government acquired property.

(3) Details as to whether the procurement involved an outside interest, such as protests by unsuccessful offerors, GAO or congressional inquiries or any other special circumstances.

(4) Refer to documents in the file which support the determination made by the Contracting Officer (memorandum from General Counsel, etc).

(f) *Repurchase against contractor's account.* (1) Where the supplies or services are still required after termination and the contractor is liable for excess costs, repurchase of supplies or services which are the same as or similar to those called for in the contract shall be made against the contractor's account as soon as possible after termination. The repurchase shall be made at a price as reasonable as can be obtained considering quality and the time within which the supplies or services are required. The contract of repurchase may be made for a quantity in excess of the undelivered quantity terminated for default, when such excess quantity is needed so long as this does not result in paying a higher unit price than available for the undelivered quantity. Excess costs may be charged against the defaulting contractor for no more than the undelivered quantity terminated for default, including any variation in quantity permitted in the repurchase contract, not to exceed the undelivered quantity plus or minus any variation permitted in the defaulted contract.

(2) If the repurchase is for a quantity not in excess of the undelivered quantity terminated for default, requirements for advertising are not mandatory. However, the Contracting Officer should use sealed bidding procedures except where negotiation is necessary. If the Contracting Officer decides to negotiate the repurchase contract with bidders who submitted bids on the original solicitation, the reason shall be noted in the contract file folder and the procurement shall be identified as a repurchase in accordance with the provisions of the Default clause in the defaulted contract. If the repurchase is for a quantity in excess of the undelivered quantity terminated for default, the entire quantity shall be treated as a new procurement for the purpose of determining whether advertising or negotiation should be used.

(3) If the repurchase is awarded at a price in excess of the supplies terminated, the Contracting Officer shall:

(i) advise the Financial Management Service, Voucher Examination Branch (Stop FMCE) that such a repurchase has been made;

(ii) provide the jacket number, the purchase order number and contractor's name for both the terminated and new contracts; and,

(iii) request that excess costs be computed at the expiration of the repurchased contract and the Contracting Officer advised.

(4) When advised by the Voucher Examination Branch, the Contracting Officer shall make a written demand (with a copy to the Voucher Examination Branch) on the defaulted contractor for the total amount of such excess including increases or decreases in other costs such as transportation and discounts. If the contractor fails to make payment, the Voucher Examination Branch shall take appropriate action to collect the amount due.

(g) *Other damages.* (1) If a contract is terminated for default or if a course of action in lieu of termination for default is followed, the Contracting Officer shall promptly determine and demand any liquidated damages to which the GPO may be entitled under the contract. Pursuant to the contract provisions for liquidated damages, such damages are in addition to any excess cost of reprocurement.

(2) If the GPO has suffered any other damages as a result of the contractor's default, the Contracting Officer shall, on the basis of legal advice, take appropriate action to assert the GPO's claim for such damages.

SECTION 2. TERMINATION FOR CONVENIENCE

1. Scope. This section sets forth policies and procedures relating to the complete or partial termination of contracts for the convenience of the Government and the policies and procedures relating to the settlement of claims arising from the termination action.

2. General. Contracts may be terminated for the convenience of the Government when the Contracting Officer determines that, for reasons other than the default of the contractor, it is in the best interest of the Government to discontinue all, or some part, of the remaining work under an uncompleted contract. A Contracting Officer shall not terminate a contract for convenience if the contractor is in inexcusable default or the Government has a legal right to terminate for default, even though the Government's requirements for performance have changed, or no longer exist. This prohibition shall not preclude a no-cost termination settlement agreement as provided in XIV-1.3(d)(3). The Termination for Convenience clause in GPO Contract Terms (Pub. 310.2) defines the rights of GPO and of the contractor in the event of termination and provides for the settlement of claims. As a contractor may have incurred very small costs on the terminated portion of a contract, it may be willing to waive its right to collect in order to avoid the administrative work and expense associated with processing a claim. Accordingly, emphasis should be placed on and the Contracting Officer should explore with the contractor the possibility of a no-cost settlement.

3. Procedure.

(a) *Notice of termination.* (1) Contract Review Board concurrence must be obtained prior to issuance of a termination notice when resolicitation is required. After concurrence, the Contracting Officer shall notify the contractor by telephone, confirmed by letter (see exhibit XIV-5), stating:

(i) That the contract is being terminated for the convenience of the Government pursuant to the termination clause;

(ii) the effective date of termination;

(iii) the extent of termination and, if a partial termination, the portion of the contract to be continued; and

(iv) any special instructions.

(2) A copy of the termination notice shall be sent to each known assignee, guarantor, or surety of the contractor. The letter shall be sent by certified mail (return receipt requested).

(b) *Amending the termination notice.* (1) A notice of termination may be amended to provide for:

(i) The correction of mistakes in the notice of a nonsubstantive nature;

(ii) addition of supplemental data or instructions; and

(iii) rescission of the notice when the contract has been completed or shipment made prior to the contractor's receipt of the notice.

(2) The terminated portion of a contract may be reinstated in whole or in part by an amendment to the notice of termination provided that it has been determined in writing that:

(i) circumstances clearly indicate a requirement for the terminated items; and

(ii) reinstatement is advantageous to the Government and written consent of the contractor is obtained to the reinstatement.

(c) *Duties of prime contractor after receipt of notice of termination.* After receipt of the notice of termination, the contractor must comply with the termination clause and the notice of termination, except as otherwise directed by the Contracting Officer. The clause and notice generally require that the contractor:

(1) Stop work immediately on the terminated portion of the contract and discontinue placing subcontracts thereunder;

(2) terminate all subcontracts related to the terminated portion of the prime contract;

(3) immediately advise the Contracting Officer of any special circumstances precluding the stoppage of work;

(4) if the termination is partial, perform the continued portion of the contract and submit promptly any request for an equitable adjustment of price with respect to the continued portion of the contract, supported by evidence of any increase in cost;

(5) take such action as may be necessary, or as the Contracting Officer may direct, to protect and preserve property in the possession of the contractor in which the Government has or may acquire an interest; and, to the extent directed by the Contracting Officer, deliver such property to the Government;

(6) promptly notify the Contracting Officer in writing of any legal proceedings against the contractor growing out of any subcontract or other commitment related to the terminated portion of the contract;

(7) settle all outstanding liabilities and all claims arising out of the termination of subcontracts, obtaining any approvals or ratifications required by the Contracting Officer;

(8) promptly submit a settlement proposal if necessary, supported by appropriate schedules;

(9) dispose of any termination inventory, as directed or authorized by the Contracting Officer; and

(10) if the contractor believes that a claim exists against the Government then a claim shall be submitted to the Contracting Officer on GPO form 911, Settlement Proposal.

(d) *Duties of Contracting Officer after issuance of notice of termination.* (1) In accordance with the termination clause and with the notice of termination the Contracting Officer shall, among other things:

(i) Direct the action required of the prime contractor including the execution of a no-cost settlement agreement if appropriate;

(ii) examine the settlement proposal of the contractor (and, when appropriate, the settlement proposals of subcontractors—see XIV-2.3(h));

(iii) promptly negotiate a settlement with the contractor and enter into a settlement agreement; and

(iv) to the extent that the Contracting Officer is unable to negotiate settlement after due and diligent effort, promptly settle the contractor's claim by determination;

(v) furnish GPO form 911, Settlement Proposal to the contractor with the Notice of Termination.

(2) To expedite settlement, the Contracting Officer shall seek assistance as necessary, i.e., legal, financial, etc., for:

(i) Assistance in dealings with the contractor;

(ii) advice on legal and contractual matters;

(iii) conduct of accounting reviews and advice and assistance on accounting matters; and

(iv) performance of the following functions with respect to the termination inventory—

(A) verifying its existence;

(B) undertaking necessary screening and redistribution; and

(C) assisting the contractor in accomplishing other disposition.

(e) *Methods of settlement.* Settlement of contracts terminated for convenience may be effected by negotiated agreement, determination by the Contracting Officer, or a combination of these methods. Every effort shall be made to reach a fair and prompt settlement with the contractor. A negotiated agreement is the most expeditious and most satisfactory method of settling termination claims and shall be used whenever feasible. Settlement by determination shall be used only when a claim cannot be settled by agreement.

(f) *Certification.* GPO Form 911 shall be furnished to contractors for all claims upon termination for convenience unless for no cost. Settlement proposals submitted on other than form 911 will not be accepted unless the certification at XV-1.3 is included:

(g) *Fraud or other criminal conduct.* Whenever the Contracting Officer has reason to suspect fraud or other criminal conduct in connection with the settlement of a terminated contract, all negotiations shall be discontinued with the contractor and a report of the facts shall be made to the appropriate Superintendent, as applicable. The Superintendent will immediately send the report to both the Office of General Counsel and Office of Inspector General.

(h) *Audit of prime contract settlement proposals and of subcontract settlements.* (1) Each settlement proposal over \$10,000 submitted by a prime contractor shall be referred by the Contracting Officer to a contract auditor for appropriate examination and recommendation and under \$10,000 when the Contracting Officer deems it necessary. The referral shall be in writing, shall indicate any specific information or data which the Contracting Officer desires to have developed, and shall include any facts or circumstances within the knowledge of the Contracting Officer which will assist the auditor in the performance of his or her function. The auditor will develop such information and make such further accounting review as is deemed appropriate. The auditor will submit written comments and recommendations to the Contracting Officer.

(2) The responsibility of the prime contractor and of each subcontractor for settlement of immediate subcontractor's settlement proposals includes responsibility for performing accounting reviews and any necessary field audits. The auditor generally should be requested to perform the accounting review of a subcontractor's settlement proposal where:

(i) A subcontractor objects to an accounting review of its records by an upper tier contractor for competitive reason;

(ii) the auditor currently is performing audit work at the subcontractor's plant, or where it can be performed more economically or efficiently; or

(iii) the contractor has a substantial or controlling interest in the subcontractor. Duplication by the auditor of accounting reviews performed by the upper tier contractor or subcontractor settlement proposals should be avoided to the extent possible. However, when appropriate, GPO shall make additional reviews.

(3) The audit report is an advisory document provided to the Contracting Officer for his or her use in negotiating a settlement or issuing a unilateral determination. Appropriate measures shall be taken to assure confidentiality is maintained in handling the audit reports of a contractor's or subcontractor's settlement proposals to assure that privileged information or information that will jeopardize the negotiation position of the Government, prime contractor, or a higher tier subcontractor is not revealed.

(i) *Settlement of subcontractor claims.* (1) *Subcontractor's rights.* Unless otherwise specifically provided, a subcontractor has no contractual rights against the Government upon the termination of a prime contract. The rights of a subcontractor are against the prime contractor or intermediate subcontractor with whom it has contracted. Upon termination of a prime contract, the prime contractor and each subcontractor are responsible for the prompt settlement of the termination claims of immediate subcontractors.

(2) *Prime contractor's rights and obligations.* The Termination for Convenience clause provides, that after receipt of a notice of termination, the prime contractor shall (except as otherwise directed by the Contracting Officer) terminate all subcontracts to the extent that they relate to the performance of any work terminated by a notice of termination. Prime contractors should, for their own protection, include a termination clause in their subcontracts. The failure of a prime contractor to include an appropriate termination clause in any subcontract, or to exercise his rights thereunder, shall not (i) affect the right of GPO to require the termination of the subcontract, or (ii) increase the obligation of GPO beyond that which would have arisen if the subcontract had contained an appropriate termination clause.

(3) *Settlement procedure.* Settlements with subcontractors shall be made in general conformity with the policies and principles relating to settlement of prime contracts as set forth in XIV-2.3(p), as applicable. However, the basis and form of the subcontractor's settlement proposal must be acceptable to the prime contractor or the next higher tier subcontractor. Each such settlement shall be supported by accounting and other data sufficient for adequate review by GPO. In no event shall GPO pay to the prime contractor any amount for loss of anticipatory profits or consequential damages resulting from the termination of any subcontract.

(4) *Delay in settlement of subcontractor claim.* Where a prime contractor is unable to settle with a subcontractor and

such inability is delaying the settlement of the prime contract, the Contracting Officer may settle with the prime contractor. The Contracting Officer shall withhold from the settlement with the prime contractor all or any part of the claim made by the subcontractor, and shall reserve the rights of the Government and of the prime contractor with respect to the subcontractor's claim.

(5) *Government assistance in settlement of subcontracts.* In unusual cases the Contracting Officer may determine that it is in the best interest of the Government to offer assistance to the prime contractor in the settlement of a particular subcontract. Such a situation may exist when the prime contractor has made all reasonable efforts to negotiate the settlement without success and the Contracting Officer believes that with the assistance of GPO a settlement can be reached. Such assistance shall be furnished only with the consent of the prime contractor. In such cases, an agreement may be entered into by GPO, the prime contractor, and a subcontractor, covering the settlement of one or more subcontracts. In any such case, payment to the subcontractor shall be made through the prime contractor as part of the overall settlement with the prime contractor.

(6) *Assignment of rights under subcontracts.* The Termination for Convenience clause obligates the prime contractor to assign to GPO, as directed by the Contracting Officer, all its rights, title, and interest under any subcontracts terminated as a result of the termination of the prime contract. The Contracting Officer shall not require such assignment unless he or she determines that it is in the best interest of the Government. The Termination clause also provides that GPO shall have the right, in its discretion, to settle and pay any or all claims arising out of the termination of such subcontracts. This right does not obligate GPO to settle and pay termination claims of subcontractors. As a general rule, the prime contractor is obligated to settle and pay such claims. When, however, the Contracting Officer determines that it is in the best interest of the Government, he or she shall, after notifying the contractor, proceed to settle the subcontractor's termination claim in accordance with termination procedures applicable to the settlement of prime contractors. For example, if a subcontractor is the sole source for a product and it appears that a delay by the prime contractor in settlement or payment of the subcontractor's claim will jeopardize the financial position of the subcontractor, it is in the best interest of the Government to settle directly with the subcontractor.

(j) *Supplemental agreements.* (1) *General.* When a settlement has been negotiated with respect to the terminated portion of a contract and all required reviews have been obtained, the contractor and the Contracting Officer shall enter into a supplemental agreement of settlement. The appropriate formats for the supplemental agreements for use in settling contracts after complete and partial terminations are provided at exhibits XIV-6(a) and 6(b). The settlement shall cover:

(i) Any set-offs and counterclaims which GPO may have against the contractor and which may be applied against the terminated contract, and

(ii) all claims of subcontractor, except claims which are specifically excluded from the agreement and reserved for separate settlement.

The Contracting Officer shall sign three copies of the supplemental agreement and forward them to the contractor. The contractor shall be instructed to sign and return two copies to the Contracting Officer. Upon receipt of the executed sup-

plemental agreement, the Contracting Officer shall have one copy placed in the official contract file folder and the other forwarded to Financial Management Service, Voucher Examination Branch (Stop FMCE). The Contracting Officer shall establish a "tickler" file to assure the timely return of the executed supplemental agreement from the contractor.

(2) *Excluded items.* Where any rights or claims of GPO or of the contractor are to be excluded from the settlement, the settlement agreement shall specify the nature and extent of the excluded items. However, care shall be taken so that the wording of the exclusion does not create any new rights in the parties beyond those in existence prior to the execution of the settlement agreement.

(3) *Government property.* Before any settlement agreement is executed, the Contracting Officer shall determine the accuracy of the Government property account, if any, for the terminated contract. If the audit discloses property for which the contractor cannot account, the settlement agreement shall reserve the rights of the Government with respect to such property or make an appropriate deduction from the amount otherwise due the contractor.

(4) *No-cost settlement.* If no costs have been incurred by the contractor with respect to the terminated portion of the contract or if the contractor is willing to waive the costs incurred by it and if no amounts are due to the Government under the contract, a no-cost settlement agreement shall be executed. The formats for no-cost settlements of complete and partial terminations are provided at exhibits XIV-7(a) and 7(b).

(5) *Partial settlements.* Every effort should be made by the Contracting Officer to settle in one agreement all rights and liabilities of the parties under the contract except those arising from any continued portion of the contract. Generally, Contracting Officers shall not attempt to make partial settlements covering particular items of the prime contractor's settlement proposal. However, when a Contracting Officer cannot promptly effect a complete settlement, a partial settlement may be entered into, provided:

(i) The issues on which agreement has been reached are clearly severable from other issues, and

(ii) the partial settlement will not prejudice the interest of GPO or the contractor in disposing of the unsettled part of the claim.

(6) *Joint settlement of two or more claims.* If a contractor has termination claims under two or more contracts, even though the contracts being terminated are with different offices within the Printing Procurement Department, a single agreement may be negotiated to cover the termination claims of all contracts involved, if the contractor consents. The joint settlement shall be in accordance with arrangements made between the Contracting Officers. Each such joint settlement agreement shall:

(i) Clearly identify the contracts involved;

(ii) apportion the total amount of the settlement among the several contracts on some reasonable basis;

(iii) have attached or incorporated therein a schedule showing the apportionment; and

(iv) be distributed and attached to each contract involved in the same manner as other contract modifications.

(7) *Settlement by determination.* (i) *General.* If the contractor and Contracting Officer are unable to agree upon the settlement of a terminated contract or if a termination claim is not submitted within the period required by the Termination

clause in the contract, the Contracting Officer shall issue a determination. The amount of the determination shall be in accordance with the Termination clause.

(ii) *Notice to Contractor.* Before issuing a determination of the amount due to the contractor, the Contracting Officer shall notify the contractor by certified mail (return receipt requested) to submit on or before a stated date (allowing at least 15 days), the amount claimed with substantiating evidence for that claim.

(iii) *Submission of evidence.* (A) The contractor must provide proof, sufficient to satisfy the Contracting Officer, of the amount claimed.

(B) The contractor may submit vouchers, verified transcripts of books of account, affidavits, audit reports, and other documents. The Contracting Officer may request additional documents and data, and may have additional accounting, investigations, and audits made, as appropriate.

(C) The Contracting Officer may accept photostatic or other copies of documents and records, unless there is a question of authenticity.

(iv) *Determinations.* After reviewing all information available, the Contracting Officer shall determine the amount due and shall transmit a copy of the determination to the contractor by certified mail (return receipt requested). The letter of transmittal shall advise the contractor that the determination is a final decision which may be appealed under the Disputes clause. The determination shall state the amount due the contractor and shall be supported by detailed schedules, additional information, and analysis, as appropriate. An explanation shall be given for each major item disallowed. The Contracting Officer need not reconsider previously ratified or approved actions, such as:

(A) Any settlement with a subcontractor,

(B) any disposition of property, or

(C) any other action relating to the terminated portion of the contract or previously ratified or approved actions.

(v) *Preservation of evidence.* All written evidence and other data which the Contracting Officer relied upon in making his or her determination, shall be retained in the contract file. Copies of original books of account need not be made. Books of account with other original papers and documents, shall be returned to the contractor within a reasonable time.

(vi) *Appeals.* The contractor has the right to appeal, under the Disputes clause, any settlement by determination. However the contractor has no such right of appeal where it has failed to submit its settlement proposal within the time provided in the contract and has failed to request extension of such time. Although an appeal is pending, this does not affect the authority of the Contracting Officer to settle the termination claim or any part thereof by a negotiated agreement with the contractor at any time before the appeal is decided.

(k) *Contracting Officer's negotiation memorandum.* (1) The Contracting Officer shall, at the conclusion of the settlement negotiations, prepare a statement, in the form of a CRB memorandum, summarizing the principal elements of the settlement. At a minimum, the memorandum shall include the following:

(i) Synopsis of events which caused termination of the contract and reference the documents in the file that contain the information (e.g. letter or memorandum from the customer agency).

(ii) Identify and explain any conditions that were negotiated which differ from those in the settlement proposal submitted by the contractor.

(iii) A brief statement as to why the agreed-to price is fair and reasonable.

(iv) A statement on the disposition of Government furnished property and Government acquired property.

(v) Provide details if the procurement involved an outside interest (i.e. protests by unsuccessful offerors, GAO or congressional inquiries), or any other special circumstances.

(vi) Complete the summary with a positive recommendation or conclusion for making the proposed settlement.

(vii) Refer to documents in the file which support the determination made by the Contracting Officer (i.e. memorandum from the Office of General Counsel, Financial Management, etc.).

(2) The amount of the recommended settlement shall be supported in reasonable detail and the Contracting Officer shall specify the factors considered in negotiating the settlement.

(3) The memorandum shall include any other matters which will assist reviewing authorities in understanding the basis for the settlement.

(1) *Contract Review Board action.* (1) *When required.* CRB concurrence shall be obtained prior to—

(i) issuance of a notice of termination when resolicitation is required, and

(ii) executing a settlement agreement (except for termination for convenience under \$5,000), issuing a determination, or approving or ratifying a subcontract settlement, except for a no-cost settlement.

(2) *Submission of information.* (i) For a notice of termination, the Contracting Officer shall submit a justification for the proposed termination action with supporting information.

(ii) For settlements, other than for no-cost or for convenience under \$5,000, the Contracting Officer shall submit the memorandum required in XIV-2.k(1) including copies of—

(A) the contractor's or subcontractor's settlement proposal;

(B) the audit report, if an audit was performed; and

(C) the property disposal report with required approvals if any;

(iii) Additional information may be requested by the CRB.

(m) *Payment.* (1) *Partial payments upon termination.* (i) *General.* If the contract authorizes partial payments on termination claims prior to settlement, a contractor may request such partial payments at any time after submission of interim or final settlement proposals. Application for partial payments shall be processed promptly. A subcontractor's partial payment application shall be submitted through the prime contractor and the prime contractor shall attach its own invoice and recommendations to the subcontractor's application. Partial payments to a subcontractor shall be made only through the prime contractor.

(ii) *Processing partial payments.* Prior to approving partial payments, the Contracting Officer shall have performed all accounting and other reviews of the data submitted in support of the contractor's settlement proposal. If the Contracting Officer's examination of the data indicates that the requested partial payment is proper, the Contracting Officer may authorize payment in—

(A) an amount up to 100% of the contract price, adjusted for undelivered but accepted completed end items;

(B) an amount up to 100% of the amount of an approved subcontract settlement or of partial payments made to subcontractors;

(C) an amount up to 90% of the direct cost of termination inventory; and

(D) a reasonable amount, not to exceed 90%, of other allowable costs.

(iii) *Recognition of assignments.* The assignee under an assignment of claims shall receive partial payments.

(iv) *Limitation on payments.* The total amount of the partial payment shall not exceed the amount the Contracting Officer estimates will be due the contractor from the termination. If the total of partial payments exceeds the amount finally determined to be due the contractor on the termination claim, the overpayment shall be repaid to GPO on demand, with interest computed at the rate established by the Secretary of the Treasury. The interest is calculated from the date such overpayment was received by the contractor to the date of repayment.

(v) *Submission of voucher.* The contractor's voucher shall contain a certification as follows:

The payment covered by this voucher is a partial payment on account of the contractor's termination claim under contract No. ____

The Contracting Officer shall note approval as follows:

Payment in the amount of \$ _____ approved.

(2) *Final payment upon termination.* (i) *Negotiated settlement.* Upon execution of a negotiated settlement, final payment is made to the prime contractor only by submitting to the Comptroller a voucher showing the amount agreed upon, less any portion previously paid, with a copy of the settlement agreement.

(ii) *Settlement by determination.* In the event of a settlement by determination:

(A) If the contractor has not appealed the determination within the time allowed for appeal, a voucher showing the amount so determined to be due, less any portion previously paid, shall be submitted to the Comptroller for payment; or

(B) if the contractor has appealed the determination, a voucher showing the amount decided by the appeal less any portion previously paid, shall be submitted to the Comptroller for payment. If an appeal is pending, payment may be made without prejudice to the rights of either party on the appeal.

(iii) *Interest.* No interest shall be paid by GPO on the amount due under a settlement agreement or a settlement by determination.

(n) *Allowance for profit.* Profit shall be allowed by the Contracting Officer on preparations made and work done by the contractor for the terminated portion of the contract. Although the contractor's settlement efforts will be considered, profit will not be based on the dollar amount of the contractor's settlement expenses. Anticipatory profits and consequential damages shall not be allowed. Any reasonable method may be used to arrive at a fair profit, separately or as a part of the whole settlement.

(o) *Adjustment for loss.* In the negotiation or determination of any settlement, no profit shall be allowed if it appears that the contractor would have incurred a loss had the entire con-

tract been completed. The amount of loss shall be negotiated or determined and an adjustment in the amount of settlement shall be made. In estimating the cost to complete, consideration shall be given to expected production efficiencies and to other factors affecting the cost to complete.

(p) *Settlement proposals.* (1) Subject to the provisions of the Termination for Convenience clause, settlement proposals shall be submitted to the Contracting Officer within 3 months from the effective date of the termination, unless otherwise extended.

(2) The proposal shall cover all elements of the contractor's claim, including settlements with subcontractors. Interim proposals may be filed in successive steps covering separate portions of a claim.

(3) Settlement proposals shall be submitted on GPO Form 911, Settlement Proposal. The proposals should contain reasonable detail supported by adequate accounting data. Actual, standard (appropriately adjusted), or average costs, may be used in preparing settlement proposals; provided, that such costs are determined in accordance with generally recognized accounting principles consistently followed by the contractor. When actual, standard, or average costs are not reasonably available, estimated costs may be used if the method of arriving at the estimates is approved by the Contracting Officer.

(q) *Disposition of termination inventory.* (1) *Methods of disposition.* Termination inventory shall be disposed of in compliance with PRA 315-1, Reporting, Redistribution, and Disposal of Contractor Inventory. Methods of disposal include purchase or retention by the prime contractor or sub-

contractor at cost; return to suppliers; utilization, donation, or sale; and destruction or abandonment.

(2) *General restrictions on contractor's authority.* (i) The authority of a contractor to purchase, retain or dispose of termination inventory or to authorize or approve a purchase, retention, or disposition by a subcontractor is subject to (A) any applicable Government restrictions on the disposition of property which is either classified for security reasons or is dangerous to public health, safety, or welfare; and (B) any contract provision or clause regarding the disposition of material subject to lien.

(ii) Contractors shall not sell termination inventory to persons known by them to be officers or employees of the Government, unless exception is made by the Manager, PPD as being in the best interest of the Government. Appropriate safeguards shall be taken to preclude collusion and fraud.

(3) *Contractor-acquired property.* Contractors shall be encouraged to purchase or retain contractor-acquired property at no cost to the Government. The cost of such property so purchased or retained shall not be included in settlement proposals.

(4) *Return of property to suppliers.* Contractors are authorized and shall be encouraged to return allowable quantities of contractor-acquired property to suppliers for full credit less the supplier's normal restocking charge. Contractors shall not include in their settlement proposals the cost of such property returned to suppliers, but may include as "other costs" the transportation, handling, and restocking charge with respect to the property so returned.

EXHIBIT XIV-1



United States Government Printing Office
Washington, DC 20401

Name
Company
Address
City, State

SHOW CAUSE

Dear ?:

Since you have failed to {insert perform Jacket ? (Purchase Order ?), or Program ? (Print Order ?) within the time required by its terms, or cure the conditions endangering performance under Jacket ? or Program ? as described to you in the government's letter of (date)}, the Government Printing Office is considering terminating the contract under the provisions for default of this contract.

Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose from causes beyond your control and without fault or negligence on your part. Accordingly, you are given the opportunity to present, in writing, any facts bearing on the question to the Contracting Officer within 10 days after receipt of this notice. Your failure to present any excuses within this time may be considered as an admission that none exist. Your attention is invited to the respective rights of the Contractor and the Government under the "Default" article and the liabilities that may be invoked if a decision is made to terminate for default.

Any assistance given to you on this contract or any acceptance by the Government of delinquent goods or services will be solely for the purpose of mitigating damages, and it is not the intention of the Government to condone any delinquency or to waive any rights the Government has under the contract.

Sincerely,

Contracting Officer



EXHIBIT XIV-2



United States Government Printing Office
Washington, DC 20401

Name
Company
Address
City, State

CURE NOTICE

Dear ?:

You are notified that the Government Printing Office considers your ? on {insert Jacket ? (Purchase Order ?) or Program ? (Purchase Order ?, Print Order ?)}, a condition that is endangering performance of the contract in accordance with its terms. Therefore, you are given the opportunity to present, in writing, within 10 days from receipt hereof, the measures adopted which have cured such condition. Unless such condition has been cured, the Government may terminate the contract for default under the terms and conditions of the Default article in GPO Contract Terms (Pub. 310.2).

Sincerely,

?
Contracting Officer





United States Government Printing Office
Washington, DC 20401

Name
Company
Address
City, State

NOTICE OF TERMINATION -- COMPLETE

Dear ?:

You are notified that your contract identified as {insert Jacket ? (Purchase Order ?) or Program ? (Purchase Order ?, Print Order ?)}, is hereby terminated for default because ?

Effective ?, your right to proceed with performance under the subject contract is terminated pursuant to the article entitled "Default" in GPO Contract Terms (Pub. 310.2).

You are also advised that the same or similar items terminated may be reprocured against your firm's account, on such terms and in such manner as the Contracting Officer deems appropriate. In that event, your firm shall be held liable to the Government for any excess costs. The Government reserves all rights and remedies provided by law and under the contract, in addition to charging excess costs.

This is a final decision of the Contracting Officer, made pursuant to article 5, "Disputes", of Contract Clauses in GPO Contract Terms (Pub. 310.2), which is a part of the contract. It shall be final and conclusive as provided therein, unless within 90 days from the date of receipt of this decision, a written notice of appeal, addressed to the Board of Contract Appeals, is mailed or otherwise furnished. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number. In connection with any appeal proceeding, you shall be afforded the opportunity to be heard and to offer evidence in support of your appeal.

Sincerely,

?
Contracting Officer



EXHIBIT XIV-4



United States Government Printing Office
Washington, DC 20401

Name
Company
Address
City, State

NOTICE OF TERMINATION - PARTIAL

Dear ?:

You are notified that your contract identified as {insert Jacket ? (Purchase Order ?) or Program ? (Purchase Order ? Print Order ?)}, is hereby partially terminated for default because ?

Effective ?, your right to proceed with performance under the subject contract is terminated pursuant to the article entitled "Default" in GPO Contract Terms (Pub. 310.2).

You are also advised that the same or similar items terminated may be reprocured against your firm's account, on such terms and in such manner as the Contracting Officer deems appropriate. In that event, your firm shall be held liable to the Government for any excess costs. The Government reserves all rights and remedies provided by law and under the contract, in addition to charging excess costs.

This is a final decision of the Contracting Officer, made pursuant to article 5, "Disputes", of the Contract Clauses in GPO Contract Terms (Pub. 310.2), which is a part of the contract. It shall be final and conclusive as provided therein, unless within 90 days from the date of receipt of this decision, a written notice of appeal, addressed to the Board of Contract Appeals, is mailed or otherwise furnished. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number. In connection with any appeal proceeding, you shall be afforded the opportunity to be heard and to offer evidence in support of your appeal.

Sincerely,

?
Contracting Officer





United States Government Printing Office
 Washington, DC 20401

Name
 Company
 Address
 City, State

NOTICE OF TERMINATION - CONVENIENCE OF THE GOVERNMENT

Dear ?:

1. Effective Date of Termination. You are notified that your Purchase Order ? (Program ?, Print Order ?), Jacket ? (referred to as "the contract" in this notice) is hereby terminated ? for the convenience of the Government, in accordance with the article entitled "Termination for Convenience of the Government" in GPO Contract Terms (Pub. 310.2). This termination is effective ?.
2. Cessation of Work and Notification to Immediate Subcontractors.
 - (a) You must stop all work, make no further shipment, and place no further orders in connection with the contract, except to the extent necessary to perform any portion thereof not terminated by this notice. You must keep adequate records of your compliance with this paragraph 2(a) showing (i) the date you received your Notice of Termination, (ii) the effective date of the termination, and (iii) the extent of completion of performance on the effective date.
 - (b) You shall give notice of termination to your immediate subcontractors (including suppliers) who will be affected by the termination of your contract and direct them to submit any settlement proposals promptly, in order to expedite settlement.
 - (c) You shall notify the Contracting Officer of any pending legal proceedings which relate to any subcontractors or purchase orders under the terminated contract. You remain liable to your subcontractors and suppliers for claims arising by reason of the termination of their subcontracts or



EXHIBIT XIV-5

orders. You are requested to settle such termination claims as promptly as possible.

- (d) You shall notify the Contracting Officer of the number of articles completed under the contract and still on hand, and arrange with the Contracting Officer for their delivery or other disposal.
- (e) In connection with any settlement of your claim, it will be necessary for you to properly account for your termination inventory and the inventory of your subcontractors.
- (f) Should a settlement proposal be necessary, you must submit it on the enclosed GPO Form 911 and take such other action as may be required by the Contracting Officer or under the termination clause contained in your contract.

3. Acknowledgement of Receipt of Notice. You are required to acknowledge receipt of this notice to the Contracting Officer responsible for settlement of claims in this termination as shown below.

Sincerely,

?
Contracting Officer

EXHIBIT XIV-6(a)

SUPPLEMENTAL AGREEMENT OF SETTLEMENT

(Supplemental Agreement for use in settling contracts after complete termination)

This Supplemental Agreement of Settlement is entered into this ____ day of ____, 19____, between the Government Printing Office (GPO) represented by the Contracting Officer executing this contract, and *(Company Name)* (hereafter referred to as "the Contractor").

Since the Contractor and the GPO have entered into Purchase Order No. _____ Jacket No. _____ dated _____, 19____, which together with any and all changes, is hereafter referred to as "the contract"; and

since, the contract provides that the performance of work thereunder may at the convenience or option of the Government be terminated by the Government in whole, or from time to time in part, whenever any such termination is determined to be for the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of such termination; and

since, by notice of termination dated _____, the GPO advised the contractor of the complete termination of the contract for the convenience of the Government;

the parties do mutually agree as follows:

The Contractor has received the sum of \$_____ on account of work and services performed, or articles delivered, under the completed portion of the contract. The GPO as part of this negotiated settlement hereby confirms and acknowledges the right of the Contractor (subject to any rights or liabilities reserved below) to retain such sum already paid and agrees that such sum constitutes a portion of the total amount to which the Contractor is entitled in settlement of the contract. In addition, upon execution of this agreement the Government agrees to pay to the Contractor or its assignee, upon presentation of proper invoices or vouchers, the sum of \$_____ (*insert net amount of settlement*), arrived at by deducting from the sum of \$_____ (*insert gross amount of settlement*), (1) the amount of \$_____, representing all unliquidated partial or progress payments previously made on account to the Contractor (2) the amount of \$_____, representing all applicable property disposal credits and (3) the amount of \$_____, representing all other amounts due the GPO under this contract. The sum of \$_____ (*insert net amount of settlement*), together with all other sums previously paid, constitutes payment in full and complete settlement of the amount due the Contractor by reason of the complete termination of work under the contract and of all other claims and liabilities of the Contractor and the GPO under the contract (except as reserved below).

(The following paragraph shall be included when appropriate.)

Notwithstanding any other provision of this agreement, the following rights and liabilities of the parties under the contract are hereby reserved: *(List any reserved or excepted rights or liabilities.)*

This Supplemental Agreement shall be effective when signed by both parties to the Agreement.

(Contracting Officer)

Date

(Contractor)

Date

EXHIBIT XIV-6(b)

SUPPLEMENTAL AGREEMENT OF SETTLEMENT

(Supplemental Agreement for use in settling contracts after partial termination)

This Supplemental Agreement of Settlement is entered into this _____ day of _____, 19____, between the Government Printing Office (GPO) represented by the Contracting Officer executing this contract, and (*Company Name*) (hereafter referred to as "the Contractor").

Since the Contractor and the GPO have entered into Purchase Order No. _____ Jacket No. _____ dated _____, 19____, which together with any and all changes, is hereafter referred to as "the contract"; and

since, the contract provides that the performance of work thereunder may at the convenience or option of the Government be terminated by the Government in whole, or from time to time in part, whenever any such termination is determined to be for the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of such termination and

since, by notice of termination dated _____, 19____, the Government advised the Contractor of the partial termination of the contract for the convenience of the Government as of the date and to the extent provided in such notice, to which reference is hereby made as to the part terminated, and said part is hereinafter referred to as "the terminated portion of the contract";

the parties do mutually agree as follows:

The terminated portion of the contract shall be as set forth in the aforementioned notice of termination (or as otherwise defined to avoid uncertainty or misunderstanding).

Upon execution of this agreement, the Government, agrees to pay to the Contractor or its assignee, upon presentation of proper invoices or vouchers, the sum of \$ _____ (*insert net amount of settlement*), arrived at by deducting from the sum of \$ _____ (*insert gross amount of settlement*), (a) the amount of \$ _____, representing all unliquidated, partial or progress payments previously made on account to the Contractor or its assignee and all unliquidated advance payments (with interest, if any, thereon) applicable to the terminated portion of the contract and (b) the amount of \$ _____, representing all applicable property disposal credits. Said sum of \$ _____ (*insert net amount of settlement*), together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor with respect to the terminated portion of the contract, except as hereinafter provided in the following paragraph.

Upon payment of said sum of \$ _____ (*insert net amount of settlement*), all obligations of the Contractor to perform further work or services or to make further deliveries under the terminated portion of the contract and all obligations of the Government to make further payments or to carry out other undertakings in connection therewith shall cease, provided, however, that nothing herein contained shall impair or affect in any way any covenants, terms, or conditions of the contract relating to the completed or continued portion thereof: (*The following is to be added if appropriate*) and provided further, that, with respect to the terminated portion of the contract, the following rights and liabilities of the parties are reserved: (*List any reserved or excepted rights or liabilities.*)

This Supplemental Agreement shall be effective when signed by both parties to the Agreement.

(Contracting Officer) Date

(Contractor) Date

EXHIBIT XIV-7(a)

SUPPLEMENTAL AGREEMENT OF SETTLEMENT

(No-cost settlement agreement—complete termination)

This Supplemental Agreement of Settlement is entered into this _____ day of _____, 19____, between the Government Printing Office (GPO) represented by the Contracting Officer executing this contract, and *(Company Name)* (hereafter referred to as the “the Contractor”).

Since the Contractor and the GPO have entered into Purchase Order No. _____ Jacket No. _____ dated _____, 19____, which together with any and all changes, is hereafter referred to as the “the contract”; and

since, the contract provides that the performance of work thereunder may at the convenience or option of the Government be terminated by the Government in whole, or from time to time in part, whenever any such termination is determined to be for the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of such termination; and

since, by notice of termination dated _____, the GPO advised the Contractor of the complete termination of the contract for the convenience of the Government; and

since the Contractor is willing to waive unconditionally any claim against the Government by reason of such termination;

the parties do mutually agree as follows:

The Contractor hereby unconditionally waives any claim against the Government by reason of the termination of the contract and, except as set forth below, releases it from any and all obligations arising under the contract or by reason of its termination; and the Government agrees that all obligations arising under the contract or by reason of termination, shall be deemed to be concluded; except as follows: *(List any reserved or excepted rights.)*

This Supplemental Agreement shall be effective when signed by both parties to the Agreement.

(Contracting Officer) Date

(Contractor) Date

EXHIBIT XIV-7(b)

SUPPLEMENTAL AGREEMENT OF SETTLEMENT

(No-cost settlement agreement—partial termination)

This Supplemental Agreement of Settlement is entered into this ____ day of _____, 19____, between the Government Printing Office (GPO) represented by the Contracting Officer executing this contract, and *(Company Name)* (hereafter referred to as “the Contractor”).

Since the Contractor and the GPO have entered into Purchase Order No. _____ Jacket No. _____ date _____, 19____, which together with any and all changes, is hereafter referred to as “the contract”; and

since, the contract provides that the performance of work thereunder may at the convenience or option of the Government be terminated by the Government in whole, or from time to time in part, whenever any such termination is determined to be for the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of such termination; and

since, by notice of termination dated _____, 19____, the GPO advised the Contractor of the partial termination of the contract for the convenience or at the option of the Government as of the date and to the extent provided in such notice, to which reference is hereby made as to the part terminated, and said part is hereinafter referred to as “the terminated portion of the contract”; and

since, the Contractor is willing to waive unconditionally any claim against the Government by reason of such termination;

the parties do mutually agree as follows:

The terminated portion of the contract shall be as set forth in the aforementioned notice of termination (or as otherwise defined to avoid uncertainty or misunderstanding).

The Contractor hereby unconditionally waives any claim against the Government arising under the terminated portion of the contract or by reason of its termination including, without limitation, all obligations of the Government to make further payments or to carry out other undertakings in connection with said terminated portion, and the Government acknowledges that the Contractor has no obligation to perform further work or services or to make further deliveries of articles or materials under the terminated portion of the contract, *provided, however,* that nothing herein contained shall impair or affect in any way any other covenants, terms or conditions of the contract, *and provided further,* that, with respect to the terminated portion of the contract, the following rights and liabilities of the parties are reserved: *(List any reserved or excepted rights.)*

This Supplemental Agreement shall be effective when signed by both parties to the Agreement.

(Contracting Officer) Date

(Contractor) Date

CHAPTER XV. DISPUTES, CLAIMS, APPEALS, AND PROTESTS

SECTION 1. DISPUTES, CLAIMS, AND APPEALS

1. Basic Policy.

(a) The Disputes clause in GPO Contract Terms (Pub. 310.2) provides a basis and an administrative method for resolving contractual disagreements while work continues. It provides that the Contracting Officer shall initially decide "...any dispute concerning a question of fact related to the contract which is not disposed of by agreement. ..."

(b) It is the Government's policy to try to resolve all contractual issues by mutual agreement at the Contracting Officer's level, without litigation. In appropriate circumstances, the Contracting Officer, before issuing a decision on a claim, should consider the use of informal discussions between the parties by individuals who have not participated substantially in the matter in dispute, to aid in resolving the differences.

2. Initiation of a Claim.

(a) Contractor claims shall be submitted in writing to the Contracting Officer for a decision. The Contracting Officer shall document the contract file with evidence of the date of receipt of any submission from the contractor deemed to be a claim by the Contracting Officer.

(b) The Contracting Officer shall issue a written decision on any Government claim initiated against a contractor.

3. Contractor Certification.

(a) Contractors shall provide a certification when submitting any claim exceeding \$50,000.

(b) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(c) The certification shall state as follows:

I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the contractor.

(d) The aggregate amount of both the increased and decreased costs shall be used in determining when the dollar thresholds requiring certification are met.

(e) The certification may be executed by any person duly authorized to bind the contractor with respect to the claim.

(f) A defective certification shall not deprive a court or the Board of Contract Appeals of jurisdiction over that claim. Prior to the entry of a final judgment by a court or a decision by the Board, however, the court or Board shall require a defective certification to be corrected.

4. Contracting Officer's Decision.

(a) When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, the Contracting Officer shall—

(1) Review the facts pertinent to the claim;

- (2) Secure assistance from legal advisors;
- (3) Coordinate with the contract administration office or contracting office, as appropriate; and
- (4) Prepare a written decision that shall include a—
 - (i) Description of the claim or dispute;
 - (ii) Reference to the pertinent contract terms;
 - (iii) Statement of the factual areas of agreement and disagreement;
 - (iv) Statement of the Contracting Officer's decision, with supporting rationale;
 - (v) Paragraph substantially as follows:

This is the final decision of the Contracting Officer. You may appeal this decision to the GPO Board of Contract Appeals. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the Board of Contract Appeals, U.S. Government Printing Office, North Capitol and H Streets NW, Washington, DC 20401 and provide a copy to the Contracting Officer from whose decision this appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number. With regard to appeals to the Board of Contract Appeals, you may, solely at your election, proceed under the Board's small claim procedure for claims of \$10,000 or less or its accelerated procedure for claims of \$50,000 or less.

(vi) Demand for payment in all cases where the decision results in a finding that the contractor is indebted to the Government.

(b) The Contracting Officer shall furnish a copy of the decision to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt. This requirement shall apply to decisions on claims initiated by or against the contractor.

(c) The Contracting Officer shall issue the decision within the following time limitations:

(1) For claims of \$50,000 or less, 60 days after receiving a written request from the contractor that a decision be rendered within that period, or within a reasonable time after receipt of the claim if the contractor does not make such a request.

(2) For claims over \$50,000, 60 days after receiving a certified claim; *provided, however*, that if a decision will not be issued within 60 days, the Contracting Officer shall notify the contractor, within that period, of the time within which a decision will be issued.

(d) The Contracting Officer shall issue a decision within a reasonable time, taking into account—

- (1) The size and complexity of the claim;
- (2) The adequacy of the contractor's supporting data; and
- (3) Any other relevant factors.

(e) The Contracting Officer shall have no obligation to render a final decision on any claim exceeding \$50,000 which contains a defective certification, if within 60 days after receipt of the claim, the Contracting Officer notifies the contractor, in writing, of the reasons why any attempted certification was found to be defective.

(f) In the event of undue delay by the Contracting Officer in rendering a decision on the claim, the contractor may request the Board of Contract Appeals to direct the Contracting Officer to issue a decision in a specified time period determined by the Board.

(g) Any failure of the Contracting Officer to issue a decision within the required time periods will be deemed a decision by the Contracting Officer denying the claim and will authorize the contractor to file an appeal or suit on the claim.

(h) The amount determined payable under the decision, less any portion already paid, should be paid, if otherwise proper, without awaiting contractor action concerning appeal. Such payment shall be without prejudice to the rights of either party.

5. Processing.

(a) A written appeal to a Contracting Officer's final decision which is mailed or otherwise filed within 90 days of receipt of that decision shall be addressed to the GPO Board of Contract Appeals, Mail Stop BCA, Washington, D.C. 20401. The board will notify the contractor that the appeal has been received.

(b) The appeal should identify the contract (jacket No., program/print order Nos.) and the decision from which the appeal is taken and shall be time-stamped upon receipt. The appeal should be signed by the appellant, or by an officer of the appellant corporation or member of the appellant firm, or by the contractor's duly authorized representative or attorney.

(c) When an appeal has been received from the board, the Contracting Officer shall assemble and transmit to the Associate General Counsel (Procurement and Contracts) for review, all documents pertinent to the appeal, including:

- (1) The decision from which appeal is taken;
- (2) The contract, including specifications and pertinent amendments, plans and drawings;
- (3) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the board;

(5) A written statement by the Contracting Officer briefly outlining the events leading to the appeal; and

(6) Copies of relevant documentation in the possession of the customer agency or in the possession of other GPO entities.

(7) Any additional information considered relevant to the appeal.

(d) The Associate General Counsel must file the documents with the Board of Contract Appeals within 30 days of receipt of an appeal or notice that an appeal has been filed.

(e) Within the same 30-day period, the Associate General Counsel shall furnish the appellant by certified mail, return receipt requested, a copy of each document he transmits to the board, except those stated in (c)(2), for which a list furnished appellant indicating specific contractual documents transmitted will suffice and the statement mentioned in subpart (c)(5) above.

(f) The Contracting Officer shall retain a complete copy of the appeal file and submit four copies to the Associate General Counsel (Procurement).

(g) Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be tabbed alphabetically in chronological order.

(h) After an appeal has been filed, the Contracting Officer is not precluded from further seeking agreement as to disposition of the controversy. A dispute may be settled at any time before the decision by written stipulation between the appellant and the Contracting Officer.

(i) Decisions of the board constitute decisions of the Public Printer as referenced in the Disputes clause. Decisions favorable to the appellant in whole or in part shall be promptly implemented through payment by the Contracting Officer. In cases where the question of entitlement only has been decided by the board and the matter of amount has been remanded to the parties for negotiation, if agreement is not reached, appellant shall be afforded a prompt decision and opportunity to appeal on the matter of amount.

(j) All appeals will be handled in accordance with GPO Instruction 110.12, Board of Contract Appeals Rules of Practice and Procedure.

SECTION 2. PROTESTS

1. Scope.

This section prescribes policies and procedures governing the administration of protests against award.

2. Definitions.

"Day," as used in this section, means a calendar day, unless otherwise specified. In the computation of any period—

(a) The day of the act, event, or default from which the designated period of time begins to run is not included; and

(b) The last day after the act, event, or default is included unless—

(1) The last day is a Saturday, Sunday, or Federal holiday; or

(2) In the case of a filing of a paper at any appropriate administrative forum, the last day is a day on which weather or other conditions cause the closing of the forum for all or part of the day, in which event the next day on which the appropriate administrative forum is open is included.

(3) In the case of the 5-day period after a debriefing date and the 10-day period after contract award for filing a protest resulting in a suspension (as described at 2.5(c)), Saturdays, Sundays, and Federal holidays shall be counted.

"Filed," as used in this section, means the complete receipt of any document by the Government Printing Office (hereinafter GPO or agency) before its close of business. Documents received after close of business are considered filed as of the next day. Unless otherwise stated, the close of business is presumed to be 4:00 p.m., local time.

"Interested party for the purpose of filing a protest," as used in this section, means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

"Protest," as used in this section, means a written objection by an interested party to any of the following:

(a) A solicitation or other request by GPO for offers for a contract for the procurement of supplies, property, or services.

(b) The cancellation of the solicitation or other request.

(c) A termination or cancellation of an award of the contract, if the written objection contains an allegation that the

termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

3. General.

(a) The General Counsel is authorized to sign all reports in reference to bid protests filed with the General Accounting Office (GAO). The General Counsel shall maintain an appropriate file of all protests received, the actions taken thereon and the ultimate disposition thereof, and shall furnish the appropriate procurement activity with copies of all relevant documents and the ruling of the Comptroller General, which documents shall be maintained as part of the contract file.

(b) Contracting Officers shall consider all protests and seek legal advice, when appropriate, whether protests are submitted before or after award and whether filed directly with GPO or GAO.

(c) If, in connection with a protest, the Public Printer, or designee, determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the Public Printer, or designee, may—

(1) Take any action that could have been recommended by the Comptroller General had the protest been filed with the General Accounting Office; and

(2) Pay appropriate costs as stated in 2.5(h).

(3) Require the awardee to reimburse the Government's costs, as provided in this paragraph, where a postaward protest is sustained as the result of an awardee's intentional or negligent misstatement, misrepresentation, or miscertification. In addition to any other remedy available, the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government.

(i) When a protest is sustained by GAO under circumstances that may allow the Government to seek reimbursement for protest costs, the contracting officer will determine whether the protest was sustained based on the awardee's negligent or intentional misrepresentation. If the protest was sustained on several issues, protest costs shall be apportioned according to the costs attributable to the awardee's actions.

(ii) The contracting officer shall review the amount of the debt, degree of the awardee's fault, and costs of collection, to determine whether a demand for reimbursement ought to be made. If it is in the best interests of the Government to seek reimbursement, the contracting officer shall notify the contractor in writing of the nature and amount of the debt, and the intention to collect by offset if necessary. Prior to issuing a final decision, the contracting officer shall afford the contractor an opportunity to inspect and copy records pertaining to the debt to the extent permitted by statute and regulation, and to request review of the matter by the head of the contracting activity.

(iii) When appropriate, the contracting officer shall also refer the matter to the agency debarment official for consideration.

(d) *Protest likely after award.* The contracting officer may stay performance of a contract within the time period contained in 2.5(c)(1) if the contracting officer makes a written determination that—

(1) A protest is likely to be filed; and

(2) Delay of performance is, under the circumstances, in the best interests of the United States.

(e) An interested party wishing to protest is encouraged to seek resolution within GPO (see 2.4) before filing a protest with the the GAO, but may protest to the GAO in accordance with GAO regulations (4 CFR Part 21).

(f) No person may file a protest at GAO for a procurement integrity violation unless that person reported to the contracting officer the information constituting evidence of the violation within 14 days after the person first discovered the possible violation (41 U.S.C. 423(g)).

4. Protests to GPO.

(a) *Timeliness of protest.* (1) Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed in writing with the contracting officer prior to bid opening or the closing date for the receipt of initial proposals. In negotiated procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation.

(2) In cases other than those covered in paragraph (a)(1) of this subsection, protests shall be filed with the contracting officer no later than 10 workdays after the basis for the protest is known or should have been known, whichever is earlier.

(b) Prior to submission of an agency protest, all parties shall use their best efforts to resolve concerns raised by an interested party at the contracting officer level through open and frank discussions.

(c) Provision should be made for inexpensive, informal, procedurally simple, and expeditious resolution of protests. Where appropriate, the use of alternate dispute resolution techniques, third party neutrals, and other agency personnel are acceptable protest resolution methods.

(d) The following procedures are established to resolve agency protests effectively, to build confidence in the Government's acquisition system, and to reduce protests outside of the agency:

(1) Protests shall be concise and logically presented to facilitate review by the agency. Failure to substantially comply with any of the requirements of paragraph (d)(2) of this subsection may be grounds for dismissal of the protest.

(2) Protests shall include the following information:

(i) Name, address, and fax and telephone numbers of the protester.

(ii) Solicitation or contract number.

(iii) Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protester.

(iv) Copies of relevant documents.

(v) Request for a ruling by the agency.

(vi) Statement as to the form of relief requested.

(vii) All information establishing that the protester is an interested party for the purpose of filing a protest.

(viii) All information establishing the timeliness of the protest.

(3) All protests filed directly with the agency will be addressed to the contracting officer.

(4) Interested parties may request an independent review of their protest by the head of the contracting activity. The independent review shall be available as an appeal of a

contracting officer decision on a protest. Appellate review of the contracting officer's decision will not extend GAO's timeliness requirements. Therefore, any subsequent protest to the GAO must be filed within 10 days of knowledge of initial adverse agency action (4 CFR 21.2(a)(3)).

(e) The agency, for good cause shown, or where it determines that a protest raises issues significant to the agency's acquisition system, may consider the merits of any protest which is not timely filed in accordance with paragraph (a)(2) of this subsection.

(f) *Action upon receipt of protest.* (1) Upon receipt of a protest before award, a contract may not be awarded, pending agency resolution of the protest, unless contract award is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. Such justification or determination shall be approved by the head of the contracting activity who may, on a non-delegable basis, authorize award.

(2) If award is withheld pending agency resolution of the protest, the contracting officer will inform the offerors whose offers might become eligible for award of the contract. If appropriate, the offerors should be requested, before expiration of the time for acceptance of their offers, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extension of offers, consideration should be given to proceeding with award pursuant to paragraph (f)(1) of this subsection.

(3) Upon receipt of a protest within 10 days after contract award or within 5 days after a debriefing date offered to the protester under a timely debriefing request in accordance with Printing Procurement Regulation (PPR) VII-8.17(c), whichever is later, the contracting officer shall immediately suspend performance, pending resolution of the protest within the agency, including any review by the head of the contracting activity, unless continued performance is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. Such justification or determination shall be approved by the head of the contracting activity who may, on a nondelegable basis, authorize continued performance.

(4) Contracting officers shall notify the Office of General Counsel, providing a copy of the protest and:

(i) Prepare a report as prescribed in 2.5(a)(3), except that, if the contract action or contract performance continues after receipt of the protest, the report shall include any determination prescribed in 2.5(c)(2) and (3); and

(ii) Obtain review of the protest by the General Counsel.

(5) If the contracting officer and the protester agree on corrective action, a report is not required; however, in addition to amending the solicitation or taking other corrective action, the contracting officer shall inform the protester in writing of the proposed corrective action and shall obtain from the protester a written notice withdrawing the protest. A copy of this notice and any amendment shall be provided to the General Counsel.

(6) Pursuing an agency protest does not extend the time for obtaining a stay at GAO. GPO may include, as part of the agency protest process, a voluntary suspension period when agency protests are denied and the protester subsequently files at GAO.

(g) Contracting officers shall make their best efforts to resolve an agency protest within 10 days after the protest is

filed. To the extent permitted by law and regulation, the parties may exchange relevant information.

(h) Agency protest decisions shall be well-reasoned, and explain the agency position. The protest decision shall be provided to the protester using a method that provides evidence of receipt.

(i) The written decision shall include a paragraph substantially as follows:

Should you disagree with this decision, you may file an appeal with the head of the contracting activity. Any such appeal must be received within 10 calendar days after receipt of this letter. You may be able to file a protest with the General Accounting Office (GAO) at the following address: General Counsel, General Accounting Office, Washington DC 20548, ATTN: Procurement Law Control Group. Any GAO protest must be filed within 10 days of actual or constructive knowledge of the basis of the protest. If you file an appeal with the head of the contracting activity, you may waive your right of protest to the Comptroller General at a later date.

5. Protests to GAO.

Procedures for protests to GAO are found at 4 CFR Part 21 (GAO Bid Protest Regulations). In the event guidance concerning GAO procedure in this subsection conflicts with 4 CFR Part 21, 4 CFR Part 21 governs.

(a) *General procedures.* (1) A protester is required to furnish a copy of its complete protest to the location designated in the solicitation or, in the absence of such a designation, to the contracting officer, so it is received no later than 1 day after the protest is filed with the GAO. The GAO may dismiss the protest if the protester fails to furnish a complete copy of the protest within 1 day.

(2) Immediately after receipt of the GAO's written notice that a protest has been filed, the GPO shall give notice of the protest to the contractor if the award has been made, or, if no award has been made, to all parties who appear to have a reasonable prospect of receiving award if the protest is denied. The GPO shall furnish copies of the protest submissions to such parties with instructions to (i) communicate directly with the GAO, and (ii) provide copies of any such communication to the GPO and to other participating parties when they become known. However, if the protester has identified sensitive information and requests a protective order, then the contracting officer shall obtain a redacted version from the protester to furnish to other interested parties, if one has not already been provided.

(3)(i) Upon notice that a protest has been filed with the GAO, the contracting officer shall immediately begin compiling the information necessary for a report to the GAO. The General Counsel will submit a complete report to the GAO within 30 days after the GAO notifies the General Counsel by telephone that a protest has been filed, or within 20 days after receipt from the GAO of a determination to use the express option, unless the GAO—

(A) Advises the GPO that the protest has been dismissed; or

(B) Authorizes a longer period in response to an agency request for an extension. Any new date is documented in the agency file.

(ii) When a protest is filed with the GAO, and an actual or prospective offeror so requests, the contracting officer shall, in accordance with any applicable protective orders, provide actual or prospective offerors reasonable access to the protest file. However, if the GAO dismisses the protest before the documents are submitted to the GAO, then no protest file need be made available. Information exempt from disclosure

may be redacted from the protest file. The protest file shall be made available to non-intervening actual or prospective offerors within a reasonable time after submittal of the agency report to the GAO. The protest file shall include an index and as appropriate—

- (A) The protest;
- (B) The offer submitted by the protester;
- (C) The offer being considered for award or being protested;
- (D) All relevant evaluation documents;
- (E) The solicitation, including the specifications or portions relevant to the protest;
- (F) The abstract of offers or relevant portions; and
- (G) Any other documents that the GPO determines are relevant to the protest, including documents specifically requested by the protester.

(iii) At least 5 days prior to the filing of the report, in cases in which the protester has filed a request for specific documents, the GPO shall provide to all parties and the GAO a list of those documents, or portions of documents, that have been released to the protester or intends to produce in its report, and those documents that the GPO intends to withhold from the protester and the reasons for the proposed withholding. Any objection to the scope of the GPO's proposed disclosure or nondisclosure of the documents must be filed with the GAO and the other parties within 2 days after receipt of the list.

(iv) The agency report to the GAO shall include—

- (A) A copy of the documents described in 2.5(a)(3)(ii);
- (B) The contracting officer's signed statement of relevant facts, including a best estimate of the contract value, and a memorandum of law. The contracting officer's statement shall set forth findings, actions, and recommendations, and any additional evidence or information not provided in the protest file that may be necessary to determine the merits of the protest; and
- (C) A list of parties being provided the documents.

(4)(i) At the same time the GPO submits its report to the GAO, copies of the report shall be furnished to the protester and any intervenors. A party shall receive all relevant documents, except—

- (A) Those that the GPO has decided to withhold from that party for any reason, including those covered by a protective order issued by the GAO. Documents covered by a protective order shall be released only in accordance with the terms of the order. Examples of documents the GPO may decide to exclude from a copy of the report include documents previously furnished to or prepared by a party; classified information; and information that would give the party a competitive advantage; and
- (B) Protester's documents which the GPO determines, pursuant to law or regulation, to withhold from any interested party.

(ii)(A) If the protester requests additional documents within 2 days after the protester knew the existence or relevance of additional documents, or should have known, the GPO shall provide the requested documents to the GAO within 2 days of receipt of the request.

(B) The additional documents shall also be provided to the protester and other interested parties within this 2-day period unless the GPO has decided to withhold them for any reason (see paragraph (a)(4)(i) of this subsection). This includes any documents covered by a protective order issued by the GAO.

Documents covered by a protective order shall be provided only in accordance with the terms of the order.

(C) The General Counsel shall notify the GAO of any documents withheld from the protester and other interested parties and shall state the reasons for withholding them.

(5) The GAO may issue protective orders which establish terms, conditions, and restrictions for the provision of any document to an interested party. Protective orders prohibit or restrict the disclosure by the party of procurement sensitive information, trade secrets or other proprietary or confidential research, development or commercial information that is contained in such document. Protective orders do not authorize withholding any documents or information from the United States Congress or an executive agency.

(i) *Requests for protective orders.* Any party seeking issuance of a protective order shall file its request with the GAO as soon as practicable after the protest is filed, with copies furnished simultaneously to all parties.

(ii) *Exclusions and rebuttals.* Within 2 days after receipt of a copy of the protective order request, any party may file with the GAO a request that particular documents be excluded from the coverage of the protective order, or that particular parties or individuals be included in or excluded from the protective order. Copies of the request shall be furnished simultaneously to all parties.

(iii) *Additional documents.* If the existence or relevance of additional documents first becomes evident after a protective order has been issued, any party may request that these additional documents be covered by the protective order. Any party to the protective order also may request that individuals not already covered by the protective order be included in the order. Requests shall be filed with the GAO, with copies furnished simultaneously to all parties.

(iv) *Sanctions and remedies.* The GAO may impose appropriate sanctions for any violation of the terms of the protective order. Improper disclosure of protected information will entitle the aggrieved party to all appropriate remedies under law or equity. The GAO may also take appropriate action against the agency for failing to provide documents designated in a protective order.

(6) The protester and other interested parties are required to furnish a copy of any comments on the agency report directly to the GAO within 10 days, or 5 days if express option is used, after receipt of the report, with copies provided to the contracting officer and to other participating interested parties. If a hearing is held, these comments are due within 5 days after the hearing.

(7) The General Counsel shall furnish the GAO with the name, title, and telephone number of the official whom the GAO may contact who is knowledgeable about the subject matter of the protest. The General Counsel shall be responsible for promptly advising the GAO of any change in the designated official.

(b) *Protests before award.* (1) When the GPO has received notice from the GAO of a protest filed directly with the GAO, a contract may not be awarded unless authorized by the head of the contracting activity, on a nondelegable basis, upon a written finding that—

(i) Urgent and compelling circumstances which significantly affect the interest of the United States will not permit awaiting the decision of the GAO; and

(ii) Award is likely to occur within 30 days of the written finding.

(2) A contract award shall not be authorized until the General Counsel has notified the GAO of the finding in paragraph (b)(1) of this subsection.

(3) When a protest against the making of an award is received and award will be withheld pending disposition of the protest, the contracting officer should inform the offerors whose offers might become eligible for award of the protest. If appropriate, those offerors should be requested, before expiration of the time for acceptance of their offer, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extensions of offers, consideration should be given to proceeding under paragraph (b)(1) of this subsection.

(c) *Protests after award.* (1) When the General Counsel receives notice of a protest from the GAO within 10 days after contract award or within 5 days after a debriefing date offered to the protester for any debriefing that is required by PPR VII-8.17(c), whichever is later, the contracting officer shall immediately suspend performance or terminate the awarded contract, except as provided in paragraphs (c)(2) and (3) of this subsection.

(2) The head of the contracting activity may, on a nondelegable basis, authorize contract performance, notwithstanding the protest, upon a written finding that—

(i) Contract performance will be in the best interest of the United States; or

(ii) Urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for the GAO's decision.

(3) Contract performance shall not be authorized until the General Counsel has notified the GAO of the finding in paragraph (c)(2) of this subsection.

(4) When it is decided to suspend performance or terminate the awarded contract, the contracting officer should attempt to negotiate a mutual agreement on a no-cost basis.

(5) When the GPO receives notice of a protest filed with the GAO after the dates contained in paragraph (c)(1), the contracting officer need not suspend contract performance or terminate the awarded contract unless the contracting officer believes that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Government's interest.

(d) *Findings and notice.* If the decision is to proceed with contract award, or continue contract performance under paragraphs (b) or (c) of this subsection, the contracting officer shall include the written findings or other required documentation in the file. The contracting officer also shall give written notice of the decision to the protester and other interested parties.

(e) *Hearings.* The GAO may hold a hearing at the request of the agency, a protester, or other interested party who has responded to the notice in paragraph (a)(2) of this subsection. A recording or transcription of the hearing will normally be made, and copies may be obtained from the GAO. All parties may file comments on the hearing and report within 7 days of the hearing.

(f) *GAO decision time.* GAO issues its recommendation on a protest within 100 days from the date of filing of the protest with the GAO, or within 65 days under the express option. The GAO attempts to issue its recommendation on an amended protest that adds a new ground of protest within the time limit of the initial protest. If an amended protest cannot be

resolved within the initial time limit, the GAO may resolve the amended protest through an express option.

(g) *Notice to GAO.* If the GAO recommendations, with respect to a solicitation for a contract or an award or a proposed award of a contract, have not been fully implemented within 60 days of receiving the GAO recommendations, the head of the contracting activity responsible for that contract shall report the failure to the GAO, through the General Counsel, not later than 5 days after the expiration of the 60-day period. The report shall explain the reasons why the GAO's recommendation, exclusive of costs, has not been followed.

(h) *Award of costs.* (1) If the GAO determines that a solicitation for a contract, a proposed award, or an award of a contract does not comply with a statute or regulation, the GAO may recommend that the agency pay to an appropriate protester the cost, exclusive of profit, of filing and pursuing the protest, including reasonable attorney, consultant, and expert witness fees, and bid and proposal preparation costs. The agency shall use funds available to pay the costs awarded.

(2) The protester shall file its claim for costs with GPO within 60 days after receipt of the GAO's recommendation that GPO pay the protester its costs. Failure to file the claim within that time may result in forfeiture of the protester's right to recover its costs.

(3) The GPO shall attempt to reach an agreement on the amount of costs to be paid. If the GPO and the protester are unable to agree on the amount to be paid, the GAO may, upon request of the protester, recommend to the GPO the amount of costs that the GPO should pay.

(4) Within 60 days after the GAO recommends the amount of costs the GPO should pay the protester, the GPO shall notify the GAO of the action taken in response to the recommendation.

(5) The GPO shall not pay a party costs under paragraph (h)(2) of this subsection—

(i) For consultant and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Government pursuant to 5 U.S.C. 3109 and 5 CFR 304.105; or

(ii) For attorney's fees that exceed \$150 per hour, unless the agency determines, based on the recommendation of the Comptroller General on a case-by-case basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee. The cap placed on attorneys' fees for businesses constitutes a benchmark as to a "reasonable" level for attorney's fees.

(6) Before paying a recommended award of costs, GPO personnel will consult with General Counsel. Paragraph (h) of this subsection applies to all recommended awards of costs that have not yet been paid.

(7) Any costs the contractor receives under this subsection shall not be the subject of subsequent proposals, billings, or claims against the Government, and those exclusions should be reflected in the cost agreement.

(8) If the Government pays costs, as provided in paragraph (h)(1) of this subsection, where a postaward protest is sustained as the result of an awardee's intentional or negligent misstatement, misrepresentation, or miscertification, the Government may require the awardee to reimburse the Government the amount of such costs. In addition to any other remedy available, the Government may collect this debt by offset-

ting the amount against any payment due the awardee under any contract between the awardee and the Government.

6. Solicitation provision and contract clause.

(a) The contracting officer shall insert: (1) the provision, Service of Protest, in solicitations for contracts expected to exceed the small purchase threshold; and (2) the clause, Protest After Award, in all solicitations and contracts.

(b) As prescribed, insert the following provision:

SERVICE OF PROTEST

(a) Protests (as as defined in section 3 of GPO Instruction 305.7) that are filed directly with the Government Printing Office (GPO), and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the contracting officer at the procurement office from which the solicitation was issued by obtaining written and dated acknowledgment of receipt from_____. [*Contracting officer designate the official or location where a protest may be served on the contracting officer.*]

(b) The copy of any protest shall be received by the official or in the office designated above within one day of filing a protest with the GAO.

(c) As prescribed, insert the following clause:

PROTEST AFTER AWARD

(a) Upon receipt of a notice of protest (as defined in section 3 of GPO Instruction 305.7) or a determination that a protest is likely (see section 4(d) of GPO Instruction 305.7), the contracting officer may, by written order to the contractor, direct the contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order

during the period of work stoppage. Upon receipt of the final decision in the protest, the contracting officer shall either—

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the contractor shall resume work. The contracting officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—

(1) The stop-work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; *provided*, that if the contracting officer decides the facts justify the action, the contracting officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the contracting officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the contracting officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as a result of the contractor's intentional misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained and the Government pays costs, as provided in 4(c)(2) or 6(h)(1) of GPO Instruction 305.7, the Government may require the contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, the Government may collect this debt by offsetting the amount against any payment due the contractor under any contract between the contractor and the Government.

CHAPTER XVI. CONTRACT CLAUSES

SECTION 1. GENERAL

1. Scope. This chapter sets forth contract clauses for use in the procurement of printing, binding, and related services.

2. Applicability. Each of the following sections contain clauses to be used in accordance with conditions prescribed elsewhere in the PPR.

SECTION 2. GPO CONTRACT CLAUSES

1. Scope. The solicitation provisions, representations and certifications, supplemental specifications, and contract clauses contained in GPO Publication 310.2, “GPO Contract Terms” are incorporated in this regulation by reference and listed by title.

2. Solicitation Provisions. Prescribes the conditions under which bids are solicited.

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|--|---|
| 1. Preparation of bids | 11. Postponement of bid opening |
| 2. Information furnished to bidders | 12. Discounts |
| 3. Amendments to solicitations | 13. Contract award—sealed bid |
| 4. Submission of bids | 14. Contract award—competitive negotiation |
| 5. Telegraphic bids | 15. Certification of independent price determination |
| 6. Facsimile bids | 16. Government furnished property |
| 7. Late submissions, modifications, and withdrawals of bids | 17. Utilization of small, small disadvantaged and women-owned small business concerns |
| 8. Late submissions, modifications, and withdrawals of Proposals | 18. Service of protest |
| 9. Failure to submit bid | 19. Recovered materials program |
| 10. False statements in bids | |

3. Representations and Certifications.

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|---|--|
| R-1. Small business concern | C-4. Certificate of independent price determination |
| R-2. Small disadvantaged business concern | C-5. Certification regarding debarment, suspension, proposed debarment, and other responsibility matters |
| R-3. Women-owned small business concern | C-6. Certification of nonsegregated facilities |
| C-1. Contingent fee | Referenced documents |
| C-2. Buy American certification | |
| C-3. Certification of clean air and water | |

4. Supplemental Specifications. Prescribes specific conditions for contractor performance and furnished supplies.

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|--------------------------------|---|
| General | |
| 1. Ink | 10. Reproduction media |
| 2. Quality | 11. Certificate of conformance |
| 3. Packing | 12. Changes on multipart sets |
| 4. Labeling and marking | 13. Timework |
| 5. Deliveries | 14. Departmental random copies (blue label) |
| 6. Shipping instructions | |
| 7. Drayage and special charges | Proofs |
| 8. Palletizing | 15. General requirements |
| 9. Imprints | 16. Author’s alterations |

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|-------------------------|---|
| 17. Proofing procedures | Labeling and marking specifications (facsimile label) |
| 18. Proofs | Design for Type III pallet |

5. Contract Clauses. Prescribes conditions under which the Contracting Officer will administer the contract.

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|---|--|
| 1. Contractual responsibility | 31. Contract Work Hours and Safety Standard Act—overtime compensation |
| 2. Order of precedence | 32. Walsh-Healey Public Contracts Act |
| 3. Workday | 33. Equal opportunity |
| 4. Changes | 34. Nondiscrimination because of age |
| 5. Disputes | 35. Affirmative action for workers with disabilities |
| 6. Subcontracts | 36. Affirmative Action for disabled veterans and veterans of the Vietnam era |
| 7. Government furnished property (GFP) | 37. Buy American Act |
| 8. Use of Government furnished property | 38. Advertising of award prohibited |
| 9. Risk of loss | 39. Maintenance of records on recovered materials in paper products |
| 10. Return of Government property | 40. Examination of records |
| 11. Quantity variation | 41. Audit and records—sealed bidding |
| 12. Notice of compliance with schedules | 42. Price reduction for defective cost or pricing data—modification—sealed bidding |
| 13. Failure to ship/deliver full quantities | 43. Audit—Negotiation |
| 14. Inspection and tests | 44. Gratuities |
| 15. Warranty | 45. Covenant against contingent fees |
| 16. Notice and assistance regarding patent and copyright infringement | 46. Contract cost principles and procedures |
| 17. Patent indemnity | 47. Joint ventures |
| 18. Reproduction of printing prohibited | 48. Protest after award |
| 19. Termination for the convenience of the Government | 49. Anti-kickback procedures |
| 20. Default | 50. Bankruptcy |
| 21. Actual damages | 51. Cancellation, rescission, and recovery of funds for illegal or improper activity |
| 22. Liquidated damages | 52. Price or fee adjustment for illegal or improper activity |
| 23. Delay in deliveries | 53. Restrictions on subcontractor sales to the Government |
| 24. Payments on purchase order | |
| 25. Partial payment | |
| 26. Payment for accelerated delivery | |
| 27. Federal, State and local taxes | |
| 28. Mandatory information for electronic funds transfer payment | |
| 29. Assignment of claims | |
| 30. Convict labor | |

SECTION 3. MULTIYEAR PROCUREMENT

1. Applicability. The clauses in this section shall be used in multiyear contracts where an adjustment clause is determined appropriate.

2. Paper Price Adjustment. Procurement Instruction 312.1B, Use of Recovered Materials, dated July 22, 1996, is incorporated by reference with the same effect as if appearing in full text.

3. Economic Price Adjustment.

(a) Contracting Officers shall include the clause Economic Price Adjustment, substantially as follows, in multiyear and option contracts.

ECONOMIC PRICE ADJUSTMENT

(a) *General.* The prices set forth in this contract shall be adjusted in accordance with the provisions of this clause, provided that, in no event will prices be revised to exceed the maximum permissible under any law existing as of the date of the contract or as may be hereafter promulgated.

(b) *Price adjustment period.* For the purpose of this clause, the program years shall comply with the Contract Term clause. There shall be no price adjustment for orders placed during the first program year of this contract.

(c) *Price adjustment.* The prices shall be adjusted on the basis of the "Consumer Price Index For All Urban Consumers—Commodities Less Food, Seasonally Adjusted," published monthly in the CPI Detailed Report by the Department of Labor, Bureau of Labor Statistics, in the following manner:

(1) The contract price of orders placed during the adjusted period (excluding reimbursable postage or transportation costs) shall be adjusted by the percentage increase or decrease in the average, seasonally adjusted Consumer Price Index For All Urban Consumers—Commodities Less Food (seasonally adjusted) as follows: An index shall be calculated by averaging the 12 seasonally adjusted months ending 3 months prior to the expiration of the first period of the contract. This average is then compared with the average index for the 12-month period ending 3 months prior to the beginning of the contract, called the base index. The percentage increase or decrease by comparing these two indexes shall be applied to the contractor's invoices for orders placed during the price adjustment period.

(2) The Government will notify the contractor in writing of the percentage increase or decrease to be applied to any invoices to be submitted for orders subject to price adjustment in accordance with this clause. Such percentage will be determined from the published index as set forth above. The contractor shall apply the percentage increase or decrease against the total price of the invoice less reimbursable postage or transportation costs. Any applicable discounts will be calculated on the basis of the invoice price as adjusted.

Alternate. Add the following paragraph (d) to the basic clause for option contracts as necessary.

(d) If the Government exercises this option, the extended contract shall be considered to include this option clause.

4. Limitation of Performance and Contractor Obligations. The following clause shall be used for multiyear contracts which are effective at the beginning of a fiscal year. The clause must be appropriately modified for multiyear contracts that are not concurrent with the beginning of a fiscal year.

LIMITATION OF PERFORMANCE AND CONTRACTOR OBLIGATIONS

(a) Funds are available for performance of this contract for the first program period only. The amount of funds at award are not considered sufficient for performance required for any program year other than the first program year. When additional funds are available for the full requirements for the next succeeding program year, the Contracting Officer shall, not later than 60 calendar days before the expiration of the program year for which performance has been funded (unless a later day is agreed to), so notify the contractor in writing. Notification that funds are not available shall effect cancellation of the contract.

(b) The Government is not obligated to the contractor for any amount over requirements for which funds have been made available and as obligated by each print order.

(c) The contractor is not obligated to incur costs for the performance required for any program year after the first unless and until written notification is received from the Contracting Officer of an increase in availability of funds. If so notified, the contractor's obligation shall increase only to the extent contract performance is required for the additional program year for which funds have been made available.

(d) If this contract is terminated under the "Termination for Convenience of the Government" clause, "total contract price" in that clause means the amount available for performance of this contract, as provided for in this clause. The term "Work in Process" in that clause means the work under

the program year requirements for which funds have been made available. If the contract is terminated for default, the Government's rights under this contract shall apply to the entire multiyear requirements.

(e) Notification to the contractor of an increase or decrease in the funds available for performance of the contract under another clause (e.g. the "Option" or "Changes" clause) shall not constitute the notification required by paragraph (a).

(f) This procedure shall apply for each successive program year.

5. Notification. The following clause shall be appropriately modified for multiyear contracts in which the two periods are not concurrent with the fiscal years.

NOTIFICATION

The contractor will be notified on or before [insert date] of availability or nonavailability of funds for subsequent periods. Cancellation is effected if (i) the Contracting Officer notifies the contractor that funds are not available for the next year, or (ii) the Contracting Officer fails to notify the contractor that funds are available for the next year.

SECTION 4. CLAUSES TO BE USED WHEN APPLICABLE

1. Service Contract Act of 1965

SERVICE CONTRACT ACT OF 1965, AS AMENDED

(a) *Definitions.* "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.).

"Contractor," as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

"Service employee" means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) *Applicability.* This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, interpreted in subpart C of 29 CFR part 4.

(c) *Compensation.* (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) *Adjustment of Compensation.* If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) *Obligation to Furnish Fringe Benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with subpart D of 29 CFR Part 4.

(e) *Minimum Wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) *Successor Contracts.* If this contract succeeds a contract subject to the Act, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was

employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would be entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made a part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) *Notification to employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determinations attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) *Safe and Sanitary Working Conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary or hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) *Records.* (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration a record of the following:

- (i) For each employee subject to the Act—
 - (A) Name and address and social security number;
 - (B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;
 - (C) Daily and weekly hours worked by each employee; and
 - (D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the

Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) *Pay Periods.* The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) *Withholding of Payment and Termination of Contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor, requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) *Subcontracts.* The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) *Collective Bargaining Agreements Applicable to Service Employees.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiations thereof.

(n) *Seniority List.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) *Rulings and Interpretations.* Rulings and interpretations of the Act are contained in Regulations, 29 CFR part 4.

(p) *Contractor's Certification.* (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) *Variations, Tolerances, and Exemptions Involving Employment.* Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act, without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two Acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, 525);

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR parts 525 and 528.

(r) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

(s) *Tips.* An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision—

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) *Disputes Concerning Labor Standards.* The U.S. Department of Labor has set forth in 29 CFR parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

2. Exception. This clause shall be included in the specifications for all multiple-award contracts.

EXCEPTION

Noncompliance with the shipping and/or delivery schedule, or any other term, condition or specification of this contract, will be cause, and the Government Printing Office reserves the right, to withhold further offers from the contractor until he is judged by the Government to have established adequate procedures to fulfill the requirements.