

DELEGATION STATUS FOR PART 63 STANDARDS.—STATE OF TEXAS<sup>1</sup>—Continued

Subpart	Source category	TCEQ <sup>2</sup>
MMMM	Miscellaneous Metal Parts and Products Surface Coating	X
NNNN	Surface Coating of Large Appliances	X
OOOO	Fabric Printing Coating and Dyeing	X
PPPP	Surface Coating of Plastic Parts and Products	X
QQQQ	Surface Coating of Wood Building Products	X
RRRR	Surface Coating of Metal Furniture	X
SSSS	Surface Coating for Metal Coil	X
TTTT	Leather Finishing Operations	X
UUUU	Cellulose Production Manufacture	X
VVVV	Boat Manufacturing	X
WWWW	Reinforced Plastic Composites Production	X
XXXX	Tire Manufacturing	X
YYYY	Stationary Combustion Turbines	X
ZZZZ	Reciprocating Internal Combustion Engines	X
AAAA	Lime Manufacturing	X
BBBB	Semiconductor Manufacturing	X
CCCC	Coke Ovens: Pushing, Quenching and Battery Stacks	X
DDDD	Industrial, Commercial, and Institutional Boilers and Process Heaters	X
EEEE	Iron and Steel Foundries	X
FFFF	Integrated Iron and Steel	X
GGGG	Site Remediation	X
HHHH	Miscellaneous Coating Manufacturing	X
IIII	Mercury Cell Chlor-Alkali Plants	X
JJJJ	Brick and Structural Clay Products Manufacturing	X
KKKK	Clay Ceramics Manufacturing	X
LLLL	Asphalt Roofing and Processing	X
MMMM	Flexible Polyurethane Foam Fabrication Operation	X
NNNN	Hydrochloric Acid Production, Fumed Silica Production	X
PPPP	Engine Test Facilities	X
QQQQ	Friction Materials Manufacturing	X
RRRR	Taconite Iron Ore Processing	X
SSSS	Refractory Products Manufacture	X
TTTT	Primary Magnesium Refining	X

<sup>1</sup> Program delegated to Texas Commission on Environmental Quality (TCEQ).

<sup>2</sup> Authorities which may not be delegated include: § 63.6(g), Approval of Alternative Non-Opacity Emission Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting; and all authorities identified in the subparts (e.g., under "Delegation of Authority") that cannot be delegated.

<sup>3</sup> The TCEQ was previously delegated this subpart on May 17, 2005 (70 FR 13018). The subpart was vacated and remanded to EPA by the United States Court of Appeals for the District of Columbia Circuit. See, *Mossville Environmental Action Network v. EPA*, 370 F. 3d 1232 (D.C. Cir. 2004). Because of the D.C. Court's holding this subpart is not delegated to TCEQ at this time.

\* \* \* \* \*

[FR Doc. 06-4114 Filed 5-1-06; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF HOMELAND SECURITY**

**48 CFR Chapter 30**

**RIN 1601-AA16**

**Revision of Department of Homeland Security Acquisition Regulation**

**AGENCY:** Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts, with specified changes, the interim rule establishing the Department of Homeland Security Acquisition Regulation (HSAR). This regulation supplements the Federal Acquisition Regulation (FAR) and provides a uniform department-wide acquisition

regulation for the Department of Homeland Security (DHS). The HSAR provides specificity about the Department's organization, policies, procedures, and delegations of authority. The FAR and HSAR apply to all DHS entities, except the Transportation Security Administration (TSA).

**DATES:** This rule is effective on June 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Kathy Strouss, Office of the Chief Procurement Officer, Department of Homeland Security; (202) 205-0141.

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Discussion of Public Comments
- III. Additional Technical Changes
- IV. Regulatory Requirements
  - A. Executive Order 12866 Assessment
  - B. Regulatory Flexibility Act
  - C. Paperwork Reduction Act
  - D. Executive Order 13132 Federalism

**I. Background**

On December 4, 2003, the HSAR was published in the **Federal Register** (68 FR 67867) as an interim rule and request for comment. Simultaneously, DHS promulgated the Homeland Security Acquisition Manual (HSAM), which provides procedural guidance on internal acquisition matters that need not be set out in a regulation.

The numbering scheme of the HSAR and HSAM parallels that of the FAR. The purpose of the HSAR is not to duplicate the FAR text. Instead, the HSAR supplements the FAR by providing specificity regarding DHS's organization, policies, procedures, and delegations, and by implementing unique authorities provided by the Homeland Security Act, Public Law 107-296, as amended. These authorities include: (1) Increased use of FAR part 12, simplified acquisition, and micro-purchase procedures where the Department's mission would be

seriously impaired otherwise; (2) a prohibition against most contracts with corporate expatriates, also referred to as inverted domestic corporations; and (3) personal services contracting authority, including waiver of pay limitations when necessary for urgent homeland security purposes.

The HSAR (1) establishes the DHS Mentor Protégé Program to develop small business sources; (2) designates the Department of Transportation Board of Contract Appeals as the DHS Board of Contract Appeals; (3) creates uniform DHS provisions and clauses, as well as Organizational Element (OE) unique clauses; and (4) identifies OEs with procurement authority. There are no HSAR parts relating to FAR parts 7, 8, 10, 12, 14, 18, 20, 21, 25, 26, 29, 34, 38, 39, 40, 41, 43, 44, 48, 49, 50, or 51.

The final rule amends the HSAR in order to incorporate changes resulting from the comments, changes resulting from statutory requirements, and changes to carry out the intent of the interim rule. General changes made to HSAR by this rulemaking are provided in the list below. Of particular note, the rule—

- Revises (HSAR) 48 CFR 3001.104 to provide a forum for resolutions of Non-appropriated Fund Instrumentality (NAFI) contract disputes and to provide the option for appropriated fund contracting officers to follow the procurement regulations where feasible, even when the resulting contract does not use appropriated funds.

- Revises (HSAR) 48 CFR 3001.301–71 to include language similar to FAR 1.108 regarding application of regulatory changes to existing solicitations and contracts.

- Revises (HSAR) 48 CFR 3001.404 to include a requirement to consult with the Civilian Agency Acquisition Council Chairperson prior to issuing non-emergency FAR class deviations.

- Adds a definition for “sensitive information” in (HSAR) 48 CFR 3002.101 and (HSAR) 48 CFR 3052.204–71.

- Revises (HSAR) 48 CFR 3004.470 to prescribe clauses regarding security requirements for sensitive but unclassified information and contractor access to Information Technology resources.

- Adds (HSAR) 48 CFR 3006.1 and 3006.101–70 to define the terms “Agency Competition Advocate” and “Competition Advocate for the Procuring Activity.”

- Amends (HSAR) 48 CFR 3009.104–72, 3009.104–73, and 3009.104–74 to comport with statutory changes regarding the prohibition against contracting with companies treated as

inverted domestic corporations and waivers to that prohibition.

- Removes the previous prescription at (HSAR) 48 CFR 3009.507, regarding (HSAR) 48 CFR 3052.209–72, which addressed organizational conflicts of interest, and inserts two new subsections, 3009.507–1 and 3009.507–2, which provide prescriptions for a revised provision at (HSAR) 48 CFR 3052.209–72 and a new clause at (HSAR) 48 CFR 3052.209–71.

- Removes (HSAR) 48 CFR 3011.204–90, 3013.106–190, and 3013.302–590 and the corresponding clauses at (HSAR) 48 CFR 3052.211–90 and 3052.213–90, which contained obsolete references and content.

- Removes (HSAR) 48 CFR 3015.404–470, which required withholding profit and fee payments until after definitization of a letter contract.

- Adds text at (HSAR) 48 CFR 3016.505(b)(5)(ii) to identify the DHS Task and Delivery Order Ombudsman as the Senior Competition Advocate.

- Adds a new subpart at (HSAR) 48 CFR 3017.204–90 to implement Public Law 106–553, Title I, Section 119, regarding contracts for detention and incarceration facilities for Immigration and Customs Enforcement (ICE).

- Corrects the text at (HSAR) 48 CFR 3019.201 to include all the current small business categories listed in (FAR) 48 CFR 19.201(a).

- Revises (HSAR) 48 CFR 3022.101–70(a) to distinguish between non-employee and contractor union employee representatives and to ensure appropriate access to facilities.

- Adds a new section at (HSAR) 48 CFR 3035.017 regarding Federally Funded Research and Development Centers (FFRDCs).

- Removes internal procedural matters in (HSAR) 48 CFR 3037.104–70 relating to personal services contracts.

- Amends (HSAR) 48 CFR 3046.7, regarding warranties, by removing the sections applying to DHS and all OEs other than the Coast Guard, and by clarifying the use of warranties in major systems acquisitions for the USCG.

- Removes the certification requirement from (HSAR) 48 CFR 3052.223–70 relating to the licenses and permits required by Federal, state, and local laws to perform hazardous substance(s) removal or disposal services.

- Redesignates (HSAR) 48 CFR 3052.237–70, Qualifications of Contractor Employees, as (HSAR) 48 CFR 3052.204–71, Contractor Employee Access, and revises the content of the redesignated clause with regard to access to sensitive information and to information technology resources.

## II. Discussion of Public Comments

Sixty-six sources submitted comments on the interim rule. All comments were considered in developing the final rule. The public comments received, and the actions taken, are summarized below:

### *Small Entities and Small Business Administration Office of Advocacy Comments*

We received comments from forty-seven small business entities and the Small Business Administration Office of Advocacy. Thirty of these small businesses submitted general comments expressing concern that the rule would have a negative impact on small businesses, without specifying how. These comments may have originated from an analysis posted on a private sector Web site, whose authors apparently believed that the HSAR excluded small businesses from competing for prime contracts and that DHS’s small business programs included only those specifically set out in the HSAR.

Our response to these general comments is that the HSAR supplements, rather than replaces the FAR, and that DHS has implemented the FAR’s small business programs. The additional small business programs in the HSAR, especially the Mentor-Protégé program, are expected to have a positive impact on small business subcontracting opportunities without adversely affecting prime contracting opportunities. We have included additional discussion under the Regulatory Flexibility Act section of this preamble.

The eighteen remaining commenters addressed specific small business issues, which we have summarized as follows:

1. *Comment:* Several comments expressed concern that the incentives provided to a large contractor participating as a mentor may actually penalize small business subcontractors that do not desire to participate in the program as protégés. Several comments recommended that DHS revise paragraph (d) of (HSAR) 48 CFR 3052.219–71 to clarify whether DHS will permit mentors to satisfy their subcontracting plans solely by awarding contracts and development assistance to protégés, and recommended that DHS perform a regulatory flexibility analysis. The Small Business Administration’s Office of Advocacy letter of January 5, 2004, specifically questioned this same issue and recommended DHS provide the factual basis to support its decision to certify the rule under the Regulatory Flexibility Act.

*Response:* We disagree that, as a practical matter, large businesses can fulfill their entire subcontracting plan goals for a contract through Mentor-Protégé agreements, nor does DHS intend to approve any subcontracting plan that solely relies on Mentor-Protégé agreements. Because DHS intends the Mentor-Protégé Program as an extension of its Small Business Program—not its replacement—we have clarified (HSAR) 48 CFR 3052.219–71(d) regarding the limitations of the individual Mentor-Protégé agreements. DHS will use the Mentor-Protégé program in addition to the small business programs in (FAR) 48 CFR part 19: The business development program established under section 8(a) of the Small Business Act, 15 U.S.C. section 637(a) (the “8(a) program”), the HUBZone program, the service disabled veteran small business program, the traditional small business set-aside program, and the small business subcontracting program. It is expected that the protégé entities will directly benefit from the forms of mentoring provided for in this rule. Hence, the rule will not have a significant economic impact on a substantial number of small entities in the sense envisioned by the Regulatory Flexibility Act.

2. *Comment:* Several comments expressed concerns about TSA’s exemption from the FAR and the HSAR, particularly from the small business requirements.

*Response:* TSA is statutorily exempt from the FAR, HSAR, and Small Business Act, under the Aviation and Transportation Security Act of 2001, and is bound instead by the Federal Aviation Administration (FAA) Acquisition Management System (AMS). Section 3.6.1 of the AMS, “Small Business Utilization,” sets out TSA’s requirements with regard to small business acquisition programs. Nonetheless, TSA actively participates in DHS’s small business programs, including taking part in small business outreach events, setting small business goals, and providing information for the annual Forecast of Contract Opportunities.

3. *Comment:* Fourteen comments requested language granting priority for small business prime contract acquisition in the HSAR.

*Response:* The requested language would unnecessarily duplicate (FAR) 48 CFR 19.201(a) and the “Rule of Two” set out at (FAR) 48 CFR 19.505–2, which require exclusive set-asides for small businesses in certain circumstances.

4. *Comment:* Multiple comments requested that “the DHS Director, Small Business Entities, be given the authority and responsibility for the final

execution and management of subcontracting plans and program contracts. Such contracts must require the DHS contracting officer to include the Small Business Entity and the DHS Director, Small Business Entities, a place at the negotiating and evaluation table with the Large Prime Contractor.”

*Response:* We interpret the comments as requesting authority for small business offerors on DHS subcontracts and DHS’s Director of Small and Disadvantaged Business Utilization to participate in contracting officers’ discussions and negotiations with large business prime contract offerors. We believe that such a change would exceed the scope of the interim rule, and would require modification to statutory authority or the FAR.

5. *Comment:* DHS received multiple requests for a DHS-wide pilot to provide funds for small business demonstration projects, including financial incentives for individual small businesses and groups of small businesses to compete.

*Response:* DHS believes the requested demonstration projects would constitute financial assistance, and would require statutory authority.

#### *Specific Comments Relating to HSAR Parts*

6. *Comment:* DHS received several comments dealing with the structure of the regulations. One comment recommended clarification of the order of precedence to include court and administrative decisions. Another comment suggested including a cross reference between the FAR and the HSAR to minimize confusion over precedence, and an instruction to follow the FAR unless the HSAR provides specific supplemental regulations. One comment asked why the regulation is focused on U.S. Coast Guard acquisitions.

*Response:* The HSAM and HSAR, like other regulatory and administrative documents, implicitly incorporate interpretations from courts and administrative bodies. We do not believe that the HSAR needs additional cross references to the FAR; HSAR numbering corresponds to the FAR citations addressing the same subject matter, with the HSAR providing more specificity. Some HSAR numbers have no parallel FAR citations because they address issues unique to DHS. We have placed such regulations in HSAR parts that relate generally to the subject matter and numbered them with the suffix “70”, for example: 3019.70 (a DHS unique subpart), 3004.470–3 (a DHS unique section), or 3019.708–70 (a DHS unique subsection). Unique requirements applying to a particular

Organizational Element, such as the U.S. Coast Guard, are numbered similarly, except that their suffixes begin with “90”, instead of “70”, for example, 3028.106–490 (unique section) and 3037.104–91 (unique subsection). Finally, as a uniformed service, the Coast Guard is subject to unique statutory requirements. Hence, the HSAR contains several sections specific to the Coast Guard.

7. *Comment:* Two comments recommended that (HSAR) 48 CFR 3001.104(c) should be revised to explicitly provide a forum for resolution of Non-appropriated Funded Instrumentality (NAFI) contract disputes.

*Response:* We agree. The (HSAR) 48 CFR 3001.104(c) was revised to provide for appeal of NAFI contract disputes to the Department of Transportation Board of Contract Appeals.

8. *Comment:* The requirement at (HSAR) 48 CFR 3001.301–71(b) to obtain the Chief of the Contracting Office’s (COCO’s) determination to include new HSAR provisions in previously issued solicitations is “too inflexible.”

*Response:* We agree. The (HSAR) 48 CFR 3001.301–71 was revised to contain language similar to (FAR) 48 CFR 1.108 regarding effective dates and application of regulatory changes.

9. *Comment:* The final rule should include language similar to (FAR) 48 CFR 1.404(a)(2) that states, “An agency official who may authorize a class deviation, before doing so, shall consult with the chairperson of the Civilian Agency Acquisition Council (CAA Council), unless that agency official determines that urgency precludes such consultation.”

*Response:* We agree. (HSAR) 48 CFR 3001.404(a) was modified to include the requirement to consult with the CAA Council Chairperson for FAR class deviations.

10. *Comment:* One comment suggested addressing the “Special Emergency Procurement Authority,” granted by section 1443 of the Services Acquisition Reform Act of 2003, enacted as title XIV of the fiscal year 2004 National Defense Authorization Act (Pub. L. 108–136), in (HSAR) 48 CFR 3013.7004.

*Response:* We disagree. Federal Acquisition Circular (FAC) 2001–022, published on February 23, 2004, incorporated the new authorities listed in section 1443 of the Services Acquisition Reform Act (SARA) into the FAR. The authorities in section 1443 of SARA overlap the special authorities set out in section 833 of the Homeland Security Act, 6 U.S.C. 393. The

definitions of "micro-purchase threshold," at (HSAR) 48 CFR 3013.7003, and "simplified acquisition threshold," at (HSAR) 48 CFR 3013.7004, apply only to DHS procurements that take place under the streamlined authority in section 833 of the Homeland Security Act, and not those under the similar authority in section 1443 of SARA. Any internal DHS requirements associated with the FAR rule will be addressed in the HSAM.

11. *Comment:* One comment recommended that the HSAR address DHS's Procurement Instrument Identification Descriptions (PIID) (contract numbers).

*Response:* DHS's PIID scheme is addressed in section 3004.602-71 of the HSAM.

12. *Comment:* Some of the comments indicated confusion over use of different terms in different places to refer to the Departmental and OE competition advocates, specifically in (HSAR) 48 CFR 3006.501 and 3006.502, FAR 6.5, and the office of Federal Procurement Policy (OFPP) Act.

*Response:* We have amended the HSAR to include language at 3006.1 and 3006.101-70 (previously located in the HSAM, at section 3006.101-70) to make clear that the different titles refer to the same individual.

13. *Comment:* The term "Departmental Advocates for Competition" should be replaced with "DHS SCA" at (HSAR) 48 CFR 3006.502 to be consistent with the title established in (HSAR) 48 CFR 3006.501 "Competition Advocates."

*Response:* We agree. However, we have removed (HSAR) 48 CFR 3006.502 and included provisions in the HSAM because the procedures identified are internal policy matters.

14. *Comment:* DHS should provide additional details regarding bundled procurements in accordance with (FAR) 48 CFR 7.107(c), which states, "Without power of delegation, \* \* \* the Deputy Secretary or equivalent for the civilian agencies may determine that bundling is necessary and justified when \* \* \*."

*Response:* The (FAR) 48 CFR 7.107(c) specifies that the Deputy Secretary of DHS must make the necessary determinations. The specific procedures for making such determinations are internal matters that are addressed in HSAM 3007.107(e).

15. *Comment:* The HSAR does not provide Departmental procedure to ensure compliance with section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107), which applies to orders for services over \$100,000 placed by non-Department of

Defense (DoD) agencies on behalf of DoD.

*Response:* DHS believes that the General Services Administration's (GSA) special ordering procedures for the Federal Supply Schedules and Defense Federal Acquisition Regulation Supplement (DFARS) 48 CFR 208.404-70, "Additional Ordering Procedures for Services," adequately set out DHS's requirements when ordering off the schedules on behalf of DoD components.

16. *Comment:* The prohibition at (HSAR) 48 CFR 3009.104-71 implementing section 835(b) of the Homeland Security Act (HSA), 6 U.S.C. section 395(b), against contracting with a foreign incorporated entity treated as an inverted domestic corporation, does not state how it is to be applied with regard to purchases at or below the simplified acquisition threshold, or to task and delivery orders issued under contracts with other agencies.

*Response:* The HSA states, "The Secretary may not enter into any contract" with a company deemed under the statute to be an "inverted domestic corporation." The statute provides a waiver for specific contracts if the Secretary determines that such a waiver is in the interests of national security. DHS employees and officials exercising the Secretary's delegated authority to enter into contracts are bound by this requirement. OEs are advised to consult with legal counsel if questions exist regarding the application of the language of section 835.

17. *Comment:* One comment recommended revising (HSAR) 48 CFR 3009.104-71 because it fails to recognize the Homeland Security Act's explicit authority to waive the prohibition in appropriate circumstances against contracting with corporate expatriates. The comment suggested adding a new lead-in phrase stating "Except as provided in (HSAR) 48 CFR 3009.104-74."

*Response:* We modified (HSAR) 48 CFR 3009.104-71 as recommended. Also, we modified the text of (HSAR) 48 CFR 3009.104-72 to comport with changes in the 2005 Homeland Security Appropriations Act, Public Law 108-334, section 523 (General Provisions), regarding companies that are to be treated as inverted domestic corporations.

18. *Comment:* One comment recommended changing the heading of (HSAR) 48 CFR 3009.104, the text of (HSAR) 48 CFR 3009.104-75, and the section heading and the title of (HSAR) 48 CFR 3052.209-70 to refer to "Inverted Domestic Corporations," instead of "corporate expatriates."

*Response:* The current heading is consistent with section 835 of the Homeland Security Act, 6 U.S.C. 395, "Prohibition on Contracts with Corporate Expatriates."

19. *Comment:* Several comments were submitted regarding (HSAR) 48 CFR 3009.104-74 and the clause, Prohibition on Contracts with Expatriates at (HSAR) 48 CFR 3052.209-70, which implement the Secretary's authority to waive the prohibition on contracting with inverted domestic corporations. The specific recommendations included referring to the substantive provisions of the HSAR rather than to the substantive provisions of the statute; adding language that encourages the contractor to submit waiver requests at the earliest time practicable; adding language permitting an offeror to submit an offer at its risk before a waiver has been granted; and adding an alternate certification permitting a company to state that it is an inverted corporation pursuant to the criteria of the Act but has submitted a request for waiver pursuant to (HSAR) 48 CFR 3009.104-74. Also, one comment noted that Public Law 108-7, Div. L, section 101(2), 117 Stat. 528 (February 20, 2003), limited waivers to those "in the interest of homeland security," and suggested amending the regulation accordingly.

*Response:* We adopt the recommendation to cite the regulation rather than the Homeland Security Act and have also changed (HSAR) 48 CFR 3009.104-74(a) to comport with amendments to the Act. Additionally, we have amended (HSAR) 48 CFR 3052.209-70(f) to provide for offerors to submit one of three alternative representations: That the offeror is not an inverted domestic corporation, that the offeror should be treated as an inverted domestic corporation but has submitted a waiver request, and that the offeror should be treated as an inverted domestic corporation but plans to apply for a waiver. Adding such a representation will allow entities that do not meet the requirements to remain in line for award while their waiver requests are processed. We do not adopt recommendations to add language suggesting offerors submit waiver requests as early as possible or language allowing submission of an offer at the offeror's risk before a waiver is granted. In both cases, we believe that the suggested wording is common sense advice that need not be codified in formal regulations.

20. *Comment:* DHS received comments objecting to the burdens imposed by the Disclosure of Conflicts of Interest provision at (HSAR) 48 CFR 3052.209-72 and the lack of clarity at

(HSAR) 48 CFR 3009.507 regarding the conditions for the provision's use.

*Response:* We have deleted the prescription in the interim rule at (HSAR) 48 CFR 3009.507 and the clause at (HSAR) 48 CFR 3052.209–72 and replaced them with a new prescription at (HSAR) 48 CFR 3009.507–1 and provision at (HSAR) 48 CFR 3052.209–72. Additionally, DHS has inserted a new clause at (HSAR) 48 CFR 3052.209–73, Limitation on Future Contracting, which the contracting officer shall insert into solicitations and contracts according to the new prescription at (HSAR) 48 CFR 3009.507–2. We believe that the new procedures will reduce the burden on offerors.

21. *Comment:* One comment recommended adding language to HSAR subpart 3010 to implement section 509(2) of the Homeland Security Act, 6 U.S.C. 319(2), which provides: "It is the sense of Congress that in order to further the policy of the United States to avoid competing commercially with the private sector, the Secretary should rely on commercial sources to supply the goods and services needed by the Department."

*Response:* We have not added language to the HSAR for this purpose because we believe (FAR) 48 CFR parts 7, 10, and 11 adequately implement the Homeland Security Act's policy in favor of private sector performance of commercial functions.

22. *Comment:* One comment suggested including a statement at (HSAR) 48 CFR 3012.303 instructing contracting officers in commercial item acquisitions to use the format set out at (FAR) 48 CFR 12.303, instead of the uniform contract format.

*Response:* We disagree that additional regulatory language is required beyond the FAR. However, we will consider placing recommended language in the HSAM as internal guidance to DHS contracting officers.

23. *Comment:* One comment suggested adding special provisions for large dollar expedited acquisitions under emergency circumstances, to facilitate the ability for a quick national recovery.

*Response:* The special acquisition provisions found in (HSAR) 48 CFR parts 3002 (Definitions) and 3013.7000 through 3013.7005, which implement statutory authority in section 833 of the Homeland Security Act, 6 U.S.C. 393, address such acquisitions designed to facilitate quick national recovery.

24. *Comment:* One comment recommended referring to the FAR in (HSAR) 48 CFR subpart 3013.70 instead of including the specific micro-purchase

and Simplified Acquisition Procedures dollar amounts.

*Response:* We agree. We changed (HSAR) 48 CFR 3013.7005 accordingly.

25. *Comment:* Several comments expressed concern regarding (HSAR) 48 CFR 3015.207–70(b), which allows releasing proposals and information outside the government "for evaluation and similar purposes if qualified personnel are not available" within the government to analyze the submissions. The comments included urging DHS to require a non-disclosure agreement for those outside the Department, asking DHS to establish qualifications for contractors and consultants to receive such material, and seeking establishment of an additional level of review before allowing such release.

*Response:* We do not believe that the regulation needs to be changed. (HSAR) 48 CFR 3009.507, 3052.204–70, 3052.204–71, and 3052.209–72 restrict the conditions under which the government may release contractor or offeror information. Furthermore, the HSAM requires DHS personnel to ensure that contractors receiving sensitive information execute non-disclosure agreements.

26. *Comment:* The (HSAR) 48 CFR 3015.404–470 imposes an unnecessary and unfair hardship on the contractor by withholding profit or fee payments until after definitization of a letter contract.

*Response:* We agree. We removed (HSAR) 48 CFR 3015.404–470.

27. *Comment:* One comment objected to the (HSAR) 48 CFR 3015.603(a) language stating costs associated with proposal preparation are solely the responsibility of the offeror submitting the proposal. Another comment stated that such costs should be reimbursable if a contract is awarded to that contractor.

*Response:* We agree in part. We removed (HSAR) 48 CFR 3015.603(a) because it potentially contradicts the FAR.

28. *Comment:* One comment recommended establishing a uniform Departmental policy for unsolicited proposals, to avoid separate requirements applicable to each OE.

*Response:* DHS issued Management Directive (MD) 0750.1, "Responding to Unsolicited Proposals" to provide uniform procedures. DHS will consider incorporating appropriate procedures into the HSAM.

29. *Comment:* (HSAR) 48 CFR 3016.505(b)(5)(iii) provides for complaint referrals from each OE Task and Delivery Order Ombudsman to the DHS Task and Delivery Order Ombudsman. Comments suggested that the regulations identify the DHS

position title and organization of the individuals whose duties will include serving as DHS Task and Delivery Order Ombudsmen.

*Response:* We agree. We modified (HSAR) 48 CFR 3016.505(b)(5)(ii) to include the reporting requirements and to identify the DHS Task and Delivery Order Ombudsman as the Senior Competition Advocate.

30. *Comment:* One comment expressed concern that the term "definitized letter contracts" in the prescription at (HSAR) 48 CFR 3016.603–4, Contract clauses, has no meaning. The comment states that letter contracts and definitized contracts exist, but not "definitized letter contracts."

*Response:* Although the term "definitized letter contract" is not described in the FAR, we believe the term is widely used to describe the act of completing the definitization (negotiation) of the preliminary contractual instrument (i.e., letter contract.) We have used the term "definitized letter contract" in the contract clause prescription to refer to the negotiated contractual instrument with agreed-to prices, terms and conditions.

31. *Comment:* Several comments addressed energy savings performance contracts. One comment noted that the statutory authority to engage in energy savings performance contracts, 42 U.S.C. 8287, expired on October 1, 2003.

*Response:* We removed (HSAR) 48 CFR 3017.7000, which addressed internal procedural matters pertaining to energy savings contracts. DHS will amend the HSAM to address internal procedural matters pertaining to the program's administration, reauthorized through Fiscal Year 2006 by the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law No. 108–375, section 1090, 118 Stat 1811 (2004).

32. *Comment:* The clauses and provisions listed in 3017.9000(a) apply to "sealed bid fixed-price solicitations and contracts \* \* \* to be performed within the United States, its possessions, or Puerto Rico." The clauses and provisions listed in 3017.9000(b) apply to "\* \* \* negotiated solicitations and contracts to be performed outside the United States." What are the clauses applicable to sealed bid fixed-price solicitations and contracts to be performed outside the United States, its possessions, or Puerto Rico? What are the clauses applicable to negotiated solicitations and contracts to be performed inside the United States?

*Response:* There are no specific clauses and provisions required for sealed bid solicitations and contracts

outside the United States or negotiated solicitations and contracts inside the United States. The contracting officer retains discretion to include the clauses and provisions listed in 3017.9000, if appropriate, for such solicitations and contracts.

33. *Comment:* One comment suggested that the HSAR implement section 119 of Public Law 106-553. That section authorizes the Bureau of Immigration and Customs Enforcement (ICE) to enter into Federal procurement contracts for detention or incarceration space or facilities, including related services, for any reasonable duration and on any reasonable basis “notwithstanding any other provision of law, including section 4(d) of the Service Contract Act of 1965 (41 U.S.C. 353(d)).”

*Response:* We agree. Public Law 106-553, Title I, section 119, 18 U.S.C.A. 4013 note (redesignated as section 118 by Public Law 106-554, section 213), authorized the Attorney General of the United States to enter into contracts exceeding five years in duration, notwithstanding any other provision of law, including section 4(d) of the Service Contract Act of 1965, 41 U.S.C. 353(d). As a result of sections 441 and 1511(d)(2) of the Homeland Security Act, 6 U.S.C. 251 and 551(d)(2), the Department of Homeland Security may exercise that authority. Accordingly, we added a new section, (HSAR) 48 CFR 3017.204-90, to implement the statutory authority for ICE.

34. *Comment:* One comment stated that the list of small business categories in (HSAR) 48 CFR 3019.201(d), assigning responsibility to the Director, Office of Small and Disadvantaged Business Utilization for small business programs, includes only small and small disadvantaged businesses, and should also include veteran-owned small businesses, service-disabled veteran-owned small businesses, HUBZone businesses, and women-owned small business concerns.

*Response:* We agree. We corrected the text at (HSAR) 48 CFR 3019.201(d) to include the business categories listed in (FAR) 48 CFR 19.201(a).

35. *Comment:* We received numerous comments regarding subpart 3019.7 and its associated provisions and clauses. One comment stated that (HSAR) 48 CFR subpart 3019.705-1 should begin with the phrase “Except when otherwise required,” to indicate that a subcontracting plan is mandatory in some circumstances and inappropriate in others. The comment continued that evaluation factors should focus on the plan’s details, rewarding good faith efforts rather than only results. In

contrast, another comment argued that (FAR) 48 CFR 42.1502 *requires* consideration of the offeror’s past performance regarding previous subcontracting goals. Two other comments suggested changes to (HSAR) 48 CFR 3019.708-70, one to ensure the contracting officer includes an evaluation factor for Mentor-Protégé participation and one suggesting an addition to paragraph (c) requiring inclusion of (HSAR) 48 CFR 3052.219-71 and 3052.219-72 only “where involvement in subcontracting to small and disadvantaged businesses will be considered as a source selection evaluation factor.” Another comment recommended that (HSAR) 48 CFR 3052.219-71 be clarified by adding the word “additional” before the phrase “credit for purposes of determining” in paragraph (d), and address the Department’s intent to permit a protégé to have more than one mentor. Finally, a comment recommended modifying (HSAR) 48 CFR 3052.219-72, which another comment noted is a provision—not a clause—to include a representation that an offeror has submitted a Mentor-Protégé agreement that has not yet been approved.

*Response:* DHS has adopted some of the recommendations. We have rewritten: (HSAR) 48 CFR 3019.705-1 to clarify the contracting officer’s responsibility involving evaluation factors; HSAR (48 CFR 3019.708(a) and (c) to correct names of clauses and provisions; (HSAR) 48 CFR 3052.219-71(d) to include the word “additional” as suggested; and (HSAR) 48 CFR 3052.219-72 to clarify contracting officer’s discretion for approval of credits. We have not adopted the suggestion to give automatic evaluation credit if the offeror receives approval of a Mentor-Protégé agreement before the final evaluation of proposals, because such a rigid requirement could lead to unfairness to other competitors. However, we believe that the contracting officer should have the discretion to grant such credit if appropriate, and have amended (HSAR) 48 CFR 3052.219-72 accordingly. We do not adopt the comment to affirm that a protégé may have more than one mentor. While we have permitted multiple mentors on a case-by-case basis through Mentor-Protégé Agreements, we have not yet decided whether to make this policy permanent and plan to address this matter through future rulemaking. Neither have we adopted the comment to incorporate (FAR) 48 CFR 42.1502, requiring past performance evaluations regarding subcontracting plans, into (HSAR) 48

CFR 3019.705-1 because we believe (FAR) 48 CFR part 42 applies during contract administration and not pre-award. Reports generated under (FAR) 48 CFR part 42 should be considered during evaluations on the same basis as other past performance information.

36. *Comment:* One comment suggested clarifying the term “union representative” in (HSAR) 48 CFR 3022.101-70 to distinguish between outside union representatives and contractor employee union representatives to ensure access for union representatives who are contractor employees. The same comment also expressed concerns about unlawful surveillance of union activities and urged adoption of a governmental appeal process for contractor employees who lose their jobs.

*Response:* We have amended (HSAR) 3022.101-70(a) to distinguish between non-employee and contractor union employee representatives, and to ensure appropriate access. With regard to concerns about unlawful investigation or surveillance of union activity, DHS does not believe that it has directly or indirectly proposed investigation or surveillance. We do not adopt the suggestion to provide an appeal process for aggrieved contractor employees in the acquisition regulations, because DHS believes the question of appeal rights is best addressed through other means.

37. *Comment:* One comment questioned the need for (HSAR) 48 CFR 3023.501(d) to delegate authority to the head of law enforcement Organizational Elements to determine that the Drug-Free Workplace requirements do not apply in particular circumstances.

*Response:* We disagree, but have reworded the (HSAR) 48 CFR 3023.501(d) for clarity.

38. *Comment:* Two comments sought incorporation of (FAR) 48 CFR part 25 and (DFARS) 48 CFR part 225 into the HSAR to assure compliance with procurement treaties. Another comment sought the adoption of provisions similar to (DFARS) 48 CFR 225.870 to allow DHS to contract with the Canadian Commercial Corporation, using individual Canadian companies to perform the actual contract work as subcontractors.

*Response:* We do not adopt these comments at this time. DHS plans to abide by applicable procurement treaties, and believes that the FAR provides sufficient protection for foreign companies seeking to do business with DHS. While DHS is not averse to amending the HSAR to address the role of the Canadian Commercial Corporation explicitly, the Department

believes that such a change is not appropriate in a final rule.

39. *Comment:* One comment expressed concern that universities will be able to participate only in research contracts, and not in service contracts because of the contractor qualification requirements limiting access to information technology systems and other sensitive information. The same comment suggested deleting or modifying (HSAR) 48 CFR 3052.242–70(c) to permit press releases by universities without pre-clearance by DHS.

*Response:* The requirements of (HSAR) 48 CFR part 3037 (moved to subpart 3004.4), regarding contractor employee access and security matters involving sensitive but unclassified information, will not ordinarily apply to universities. We have included language to that effect in HSAR 48 CFR 3004.470–3(b). Because we agree that press releases from universities should not require pre-clearance, we have deleted (HSAR) 48 CFR 3052.242–70(c). Additionally, we have moved the prescription at (HSAR) 48 CFR 3042.202–70(a) to a new HSAR subpart 3035.70 and moved the clause to (HSAR) 48 CFR 3052.235–70.

40. *Comment:* One comment stated that (FAR) 48 CFR 31.205–32 adequately addresses the allowability of precontract costs and that (HSAR) 48 CFR 3031.205–32(a) is unnecessary.

*Response:* We disagree. DHS believes that the additional information contained in the HSAR will provide further clarification regarding precontract costs.

41. *Comment:* One comment recommended that the HSAR include guidance regarding the “other transaction” authority in section 831 of the Homeland Security Act, 6 U.S.C. 391. The comment also recommended adding language to (HSAR) 48 CFR 3035 to address the use of Federally Funded Research and Development Centers (FFRDCs) and national laboratories.

*Response:* Section 831 of the Homeland Security Act, 6 U.S.C. 391, provides the Secretary of Homeland Security temporary authority (until September 2007) to enter into “Other Transactions.” “Other Transactions” is the term commonly used to refer to the 10 U.S.C. 2371 authority to enter into transactions other than contracts, grants or cooperative agreements. Since the policies and procedures applicable to these instruments are outside the Federal Acquisition Regulation, a separate Management Directive and Guide was issued by the Office of the Chief Procurement Officer. With regard to the second part of the comment, new

language regarding FFRDCs has been added to (HSAR) 48 CFR 3035.017.

42. *Comment:* One comment asked why the National Institutes of Health (NIH) Contractor Performance System (CPS) is used in the HSAR instead of the Past Performance Information Retrieval System (PPIRS).

*Response:* The NIH CPS is one tool in existence to collect contractor performance information. The DoD PPIRS is not a performance information collection tool, but a Web site that displays final collected performance reports. The two systems work together.

43. *Comment:* One comment asked why the HSAR did not contain more guidance on the use of Performance Based Contracting.

*Response:* There is adequate published guidance on the use of Performance-Based Contracting in the FAR, as well as industry associations and Federal Web sites. The HSAR sets out regulations unique to DHS.

44. *Comment:* One comment noted that the Office of Management and Budget’s clearances for HSIF Form 3237, Contractor Personnel Access Application and HSIF Form 4024, Sensitive Information Non-Disclosure Agreement, were not included in (HSAR) 48 CFR 3037.103–71.

*Response:* These two forms have been removed from the DHS centrally managed forms program. We have removed (HSAR) 48 CFR 3037.103–70 and 3037.103–71 from the final rule.

45. *Comment:* One comment asked why (HSAR) 48 CFR 3037.104–90, granting authority to enter into medical personal service contracts, applies only to the U.S. Coast Guard. Another comment noted that 10 U.S.C. 1091(a)(2) now contains permanent authority to enter into personal services contracts for the performance of health care responsibilities at locations other than military medical treatment facilities.

*Response:* 10 U.S.C. 1091 specifically authorizes the Department of Defense and the U. S. Coast Guard to award medical personal services contracts. This authority does not apply to DHS civilian entities. We removed the expiration date from (HSAR) 48 CFR 3037.104–90(a).

46. *Comment:* One comment recommended that (HSAR) 48 CFR Part 3038 include the Department’s specialized authority in Section 803 of the 2004 National Defense Authorization Act (Pub. L. 108–136) to permit cooperative purchasing by state and local governments.

*Response:* Consistent with section 803 of Public Law 108–136, DHS is presently working with the Administrator of the Office of Federal

Procurement Policy to develop the scope and process for cooperative purchasing by states and units of local government.

47. *Comment:* One comment recommended amending subpart 3039 to implement section 509 of the Homeland Security Act, 6 U.S.C. 319, “the sense of Congress” to use off-the-shelf technologies “to collect, manage, share, analyze and disseminate information securely over multiple channels of communication.”

*Response:* We disagree. Existing FAR and HSAR language regarding the procurement of commercial items adequately implements the statute.

48. *Comment:* DHS received several comments concerning warranty requirements. One comment recommended that (HSAR) 48 CFR 3046.705(a)(3) be amended to exclude warranty liability resulting from terrorism. Another recommended rephrasing (HSAR) 48 CFR 3046.703(a)(1) to make clear when warranties are required for major systems acquisitions. A third stated that (HSAR) 48 CFR 3046.706(a) is more procedural than regulatory, and should be included in the HSAM. Finally, one comment recommended changing the (HSAR) 48 CFR 3046.702–70 to be consistent with the statutory (FASA) and regulatory (FAR) definition of a commercial item.

*Response:* We have amended the warranty requirements and renumbered subpart 3046 to make clear that the content applies only to the Coast Guard, in accordance with Public Law 99–190, Title I, Department of Transportation Appropriations, “Acquisition, Construction, and Improvements” (December 19, 1985) (mandating warranty procedures for the Coast Guard and setting out a combat exemption). We did not extend the exclusion from warranty liability to damage by terrorism because such an exclusion would exceed the statutory authority. We have also reworded the exclusion to apply to “combat damage” (as opposed to “in time of war or national emergency”) to comport with statutory language. Finally, DHS has removed (HSAR) 48 CFR 3046.702–70 and the internal instructions to contracting officers found in the interim rule at (HSAR) 48 CFR 3046.706. We will insert the latter into HSAM Chapter 3046.

49. *Comment:* One comment recommended that the HSAR implement the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act), found in sections 861–865 of the Homeland Security Act, 6 U.S.C. 441–444, and



address its extraordinary relief provisions in (HSAR) 48 CFR 3050.

*Response:* DHS believes a change is necessary to (FAR) 48 CFR part 50 with regard to extraordinary relief and provided our business case recommendation to the FAR Secretariat. Concurrent rulemaking is taking place in DHS to implement the SAFETY Act in general. After completion of that rulemaking process, we will consider adding any necessary provisions to the HSAR.

50. *Comment:* One comment expressed concern that while the introductory paragraph of (HSAR) 48 CFR 3052.209–70 identifies it as a clause, subparagraphs (f) and (g) make clear that it is a solicitation provision.

*Response:* We disagree. (HSAR) 48 CFR 3052.209–70 applies to both solicitations and contracts and is therefore a clause.

51. *Comment:* (HSAR) 48 CFR 3052.211–90 contains references to Military Standards (Mil-Std), 1189, “Bar Coding Symbolology,” and 129H, “Marking for Shipment and Storage”. One comment stated that Mil-Std 1189 is an inactive standard and Mil-Std 129H has been replaced by Mil-Std 129P.

*Response:* We agree. We removed (HSAR) 48 CFR 3011.204–90, 3013.106–190, 3013.302–590, and the corresponding clauses at (HSAR) 48 CFR 3052.211–90 and 3052.213–90, all of which contain obsolete references.

52. *Comment:* One comment stated that the (HSAR) 48 CFR 3052.215–70 is too restrictive and firms should be able to replace key personnel without pre-approval.

*Response:* We disagree. The approval process is standard practice in federal contracting.

53. *Comment:* One comment recommended that “will be rejected” is too restrictive and should be changed to “may be rejected” in the first paragraph of (HSAR) 48 CFR 3052.216–70.

*Response:* We agree. We have changed the clause as suggested.

54. *Comment:* One comment recommended that (HSAR) 48 CFR 3052.216–73 permit provisional payment of award fees, similar to regulations recently implemented by the DoD in the DFARS.

*Response:* We decline to adopt the DoD policy concerning provisional payment of award fees. DHS believes that its own award fee system provides for flexibility and timely payment without adding the complexity of a provisional payment system.

55. *Comment:* One comment questioned why the vessel repair guarantee periods in paragraphs (a) and

(e) of the (HSAR) 48 CFR 3052.217–100 are inconsistent.

*Response:* For consistency we changed the number of days in paragraph (e) of (HSAR) 48 CFR 3052.217–100 from 90 days to 60 days.

56. *Comment:* One comment stated that (HSAR) 48 CFR 3052.222–90, Local Hire, could be interpreted to mean that all hires must be from the local area.

*Response:* The comment correctly interprets the HSAR text and clause, which properly identify the restrictions placed on the U.S. Coast Guard under 14 U.S.C. 666. However, DHS has amended the language to parallel the statute.

57. *Comment:* One comment recommended revising (HSAR) 48 CFR 3052.223–70 to read: “The Contractor must have all licenses and permits required by Federal, state, and local laws to perform hazardous substance(s) removal or disposal services. If the Contractor does not currently possess the necessary licenses and permits, it must obtain them within \_\_\_ days after date of award. The Contractor shall provide evidence of compliance to the Contracting Officer or designated Government representative prior to commencement of work under the contract.”

*Response:* We agree, and have amended (HSAR) 48 CFR 3052.223–70 to include the revised text, although we have revised the comment’s suggested wording to provide additional clarity.

58. *Comment:* Several comments noted the stringency of the “contractor qualification” requirements. Some of the comments expressed concern that the interim regulation required citizenship or legal permanent resident alien status for all contractor employees.

*Response:* DHS did not intend the requirements to apply to all individuals employed by the contractor’s organization, but only to those employed on DHS contracts. We have modified the restrictions to apply only to contracts involving access to information technology, sensitive information, or government facilities, and have clarified the requirements.

59. *Comment:* Several comments objected to the sweeping definition of “sensitive information” in (HSAR) 48 CFR 3052.237–70(a).

*Response:* DHS has narrowed the definition of “sensitive information” and moved it to (HSAR) Part 3002.101, the “Definition” section of the regulation. The amended text clarifies that the government must mark sensitive information that it furnishes to the contractor. The government may designate as “sensitive” information

generated by the contractor during performance.

60. *Comment:* One comment recommended additional specificity in (HSAR) 48 CFR 3052.237–70(c) regarding the forms contractor employees must complete.

*Response:* The HSAM will be amended to include the relevant information.

61. *Comment:* One comment raised concerns that (HSAR) 48 CFR 3052.237–72, Contractor Screening for Unclassified Information Technology Access, provides the Department with virtually unlimited rights to inspect contractor facilities and question contractor personnel.

*Response:* We have removed the clause and plan to include administrative guidance in the HSAM.

62. *Comment:* Numerous comments provided edits for various parts of the HSAR.

*Response:* We have considered the comments relating to technical edits and corrections. We have addressed changes in the amended sections of the final rule.

### III. Additional Technical Changes

We have made additional technical changes to the interim rule, examples of which follow. These revisions are not intended to change the substance of the rule. Typographical corrections include (HSAR) 48 CFR 3001.104(c), which was revised to correct “institutions” to “Instrumentality” and (HSAR) 48 CFR 3002.101, the definition section, where “Head of Contracting Activity” was corrected to read “Head of the Contracting Activity.” Typographical error corrections are identified in the amended text section of this rule. Each DHS form was modified to include the expiration date of September 27, 2007, in consonance with the expiration date of OMB Control Number 1600–0002 for the collection of information under (HSAR) 48 CFR chapter 30. (HSAR) 48 CFR parts 3002, 3005, 3009, 3013, 3035, 3037, and 3052, reflect the codified cites to the Homeland Security Act, which were not available when the interim rule was published, were added.

### IV. Regulatory Requirements

#### A. Executive Order 12866 Assessment

This rule is not considered by DHS to be a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, the Office of Management and Budget has waived its review process under section 6(a)(3)(A). As identified in the interim rule, the HSAR is the supplemental regulation to the



FAR, similar to all other Federal agencies' FAR supplements. Since the FAR is the controlling document for the conduct of most federal acquisitions, the HSAR provides necessary supplemental information regarding DHS acquisition procedures.

### B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) mandates that an agency conduct an RFA analysis when an agency is "required by section 553 \* \* \*, or any other law, to publish general notice of proposed rulemaking for any proposed rule." RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). DHS has determined that good cause exists under 5 U.S.C. 553(b)(B) to exempt this rule from the notice and comments requirements of 5 U.S.C. 553(b). Therefore no RFA analysis under 5 U.S.C. 603 is required for this rule. However, DHS did consider the impact of this rule on small entities and does not believe it will have an adverse impact. There were comments from small entities on the December 4, 2003, interim rule and those comments were previously addressed in the "Discussion of Public Comments" section of the preamble.

### C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) applies because the final rule contains information collection requirements which require OMB approval under 44 U.S.C. 3501, et seq. OMB has granted approval for a 3-year period under OMB Control Numbers 1600-0003 through 1600-0005.

### D. Executive Order 13132—Federalism

DHS has determined that this final rule does not contain federalism implications and would not preempt State laws. Accordingly, DHS certifies that it will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. Accordingly, this rule is not subject to the requirements of Executive Order 13132.

**List of Subjects in 48 CFR Parts 3001, 3002, 3003, 3004, 3005, 3006, 3009, 3011, 3013, 3015, 3016, 3017, 3019, 3022, 3023, 3028, 3030, 3031, 3033, 3035, 3037, 3042, 3046, 3052 and 3053**

Government procurement.

Dated: April 25, 2006.

**Elaine C. Duke,**  
*Chief Procurement Officer.*

■ Accordingly, the interim rule amending the 48 CFR chapter 30 which was published at 68 FR 67870 on December 4, 2003, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 3001, 3002, 3003, 3004, 3005, 3006, 3009, 3011, 3013, 3015, 3016, 3017, 3019, 3022, 3023, 3028, 3030, 3031, 3033, 3035, 3037, 3042, 3046, 3052, and 3053 continues to read as follows:

**Authority:** 41 U.S.C. 418b(a) and (b).

### PART 3001—FEDERAL ACQUISITION REGULATION SYSTEM

■ 2. Amend section 3001.104 by revising paragraph (c) and by adding paragraph (d) to read as follows:

#### 3001.104 Applicability.

\* \* \* \* \*

(c) Contracts involving Non-Appropriated Fund Instrumentalities (NAFIs) must contain suitable dispute provisions and may provide for appellate dispute jurisdiction in the Department of Transportation's Board of Contract Appeals (DOTBCA). However, the contract must not attempt to confer court jurisdiction that does not otherwise exist.

(d) The FAR and HSAR may be followed, where feasible, for:

- (1) No-cost contracts;
- (2) Concession contracts; and
- (3) Contracts on behalf of NAFIs

entered into by appropriated fund contracting officers.

■ 3. Amend section 3001.105-2 by revising the second sentence of paragraph (a) to read as follows:

#### 3001.105-2 Arrangement of regulations.

(a) \* \* \* Guidance that is unique to an Organizational Element contains the organization's acronym or abbreviation directly following the title. \* \* \*

\* \* \* \* \*

#### 3001.301 [Amended]

4. Amend section 3001.301(a)(1) by removing "OE" and by replacing it with "Organizational Element (OE)."

#### 3001.301-70 [Amended]

■ 5. Amend section 3001.301-70(a) by removing "Request" in the first sentence and replacing it with "Requests."

■ 6. Revise section 3001.301-71 to read as follows:

#### 3001.301-71 Effective date.

Unless otherwise stated:

(a) HSAR changes apply to solicitations issued on or after the effective date of the change;

(b) Contracting officers may, at their discretion, amend solicitations issued before the effective date to include HSAR changes, provided award of the resulting contract(s) will occur on or after the effective date of the change; and

(c) Contracting officers, at their discretion, may use the changes clause or other suitable authority to modify existing contract to include HSAR changes.

■ 7. Revise section 3001.404(a) to read as follows:

#### 3001.404 Class deviations.

(a) Unless precluded by law, executive order, or other regulation, the CPO is authorized to approve FAR class deviations, except (FAR) 48 CFR 30.201-3, and 30.201-4 (the requirements of the Cost Accounting Standards Board); 48 CFR Chapter 99 (FAR Appendix); and part 50. Prior to authorizing a FAR class deviation, the CPO shall consult with the chairperson of the Civilian Agency Acquisition Council (CAA Council), unless the CPO determines that urgency precludes such consultation. FAR class deviation requests shall be submitted to the CPO per (HSAR) 48 CFR subpart 3001.70 including complete documentation of the justification for the deviation, and the estimated number and type of contract actions affected. The CPO will transmit a copy of each approved FAR deviation to the FAR Secretariat.

#### 3001.603-1 [Amended]

■ 8. Amend section 3001.603-1 by removing "COCO" in the first sentence and replacing it with "Chief of the Contracting Office (COCO)."

### PART 3002—DEFINITIONS OF WORDS AND TERMS

■ 9. Amend section 3002.101 by revising the definition for "Micro-purchase threshold", by revising the term "Head of Contracting Activity" to read "Head of the Contracting Activity," by revising the definition for "Simplified acquisition threshold," and by adding a definition for "sensitive information," as follows:

#### 3002.101 Definitions.

\* \* \* \* \*

*Micro-purchase threshold* is defined as in (FAR) 48 CFR 2.101, except when (HSAR) 48 CFR 3013.7003(a) applies.

\* \* \* \* \*

*Sensitive Information* as used in this Chapter, means any information, the

loss, misuse, disclosure, or unauthorized access to or modification of which could adversely affect the national or homeland security interest, or the conduct of Federal programs, or the privacy to which individuals are entitled under 5 U.S.C. 552a (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:

(1) Protected Critical Infrastructure Information (PCII) as set out in the Critical Infrastructure Information Act of 2002 (Title II, Subtitle B, of the Homeland Security Act, Pub. L. 107-296, 196 Stat. 2135), as amended, the implementing regulations thereto (6 CFR part 29) as amended, the applicable PCII Procedures Manual, as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the PCII Program Manager or his/her designee);

(2) Sensitive Security Information (SSI), as defined in 49 CFR part 1520, as amended, "Policies and Procedures of Safeguarding and Control of SSI," as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the Assistant Secretary for the Transportation Security Administration or his/her designee);

(3) Information designated as "For Official Use Only," which is unclassified information of a sensitive nature and the unauthorized disclosure of which could adversely impact a person's privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national or homeland security interest; and

(4) Any information that is designated "sensitive" or subject to other controls, safeguards or protections in accordance with subsequently adopted homeland security information handling procedures.

*Simplified acquisition threshold* is defined as in (FAR) 48 CFR 2.101, except when (HSAR) 48 CFR 3013.7004 applies.

### **PART 3003—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

#### **3003.101-3 [Amended]**

■ 10. Amend section 3003.101-3 by removing the "(a)" designation, by removing "parts 2635 and 3101" and adding in its place "part 2635", and

replacing "MD 0480, Ethics/Standards of Conduct" with "MD 0480.1, Ethics/Standards of Conduct, or any replacement Management Directive."

#### **3003.203 [Amended]**

■ 11. Amend section 3003.203(a) introductory text by amending the first sentence to remove the phrase "of the Gratuities clause."

#### **3003.204 [Amended]**

■ 12. Revise section 3003.204(c) to read as follows:

#### **3003.204 Treatment of violations.**

\* \* \* \* \*

(c) If the HCA determines that the alleged gratuities violation occurred during the "conduct of an agency procurement" the COCO shall consult with Government legal counsel regarding appropriate action.

### **PART 3004—ADMINISTRATIVE MATTERS**

■ 13. Revise subpart 3004.4 to read as follows:

#### **Subpart 3004.4—Safeguarding Classified and Sensitive Information Within Industry**

Sec.

3004.470 Security requirements for access to unclassified facilities, Information Technology resources, and sensitive information.

3004.470-1 Scope.

3004.470-2 Policy.

3004.470-3 Contract clauses.

#### **Subpart 3004.4—Safeguarding Classified and Sensitive Information Within Industry**

**3004.470 Security requirements for access to unclassified facilities, Information Technology resources, and sensitive information.**

##### **3004.470-1 Scope.**

This section implements DHS's policies for assuring the security of unclassified facilities, Information Technology (IT) resources, and sensitive information during the acquisition process and contract performance.

##### **3004.470-2 Policy.**

(a) DHS's policies and procedures on contractor personnel security requirements are set forth in various management directives (MDs). MD 11042.1, Safeguarding Sensitive But Unclassified (For Official Use only) Information describes how contractors must handle sensitive but unclassified information. MD 4300.1, entitled Information Technology Systems Security, and the DHS Sensitive

Systems Handbook, prescribe the policies and procedures on security for Information Technology resources. Compliance with these policies and procedures, any replacement publications, or any other current or future DHS policies and procedures covering contractors specifically is required in all contracts that require access to facilities, IT resources or sensitive information.

(b) The contractor must not use or redistribute any DHS information processed, stored, or transmitted by the contractor except as specified in the contract.

#### **3004.470-3 Contract clauses.**

(a) Contracting officers shall insert a clause substantially the same as the clause at (HSAR) 48 CFR 3052.204-70, Security Requirements for Unclassified Information Technology Resources, in solicitations and contracts that require submission of an IT Security Plan.

(b) Contracting officers shall insert the basic clause at (HSAR) 48 CFR 3052.204-71, Contractor Employee Access, in solicitations and contracts when contractor employees require recurring access to Government facilities or access to sensitive information. Contracting Officers shall insert the basic clause with its Alternate I for acquisitions requiring contractor access to IT resources. For acquisitions in which the contractor will not have access to IT resources, but the Department has determined contractor employee access to sensitive information or Government facilities must be limited to U.S. citizens and lawful permanent residents, the contracting officer shall insert the clause with its Alternate II. Neither the basic clause nor its alternates shall be used unless contractor employees will require recurring access to Government facilities or access to sensitive information. Neither the basic clause nor its alternates should ordinarily be used in contracts with educational institutions.

### **PART 3005—PUBLICIZING CONTRACT ACTIONS**

#### **3005.9000 [Amended]**

■ 14. Revise section 3005.9000 to read as follows:

#### **3005.90 Applicability (USCG).**

Contracts awarded by the U.S. Coast Guard using the procedures in (HSAR) 48 CFR 3037.104-91 are expressly authorized for the Coast Guard under 10 U.S.C. 1091, as amended by section 1512(d) of the Homeland Security Act,

6 U.S.C. 552(d), and are exempt from (FAR) 48 CFR part 5.

### PART 3006—COMPETITION REQUIREMENTS

- 15. Add Subpart 3006.1 to read as follows:

#### Subpart 3006.1—Full and Open Competition

Sec.  
3006.101 Policy.  
3006.101–70 Definitions.

As used in this part:

*Agency competition advocate* means an individual designated by the Chief Procurement Officer (CPO) to perform, at a minimum, the functions under (FAR) 48 CFR 6.502(b) and is synonymous with “Departmental Competition Advocate” and “Senior Competition Advocate (SCA).”

*Competition advocate for the procuring activity* means the individual who has been designated by the Organization Element (OE) to approve Justifications and Approvals (J & A) for other than full and open competition as permitted by the (FAR) 48 CFR 6.304 and to perform the duties and responsibilities assigned under (FAR) 48 CFR 6.502. This term is synonymous with “procuring activity competition advocate.”

#### 3006.502 [Removed]

- 16. Remove section 3006.502.

### PART 3009—CONTRACTOR QUALIFICATIONS

- 17. Revise section 3009.104–71 by revising the text as follows:

#### 3009.104–71 General.

Except as provided in (HSAR) 48 CFR 3009.104–74, DHS may not enter into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation under subsection (b) of section 835 of the Homeland Security Act, 6 U.S.C. 395(b), or any subsidiary of such an entity.

#### 3009.104–72 [Amended]

- 18. Amend section 3009.104–72 by revising the definition of “Foreign Incorporated Entity” and revising paragraph (1) of the definition for “Inverted Domestic Corporation” to read as follows:

#### 3009.104–72 Definitions.

\* \* \* \* \*

*Foreign Incorporated Entity* means any entity which is, or but for section 835(b) of the Homeland Security Act, 6 U.S.C. 395(b), would be, treated as a

foreign corporation for purposes of the Internal Revenue Code of 1986.

*Inverted Domestic Corporation* \* \* \*

(1) The entity completes the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;

\* \* \* \* \*

- 19. Amend section 3009.104–73 by revising paragraphs (a)(2) and (b) to read as follows:

#### 3009.104–73 Special rules.

(a) \* \* \*

(2) Stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1) of section 835 of the Homeland Security Act, 6 U.S.C. 395(b)(1).

(b) *Plan deemed in certain cases.* If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of section 835(b)(2) of the Act are met, such actions shall be treated as pursuant to a plan.

\* \* \* \* \*

#### 3009.104–74 [Amended]

- 20. Revise section 3009.104–74 to read as follows:

#### 3009.104–74 Waivers.

(a) The Secretary shall waive the provisions of (HSAR) 48 CFR 3009.104–71 with respect to any specific contract if the Secretary determines that the waiver is required in the interest of national security.

(b) Contractors shall submit waiver requests to the CPO. A copy of the waiver request or the approved waiver shall be attached with the bid or proposal.

#### 3009.470–4 [Amended]

- 21. Amend section 3009.470–4 by removing “(HSAR) 48 CFR 3052.3009–71” and adding in its place “(HSAR) 48 CFR 3052.209–71.”

- 22. Amend section 3009.507 by revising the heading to read as follows:

#### 3009.507 Solicitation provision and contract clause.

#### 3009.507–1 [Amended]

- 23. Add section 3009.507–1 to read as follows:

#### 3009.507–1 Solicitation provision.

The contracting officer shall insert a provision substantially the same as

(HSAR) 3052.209–72, Organizational Conflict of Interest, in solicitations and contracts where a potential organizational conflict of interest exists and mitigation may be possible. The contracting officer shall ensure the conditions enumerated in (FAR) 48 CFR subpart 9.5 warrant inclusion. The contracting officer shall include the information required by (FAR) 48 CFR 9.507–1 and (HSAR) 3052.209–72(a).

#### 3009.507–2 [Added]

- 24. Add section 3009.507–2, to read as follows:

#### 3009.507–2 Contract clause.

The contracting officer shall insert a clause substantially the same as the clause at (HSAR) 48 CFR 3052.209–73, Limitation of Future Contracting, in solicitations and contracts when a potential organizational conflict of interest exists and mitigation is not feasible.

### PART 3011—DESCRIBING AGENCY NEEDS

#### 3011.204–90 [Removed]

- 25. Remove section 3011.204–90.

### PART 3013—SIMPLIFIED ACQUISITION PROCEDURES

#### Subpart 3013.1—[Removed]

- 26. Remove subpart 3013.1.

#### Subpart 3013.3—[Removed]

- 27. Remove subpart 3013.3.
- 28. Revise section 3013.7000(a) to read as follows:

#### 3013.7000 General.

(a) The Secretary may use the special streamlined acquisition authorities set forth in the Homeland Security Act, section 833, 6 U.S.C. 393, with respect to any procurement that takes place during the period ending September 30, 2007, if the Secretary determines in writing that the mission of the Department (as described in the Homeland Security Act, section 101, 6 U.S.C. 111) would be seriously impaired without the use of such authorities.

\* \* \* \* \*

- 29. Revise section 3013.7005 to read as follows:

#### 3013.7005 Test program for certain commercial items.

When the streamlined authority is exercised, the limitation provided in (FAR) 48 CFR subpart 13.5 is increased to \$7,500,000.

**PART 3015—CONTRACTING BY NEGOTIATION****Subpart 3015.4—[Removed]**

- 30. Remove subpart 3015.4.
- 31. Revise section 3015.602 to read as follows:

**3015.602 Policy.**

The Department of Homeland Security (DHS) encourages new and innovative proposals and ideas that will sustain or enhance the DHS mission.

**3015.603 [Removed and reserved]**

- 32. Remove and reserve section 3015.603.

**PART 3016—TYPES OF CONTRACTS****3016.406 [Amended]**

- 33. Amend section 3016.406 by removing the word “includes” and adding in its place “include” in paragraphs (e)(1)(i), (ii) and (iii).

**3016.505 [Amended]**

- 34. Amend section 3016.505 by revising paragraph (b)(5)(ii) to read as follows:

**3016.505 Ordering.**

(b)(5) \* \* \*

(ii) Issues that cannot be resolved within the OE shall be forwarded to the DHS Task and Delivery Order Ombudsman, who is also the DHS Senior Competition Advocate, for review and resolution.

**PART 3017—SPECIAL CONTRACTING METHODS**

- 35. Add new sections 3017.204 and 3017.204–90 to read as follows:

**3017.204 Contracts.****3017.204–90 Detention Facilities and Services (ICE).**

The ICE Head of the Contracting Activity (HCA), without delegation, may enter into contracts of up to fifteen years' duration for detention or incarceration space or facilities, including related services.

**Subpart 3017.70—[Removed]**

- 36. Remove Subpart 3017.70.

**PART 3019—SMALL BUSINESS PROGRAMS****3019.201 [Amended]**

- 37. Revise section 3019.201 to read as follows:

**3019.201 General policy.**

(d) DHS is committed to a unified team approach involving senior

management, small business specialists, acquisition personnel and program staff to support both critical homeland security missions and meet public policy objectives concerning small business participation in departmental procurements. The Director, Office of Small and Disadvantaged Business Utilization, is responsible for the implementation and execution of programs to assist small businesses, veteran owned small businesses, service-disabled veteran owned small businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small business concerns as required by the Small Business Act.

- 38. Revise section 3019.705–1 to read as follows:

**3019.705–1 General support for the program.**

In any solicitation where subcontracting plans will be required for one or more offerors, contracting officers may include evaluation factors that consider the quality of proposed subcontracting plans and past performance under previous subcontracting plans. Contracting officers must ensure that these factors do not penalize companies not required to submit subcontracting plans.

**3019.708–70 [Amended]**

- 39. Amend section 3019.708–70 by revising the heading and paragraphs (a) and (c) to read as follows:

**3019.708–70 Solicitation provision and contract clauses.**

(a) The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.219–70, Small Business Subcontracting Plan Reporting, in solicitations and contracts containing the clause at (FAR) 48 CFR 52.219–9.

\* \* \* \* \*

(c) The contracting officer shall insert the provision at (HSAR) 48 CFR 3052.219–72, Evaluation of Prime Contractor Participation in the DHS Mentor-Protégé Program, in all solicitations containing (HSAR) 48 CFR 3052.219–71, DHS Mentor-Protégé Program and (FAR) 48 CFR 52.219–9, Small Business Subcontracting Plan.

**PART 3022—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS****3022.101–70 [Amended]**

- 40. Revise section 3022.101–70 to read as follows:

**3022.101–70 Admittance of union representatives to DHS installations.**

(a) Admittance of union representatives to Transportation

Security Administration or United States Secret Service installations and work sites is not governed by this rule, but by laws, rules, regulations, Executive Orders and policies applicable to those Organizational Elements. It is the policy of DHS to admit non-employee labor union representatives of contractor employees to DHS installations to visit work sites and transact labor union business with contractors, their employees, and union stewards pursuant to existing union collective bargaining agreements. Their presence must not interfere with the contractor's work under a DHS contract nor violate safety or security regulations that may be applicable to persons visiting the installation. However, if there have been incidents of vandalism, illegal work stoppages, or interference with work, the non-employee labor union representatives may be subject to access limitations. Non-employee labor union representatives will not be permitted to conduct meetings, collect union dues, or make speeches concerning union matters while visiting a work site during working hours.

(b) Whenever a non-employee labor union representative is denied entry to a work site, the person denying entry shall make a written report to the DHS labor coordinator and OE labor advisor, if any, within two working days after the request for entry is denied. The report shall include the reason(s) for the denial, the name of the representative denied entry, the union affiliation and number, and the name and title of the person that denied the entry.

**3022.9001 [Amended]**

- 41. In section 3022.9001, remove the phrase “(HSAR) 3052.222–90, Local Hire Provision” and add in its place “(HSAR) 48 CFR 3052.222–90, Local Hire (USCG).”

**PART 3023—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

- 42. Revise the heading of part 3023 to read as set forth above.

- 43. Revise section 3023.501 to read as follows:

**3023.501 Applicability.**

(d) The head of any Organizational Element may issue a determination under (FAR) 48 CFR 23.501(d) to exclude the Drug-Free Workplace requirements of FAR subpart 23.5 in contracts supporting undercover law enforcement operations.

**PART 3028—BONDS AND INSURANCE**

■ 44. Revise 3028.106–6(c) to read as follows:

**3028.106–6 Furnishing information.**

\* \* \* \* \*

(c) When furnishing a copy of a payment bond and contract in accordance with (FAR) 48 CFR 28.106–6(c), the requirement for a copy of the contract may be satisfied by furnishing a machine-duplicate copy of the contract's cover page, showing the contract number and date, the contractor's name and signature, the contracting officer's signature, and the description of the contract work. The contracting officer furnishing the copies shall place the statement "Certified to be a true and correct copy" followed by a signature, title and name of the OE. The fee for furnishing the requested certified copies shall be determined according to the DHS Freedom of Information Act regulation, 6 CFR part 5, subpart B.

■ 45. Revise section 3028.106–490 to read as follows:

**3028.106–490 Contract clause (USCG).**

For the U.S. Coast Guard, the contracting officer shall insert the USCG clause at (HSAR) 48 CFR 3052.228–90, Notification of Miller Act Payment Bond Protection (USCG), in solicitations and contracts, and shall require its first-tier subcontractors to insert the clause in all of their subcontracts, when payment bonds are required.

**PART 3030—COST ACCOUNTING STANDARDS ADMINISTRATION**

■ 46. Revise section 3030.201–5 to read as follows:

**3030.201–5 Waiver.**

(a) The CPO is authorized to waive the applicability of the Cost Accounting Standards (CAS) under (FAR) 48 CFR 30.201–5(b). This authority may not be redelegated.

(c) Waiver requests must conform to (HSAR) 48 CFR 3001.70.

**PART 3031—CONTRACT COST PRINCIPLES AND PROCEDURES****3031.205–32 [Amended]**

■ 47. Amend section 3031.205–32(a) by removing the word "can" from the second sentence.

**PART 3033—PROTESTS, DISPUTES, AND APPEALS****3033.214 [Amended]**

■ 48. Amend section 3033.214 by revising paragraph (c) introductory text and paragraph (c)(1) to read as follows:

**3033.214 Alternative dispute resolution (ADR).**

(c) The Administrative Dispute Resolution Act (ADRA) of 1996, as amended, 5 U.S.C. 571, *et seq.*, authorizes and encourages agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes, and for other purposes. The DOTBCA ADR procedures are contained in 48 CFR chapter 63, section 6302.30, ADR Methods (Rule 30), and will be distributed to the parties, if ADR procedures are used. These procedures may be obtained from the DOTBCA upon request. ADR procedures may be used—

(1) When there is mutual consent by the parties to participate in the ADR process (with consent being obtained either before or after an issue in controversy has arisen);

\* \* \* \* \*

**PART 3035—RESEARCH AND DEVELOPMENT CONTRACTING**

■ 49. Add a new section 3035.017 to subpart 3035.000 to read as follows:

**3035.017 Federally Funded Research and Development Centers.**

(a) In accordance with section 309(b) of the Homeland Security Act, 6 U.S.C. 189(b), DHS may be a joint sponsor under a multiple agency sponsorship arrangement with the Department of Energy (DOE) of one or more DOE national laboratories or sites. DOE shall be the primary sponsor under any multiple agency sponsorship arrangement with DOE laboratories or sites. Work performed by a DOE national laboratory or site under a joint sponsorship arrangement with DHS OEs shall comply with policy on the use of Federally Funded Research and Development Centers (FFRDCs) in (FAR) 48 CFR 35.017.

■ 50. Add subpart 3035.70 to read as follows:

**Subpart 3035.70—Information Dissemination by Educational Institutions****3035.7000 Contract clause.**

The contracting officer may use the clause at (HSAR) 48 CFR 3052.235–70, Dissemination of Information—Educational Institutions, except in

contracts that require coordination of information release.

**PART 3037—SERVICE CONTRACTING****3037.103 [Removed and reserved]**

■ 51. Remove and reserve section 3037.103.

**3037.103–70 [Removed]**

■ 52. Remove section 3037.103–70.

**3037.103–71 [Removed]**

■ 53. Remove section 3037.103–71.

■ 54. Revise section 3037.104–70 to read as follows:

**3037.104–70 Personal service contracts.**

(b) Authorization to acquire the personal services of experts and consultants is included in section 832 of the Homeland Security Act, 6 U.S.C. 392. This section includes authority to use personal service contracts, including authority to contract without regard to the pay limitation of 5 U.S.C. 3109 when the services are necessary due to an urgent homeland security need.

■ 55. Revise section 3037.104–90 to read as follows:

**3037.104–90 Personal services contracts (USCG).**

The U.S. Coast Guard HCA may enter into medical personal services contracts in accordance with 10 U.S.C. 1091.

**3037.110–70 [Removed]**

■ 56. Remove section 3037.110–70.

**PART 3042—CONTRACT ADMINISTRATION AND AUDIT SERVICES****3042.202–70 [Amended]**

■ 57. Revise section 3042.202–70 to read as follows:

**3042.202–70 Contract clause.**

The contracting officer may insert the clause at (HSAR) 48 CFR 3052.242–71, Dissemination of Contract Information, in DHS contracts. For contracts with educational institutions, the contracting officer may instead use (HSAR) 48 CFR 3052.235–70, Dissemination of Information—Educational Institutions, when coordination of information release is not required.

**PART 3046—QUALITY ASSURANCE****3046.702 [Removed and reserved]**

■ 58. Remove and reserve section 3046.702.

**3046.702–70 [Removed]**

■ 59. Remove section 3046.702–70.

**3046.703, 3046.705 and 3046.706**  
**[Removed and reserved]**

- 60. Remove and reserve sections 3046.703, 3046.705, and 3046.706.
- 61. Revise section 3046.790 to read as follows:

**3046.790 Use of warranties in major systems acquisitions by the USCG (USCG).**

- 62. Redesignate section 3046.791 as section 3046.790-1 and revise the section heading to read as follows:

**3046.790-1 Scope (USCG).**

\* \* \* \* \*

- 63. Add new sections 3046.790-2, 3046.790-3, and 3046.790-4 to read as follows:

**3046.790-2 Definitions (USCG).**

As used in this part:

*At no additional cost to the Government* means without an increase in price for firm-fixed-price contracts, without an increase in target or ceiling price for fixed price incentive contracts (see (FAR) 48 CFR 46.707).

*Defect* means any condition or characteristic in any supplies or services furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

*Design and manufacturing requirement* means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the major system being produced.

*Performance requirements* means the operating capabilities, maintenance, and reliability characteristics of a system that are determined to be necessary for it to fulfill the requirement for which the system is designed.

**3046.790-3 Policy (USCG).**

(a) *Major Systems.* The use of warranties by the USCG in the procurement of major systems valued at \$10,000,000 or higher is mandatory, unless waived (see (HSAR) 48 CFR 3046.790-4).

(b) Any warranty on major system acquisitions shall not apply in the case of any system or component thereof which has been furnished by the Government to a contractor except as indicated in paragraph (c)(4) of this section.

(c) When drafting warranty provisions/clauses for major systems acquisitions, the contracting officer shall ensure that the items listed at the Homeland Security Acquisition Manual (HSAM) Chapter 3046 have been considered. The warranty shall also meet the following requirements:

- (1) For systems or components that are commercially available, such

warranty as is normally provided by the manufacturer or supplier shall be obtained in accordance with (FAR) 48 CFR 46.703(d) and 46.710(b)(2).

(2) For systems or components provided in accordance with either design and manufacturing or performance requirements as specified in the contract or any modification to that contract, a warranty of compliance with the stated requirements shall be obtained.

(3) Any warranty obtained shall specifically exclude coverage for combat damage.

(4) A contractor for a major systems acquisition shall not be required to provide the warranties specified in this section on any property furnished to that contractor by the Government except for defects in installation.

**3046.790-4 Waiver (USCG).**

(a) The Secretary of Homeland Security may waive the requirement for a warranty for USCG major system acquisitions when the waiver is in the interest of national defense or if the warranty obtained would not be cost beneficial. A waiver may be granted provided that the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science and Transportation of the Senate, and the Committee on Merchant Marine and Fisheries of the House of Representatives are notified, in writing, of the Secretary's intention to waive the warranty requirements and the reasons supporting such a determination, prior to granting the waiver.

The request for Secretarial waiver shall include, as a minimum:

(1) A brief description of the major system and its stage of production (e.g., the number of units delivered and anticipated to be delivered during the life of the program);

(2) The specific waiver requested, the duration of the waiver if it is to involve more than one contract, and the rationale for the waiver; and

(3) All documentation supporting the request for waiver, such as a cost-benefit analysis.

(b) The waiver request shall be forwarded to the Secretary, via the CPO. The USCG shall maintain a written record of each waiver granted and the Congressional notification and report made, together with supporting documentation.

**PART 3052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES****3052.204-70 [Amended]**

- 64. Revise section 3052.204-70 to read as follows:

**3052.204-70 Security requirements for unclassified information technology resources.**

As prescribed in (HSAR) 48 CFR 3004.470-3, insert a clause substantially the same as follows:

**Security Requirements for Unclassified Information Technology Resources (JUN 2006)**

(a) The Contractor shall be responsible for Information Technology (IT) security for all systems connected to a DHS network or operated by the Contractor for DHS, regardless of location. This clause applies to all or any part of the contract that includes information technology resources or services for which the Contractor must have physical or electronic access to sensitive information contained in DHS unclassified systems that directly support the agency's mission.

(b) The Contractor shall provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this contract.

(1) Within \_\_\_ ["insert number of days"] days after contract award, the contractor shall submit for approval its IT Security Plan, which shall be consistent with and further detail the approach contained in the offeror's proposal. The plan, as approved by the Contracting Officer, shall be incorporated into the contract as a compliance document.

(2) The Contractor's IT Security Plan shall comply with Federal laws that include, but are not limited to, the Computer Security Act of 1987 (40 U.S.C. 1441 et seq.); the Government Information Security Reform Act of 2000; and the Federal Information Security Management Act of 2002; and with Federal policies and procedures that include, but are not limited to, OMB Circular A-130.

(3) The security plan shall specifically include instructions regarding handling and protecting sensitive information at the Contractor's site (including any information stored, processed, or transmitted using the Contractor's computer systems), and the secure management, operation, maintenance, programming, and system administration of computer systems, networks, and telecommunications systems.

(c) Examples of tasks that require security provisions include—

(1) Acquisition, transmission or analysis of data owned by DHS with significant replacement cost should the contractor's copy be corrupted; and

(2) Access to DHS networks or computers at a level beyond that granted the general public (e.g., such as bypassing a firewall).

(d) At the expiration of the contract, the contractor shall return all sensitive DHS information and IT resources provided to the

contractor during the contract, and certify that all non-public DHS information has been purged from any contractor-owned system. Organizational elements shall conduct reviews to ensure that the security requirements in the contract are implemented and enforced.

(e) Within 6 months after contract award, the contractor shall submit written proof of IT Security accreditation to DHS for approval by the DHS Contracting Officer.

Accreditation will proceed according to the criteria of the DHS Sensitive System Policy Publication, 4300A (Version 2.1, July 26, 2004) or any replacement publication, which the Contracting Officer will provide upon request. This accreditation will include a final security plan, risk assessment, security test and evaluation, and disaster recovery plan/continuity of operations plan. This accreditation, when accepted by the Contracting Officer, shall be incorporated into the contract as a compliance document. The contractor shall comply with the approved accreditation documentation.

(End of clause)

■ 65. Add section 3052.204–71 to read as follows:

**3052.204–71 Contractor employee access.**

As prescribed in (HSAR) 48 CFR 3004.470–3(b), insert a clause substantially the same as follows with appropriate alternates:

**Contractor Employee Access (JUN 2006)**

(a) “Sensitive Information,” as used in this Chapter, means any information, the loss, misuse, disclosure, or unauthorized access to or modification of which could adversely affect the national or homeland security interest, or the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:

(1) Protected Critical Infrastructure Information (PCII) as set out in the Critical Infrastructure Information Act of 2002 (Title II, Subtitle B, of the Homeland Security Act, Pub. L. 107–296, 196 Stat. 2135), as amended, the implementing regulations thereto (Title 6, Code of Federal Regulations, part 29) as amended, the applicable PCII Procedures Manual, as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the PCII Program Manager or his/her designee);

(2) Sensitive Security Information (SSI), as defined in Title 49, Code of Federal Regulations, part 1520, as amended, “Policies and Procedures of Safeguarding and Control of SSI,” as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the Assistant Secretary for the Transportation Security Administration or his/her designee);

(3) Information designated as “For Official Use Only,” which is unclassified information of a sensitive nature and the unauthorized disclosure of which could adversely impact a person’s privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national or homeland security interest; and

(4) Any information that is designated “sensitive” or subject to other controls, safeguards or protections in accordance with subsequently adopted homeland security information handling procedures.

(b) “Information Technology Resources” include, but are not limited to, computer equipment, networking equipment, telecommunications equipment, cabling, network drives, computer drives, network software, computer software, software programs, intranet sites, and internet sites.

(c) Contractor employees working on this contract must complete such forms as may be necessary for security or other reasons, including the conduct of background investigations to determine suitability. Completed forms shall be submitted as directed by the Contracting Officer. Upon the Contracting Officer’s request, the Contractor’s employees shall be fingerprinted, or subject to other investigations as required. All contractor employees requiring recurring access to Government facilities or access to sensitive information or IT resources are required to have a favorably adjudicated background investigation prior to commencing work on this contract unless this requirement is waived under Departmental procedures.

(d) The Contracting Officer may require the contractor to prohibit individuals from working on the contract if the government deems their initial or continued employment contrary to the public interest for any reason, including, but not limited to, carelessness, insubordination, incompetence, or security concerns.

(e) Work under this contract may involve access to sensitive information. Therefore, the Contractor shall not disclose, orally or in writing, any sensitive information to any person unless authorized in writing by the Contracting Officer. For those contractor employees authorized access to sensitive information, the contractor shall ensure that these persons receive training concerning the protection and disclosure of sensitive information both during and after contract performance.

(f) The Contractor shall include the substance of this clause in all subcontracts at any tier where the subcontractor may have access to Government facilities, sensitive information, or resources.

(End of clause)

*Alternate I (JUN 2006)*

When the contract will require contractor employees to have access to Information Technology (IT) resources, add the following paragraphs:

(g) Before receiving access to IT resources under this contract the individual must receive a security briefing, which the Contracting Officer’s Technical Representative (COTR) will arrange, and complete any nondisclosure agreement furnished by DHS.

(h) The contractor shall have access only to those areas of DHS information technology resources explicitly stated in this contract or approved by the COTR in writing as necessary for performance of the work under this contract. Any attempts by contractor personnel to gain access to any information technology resources not expressly authorized by the statement of work, other terms and conditions in this contract, or as approved in writing by the COTR, is strictly prohibited. In the event of violation of this provision, DHS will take appropriate actions with regard to the contract and the individual(s) involved.

(i) Contractor access to DHS networks from a remote location is a temporary privilege for mutual convenience while the contractor performs business for the DHS OE. It is not a right, a guarantee of access, a condition of the contract, or Government Furnished Equipment (GFE).

(j) Contractor access will be terminated for unauthorized use. The contractor agrees to hold and save DHS harmless from any unauthorized use and agrees not to request additional time or money under the contract for any delays resulting from unauthorized use or access.

(k) Non-U.S. citizens shall not be authorized to access or assist in the development, operation, management or maintenance of Department IT systems under the contract, unless a waiver has been granted by the Head of the Organizational Element or designee, with the concurrence of both the Department’s Chief Security Officer (CSO) and the Chief Information Officer (CIO) or their designees. Within DHS Headquarters, the waiver may be granted only with the approval of both the CSO and the CIO or their designees. In order for a waiver to be granted:

(1) The individual must be a legal permanent resident of the U.S. or a citizen of Ireland, Israel, the Republic of the Philippines, or any nation on the Allied Nations List maintained by the Department of State;

(2) There must be a compelling reason for using this individual as opposed to a U.S. citizen; and

(3) The waiver must be in the best interest of the Government.

(l) Contractors shall identify in their proposals the names and citizenship of all non-U.S. citizens proposed to work under the contract. Any additions or deletions of non-U.S. citizens after contract award shall also be reported to the contracting officer.

(End of clause)

*Alternate II (JUN 2006)*

When the Department has determined contract employee access to sensitive information or Government facilities must be limited to U.S. citizens and lawful permanent residents, but the contract will not require access to IT resources, add the following paragraphs:

(g) Each individual employed under the contract shall be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidenced by a Permanent Resident Card (USCIS I–551). Any exceptions must be



approved by the Department's Chief Security Officer or designee.

(h) Contractors shall identify in their proposals, the names and citizenship of all non-U.S. citizens proposed to work under the contract. Any additions or deletions of non-U.S. citizens after contract award shall also be reported to the contracting officer.

(End of clause)

■ 66. Amend section 3052.209–70 as follows:

■ a. Revise the date of the clause.

■ b. Revise paragraph (a).

■ c. Amend paragraph (b) by revising the definition of "Foreign Incorporated Entity" and the introductory text and paragraph (1) of the definition of "Inverted Domestic Corporation".

■ d. Revise paragraphs (c)(1)(ii), (c)(2), (d), (f) and (g).

**3052.209–70 Prohibition on contracts with corporate expatriates.**

\* \* \* \* \*

**Prohibition on Contracts with Corporate Expatriates (JUN 2006)**

(a) Prohibitions.

Section 835 of the Homeland Security Act, 6 U.S.C. 395, prohibits the Department of Homeland Security from entering into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation as defined in this clause, or with any subsidiary of such an entity. The Secretary shall waive the prohibition with respect to any specific contract if the Secretary determines that the waiver is required in the interest of national security.

(b) Definitions.

\* \* \* \* \*

*Foreign Incorporated Entity* means any entity which is, or but for subsection (b) of section 835 of the Homeland Security Act, 6 U.S.C. 395, would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

*Inverted Domestic Corporation.* A foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) The entity completes the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) Stock of such entity which is sold in a public offering related to an acquisition described in section 835(b)(1) of the Homeland Security Act, 6 U.S.C. 395(b)(1).

(2) *Plan deemed in certain cases.* If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (b)(2) are met, such actions shall be treated as pursuant to a plan.

\* \* \* \* \*

(d) Special rule for related partnerships. For purposes of applying section 835(b) of the Homeland Security Act, 6 U.S.C. 395(b) to the acquisition of a domestic partnership, except as provided in regulations, all domestic partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as a partnership.

\* \* \* \* \*

(f) *Disclosure.* The offeror under this solicitation represents that [Check one]:

\_\_\_ it is not a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.104–70 through 3009.104–73;

\_\_\_ it is a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.104–70 through 3009.104–73, but it has submitted a request for waiver pursuant to 3009.104–74, which has not been denied; or

\_\_\_ it is a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.104–70 through 3009.104–73, but it plans to submit a request for waiver pursuant to 3009.104–74.

(g) A copy of the approved waiver, if a waiver has already been granted, or the waiver request, if a waiver has been applied for, shall be attached to the bid or proposal. (End of provision)

■ 67. Revise section 3052.209–72 to read as follows:

**3052.209–72 Organizational conflict of interest.**

As prescribed in (HSAR) 48 CFR 3009.507–1, insert the following provision:

**Organizational Conflict of Interest (JUN 2006)**

(a) Determination. The Government has determined that this effort may result in an actual or potential conflict of interest, or may provide one or more offerors with the potential to attain an unfair competitive advantage. The nature of the conflict of interest and the limitation on future contracting \_\_\_\_\_ ["contracting officer shall insert description here"].

(b) If any such conflict of interest is found to exist, the Contracting Officer may (1) disqualify the offeror, or (2) determine that it is otherwise in the best interest of the United States to contract with the offeror and include the appropriate provisions to avoid, neutralize, mitigate, or waive such conflict in the contract awarded. After discussion with the offeror, the Contracting Officer may determine that the actual conflict cannot be avoided, neutralized, mitigated or otherwise resolved to the satisfaction of the Government, and the offeror may be found ineligible for award.

(c) Disclosure: The offeror hereby represents, to the best of its knowledge that:

\_\_\_ (1) It is not aware of any facts which create any actual or potential organizational conflicts of interest relating to the award of this contract, or

\_\_\_ (2) It has included information in its proposal, providing all current information bearing on the existence of any actual or potential organizational conflicts of interest, and has included a mitigation plan in accordance with paragraph (d) of this provision.

(d) Mitigation. If an offeror with a potential or actual conflict of interest or unfair competitive advantage believes the conflict can be avoided, neutralized, or mitigated, the offeror shall submit a mitigation plan to the Government for review. Award of a contract where an actual or potential conflict of interest exists shall not occur before Government approval of the mitigation plan. If a mitigation plan is approved, the restrictions of this provision do not apply to the extent defined in the mitigation plan.

(e) Other Relevant Information: In addition to the mitigation plan, the Contracting Officer may require further relevant information from the offeror. The Contracting Officer will use all information submitted by the offeror, and any other relevant information known to DHS, to determine whether an award to the offeror may take place, and whether the mitigation plan adequately neutralizes or mitigates the conflict.

(f) Corporation Change. The successful offeror shall inform the Contracting Officer within thirty (30) calendar days of the effective date of any corporate mergers, acquisitions, and/or divestitures that may affect this provision.

(g) Flow-down. The contractor shall insert the substance of this clause in each first tier subcontract that exceeds the simplified acquisition threshold.

(End of provision)

■ 68. Add section 3052.209–73 to read as follows:

**3052.209–73 Limitation of future contracting.**

As prescribed in (HSAR) 48 CFR 3009.507–2, the contracting officer may insert a clause substantially as follows in solicitations and contracts:

**Limitation of Future Contracting (JUN 2006)**

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, the attention of prospective offerors is invited to FAR Subpart 9.5—Organizational Conflicts of Interest.

(b) The nature of this conflict is [describe the conflict].

(c) The restrictions upon future contracting are as follows:

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work that are to be incorporated into a solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime or first-tier subcontractor under an ensuing DHS contract. This restriction shall remain in effect for a reasonable time, as agreed to by the Contracting Officer and the Contractor, sufficient to avoid unfair competitive advantage or potential bias (this time shall in no case be less than the

duration of the initial production contract). DHS shall not unilaterally require the Contractor to prepare such specifications or statements of work under this contract.

(2) To the extent that the work under this contract requires access to proprietary, business confidential, or financial data of other companies, and as long as these data remain proprietary or confidential, the Contractor shall protect these data from unauthorized use and disclosure and agrees not to use them to compete with those other companies.

(End of clause)

**3052.211-90 [Removed]**

■ 69. Remove section 3052.211-90.

**3052.213-90 [Removed]**

■ 70. Remove section 3052.213-90.

■ 71. Revise section 3052.216-70 to read as follows:

**3052.216-70 Evaluation of offers subject to an economic price adjustment clause.**

As prescribed in (HSAR) 48 CFR 3016.203-470, insert a provision substantially the same as the following:

**Evaluation of Offers Subject to an Economic Price Adjustment Clause (JUN 2006)**

Offers shall be evaluated without adding an amount for an economic price adjustment. Offers may be rejected which: (1) Increase the stipulated ceiling; (2) limit the downward adjustment; or (3) delete the economic price adjustment clause. If the offer stipulates a ceiling lower than that included in the solicitation, the lower ceiling will be incorporated into any resulting contract.

(End of provision)

■ 72. Amend section 3052.217-100 by revising the date and title of the clause and paragraph (e) to read as follows:

**3052.217-100 Guarantee (USCG).**

\* \* \* \* \*

**Guarantee (USCG) (JUN 2006)**

\* \* \* \* \*

(e) The Contractor's liability shall extend for an additional 60-day guarantee period on those defects or deficiencies that the Contractor corrected.

\* \* \* \* \*

■ 73. Amend section 3052.219-70 by revising the date and title of the clause, and paragraph (a) to read as follows:

**3052.219-70 Small business subcontracting plan reporting.**

\* \* \* \* \*

**Small Business Subcontracting Plan Reporting (JUN 2006)**

(a) The Contractor shall enter the information for the Subcontracting Report for Individual Contracts (formally the Standard Form 294 (SF 294)) and the Summary Subcontract Report (formally the Standard Form 295 (SF-295)) into the Electronic

Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>.

\* \* \* \* \*

■ 74. Amend section 3052.219-71 by revising the date of the clause and paragraph (d) to read as follows:

**3052.219-71 DHS mentor-protégé program.**

\* \* \* \* \*

**DHS Mentor-Protégé Program (JUN 2006)**

\* \* \* \* \*

(d) Large business prime contractors serving as mentors in the DHS Mentor-Protégé program are eligible for a post-award incentive for subcontracting plan credit. The mentor may receive credit for costs it incurs to provide assistance to a protégé firm. The mentor may use this additional credit towards attaining its subcontracting plan participation goal under the same or another DHS contract. The amount of credit given to a mentor firm for these protégé developmental assistance costs shall be calculated on a dollar for dollar basis and reported in the Summary Subcontract Report via the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. For example, a mentor/large business prime contractor would report a \$10,000 subcontract to the protégé/small business subcontractor and \$5,000 of developmental assistance to the protégé/small business subcontractor as \$15,000. The Mentor and Protégé will submit a signed joint statement agreeing on the dollar value of the developmental assistance and the Summary Subcontract Report.

\* \* \* \* \*

■ 75. Revise section 3052.219-72 to read as follows:

**3052.219-72 Evaluation of prime contractor participation in the DHS mentor-protégé program.**

As prescribed in (HSAR) 48 CFR 3019.708-70(c), insert the following provision:

**Evaluation of Prime Contractor Participation in the DHS Mentor-Protégé Program (JUN 2006)**

This solicitation contains a source selection factor or subfactor regarding participation in the DHS Mentor-Protégé Program. In order to receive credit under the source selection factor or subfactor, the offeror shall provide a signed letter of mentor-protégé agreement approval from the DHS Office of Small Business and Disadvantaged Business Utilization (OSDBU) before initial evaluation of proposals. The contracting officer may, in his or her discretion, give credit for approvals that occur after initial evaluation of proposals, but before final evaluation.

(End of provision)

■ 76. Revise section 3052.222-90 to read as follows:

**3052.222-90 Local hire (USCG).**

As prescribed in (HSAR) 48 CFR 3022.9001, insert the following clause:

**Local Hire (USCG) (JUN 2006)**

(a) When performing a contract in whole or in part in a State with an unemployment rate in excess of the national average determined by the Secretary of Labor, the Contractor shall employ, for the purpose of performing the portion of the contract in that State, individuals who are local residents and who, in the case of any craft or trade, possess or would be able to acquire promptly, the necessary skills.

(b) Local resident defined. As used in this section, "local resident" means a resident of, or an individual who commutes daily to, a State described in subsection (a).

(c) The Secretary of Homeland Security may waive the requirements of paragraph (a) the interest of national security or economic efficiency.

(End of clause)

■ 77. Revise section 3052.223-70 to read as follows:

**3052.223-70 Removal or disposal of hazardous substances—applicable licenses and permits.**

As prescribed in (HSAR) 48 CFR 3023.303, insert the following clause:

**Removal or Disposal of Hazardous Substances—Applicable Licenses and Permits (JUN 2006)**

The Contractor shall have all licenses and permits required by Federal, state, and local laws to perform hazardous substance(s) removal or disposal services. If the Contractor does not currently possess these documents, it shall obtain all requisite licenses and permits within \_\_["insert days"]\_\_ days after date of award. The Contractor shall provide evidence of said documents to the Contracting Officer or designated Government representative prior to commencement of work under the contract.

(End of clause)

■ 78. Redesignate section 3052.242-70 as section 3052.235-70 and amend by removing paragraph (c); redesignating paragraph (d) as paragraph (c), and revising the introductory text and the date of the clause to read as follows:

**3052.235-70 Dissemination of information—educational institutions.**

As prescribed in (HSAR) 48 CFR 3035.7000, insert the following clause:

**Dissemination of Information—Educational Institutions (JUN 2006)**

\* \* \* \* \*

**3052.237-70 [Removed]**

■ 79. Remove section 3052.237-70.

**3052.237-71 [Removed]**

■ 80. Remove section 3052.237-71.

**3052.237-72 [Removed]**

■ 81. Remove section 3052.237-72.

**3052.242-70 [Removed and reserved]**

■ 82. Remove and reserve section 3052.242-70.

**3052.242-71 [Amended]**

■ 83. Amend section 3052.242-71 by revising the introductory text to read as follows:

**3052.242-71 Dissemination of contract information.**

As prescribed in (HSAR) 48 CFR 3042.202-70, insert the following clause:

\* \* \* \* \*

■ 84. Amend section 3052.245-70 by revising the date of the clause and paragraph (b) to read as follows:

**3052.245-70 Government property reports.**

\* \* \* \* \*

**Government Property Reports (JUN 2006)**

\* \* \* \* \*

(b) The report shall be submitted to the Contracting Officer not later than September 15 of each calendar year on DHS Form 0700-5, Contractor Report of Government Property. (End of clause)

**PART 3053—FORMS**

**3053.222-70 [Amended]**

■ 85. Amend section 3053.222-70 by removing the form number “0070-04” and adding in its place “0700-04.”

**3053.245-70 [Amended]**

■ 86. Amend section 3053.245-70 by removing the form number “0070-05” and adding in its place “0700-05.”

■ 87. Revise section 3053.303 to read as follows:

**3053.303 Agency forms.**

This section illustrates agency-specified forms. To access these forms go to: <http://www.dhs.gov> (under “Business, Acquisition Information”) or <https://dhsonline.dhs.gov/portal/jhtml/general/forms.jhtml>.

Form name	Form No.
Cumulative Claim and Reconciliation Statement .....	DHS Form 0700-01.
Contractor’s Assignment of Refunds, Rebates, Credits and Other Amounts .....	DHS Form 0700-02.
Contractor’s Release .....	DHS Form 0700-03.
Employee’s Claim for Wage Restitution .....	DHS Form 0700-04.
Contractor Report of Government Property .....	DHS Form 0700-05.
Report of Inventions and Subcontract .....	DD 882.

**Appendix—HSAR Clause Matrix**

**Note:** This appendix will not appear in the Code of Federal Regulations.

**BILLING CODE 4410-10-P**







