



Program Statement

OPI: ADM/PRO
NUMBER: P4100.04
DATE: 5/19/2004
SUBJECT: Bureau of Prisons
Acquisition Policy

1. **PURPOSE AND SCOPE.** To provide controls for the acquisition of supplies and services and to provide operational direction for staff responsible for contracting functions. The Bureau of Prisons Acquisition Policy is being revised as a result of updates to acquisition regulations and to incorporate policy for the newly formed Field Acquisition Office.

Technical, instructional, and reference material are contained in the Acquisition Technical Reference Manual which is being issued in conjunction with this revision.

2. **SUMMARY OF CHANGES**

- Adds the responsibilities of the Field Acquisition Office.
- Adds a Special Level I authority for Trust Fund Staff for the acquisition of re-sale items using the purchase card.
- Revises current warrant level requirements.
- Revises the approval dollar level thresholds of Justifications for Other Than Full and Open Competition.
- Revises acquisition planning requirements.
- Adds a requirement for all Cardholders, Approving Officials, Agency Program Coordinators, and Contracting Officers to receive purchase card refresher training every two years.
- Adds a requirement that local Agency Program Coordinators conduct semi-annual reviews of all Approving Official files.
- Adds a requirement that the Field Acquisition Office shall biennially review at least five Approving Official files at each institution to ensure program compliance.

- Adds a requirement that Contracting Officers must submit all subcontracting plans to the Central Office Small Business Representative for approval prior to incorporating the plans into the contract.
- Adds information addressing the use of Recovered Materials.

3. **PROGRAM OBJECTIVES.** The expected results of this program are:

- a. All procurement activity will be conducted by staff authorized to undertake procurement actions.
- b. Contracts will be effectively managed.
- c. Fraud, waste, abuse, mismanagement, and illegal acts in procurement will be prevented, detected, and reported.
- d. Procurement data will be accurately collected and reported.
- e. Small and disadvantaged businesses will be used whenever feasible and appropriate.

4. **DIRECTIVES AFFECTED**

a. **Directive Rescinded**

P4100.03 Bureau of Prisons Acquisition Policy (9/16/96)

b. **Directives Referenced**

P1221.66 Directives Management Manual (9/15/97)
P1222.06 Forms Management (9/17/97)
P1237.10 Personal Computers Network Standards Manual
(11/24/97)
P1520.09 Printing, Distribution Management and Electronic
Documents (5/21/97)
P1600.08 Occupational Health and Environmental Safety
(8/16/99)
P2000.02 Accounting Management Manual (10/15/86)
P2100.03 Budget Execution Manual (8/4/95)
P3000.02 Human Resource Management Manual (11/1/93)
P3420.09 Standards of Employee Conduct (2/5/99)
P4200.09 Facility Operations Manual (4/3/96)
P4400.04 Property Management Manual (8/13/01)
P4500.04 Trust Fund\Warehouse\Laundry Manual (12/15/95)

P5500.11 Correctional Services Manual (10/10/03)
P5500.12 Correctional Services Procedures Manual (10/10/03)
P7300.09 Community Corrections Manual (1/12/98)

DOJ Order 2640.2E Information Technology Security
(7/12/2001)

DOJ Order 2880.1a Information Resources Management Program
(3/5/2001)

5. STANDARDS REFERENCED

- a. American Correctional Association, 3rd Edition Standards for Adult Correctional Institutions: 3-4038
- b. American Correctional Association, 3rd Edition Standards for Adult Local Detention Facilities: 3-ALDF-1B-11
- c. American Correctional Association, 2nd Edition Standards for the Administration fo Correctional Agencies: 2CO-1B-09

6. ACTION

- a. Staff responsible for acquisition of supplies, services and equipment shall use this Manual to ensure appropriate acquisition policies and procedures are used.
- b. Each institution shall issue an Institution Supplement containing instructions for processing Requests for Purchase and processing Government purchase card transactions.
- c. Each institution shall include procedures for receipt of purchase card acquisitions in the Institution Supplement addressing receiving procedures (Trust Fund/Warehouse/Laundry Manual).

/s/
Harley G. Lappin
Director

BUREAU OF PRISONS ACQUISITION POLICY

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PART 1. - GENERAL

SUBPART 1.1 - PURPOSE, AUTHORITY, ISSUANCE

1.101 - Purpose, Authority, and Issuance

(a) The Bureau of Prisons Acquisition Policy (BPAP) is established to provide uniform acquisition policy for institutions and offices within the Bureau of Prisons (BOP). The BPAP supplements the Federal Acquisition Regulation (FAR) and the Justice Acquisition Regulations (JAR). Contracting Officers shall consult all three sources as well as applicable Operations Memoranda to ascertain the total acquisition policy in any area.

(b) The BPAP has been established pursuant to the FAR and JAR. Authority to issue acquisition policy has been delegated to the Director. The Administration Division, BOP Procurement Executive maintains the BPAP. The BPAP is subdivided into Parts 1 through 53, which correspond to FAR and JAR Parts 1 through 53. This numbering system permits immediate identification of each BPAP Part with coverage of the same subject matter and same numbering system as in the FAR, JAR, and Acquisition Technical Reference Manual (TRM).

(c) Supplemental instruction and reference material are also contained in the Acquisition TRM and cover areas where internal procedures are required by the BPAP. The TRM contains procedural instructions to ensure consistent and compatible contracting throughout BOP. The TRM numbering system corresponds to Parts in the BPAP, JAR, and FAR.

(d) Supplementary material for which there is no counterpart in the FAR or JAR is identified by a numerical suffix of 70 or higher in the final position of the reference number.

(e) The following are examples illustrating the numbering system:

FAR 1.602-3 ----- Ratification of Unauthorized Commitments

JAR 2801.602-3 --- Ratification of Unauthorized Commitments

BPAP 1.602-3 ----- Ratification of Unauthorized Commitments

**BPAP 1.602-70 ---- Management Oversight of Institution and
Regional Office Acquisition Operations**

TRM 1.602-3 ----- Ratification of Unauthorized Commitments

SUBPART 1.2 - ADMINISTRATION

1.201-70 - Maintenance of the BPAP

The Director shall issue revisions to the BPAP as necessary through the Administration Division. Suggestions for revisions shall be submitted to the BOP Procurement Executive.

SUBPART 1.4 - DEVIATIONS FROM THE FAR

1.402-70 - Deviations from the BPAP

Deviations (both individual and class) from the BPAP must be authorized in writing by the Assistant Director for Administration, in accordance with the current Directives Management Manual.

SUBPART 1.6 - CAREER DEVELOPMENT, CONTRACTING AUTHORITY, AND RESPONSIBILITIES

1.601-70 - General

Review and/or advice by the Office of General Counsel (OGC) is understood to be an integral part of the entire BOP acquisition process, including but not limited to the subparts of this policy.

1.602-1-70 - Restrictions on Acquisition Authority

Only Contracting Officers delegated warrant authority in accordance with BPAP 1.603 may enter into and sign contract actions on behalf of the Government.

1.602-3 - Ratification of Unauthorized Commitments

(a) Only warranted Contracting Officers may enter into and sign contract actions on behalf of the Government. The Government is not bound by agreements or commitments made by persons to whom contracting authority has not been delegated. Unauthorized acts violate Federal statutes, regulations, and good acquisition practices.

(b) Invoices for unauthorized commitments shall not be paid until the unauthorized commitment has been approved and ratified.

(c) All suspected irregularities that may involve fraud against the Government, or any type of misconduct punishable as a

criminal offense, must be immediately reported by the employee's supervisor or the Contracting Officer to:

Federal Bureau of Prisons
Office of Internal Affairs
320 First Street NW
Washington DC 20534

(d) Unauthorized commitments, if determined to be legal and appropriate, may be approved for ratification subject to the following:

(1) Each Contracting Office shall maintain a numerical register, by fiscal year, of all unauthorized commitments.

(2) The individual who made the unauthorized commitment shall furnish all records and documents concerning the commitment and a complete written statement of facts. The CCM shall develop procedures to preclude recurrence.

(e) Contracting Officers assigned ratifications shall ensure all requirements in the FAR are addressed and forwarded through the Warden to the Chief, Field Acquisition Office. The Field Acquisition Office will request approval of the respective Regional Director and concurrence of the respective Regional Counsel. For the Central Office (see definition in BPAP Part 2), ratifications shall be addressed and forwarded to the Chief, Acquisitions Branch.

(f) Unauthorized Commitments within the micro-purchase threshold:

(1) Regional Directors are authorized to approve unauthorized commitments within the micro-purchase threshold for institutions within their respective Regions. Requests must have the concurrence of Regional Counsel and approval of the Regional Director prior to ratification by the Chief, Field Acquisition Office. This authority may not be further redelegated. Copies of all ratifications shall be provided to the Chief, Acquisitions Branch within 30 days after ratification.

(2) For the Central Office, the Chief, Acquisitions Branch, shall approve and ratify unauthorized commitments within the micro-purchase threshold. Unauthorized commitments effected by personnel in the Acquisitions Branch can only be approved and ratified by the BOP Procurement Executive. All requests must have the concurrence of the Office of General Counsel. This authority may not be further re-delegated.

(g) Unauthorized Commitments exceeding the micro-purchase threshold:

(1) For unauthorized commitments exceeding the micro-purchase threshold, the Chief, Field Acquisition Office shall ensure the request receives concurrence from the Regional Counsel and Regional Director. The request shall then be forwarded to the Central Office and concurrence obtained from the Chief, Acquisitions Branch, Office of General Counsel, and the Assistant Director for Administration prior to ratification by the BOP Procurement Executive.

(2) All Central Office unauthorized commitments exceeding the micro-purchase threshold shall have the concurrence of the Chief, Acquisitions Branch, Office of General Counsel, and Assistant Director for Administration prior to approval and ratification by the BOP Procurement Executive.

1.602-70 - Field Acquisition Responsibility

The Field Acquisition Office shall solicit and award all institution and Regional contract actions in excess of \$100,000. Appropriately warranted Contracting Officers are authorized to place delivery orders in excess of \$100,000 against established Government contracts (e.g., BOP National Contracts and contracts of other Government agencies such as Defense Logistics Agency, Federal Bureau of Investigation (FBI), General Services Administration-Federal Supply Schedules (FSS), etc.) and required sources (e.g., UNICOR, National Industries for the Blind (NIB)/National Industries for the Severely Handicapped (NISH), Veterans Administration (VA), etc.).

1.602-71 - Management Oversight of Institution and Regional Office Acquisition Operations

(a) Field Acquisition Office Contracting Officers shall review acquisition documents listed below for institutions and Regional Offices under their purview. The purpose of these reviews is to ensure acquisitions meet applicable statutes, regulations, and agency policies and procedures.

(1) Purchase card files shall be reviewed to ensure compliance with the BOP Purchase Card Handbook (see TRM Part 13);

(2) Simplified acquisition RPs, corresponding RP logs, and simplified acquisition files shall be reviewed for the month requested to determine if they have been adequately documented with regard to the following (**Note:** This section applies to all

simplified acquisitions with a value greater than the micro-purchase threshold.):

(i) Adequate competition or documentation pursuant to FAR Part 13 requirements:

(A) If competition was requested and only one quote received, price reasonableness must be documented;

(B) If only one source was sought, adequate documentation must be provided to explain the reason for the absence of competition, as well as price reasonableness;

(ii) Required source compliance (FAR Part 8);

(iii) Compliance with small business set-aside requirements or justification why the acquisition was not set aside for small business;

(iv) Appropriate and required specifications;

(v) Appropriate assignment of sub-object codes, Federal Procurement Data System (FPDS) designation codes, and Project Codes;

(vi) Evidence that acquisitions were not for personal use items or failed to conform to the Cost Center's mission.

(vii) Evidence of splitting orders to avoid competition;

(viii) Compliance with the Service Contract Act or Davis-Bacon Act (FAR Subparts 22.10 and 22.4); and

(ix) Other indicators that requirements were not processed in accordance with applicable statutes, regulations, Departmental, and BOP policies.

(3) Requests for Training and Individual Development Plans (BPAP Subpart 1.6) shall be reviewed to ensure training needs are identified to maintain or upgrade Contracting Officer's warrant authority. This review shall ensure Contracting Officers obtain the necessary training to maintain their warrants and that failure to obtain such training may result in termination of their Contracting Officer Warrants.

(4) Inter-Agency and Inter-Governmental Agreements (BPAP Subpart 17.5);

- (5) Unauthorized Commitments (BPAP Subpart 1.6),
- (6) Advisory and Assistance Services (BPAP Part 37);
- (7) Determinations and Findings requiring approval at the next higher organizational level;
- (8) Federal Procurement Data System Reports (BPAP Subpart 4.6); and
- (9) Pre-award contract modification reviews for contracts exceeding \$100,000 (excluding the exercise of option periods) or when the contract value exceeds \$100,000. (For example, if the original contract award was \$80,000, the file would not be reviewed. If a modification was issued for \$30,000, the file would then be reviewed prior to award of the modification). The complete modification file shall be presented for review. Modifications shall be ready for issuance, lacking only the Contracting Officer's signature and date. Upon completion and documentation of this pre-award review, Contracting Officers shall correct all noted deficiencies prior to modification award or provide a detailed written explanation why any corrections were not made. Other modifications may be reviewed at the request of the Chief of the Field Acquisition Office.

(b) The Chief, Field Acquisition Office shall obtain follow-up actions necessary to ensure all significant deviations and/or deficiencies noted in Program, Operational, or Oversight Reviews are corrected; and

(c) Upon review of any action by the Field Acquisition Office, the applicable Field Acquisition Office Section Chief shall prepare a memorandum to the Institution Supervisory Contract Specialist or Regional Inventory Management Specialist which identifies deficiencies and corrective actions required.

(d) The Field Acquisition Office may review any additional acquisition documents over and above those listed in this subpart as may be determined appropriate.

1.603 - Selection, Appointment and Termination of Appointment

1.603-2 - Selection

(a) Contracting authority has been delegated by the JAR to the Director as Head of the Contracting Activity. This authority is re-delegated to the BOP Procurement Executive who shall issue all BOP Contracting Warrants. Contracting Officer's signatory authority shall consist of all duties associated with the entire

acquisition process including, but not limited to, pre-award, contract award, administration, termination, and related determinations and findings regarding acquisition. Contract administration duties are not limited to any established dollar threshold; however, Contracting Officers may not sign modifications in excess of their warrant authority. Warranted Contracting Officers need not obtain a separate cardholder delegation of authority for purchase card acquisitions.

(b) Each candidate recommended for appointment as a Contracting Officer must meet the following criteria for training and experience requirements. Procedures for nominations shall be made as specified in the TRM. Requests for waivers must be processed through the Chief, Acquisitions Branch and the BOP Procurement Executive.

(1) **Special Level I Authority** - Acquisitions not exceeding \$25,000. This Special Level I Authority applies **only** to the Trust Fund (acquisitions using non-appropriated funds). Within the first year of appointment, the incumbent must receive one formal acquisition training course.

(2) **Level I Authority** - Acquisitions not exceeding \$25,000.

(i) Level I Authority applies to entry level Contracting Officers. Prior to obtaining Level I authority, Contracting Officers must have a minimum of three months acquisition experience and complete the On the Job Training (OJT) units in the Federal Acquisition Institute (FAI) Contract Specialist Training Blueprint, as specified in the TRM, Attachment 1-C. Within one-year of appointment, Contracting Officers must receive one acquisition training course.

(ii) If it is determined locally that the Inventory Management Specialist (IMS) will have Level I warrant authority, and a request is made to obtain Level I authority, the following requirements apply: Prior to obtaining Level I authority, the IMS must have a minimum of three months acquisition experience, complete the On the Job Training (OJT) units in the Federal Acquisition Institute (FAI) Contract Specialist Training Blueprint, as specified in the TRM, Attachment 1-C, and within one-year of appointment, receive one acquisition training course.

(3) **Level II Authority** - Acquisitions not exceeding \$100,000. Level II Authority applies only to entry level or Level I Contracting Officers. Prior to obtaining Level II authority, Contracting Officers must receive a total of two acquisition training courses, have a minimum of six months

acquisition experience and complete the OJT units in the FAI Contract Specialist Training Blueprint, for Level I and Level II, as specified in the TRM, Attachment 1-C.

(4) **Level III Authority** - Acquisitions not exceeding \$500,000. Prior to obtaining Level III authority, Contracting Officers must receive an additional three acquisition training courses as listed in the TRM, have been a Level II Contracting Officer for no less than 18 months, and complete the Level III OJT units in the FAI Contract Specialist Training Blueprint, as specified in the TRM, Attachment 1-C.

(5) **Level IV Authority** - Acquisitions in any amount. Prior to obtaining a Level IV authority, Contracting Officers must receive an additional five acquisition training courses as listed in the TRM, have been a Level III Contracting Officer for no less than 24 months, and complete the Level IV OJT units in the FAI Contract Specialist Training Blueprint, as specified in the TRM, Attachment 1-C.

(6) **Real Property Leasing Authority** is commensurate with the Contracting Officer's Warrant Level. Once Contracting Officers have received the necessary Real Property Lease Classes (See TRM Subpart 1.6), and delegated leasing authority, they can enter into leases after receiving a delegation from GSA. All leases shall be approved by the Assistant Director for Administration.

(c) Because acquisition is such a dynamic profession, Contracting Officers and IMSs with contracting authority must complete at least one acquisition training course every two years to maintain their warrants. Contracting Officers and IMSs who fail to comply with this training requirement may lose their warrants. (This requirement does not apply to individuals warranted with Special Level I Authority).

1.603-3-70 - Reporting Career Management Statistics

Contracting Officers shall complete BP-S615.041 - Procurement Career Development Program Individual Development Plan (IDP) (available on BOPDOCS) and forward it to the Chief of the Contracting Office no later than **July 1** of each year. Copies shall be reviewed and retained by the Chief of the Contracting Office. Based on information within the plan, the Chief of the Contracting Office shall consolidate information and forward a list of all active Contracting Officers and their locations to the Chief, Acquisitions Branch no later than August 31 of each year.

1.603-4 - Termination

Employees separated from BOP or assigned to positions not directly involved with acquisition as a primary responsibility shall automatically forfeit their contracting authority on the date of separation or reassignment. Formal revocation of contracting authority shall be in writing from the BOP Procurement Executive. Contracting Officers shall immediately return their Certificates of Appointment through the Chief of the Contracting Office to the BOP Procurement Executive.

SUBPART 1.7 - CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE

1.701-70 - Contracting Officer's Technical Representative

Contracting Officers may appoint certified Contracting Officer's Technical Representatives (COTRs) to monitor daily contractor performance. The following responsibilities shall be accomplished in accordance with procedures outlined in the TRM:

(a) Appointment, termination, and limitations of authority shall be in accordance with JAR and the TRM.

(b) Upon completing COTR training, local Employee Development Managers (EDMs)/Administrators shall notify Institution Supervisory Contract Specialists or Central Office designees via memorandum.

(c) Institution Supervisory Contract Specialists, EDMs, IMSs (for Regional Office designations), or Central Office designees shall administer COTR tests, obtain Procurement Integrity Certifications, and forward requests for COTR appointment (with attachments identified in the TRM) to the Chief, Field Acquisition Office (for institutions or Regional Offices designations) or to the Chief, Acquisitions Branch (for Central Office designations). COTR tests shall be scored by the applicable Contracting Office.

(d) Certificates of COTR Appointment, form DOJ-539, shall be issued by the Chief, Field Acquisition Office (for institution or Regional Office designations) or Chief, Acquisitions Branch (for Central Office designations). This authority may not be further re-delegated.

Attachment 1-A

ACQUISITION RESTRICTIONS

SUBJECT	DELEGATED TO	REFERENCES
Printing and binding services from commercial sources	Department of Justice	DOJ 2510.9
Copying, printing and related equipment	BOP, Central Office	PS 1520.09
Reciprocal/no-cost agreement for mutual aid	BOP Chief Executive Officers	P.L. 95-224
Approve requests for lease of all space	BOP, Central Office Assistant Director for Administration	FPMR 101-17 FPMR 101-18 FPMR 101-19
Approval request for lease of parking space	BOP, Central Office Assistant Director for Administration	FPMR 101-19
Authorize advance payments	BOP, Central Office	31 U.S.C. 3324 FAR Part 32

PART 2

DEFINITIONS OF WORDS AND TERMS

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SUBPART 2.1 - DEFINITIONS

PART 2. - DEFINITIONS OF WORDS AND TERMS

SUBPART 2.1 - DEFINITIONS

"**Agency,**" "**Department,**" or "**DOJ,**" means the Department of Justice.

"**Approving Official**" for the Purchase Card Program means Cost Center Manager or designee.

"**BOP**" means the Federal Bureau of Prisons.

"**Bureau Procurement Chief**" or "**Chief, Contracting Activity**" means the BOP Procurement Executive.

"**Cardholder**" means a staff member entrusted with a Government purchase card.

"**Central Office**" means any components of the 8 Divisions located at BOP headquarters in Washington, DC (i.e., Administration Division; Correctional Programs Division; Health Services Division; Human Resource Management Division; Information, Policy, and Public Affairs Division; National Institute of Corrections; Office of General Counsel; and Program Review Division). This definition does not include the Industries, Education, and Vocational Training Division (UNICOR).

"**Chief Executive Officer (CEO)**" means the Warden, Regional Director, or Assistant Director.

"**Chief of the Contracting Office**" means the Chief, Field Acquisition Office (for institutions and Regional Offices); Chief, Acquisitions Branch; or Chief, Property and Construction Branch.

"**Contract Action**" means award of contract, execution of a modification, or expenditure of appropriated funds.

"**Contracting Activity**" means the Federal Bureau of Prisons.

"**Definitization**" means an agreement between the Bureau of Prisons and a contractor on definitive terms, specifications, and price to replace an undefinitized contract action.

"**Director**" or "**Head of the Contracting Activity**" means the Director, Federal Bureau of Prisons.

"Head of the Program Office" means the head of the discipline, section, branch, or division (irrespective of the actual physical location) responsible for submission of a contract action.

"Local Contracting Office" means institution/Regional Business Office, Central Office Business Office, Management and Specialty Training Center (MSTC), or Federal Law Enforcement Training Center, Glynco (FLETC).

"Acquisitions Management Section" (AMS) means the section within the Acquisitions Branch, Central Office responsible for maintaining the BPAP and TRM.

"Next Higher Contracting or Organizational Level" means the Chief, Field Acquisition Office for institutions and Regional Offices and the BOP Procurement Executive for the Field Acquisition Office, Acquisitions Branch, and Property and Construction Branch.

"One Level above the Contracting Officer" means institution Supervisory Contract Specialist, Chief of the Contracting Office, or higher level supervisory contracting officer. (Supervisory Contract Specialists cannot review their own work).

"Request for Purchase" (RP) means Request for Contract Action (RCA) (form BP-S531.074, used by Community Corrections Contracting) (available on BOPDOCS) and Specification Card.

"Technical Reference Manual (TRM)" means the same as Acquisition Technical Reference Manual, and contains internal technical instructions and guidelines that supplement BPAP coverage. The TRM provides consistent and compatible procedures for training and oversight purposes.

PART 3

IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

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PART 3. - IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

SUBPART 3.1 - SAFEGUARDS

3.101-3 - BOP Policies

BOP's Standards of Employee Conduct are contained in the Program Statement on Standards of Employee Conduct.

3.104-1 - Procurement Integrity

(a) Procurement Ethics Training (for Procurement Officials)

(1) Because of the nature of their duties, the following individuals are deemed "Procurement Officials" and must receive the appropriate ethics training and sign the appropriate BOP certification:

- (i) Cost Center Managers and Assistant Cost Center Managers;
- (ii) Government Purchase Cardholders;
- (iii) Contracting Officer Technical Representatives;
and
- (iv) Any additional employees designated to serve as Procurement Officials.

(2) Supervisory Contract Specialists (SCSs) or in the absence of an SCS, Financial Management Supervisors shall ensure all employees meeting the criteria as Procurement Officials are scheduled to receive the appropriate ethics training and sign a BP-S645.41 - Procurement Integrity Certification for Procurement Officials (available on BOPDOCS). Upon identifying individuals requiring training, SCSs shall notify Employee Development Managers/Specialists who will schedule/coordinate the completion of the training. Employee Development Managers/Specialists will key the completed training using course code 13239 entitled "PROCRMNT INTE TRAINING." Signed certificates shall be maintained by the SCS and copies placed in the files of applicable contract actions exceeding the SAT.

(b) Procurement Ethics Training (for Non-Procurement Officials)

(1) The Chief Executive Officer at each facility shall ensure appropriate ethics training is provided to all staff who may be involved in acquisition matters. Because of the nature of their duties, the following individuals, at a minimum, are required to take Procurement Ethics Training:

(i) Assistant Directors and Deputy Assistant Directors;

(ii) Central Office Branch Chiefs, Assistant and Deputy Branch Chiefs;

(iii) Central Office Section Chiefs and Assistant Chiefs;

(iv) Regional Directors, Deputy Regional Directors, and Regional Executive Assistants;

(v) Wardens, Associate Wardens, and Executive Assistants;

(iv) Any additional employees involved in acquisition issues.

(2) SCSs or in the absence of an SCS, Financial Management Supervisors shall advise the Employee Development Managers/Specialists of the required ethics training. Employee Development Managers/Specialists will schedule/coordinate completion of the required training and key the completed training using the appropriate code.

(c) Disclosure of Proprietary and Source Selection Information. Only Contracting Officers, in coordination with the Freedom of Information Office, shall release source selection and proprietary information. Release of such information shall be in strict accordance with the FAR. The BOP Procurement Executive, is authorized to approve release of such information to individuals as prescribed by the FAR.

(d) Contracting Officer Certification. Contracting Officers either processing and/or signing applicable contract actions exceeding the SAT shall make the appropriate certifications (using the Contracting Officer Certificate of Procurement Integrity). The certification shall be for the specific contract action and shall be placed in the contract file. If the Contracting Officer has knowledge or information

concerning a violation of the Procurement Integrity Act, such information shall be submitted as required in paragraph (f) below.

(e) **Questions.** Persons having questions regarding the Procurement Integrity Act, post-employment restrictions, gratuities, or ethics shall contact the BOP Ethics Officer, Office of General Counsel, or the Chief of the Contracting Office.

(f) **Processing Violations or Possible Violations**

(1) Violations or possible violations shall be reported through the Chief of the Contracting Office to the BOP Procurement Executive. Contracting Officers shall not proceed with award until the BOP Procurement Executive, concurs in writing.

(2) If it is determined a violation occurred, the Director shall be notified through the Assistant Director for Administration, and the contract file shall be forwarded to the DOJ Procurement Executive for concurrence. The file shall contain a plan of action for consideration by the DOJ Procurement Executive.

(3) If a violation or possible violation occurred and the contract action is urgent and compelling, or if it is otherwise in the best interest of the Government to proceed with award, the BOP Procurement Executive, may authorize the Contracting Officer to proceed, after the Assistant Director for Administration, Director, and the DOJ Procurement Executive have been notified.

SUBPART 3.2 - CONTRACTOR GRATUITIES TO GOVERNMENT PERSONNEL

3.203 - Reporting Suspected Violations of the Gratuities Clause

BOP personnel shall report suspected violations of the gratuities clause through the Chief of the Contracting Office to the BOP Procurement Executive. The Office of General Counsel and the Assistant Director for Administration shall be consulted prior to forwarding the report to the Director.

SUBPART 3.3 - REPORTS OF SUSPECTED ANTITRUST VIOLATIONS

3.303 - Reporting Suspected Antitrust Violations

BOP personnel shall submit suspected antitrust violations through the Chief of the Contracting Office to the BOP Procurement Executive. The Office of General Counsel and the Assistant Director for Administration, shall be consulted prior to forwarding the report to the Director.

SUBPART 3.4 - CONTINGENT FEES

3.405 - Misrepresentations or Violations of the Covenant Against Contingent Fees

BOP personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of contingent fee arrangements, or other violations of the Covenant Against Contingent Fees shall immediately report the matter to the Chief of the Contracting Office. The applicable Contracting Officer shall then provide written documentation of their evaluation, conclusion, and any proposed actions where a contingent fee arrangement exists. The Contracting Officer's documentation shall have the concurrence of the Chief of the Contracting Office and the Regional Legal Counsel (if an institution or Regional Office contract is involved) prior to forwarding to the BOP Procurement Executive. The BOP Procurement Executive shall consult with the Office of General Counsel and the Assistant Director for Administration prior to forwarding to the Director.

SUBPART 3.5 - OTHER IMPROPER BUSINESS PRACTICES

3.502 - Subcontractor Kickbacks

BOP personnel shall report suspected violations of the Anti-Kickback Act (41 U.S.C. §§ 51-58) through the Chief of the Contracting Office to the BOP Procurement Executive who shall consult with the Office of General Counsel and the Assistant Director for Administration.

SUBPART 3.6 - CONTRACTS WITH GOVERNMENT EMPLOYEES OR ORGANIZATIONS OWNED OR CONTROLLED BY THEM

3.602 - Exceptions

Only the Director has authority to authorize an exception to FAR 3.601. Requests for exceptions shall be submitted, in writing, to the Chief of the Contracting Office, through the Regional

Director or appropriate Assistant Director, to the BOP Procurement Executive. The request shall have the concurrence of the Assistant Director for Administration, prior to forwarding to the Director for approval.

PART 4

ADMINISTRATIVE MATTERS

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PART 4. - ADMINISTRATIVE MATTERS

SUBPART 4.1 - CONTRACT EXECUTION

4.101-70 - Reviews Prior to Contract Award

All contract actions exceeding \$100,000 shall be reviewed at one level above the Contracting Officer. The Field Acquisition Office may review any acquisition documents below this threshold as may be determined appropriate.

SUBPART 4.2 - CONTRACT DISTRIBUTION

4.202-70 - BOP Distribution Requirements

Contracting Officers shall forward copies of contracts (including all pertinent documents), modifications, purchase/task/delivery orders, or other accounting documents, to the Payment Office, Program or Cost Center Manager, COTR, and Warehouse, as applicable.

SUBPART 4.6 - CONTRACT REPORTING

4.602 - Federal Procurement Data System (FPDS)

(a) Contracting Officers shall thoroughly understand the reporting requirement in the FPDS Reporting Manual. The FPDS Reporting Manual is available on the Internet at <http://www.fpdc.gov/>. BOP FPDS data collection points are:

(1) Contracting Officers executing contract actions are the initial data collection points and are responsible for collecting, reviewing for accuracy, and reporting of procurement data for their contracting offices;

(2) AMS, Acquisitions Branch is the central data collection point responsible for collecting, summarizing, and reporting data for all contract actions.

(b) The initial and central data collection points shall consult the TRM and FPDS Reporting Manual for procedures involving the collection, compilation, and reporting of such data. See Attachment 4-A of the TRM for appropriate designation codes. The TRM and FPDS Manual provide guidance on non-reportable requirements.

4.602-70 - Federal Procurement Data System (FPDS) Reports

(a) All acquisition staff shall ensure that the office default information in the Intelligent Procurement System (IPRO) is accurate and complete (i.e., Contracting Office Code, OMB Number, etc.).

(b) Individual Contract Action Report (ICAR) (SF-279). SF-279s shall be prepared (using IPRO) within ten calendar days after award of a contract action in accordance with the FPDS Reporting Manual.

(c) Summary of Procurement Actions of \$25,000 or Less (SF-281). This report shall include all applicable procurement actions of \$25,000 or less. Detailed instructions for preparing the SF-281 are available upon request from the AMS.

(d) AMS, Acquisitions Branch shall review SF-281 data for accuracy and completeness and retain supporting documentation.

(e) Because the Director or designee must certify, under penalty of perjury, the accuracy of FPDS reports, it is critical that knowledgeable BOP staff review FPDS data.

(1) Institutions and Regional Offices shall submit reports and Certifications signed by the CEO to the Chief, Field Acquisition Office by the 10th of the month after each quarter ends.

(2) The Chief, Field Acquisition Office shall submit a consolidated certification to the BOP Procurement Executive by the 15th of the month after each quarter ends.

(3) The Acquisitions Branch shall submit a consolidated Certification signed by the BOP Procurement Executive to the DOJ Procurement Executive.

(f) Subcontracting reports shall be submitted as indicated in BPAP Part 19.

SUBPART 4.8 - GOVERNMENT CONTRACT FILES

4.802-70 - Contract File Numbering System Identification

(a) Contracting Offices shall use the numbering and log system in the TRM for each type of acquisition document listed below:

(1) Request for Proposals (RFP)/Invitation for Bids (IFB)/SF-1449 or SF-1442;

(2) Contracts;

(3) Request for Quotations (RFQ);

(4) Purchase/Task/Delivery Orders (including Trust Fund) - Contracting Officers shall ensure all Purchase/Task/Delivery Orders are numbered with a YREGDOC number;

(5) Request for Purchase (RP)/Request for Contract Action (RCA); and

(6) Registers for Contracts, Purchase/Task/Delivery Orders, Modifications, and RPs (Attachment 4-B, TRM Part 4).

4.804-5-70 Closeout Procedures for Contracts

For reference and uniformity, Contracting Officers shall use the procedures in the TRM for closing out all contracts.

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PART 5. - PUBLICIZING CONTRACT ACTIONS

SUBPART 5.4 - RELEASE OF INFORMATION

5.403 - Requests from Members of Congress

When a Contracting Officer determines it is necessary to refer a congressional inquiry to the Director, the request shall be channeled through the respective Regional Director to the Assistant Director for Administration. When forwarding an inquiry to the Regional Director and the Assistant Director for Administration, the Contracting Officer should provide whatever background information they have available that is pertinent to the inquiry. If time permits, the request should be forwarded via fax.

5.404 - Release of Long-Range Acquisition Estimates

5.404-1 - Release Procedures

In accordance with the FAR, the BOP Procurement Executive, is authorized to issue releases of long-range acquisition estimates.

SUBPART 5.5 - PAID ADVERTISEMENTS

5.502 - Authority

The following individuals may authorize paid advertisements. Written authority must be obtained prior to publication and may not be granted retroactively.

(a) The Chief of the Contracting Office may authorize paid advertisements for other than personnel actions for offices under their purview.

(b) Regional Directors, Wardens, and the BOP Personnel Officer (Central Office) may authorize paid advertisements concerning personnel actions.

PART 6

COMPETITION REQUIREMENTS

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PART 6. - COMPETITION REQUIREMENTS

SUBPART 6.3 - OTHER THAN FULL AND OPEN COMPETITION

6.301 - Policy

Contracting without providing for full and open competition shall not be justified on the basis of lack of acquisition planning or on concerns related to funds availability (e.g., funds will expire).

6.304 - Approval of the Justification

(a) Acquisitions of \$100,000 or less acquired through Other than Full and Open Competition shall be approved at one level above the awarding Contracting Officer.

(b) Acquisitions over \$100,000, but less than or equal to \$500,000, acquired through Other than Full and Open Competition shall have the concurrence of the affected Chief Executive Officer, Chief of the Contracting Office, and Regional Director (for institutions or Regional Offices) prior to submittal to the BOP Procurement Executive for approval.

(c) Acquisitions over \$500,000, but less than or equal to \$10,000,000, acquired through Other than Full and Open Competition shall have the concurrence of the affected Chief Executive Officer, Chief of the Contracting Office, Regional Director (for institutions and Regional Offices), BOP Procurement Executive, and Assistant Director for Administration prior to submittal to the BOP Competition Advocate for approval.

(d) Acquisitions over \$10,000,000, but less than or equal to \$50,000,000, acquired through Other than Full and Open Competition shall have the concurrence of the affected Chief Executive Officer, Chief of the Contracting Office, Regional Director (for institutions and Regional Offices), Office of General Counsel, BOP Procurement Executive, and Assistant Director for Administration prior to submittal to the BOP Competition Advocate for approval.

(e) Acquisitions in excess of \$50,000,000 acquired through Other than Full and Open Competition shall have the concurrence of all appropriate officials (i.e., affected Chief Executive Officer, Chief of the Contracting Office, Regional Director (for institutions and Regional Offices), Office of General Counsel, BOP Procurement Executive, Assistant Director for Administration, BOP Competition Advocate, and Director prior to submittal to the DOJ Procurement Executive for approval.

(f) The procedures in this section are applicable to Trust Fund acquisitions, unless the authority in FAR 6.302-5(a)(2)(ii) is applicable (Trust Fund/Warehouse/Laundry Manual).

Note: For acquisitions in excess of \$100,000, institution Contracting Officers shall forward requests through the Warden to the Chief, Field Acquisition Office, who will obtain the respective Regional Director's concurrence prior to submission to the Procurement Executive.

PART 7

ACQUISITION PLANNING

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PART 7. - ACQUISITION PLANNING

SUBPART 7.1 - ACQUISITION PLANS

7.102-70 - Policy - Acquisition Lead Times

(a) Acquisition lead times shall be established to allow sufficient time to process acquisitions according to the method of contracting.

(b) The minimum adequate time for general types of acquisitions is listed below. "Minimum days" indicate the required time from receipt of an approved acquisition package by Contracting Officers (includes approval of funds, various justifications, etc.) through contract award. Lead times do not include time for delivery. Year-end acquisition prohibitions apply (where applicable), and are not reflected in this timetable.

<u>Type of Acquisition</u>	<u>Estimated Value</u>	<u>Minimum Days</u>
SUPPLIES OR SERVICES:		
Simplified Acquisition	\$25,000 or less	7
Information Technology (IT)	\$25,000 or less	30
Acquisitions for Commercial Items	\$25,000 to the Simplified Acquisition Threshold (SAT)	45
Sealed Bid/Supplies	Exceeding SAT	90
Sealed Bid/Construction/Services	Exceeding SAT	95
Negotiated Procurements	Exceeding SAT	180
IT/Telecommunications	Exceeding SAT	180
Architect/Engineering	Any Value	180
Community Corrections	Exceeding SAT	420
Medical Contracts	Exceeding SAT	305
Privatized Corrections	Exceeding SAT	365
Contract Option Renewals	Any Value	75
Community Corrections	Any Value	120
Privatized Corrections	Any Value	120
Reimbursable Agreements	Any Value	30
IAGs and IGAs	Any Value	60

7.103-70 - Acquisition Planning

(a) The Chief of the Contracting Office shall ensure acquisition planning is conducted pursuant to FAR 7.103.

(b) All contracts exceeding \$750,000 shall be supported by a formal acquisition plan. Once approved, by the Contracting Officer, a copy of the plan shall be maintained by the Chief of the Contracting Office, Formal acquisition plans shall be prepared in accordance with FAR 7.105.

7.104-70 - General Procedures - Year-End Procurements

(a) Funds appropriated by Congress for supplies for a particular fiscal year are available only to cover expenses during that year, or for the fulfillment of contracts properly made within that year. BOP shall adhere to the following guidelines (with the exception of acquisitions using Trust Fund (X4) or Building and Facilities (X3) appropriations):

(1) Acquisitions for inventory shall be managed so that active inventories are maintained at normal levels.

(2) Contracting Officers shall not take any actions on RPs received in the Contracting Office after September 14, (or another date provided by the Assistant Director for Administration) through the end of the fiscal year unless they meet the following criteria which shall be documented on the RP (this prohibition does not apply to requirements involving receipt of appropriations from the Central Office after the September 14 cut-off date):

(i) The request covers materials, supplies, equipment, or services for which there is an **immediate** need; and then only in the quantity to meet that need; or

(ii) The request covers item(s) that can be ordered, received, and placed in use prior to the end of the fiscal year.

(b) For orders placed in September, a review of the entire acquisition file (RP, PO, and supporting documentation) and purchase card file (purchase card acquisition form and supporting documentation, as required by the Chief of the Contracting Office) shall be conducted to ensure no violations of year-end policy have occurred. The Field Acquisition Office shall review orders for institutions and Regional Offices and the Acquisitions Branch shall review orders for the Central Office, MSTC and FLETC.

(c) If a violation of the September 14th year-end policy is discovered, and a determination is made that the acquisition was not for a bonafide need pursuant to the above criteria, the action will result in a contra-allotment from current year appropriations (see Budget Execution Manual).

7.105-70 - Request for Purchase

(a) An RP (BP-S101.041) or DOJ RCA (BP-s531-074) for Community Corrections (forms available on BOPDOCS), shall be used in submitting requirements.

(b) Contracting Officers shall not initiate acquisitions for the current year until CCMs make documentation of funds availability. Acquisitions for the next fiscal year shall not be initiated by Contracting Officers until CCMs provide notice of their intent to make funds available. However, this shall not limit the ability of the Contracting Officer to synopsise and solicit offers for requirements in advance of funds availability provided that the CCM has signed a notice of intent to make funds available and it is in the best interest of the BOP to do so, as determined by the BOP Procurement Executive.

(c) Each local Contracting Office shall have a Supplement containing instructions for processing RPs.

(d) The original RP shall be retained within the Contracting Office, available in the single purchase/task/delivery order filing system for audit purposes.

(e) RPs shall be used to submit requirements for supplies and services not itemized on other prescribed forms except in the following circumstances:

(1) Specification ("Spec") Cards - If used, CCMs shall deliver the completed cards to the Contracting Office no later than the first day of the final month of the quarter.

(2) An RCA form (available on BOPDOCS) has been developed for use in identifying many contract requirements (other than Community Corrections requirements). If an RCA is used in lieu of an RP, it must contain all information that would otherwise be contained in the RP.

(3) "Special Purpose Order Request" (BP-S200.045) (available on BOPDOCS) for acquisition of special purpose order items for inmates;

(4) Electronic RPs generated by the Trust Fund Accounting and Commissary System (TRUFACS) for commissary resale items.

(f) RPs and/or other prescribed forms shall be signed or initialed by CCMs, or designees, responsible for the particular cost center. RPs and supporting documentation transmitted

electronically must be sent from the CCM to the Contracting Officer.

(g) CCMs shall obtain pre-approvals for acquisitions requiring special approvals prior to submission of RPs to the Contracting Officer.

(h) RPs shall include required delivery dates. If the delivery date is critical to BOP functions, include a statement in the RP explaining any adverse effects if the delivery is not met. Delivery time frames such as Rush, Urgent, or As Soon As Possible, etc., shall not be used. Requests containing emergency handling documentation should be given top priority. Routine RPs should be processed in order of receipt. CCMs shall indicate recommended sources of supply for the requirements.

(i) The series of blocks on the RP marked "Price Quotation Abstract" may be used to document oral solicitations (e.g., completed Request for Quotations, attached worksheets, etc.).

(j) Contracting Officers shall insert designation codes into the corresponding blocks on the RP and enter the same information into the SF-281 Report in IPRO. The table containing the designation codes can be found in the TRM.

(k) A single purchase/task/delivery order or contract filing system shall contain all pertinent documentation including, but not necessarily limited to, RP, Purchase/Delivery Order, and any other applicable documentation (e.g., Request for Quotations, special approvals, justifications, etc.).

7.105-71 - Requirements for Special Approvals

(a) Whether acquired from surplus, acquired new, used, or leased, certain items require advance approval or authorization. Among the reasons to control or monitor certain types of acquisitions are the need for standardization and compatibility of equipment, or the need to obtain approval from higher authority (e.g., motor vehicles, memberships, etc.). In addition to those items noted in policy, there may be additional requirements placed upon individual disciplines by the Regional or Central Office. Special approval for some items may be granted at the local or Regional Office level, while others require approval by the Central Office, or higher. The approval must reflect the description and quantity requested and may be given using a signature on the face of the RP, memorandums, e-mails, special authorization number, etc.

(b) CCMS shall obtain all approvals and authorizations in accordance with the appropriate Program Statement. Once all approvals have been obtained, CCMS shall submit the authorizations with the RP to the contracting office, or, if appropriate, acquire using the purchase card.

(c) Listed below are examples of some products or services requiring special approvals:

(1) Central Office Approval Required

(i) Staff Housing Furnishing requests (for other than approved items) shall be submitted to the Chief, Property Management, Property and Construction Branch as specified in the Property Management Manual; and

(ii) Approval for acquisition/disposal of motor vehicles shall adhere to the Program Statement entitled, Facilities Operations Manual, Chapter 10.

(iii) DOJ Form 450s shall be prepared for the purchase of copiers and copy-related equipment. The DOJ Form 450 shall be approved by the Controller/Business Administrator prior to being sent to UNICOR for approval in accordance with the Program Statement entitled, Printing, Distribution Management, and Electronic Documents.

(2) Regional Office Approval Required

(i) Security, surveillance, or electronic communications equipment, not previously approved by the Regional Office, shall be submitted to the appropriate Regional Administrator for approval. Examples include, but are not limited to: security or communications systems, emergency response equipment, forced entry equipment, identification systems, intelligence systems, intrusion detection, metal detectors, perimeter security, vehicle security, personnel security, secure grills and doors, video systems (including identification, conferencing, surveillance, detection), access controls, and security x-ray equipment; and

(ii) Any type of firearm not previously approved for BOP use shall be submitted to the Regional Correctional Services Administrator for approval. (See Correctional Services Manual for examples of approved firearms).

(3) **Local Approval**

(i) All RPs for acquisition or rental of information technology (IT) hardware, software, or services (i.e., personal computers, desktop computers, mini-computers, servers, mainframes), or other resources defined in FAR Subpart 2.101, "information technology" by any BOP facility shall be approved by the local Computer Services Manager (CSM) on the face of the RP or purchase card acquisition form. Approvals received via e-mail shall be from the CSM and shall be order specific including the applicable YREGDOC number, items to be purchased, and the quantity to be purchased. This ensures the products or services being requested meet the standards of the Program Statement on Personal Computers and, if Local Area Network (LAN) related, the Network Standards Manual. See BPAP Part 39 for RPs of \$25,000 or more (regardless of individual item cost); and

(ii) Memberships in community or professional organizations:

(A) Require approval of the Chief Executive Officer (Attachment 7-A, TRM). It may be appropriate to expend Government funds to pay agency membership fees in local and professional organizations, upon a determination that the expenditure is a direct benefit to the agency or is a necessary expense to further the agency's mission (5 U.S.C. § 5946). Examples of memberships that may be approved are: local Chamber of Commerce, American Correctional Association, American Correctional Health Service Association, National Fire Protection Association, etc.

(B) Membership may be acquired only in the name of BOP, or in the name of the organizational BOP element (e.g., United States Penitentiary Leavenworth, Mid-Atlantic Regional Office, Central Office, etc.);

(C) Only one membership per organization at each respective location is acceptable; and

(D) Funds may not be used for memberships in an individual employee's name. Even if a membership is job-related, it does not overcome the prohibition against memberships in an individual employee's name (e.g., membership in a state bar association). However, it may be necessary to identify and associate the membership with a specific position (e.g., Warden, Health Services Administrator, etc.).

(iii) If seasonal decorations are purchased, pre-approval must be obtained from the CEO in accordance with the Property Management Manual.

(4) It may be appropriate to expend Government funds to pay for business cards to further the BOP's mission (e.g., Chief Executive Officer, recruitment, etc.). Acquisitions of business cards using Government funds require prior approval of the Chief Executive Officer. Cards shall be obtained from the required source, Lighthouse for the Blind, at 1-800-799-0402.

7.105-72 - Use Standards - Office Furnishings

Pursuant to the Federal Property Management Regulations (FPMR), it has been administratively determined by the Director that the positions listed below meet the requirements for executive-type office furnishings:

(a) Positions in Grade-15 and above;

(b) The following positions, regardless of grade: Camp Superintendents and Staff Training Center Directors;

(c) Similar or matching office furniture may be assigned to Secretaries and Staff Assistants whose duties are in direct support of these personnel.

SUBPART 7.3 - CONTRACTOR VERSUS GOVERNMENT PERFORMANCE

7.306 - Evaluation

When cost comparisons are required under OMB Circular No. A-76, "Performance of Commercial Activities," the Assistant Director for Administration, shall be the agency official responsible for final cost comparison evaluations.

7.307 - Appeals

Appeals concerning calculations of cost comparisons shall be forwarded through the Regional or respective Assistant Director and the BOP Procurement Executive to the Director.

PART 8

REQUIRED SOURCES OF SUPPLIES AND SERVICES

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PART 8. - REQUIRED SOURCES OF SUPPLIES AND SERVICES

SUBPART 8.0 - GENERAL

8.001-70 - Priorities for Use of Government Supply Sources

Defense Fuel Supply Center - Requirements for gasoline, fuel oil (diesel and burner), kerosene, and solvents; lubricating oils, greases, and gear lubricants; and coal shall be submitted directly to the Defense Fuel Supply Center, Cameron Station, Alexandria, VA 22314 (see Federal Property Management Regulation (FPMR) 101-26.602-1 and 101-26.602-4). Packaged petroleum products shall be submitted to the Defense General Supply Center (DGSC), Richmond, VA 23297 (see FPMR 101-26.602-2).

8.002-70 - Use of Other Government Supply Sources

(a) BOP authorized weapons and ammunition shall be obtained through BOP National Contracts. If a BOP National Contract is not available, such items may be acquired from the U.S. Army Tank-Automotive and Armaments Command, Armament and Chemical Acquisition and Logistics Activity, Attn: AMSTA-LC-CSI, Rock Island, IL 61299-7630 or on the Internet at <http://www.acala1.ria.army.mil/LC.cs/csi/satoc.htm>.

(b) Periodically, the BOP awards National Contracts for requirements (i.e., boiler inspection services, inmate urinalysis testing, etc.). Notice of such awards and pricing information are transmitted as appropriate by the Acquisitions Branch.

(c) Pursuant to the FPMR, BOP is required to procure new motor vehicles from the General Services Administration (GSA). Procedures shall be in accordance with the use of other Government supply sources in the TRM.

SUBPART 8.1 - EXCESS PERSONAL PROPERTY

8.102-70 - Utilization of Excess and Surplus Property

Pursuant to the FPMR, BOP is required to fill requirements to the maximum extent possible from excess or surplus sources of supply, as well as from sources within our own agency. See the FPMR and the BOP Property Management Technical Reference Manual for policy and procedures to be followed when acquiring excess personal property.

SUBPART 8.4 - FEDERAL SUPPLY SCHEDULES (FSS)

8.405-2 - Order Placement

All requests for Activity Address Codes (AAC) shall be forwarded to AMS, Acquisitions Branch, for approval. Procedures for obtaining, changing, or deleting AACs shall be in accordance with the TRM.

**SUBPART 8.6 - ACQUISITION FROM FEDERAL PRISON INDUSTRIES, INC.
(UNICOR)**

8.602 - Policy

(a) 18 U.S.C. § 4124, as implemented by FAR Subpart 8.6 and the FPMR, require the mandatory purchase by all Government agencies of products/services available from Federal Prison Industries, Inc., also referred to as UNICOR.

(b) It is BOP policy to utilize UNICOR for all available UNICOR products/services.

(c) The following are some of the products that must be ordered from UNICOR. A full product listing can be found at the UNICOR website www.unicor.gov.

(1) Pursuant to the FPMR, decals are required for official BOP motor vehicles and shall be ordered from UNICOR, Graphics and Services, Central Office. Only immediate needs should be requested without consideration of maintaining a stock supply.

(2) Targets shall be acquired from UNICOR.

(3) All stationary products (i.e., envelopes, letterhead, etc.) shall be obtained from UNICOR.

(4) Official Government license tags must be ordered through the Central Office Fleet Manager from UNICOR.

SUBPART 8.8 - ACQUISITION OF PRINTING AND RELATED SUPPLIES

8.802-70 - Policy

(a) Acquisitions of printing, binding, and blank-book work are prohibited, except from:

(1) Government Printing Office and

(2) UNICOR field printing plants.

(b) The following two reports shall have the approval of the Chief Executive Officer before submission to UNICOR, Graphics and Services, Central Office (DOJ Order - Justice Publications and Printing Regulations, and the Program Statement on Printing, Distribution Management, and Electronic Documents):

(1) Copy/Duplicating Inventory and

(2) Duplicating Production.

8.802-71 - Sources of Supply

(a) Federal Bureau of Investigation (FBI) Forms:

(1) The following forms shall be obtained by completing and forwarding Form 1-178 (Requisition for Ordering Identification Supplies) to the FBI, Identification Division, Washington DC 20530:

FD-249 Arrest and Institution Fingerprint Cards;
FD-258 Applicant Fingerprint Cards;
FD-353 Personal Identification Fingerprint Cards;
Envelopes, Self-addressed to FBI Identification
Division;
R-88 Death Sheet Forms;
R-84 Final Disposition Report Forms; and
I-12 Wanted Notice Forms.

(2) The facility's 3-digit allotment code, suffixed by a chronological number (e.g., for Lewisburg, "133-1," "133-2," "133-3," etc.), shall be inserted in the space marked "ORI" on Form 1-178.

(b) Government publications shall be acquired from the Superintendent of Documents in accordance with the Program Statement on Printing, Distribution Management and Electronic Documents.

(c) BOP forms shall be ordered in accordance with Program Statement on Forms Management.

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SUBPART 9.4 - DEBARMENT, SUSPENSION, AND INELIGIBILITY

9.404 - List of Parties Excluded from Federal Procurement and Nonprocurement Programs

(a) The List of Parties Excluded from Federal Procurement and Non-procurement Programs is available on the Internet at <http://epls.arnet.gov/>.

(b) All notices to the General Services Administration (GSA) regarding contractors debarred, suspended, proposed for debarment, or declared ineligible shall be submitted by the Chief, Acquisitions Branch.

9.406-3 - Debarment Procedures

(a) Any information which may form the basis for debarment or suspension (FAR 9.406-2) of a contractor shall immediately be referred to the BOP Procurement Executive.

(b) Pursuant to JAR 2809.402(b), if the BOP Procurement Executive decides to initiate debarment and/or suspension of a contractor, the notice must have Office of General Counsel concurrence prior to forwarding to the DOJ Procurement Executive for a final determination.

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SUBPART 11.2 - USING AND MAINTAINING REQUIREMENTS DOCUMENTS

11.201-70 - Disposition of Deceased Inmates

BOP guidance for the disposition of deceased inmates is outlined in the TRM.

SUBPART 11.5 - LIQUIDATED DAMAGES

11.502 - Procedures

Subject to the approval of the Commissioner, Financial Management Services (see Treasury Order 145-10), the Head of the Agency may reduce or waive the amount of liquidated damages assessed under a contract. Any such reduction or waiver requests shall be fully documented to support the reduction or waiver. The request shall be forwarded through the Chief of the Contracting Office to the BOP Procurement Executive.

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PART 12. - ACQUISITION OF COMMERCIAL ITEMS

SUBPART 12.1 - ACQUISITION OF COMMERCIAL ITEMS - GENERAL

12.102 - Applicability

(a) Contracting Officers shall use the policies set forth herein in conjunction with the TRM, FAR Part 12, and JAR Part 2812 in acquiring commercial items.

(b) BPAP Part 6 dollar threshold approvals apply to acquisitions of Commercial Items. However, for actions valued over \$25,000 but less than \$100,000, Contracting Officers may use an abbreviated justification format pursuant to the FAR Part 13.

**SUBPART 12.2 - SPECIAL REQUIREMENTS FOR THE ACQUISITION OF
COMMERCIAL ITEMS**

12.204 - Solicitation/Contract/Order Form

All BOP solicitations, contract awards, and orders (except for FAR 12.603 and FAR Part 36 acquisitions), when expected to exceed the SAT, shall use the SF-1449. For commercial acquisitions not exceeding the SAT, the SF-1449 or OF-347 may be used.

**SUBPART 12.3 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR
THE ACQUISITION OF COMMERCIAL ITEMS**

**12.302 - Tailoring of Provisions and Contract Clauses for the
Acquisition of Commercial Items**

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SUBPART 13.1 - Procedures

13.101-70 - General

For easy reference and uniformity, solicitation and contract flaps for simplified acquisitions are available on BOPDOCS.

13.106-1 - Soliciting Competition

(a) Past Performance will be listed as a significant evaluation factor in all competitively negotiated acquisitions when considering price and other non-cost evaluation factors. The weight assigned to Past Performance shall be at least 25% of the total evaluation or equal to the other non-cost evaluation factors.

(b) Requests for waivers to eliminate past performance as an evaluation factor when considering other than price shall be submitted by the Chief of the Contracting Office to the BOP Procurement Executive for approval.

SUBPART 13.3 - Simplified Acquisition Methods

13.301-70 - Governmentwide Commercial Purchase Card

(a) BOP shall fully use the Governmentwide Commercial Purchase Card Program. The purchase card program is intended to streamline and simplify acquisition and payment procedures, giving staff the opportunity to make practical business decisions in obtaining products or services for which they are knowledgeable.

(b) The purchase card shall be made available to BOP employees designated locally by CCMs. CCMs should utilize their best effort and discretion to select cardholders on a fair and equitable basis. Use of the card is mandatory for acquisitions of \$2,500 or less per transaction for all items not otherwise prohibited, and in accordance with the TRM. Use of the purchase card in no way diminishes the CCM's responsibility for sound internal controls and fiscal accountability. Purchase card use for acquisitions of Trust Fund items for resale is optional.

(c) Standards and guidelines to implement, use, and manage the purchase card program for simplified acquisitions throughout BOP are specified in the TRM. This program delegates authority of \$2,500 or less to Cardholders. Trust Fund acquisitions for

resale items are authorized for \$25,000 or less. See TRM 13.301-70(a) for procedures. Contracting Officers are authorized to use the purchase card to acquire good/services for \$25,000 or less on behalf of other Cost Centers.

(d) Ordering, receiving, and reconciliation procedures for orders placed by Contracting Officers on behalf of other Cost Centers shall be in accordance with the special procedures outlined in the TRM. Use of the purchase card for Trust Fund acquisitions in excess of \$2,500 requires the Cardholder to receive Special Level I authority, and to receive one acquisition training course within one year. Supervision and monitoring will continue to be under the direct control of the Contracting Officer's Approving Official.

(e) BOP's Level I Agency Program Coordinator (APC) is located in the Central Office and is BOP's primary representative to the card issuing bank. The Chief, Field Acquisition Office shall be a Level II APC and the institution Controller/Business Administrator or designee, and the Regional Comptroller shall be Level III APCs. Level III APC's shall have direct overall responsibility for the purchase card program at each location.

(f) Definitions of positions, forms, reports, and terms, as well as responsibilities and detailed procedures, are contained in the "Federal Bureau of Prisons Purchase Card Handbook," which is incorporated into the TRM (Attachment 13-A).

(g) Personnel designated to become "Cardholders" or "Approving Officials" must first receive procurement ethics and purchase card training, complete appropriate Procurement Integrity Certification, and for Cardholders only, obtain a Delegation of Cardholder Authority. Warranted Contracting Officers are not required to obtain a separate Delegation of Cardholder Authority. All Cardholders (including warranted Contracting Officers), Approving Officials, and APCs are required to complete "purchase card refresher" training every two years.

(h) Proposed Cardholders may be credited for the ethics portion of the training if they have completed the CCM self-study course, the COTR self-study course, or Procurement Integrity/Ethics training. At a minimum, purchase card training shall be completed by viewing BOP's Government Purchase Card Training CD. Upon completion of the ethics and purchase card training, the Controller/Business Administrator or Regional Comptroller must request Cardholder authority for the proposed Cardholder from the Chief, Field Acquisition Office (for Central Office employees, the Chief of the Local Contracting Office).

(i) Each issuer of Delegation of Cardholder Authority shall maintain a copy of the following documentation: Signed Delegation of Authority Letter, Procurement Integrity Certification, and Certification by the EDM that Procurement/Ethics and Purchase Card Training have been completed. This documentation must be kept on file indefinitely or until the cardholder is no longer affiliated with BOP. For staff cardholders transferring from another facility or location, a copy of the cardholders delegation of authority letter is to be forwarded upon request.

(j) Prohibited items and disallowed acquisitions:

(1) The purchase card shall not, under any circumstances, be used for: cash advances, rental or lease of land or buildings, travel, major telecommunications (telephone) services, or any personal items.

(2) Disallowed acquisitions under the purchase card include: meals, lodging, uniform allowance items, rental or lease of vehicles for travel purposes, construction services exceeding \$2,000, incentive awards (except for those authorized by Human Resource Departments), advisory and assistance services, lethal and non-lethal weapons and ammunition.

(k) Approving Officials shall verify and approve the Cardholder's monthly purchase card statements once the statement is reconciled by the Cardholder. Files containing Cardholder monthly statements (including purchase card acquisition form, packing slip/invoice, and any other backup documentation) and the Approving Official's accounting summary shall be maintained by the CCM or designee.

(l) Cases of waste, fraud, or abuse must be immediately reported to the Office of Internal Affairs by any employee who has knowledge of the case.

(m) Under no circumstances shall the purchase card be used for personal purchases. Violations may result in disciplinary actions.

(n) The overall responsibility for the integrity of the purchase card program is with the individual Cardholder. However, Approving Officials shall ensure each acquisition is in accordance with policy, and in the best interest of the Government.

(o) Semi-annually, local APCs must ensure reviews are conducted of each Approving Officials' (Cost Centers) purchase card files to ensure acquisitions comply with policy (e.g.,

statement reconciliation, mandatory sources, prohibited or personal use items, conformance to the Cost Center's mission, etc.). Reviews shall also consider any evidence that someone other than the Cardholder is making acquisitions with the purchase card. Local APCs shall maintain documentation of the reviews, identifying any deficiencies found, required corrective actions taken, and if applicable, any follow-up actions. Copies of the reviews and follow-up actions shall be forwarded to the Regional Comptroller and Chief, Field Acquisition Office, no later than 60 days from the date of the review. Cases of waste, fraud or abuse must be immediately reported to the Office of Internal Affairs. The scope of each semi-annual review shall consist of the following for each Approving Official:

(1) All Cardholders under the Approving Official shall be reviewed;

(2) A minimum of 100 transactions per Approving Official;
or

(3) If 100 transactions are not available, then the last 3 monthly statements for each cardholder.

(4) The first review shall take place during the first or second quarter of the fiscal year.

(5) The second review shall take place during the third or fourth quarter of the fiscal year.

(p) The Field Acquisition Office shall biennially review at least five Approving Officials' (Cost Centers) purchase card files at each institution to determine program compliance. Each institution will be reviewed at least once every other year. Additionally, the Field Acquisition Office shall review the findings of the local APC's reviews (see paragraph n above) to ensure compliance. Written reports of the reviews identifying deficiencies, any corrective measures and follow-up action (if applicable) shall be prepared and forwarded to the institution Controller/Business Administrator or designee, with a courtesy copy to the Chief, Acquisitions Branch, no later than 60 days from the date of the review.

(q) Cardholders shall safeguard the purchase card and account number at all times. All necessary precautions shall be taken to ensure that under no circumstances are inmates to have access to a card number (i.e., by processing/filing records, placing orders by telephone, etc.). Cardholders must not allow anyone to use their cards or account numbers. An intentional

violation or gross negligence of this security and trust may result in disciplinary action.

(r) Local procedures shall be established to ensure purchase card security for the placement of orders, safeguarding the purchase card, and maintaining purchase card documents and files.

(s) Approving Officials shall maintain records of purchase card acquisitions for a period of not less than five years. Records are to be maintained in a systematic and chronological order to facilitate review. Files shall include, at a minimum, copies of monthly Cardholder statements, monthly Approving Officials summary statements, Purchase Card Acquisition Forms listing items acquired, any available packing slips or invoices, and any backup documentation necessary. Approving Officials shall ensure statements are reconciled monthly; products or services acquired met BOP's minimum needs, were not for personal convenience items, and conformed to the department's mission. Fund Control shall be in accordance with the Budget Execution Manual.

(t) Activity from the Governmentwide purchase card should not affect an individual's personal credit report. If a situation does occur the cardholder shall request assistance from the National Agency Program Coordinator.

13.302-70 - Purchase Order Preparation - General

(a) Approval thresholds listed in BPAP Part 6 apply to all acquisitions processed under the SAP. However, for actions valued over \$25,000 but less than \$100,000, Contracting Officers may use an abbreviated justification format pursuant to FAR Part 13.

(b) If an acquisition is made from other than the required source of supply (e.g., UNICOR, General Services Administration (GSA) store stock orders \$5,000 and above per line item, etc.), waivers must be obtained and made a part of the acquisition document. Clearance is not required for NIB/NISH or UNICOR products purchased from GSA, since those agencies have complied with applicable regulations.

(c) The following forms shall be used to acquire supplies/services under this BPAP Part: OF-347 (Order for Supplies or Services not to exceed the SAT for Commercial Items), SF-1449, (Solicitation/Contract/Order for Commercial Items), GSA Form-1781 (GSA Motor Vehicle Requisition), SF-344 (Multiuse Standard Requisitioning/Issue System Document [available through

the GSA Catalog]), or any GSA electronic order forms, providing the Contracting Officer incorporates the accounting, receiving, and payment information and Contracting Officer's Signature on the file copies. The Chief, Acquisitions Branch, may approve other forms, if appropriate. Contracting Officers shall complete all applicable purchase/delivery order data elements on the form used.

(d) The following special procedures/notices apply to all orders for ammunition, weapons, and other controlled substances (These special procedures/notices also apply to purchase card acquisitions for security devices or controlled substances):

(1) **Military Type.** Chief Correctional Supervisors shall certify on the face of the RP that any ammunition requested is in accordance with the standards established in the current Correctional Services Manual. The Contracting Officer shall include a statement similar to the following in the "remarks column" of the Purchase/Delivery Order when ordering any ammunition, weapons, or security devices (i.e., handcuffs and locks), along with any additional instructions concerning shipment:

"SECURITY HAZARD - TO BE DELIVERED TO THE SECURITY OFFICER ONLY"

(2) **Other Ammunition/Weapons.** Chief Correctional Supervisors shall certify on the face of the RP that the requested ammunition and/or equipment is in accordance with the standards established in the current Correctional Services Manual.

(3) Orders for all controlled substances shall not list any other items. Such orders shall be prepared by designated employees without the knowledge or assistance of inmates and the Business Office shall ensure inmates do not have access to acquisition information until the controlled substances have been received. All orders for controlled substances shall bear the following statement:

"Instructions to consignor: Controlled substances and/or dangerous substances for a Prison facility. To be packed entirely separate from other items, shipped by certified mail or overnight carrier to the (insert the name of the CCM and the address and the phone number of the facility), who shall be notified in advance concerning the date of this shipment."

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PART 14. - SEALED BIDDING

SUBPART 14.2 - SOLICITATION OF BIDS

14.204-70 - Solicitation Files

For easy reference and uniformity, solicitation and contract flaps are available on BOPDOCS.

SUBPART 14.4 - OPENING OF BIDS AND AWARD OF CONTRACT

14.401-70 - Recording Bid Receipt

(a) Time/date stamps will be used to establish time of bid receipt. Bid envelopes will be stamped and maintained in the solicitation or contract files as documentary evidence to establish conclusively time of receipt.

(b) Where time/date stamps are not available, receipt shall be evidenced by the receiving official (evidence of date and time over the signature of the receiving official). Receipt shall be written on bid envelope or cover.

14.402-70 - Deposits Received with Bids

In rare instances where solicitation documents are not available for downloading from FedBizOpps and bid deposits have been provided, the following procedures shall apply. Bid deposits (i.e., checks, drafts, money orders) shall be listed on bid abstracts and turned over to the Controller/Business Administrator. If award is delayed more than 48 hours, the deposits shall be turned over to the Cashier for deposit to the location's suspense account. If award is made prior to the expiration of the 48-hour period, bid deposits shall be returned to unsuccessful bidders with a transmittal letter.

14.404-1 - Cancellation of Invitations after Bid Opening

Requests to cancel solicitations after bid opening (when at least one bid was received) shall be routed through the applicable Head of the Program Office to the Chief of the Contracting Office. The Chief of the Contracting Office shall review the request, all supporting documentation and recommend appropriate action. A memorandum containing the Chief of the Contracting Office's recommendation and description of the circumstances allowing cancellation and the solicitation file shall be forwarded to the BOP Procurement Executive for approval. When approval for cancellation of a solicitation has been obtained, notification to

offerors shall be made via SF-30 and shall include the reasons for cancellation of the solicitation.

14.404-3 - Notice to Bidders of Rejection of All Bids

Upon determination by the BOP Procurement Executive that rejection of all bids is in the best interest of the BOP, Contracting Officers shall notify each bidder in writing using the SF-30. The notification shall include the reason for rejection of all bids.

14.407-1-70 - General

Requests to allow corrections of mistakes in bids will be fully documented in accordance with FAR Part 14 and routed through the Chief of the Contracting Office to the BOP Procurement Executive.

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PART 15. - CONTRACTING BY NEGOTIATION

15.002-70 - Types of negotiated acquisitions

For easy reference and uniformity, solicitation and contract flaps for negotiated acquisitions are available on BOPDOCS.

SUBPART 15.3 - SOURCE SELECTION

15.303 - Responsibilities

(a) Contracting Officers are the source selection authority (SSAs) for all acquisitions, except for the following acquisitions where the Director has designated other individuals to serve as the SSA for a particular group of acquisitions:

(1) For Community Corrections contracts, the Administrator, Community Corrections Branch, Correctional Programs Division shall serve as the SSA.

(2) For Privatized Corrections contracts, the Administrator, Privatization Management Branch, Correctional Programs Division shall serve as the SSA.

(3) For Architect and Engineering contracts for existing institutions the SSA shall be the Chief, Facilities Management, Central Office.

(4) For Architect and Engineering contracts for the Central Office, the SSA shall be the Senior Deputy Assistant Director for Administration assigned responsibility for the Design and Construction Branch.

(b) Source selection officials shall comply with all requirements in FAR Subpart 15.3 and submit all required documents to the Contracting Officer.

15.304 - Evaluation Factors and Significant Subfactors

(a) Evaluation factors shall be prepared by the Program Office requiring the service or supply. To obtain Full and Open Competition, Contracting Officers shall ensure the factors are not unduly restrictive. Contracting Officers have the authority to reject evaluation factors if they appear to be unrealistic or unduly restrictive. Past Performance will be listed as a significant evaluation factor in all competitively negotiated procurements when considering price and other non-cost evaluation

factors. The weight assigned to Past Performance shall be at least 25% of the total evaluation or equal to the other non-cost evaluation factors.

(b) Requests for waivers to eliminate past performance as an evaluation factor when considering other than price shall be submitted by the Chief of the Contracting Office to the BOP Procurement Executive for approval.

15.305-70 - Proposal Evaluation Panel

(a) The Head of the Program Office or the SSA as appropriate shall appoint at least three members who are technically capable of evaluating proposals to serve on an evaluation panel and designate the Chairperson. The panel shall meet to review and score each technical proposal.

(b) For Architect and Engineering contracts and Design Build contracts, Regional Directors (for Central Office, the Senior Deputy Assistant Director for Administration assigned responsibility for the Design and Construction Branch) shall appoint technical evaluation members and designate the chairperson in accordance with BPAP 36.602-71.

(c) The Chairperson of the technical evaluation panel shall convene the panel; provide detailed instructions for completion of evaluations; ensure individual evaluations are completed by each panel member pursuant to the solicitation's stated evaluation criteria; ensure individual evaluations are documented to include supporting rationale for assignment of any numerical ratings; following completion of individual panel evaluations, conduct consensus meetings with all panel members; provide the Contracting Officer with a summary of the evaluation (including individual and consensus evaluations/scoresheets, listing of strengths, weaknesses, and any deficiencies that require discussions with offerors, etc).

15.305-71 - Cancellation of Request for Proposals after Closing Date

Requests to cancel solicitations after closing (when at least one proposal was received) shall be routed through the applicable Head of the Program Office to the Chief of the Contracting Office. The Chief of the Contracting Office shall review the request and all supporting documentation and recommend appropriate actions. A memorandum containing the Chief of the Contracting Office's recommendation and description of the circumstances allowing cancellation and the solicitation file shall be forwarded to the BOP Procurement Executive for approval.

When approval for cancellation of a solicitation has been obtained, notification to offerors shall be made via SF-30 and shall include the reason(s) for the cancellation.

15.306 - Exchanges with Offerors After Receipt of Proposals

(a) Mistakes in an offer may be resolved during communications or discussions. However, if communications or discussions are not held and an offeror requests permission to correct a mistake in its proposal after the closing date and time, but prior to award, the request shall be forwarded through the Chief of the Contracting Office to the BOP Procurement Executive. Contracting Officers shall forward all available information/documentation which supports the existence of a mistake together with the proposal actually intended. The BOP Procurement Executive, after consultation with the Office of General Counsel, shall make a written determination permitting correction of mistakes in proposals if appropriate.

(b) After proposals have been received, written and/or oral discussions shall only be between contractors and Contracting Officers. Warranted Contracting Officers are the only individuals authorized by the FAR to conduct discussions. Discussions must be meaningful, documented in writing, and placed in the solicitation file.

SUBPART 15.4 - CONTRACT PRICING

15.406-1 - Prenegotiation Objectives

Contracting Officers shall establish and place in the contract file prenegotiation objectives before the negotiation of any pricing action.

15.406-3-70 - Documenting the Negotiation

Upon completion of negotiations for a contract or modification, Contracting Officers shall document the file in accordance with FAR Subpart 15.4. This Summary shall include all pertinent details of the discussions held with each offeror(s), and the material facts, leading to the selection of the contractor selected for award.

SUBPART 15.5 - PREAWARD, AWARD AND POSTAWARD NOTIFICATIONS, PROTESTS AND MISTAKES

15.505 - Preaward Debriefing of Offerors

Debriefings will be prepared in accordance with FAR 15.505 and have concurrence one level above the Contracting Officer.

15.506 Postaward Debriefing of Offerors

Contracting Officers shall prepare postaward debriefings for each unsuccessful offeror in accordance with FAR 15.506. This debriefing will be prepared immediately after contract award and have concurrence one level above the Contracting Officer.

SUBPART 15.6 - UNSOLICITED PROPOSALS

15.606 - Agency Procedures

The Chief, Acquisitions Branch is the point of contact for the receipt and handling of unsolicited proposals. (JAR 2815.606)

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PART 16. - TYPES OF CONTRACTS

SUBPART 16.5 - INDEFINITE DELIVERY CONTRACTS

16.505 - Ordering

Pursuant to FAR Subpart 16.5 and JAR Subpart 2816.5, the BOP Competition Advocate is the Ombudsman for task and delivery order contracts.

SUBPART 16.6 - TIME-AND-MATERIALS, LABOR-HOUR, AND LETTER CONTRACTS

16.601 - Time-and-Material Contracts and 16.602 Labor-Hour Contracts

A written determination that no other contract type is suitable shall be prepared by the Contracting Officer and submitted through the Chief of the Contracting Office to the Chief, Acquisitions Branch. The Chief, Acquisitions Branch is the approving official for such contracts and all related determinations.

16.603 - LETTER CONTRACTS

16.603-3 - Limitations

A written determination that no other contract type is suitable shall be prepared by the Contracting Officer and submitted through the Chief of the Contracting Office to the BOP Procurement Executive. If adequate rationale has been provided to support use of a letter contract, it will be forwarded to the DOJ Procurement Executive for approval. Approval must be obtained prior to execution of a Letter Contract.

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PART 17. - SPECIAL CONTRACTING METHODS

17.000-70 - SCOPE OF PART

To meet its mission, and for maximum flexibility in some areas, BOP acquires and/or provides goods and/or services from and/or to other federal agencies, the military, and state and local governments through different types of agreements for a variety of purposes. This Part describes the different types of agreements and prescribes policies and procedures for executing them.

SUBPART 17.2 - OPTIONS

17.208 - Solicitation Provisions and Contract Clauses

Contracting Officers should refer to the Technical Reference Manual Subpart Part 17.2 for appropriate fill-in information for contract clauses 52.217-8 and 52.217-9.

SUBPART 17.5 - INTERAGENCY ACQUISITIONS UNDER THE ECONOMY ACT

17.501 - Definitions and Signature Authority

(a) **Interagency Agreement (IAG)**. Formal agreements with other Federal Agencies for goods and/or services provided by one supplier agency to one or more receiving agencies under authority of the Economy Act, 31 U.S.C. § 1535. IAGs define the responsibilities of the parties to the agreement to include financial responsibilities for services provided in the agreement. The term of the agreement may be for multiple years. The Chief, Acquisitions Branch is authorized to sign IAGs. This signature authority has been delegated to the Regional Directors, with the concurrence of the Chief, Field Acquisition Office, for IAGs affecting only their Regional Offices or facilities within their Regions. (See Attachment 17A, TRM).

(b) **Interservice Support Agreement (ISA)**. The military equivalent of an IAG. An ISA is a formal agreement that defines recurring services to be provided by one supplier (usually a military organization) to one or more receiving agencies and defines the basis for calculating reimbursement charges for the services. BOP can enter into and ISA with a military service under authority of the Economy Act, 31 U.S.C. S 1535. An ISA may be in effect for multiple years. The Chief, Acquisitions Branch is authorized to sign ISAs.

(c) **Intra-Agency Agreement.** Reimbursement Agreement (RA): Agreements between one or more Department of Justice (DOJ) organizations only (e.g., DOJ, Justice Management Division, U.S. Marshals, etc.) for goods and/or services provided by one or more DOJ supplying organizations to one or more DOJ receiving organizations (See Attachment 17-E, TRM). The performance period for this type of agreement does not usually cross fiscal years. Most RAs are paid out of appropriated funds and must be renewed annually. The Director has delegated authority to sign RAs to the Regional Directors and the Chief, Field Acquisition Office for RAs impacting only their Regional Office or facilities within that Region.

17.502 - General

Minimum Requirements. Although agreements may vary in format, all agreements shall include, at a minimum, the following provisions for agreements involving obligation of BOP funds:

(1) **Authority.** The authority is the Federal Statute authorizing BOP to enter into a particular agreement (not required for MOUs or MOAs not involving the obligation of funds by any of the parties to the agreement). The Economy Act is the appropriate Federal Statute for use with IAGs. Federal Statutes for IGAs will vary with the intent of the Agreement.

(2) **Estimated Amount.** To limit the BOP's financial exposure, the agreement must provide a total estimated cost, a method to calculate a total estimated amount, or a "not to exceed" estimated cost.

(3) **Method of Billing and Payment.** A description of invoice and payment procedures must be included, any allowable and/or unallowable costs, addresses, accounting information and billing dates.

(4) **Anti-deficiency Act.** In recognition of long-established appropriations law, the agreement must include the following:

"Nothing contained herein shall be construed to obligate the Federal Bureau of Prisons to any expenditure or obligation of funds in excess or in advance of appropriations in accordance with the Anti-Deficiency Act, 31 U.S.C. § 1341."

(5) **Period of Agreement.** The term of the Agreement shall be identified. If the term cannot be specified, the period of agreement shall be expressed as "indefinite."

(6) **Modification.** Modifications may be initiated by any party to the Agreement and shall be mutually agreed upon in writing.

(7) **Termination.** Termination shall be mutually agreed upon in writing by the parties. If notice is required before termination, the length of the notification time shall be specified.

(8) **Liability.** The agreement cannot include any provision requiring BOP to indemnify any other party. Normally, the agreement will include a provision to clarify that each party is responsible for any liability arising from its own conduct.

17.503 - Determinations and Findings Requirements

(a) To ensure that it is in the best interests of the Government to obtain the subject goods and/or services from another federal agency rather than directly contracting with a private source, all Economy Act agreements shall be supported by a Determination and Finding (D&F). The D&F shall be signed by the Head of the Program Office and the appropriate signature authority for the IAG (See Attachment 17-F, TRM).

(b) Consideration must be given to FAR Subpart 7.3, Contractor versus Government Performance requirements, and OMB Circular A-76, in determining that an interagency acquisition is in the best interest of the Government. A detailed cost comparison must establish that Government performance is more effective, convenient or economical than contracting with a private source, especially when goods and/or services previously have been provided by a private contractor.

SUBPART 17.70 AGREEMENTS UNDER OTHER STATUTES

17.71 - Definitions and Signature Authority

(a) Memorandum of Understanding (MOU)

(1) An MOU is a formal agreement that defines areas of mutual understanding of certain responsibilities between two or more parties, usually the trading of services between the parties, without financial compensation. An MOU does not involve the obligation of funds by any of the parties. An MOU may be in effect for multiple years.

(2) Although it may be preferable for the Director to sign some national agreements involving multiple divisions and/or regions, signature authority for a national MOU generally has been delegated to the Assistant Director of the appropriate division, depending upon subject matter. Signature authority for local MOUs has been delegated to the Chief Executive Officer with the concurrence of the Regional Director.

(b) **Memorandum of Agreement (MOA)**. An MOA is a formal agreement (usually initiated by the military) that defines general areas of responsibility and understanding between two or more parties. An MOA may include general financial obligations and a reference to a supplemental IAG and ISA that will detail specific services and define the basis for reimbursement. The military services often use MOAs and MOUS interchangeably. An MOA may be in effect for multiple years. The Director has delegated authority to sign MOAs to Regional Directors and the Chief, Field Acquisition Office. This authority has been delegated to Regional Directors for MOAs affecting their Regional Office or facilities within that Region. MOAs that do not include reference to financial requirements or expectations may be signed locally by facility Chief Executive Officers with the Regional Director's concurrence.

(c) **Inter-Governmental Agreement (IGA)**. Agreements between the BOP and one or more governments other than the Federal Government (states, Territories, Commonwealths, County, City) for goods and/or services provided by any of the parties to the other parties, either in exchange for appropriate reimbursement or for services provided by the other parties. The BOP may enter IGAs to house federal prisoners in State or local facilities using this type of agreement under authority of 18 U.S.C. § 4002; BOP may house certain state inmates (state boarders) pursuant to 18 U.S.C. § 5003. The authorizing statute also determines the length of time an IGA may be in effect, e.g. and IGA with a state or local government to house BOP inmates pursuant to 18 U.S.C. § 4002 cannot exceed three years, while a state boarder may be housed by BOP under 18 U.S.C. § 5003 for an indefinite period. The Director has delegated authority to sign IGAs authorized under 18 U.S.C. to the Chief, Field Acquisition Office.

For IGAs other than those under 18 U.S.C. signatory authority has been delegated to Regional Directors for goods and/or services affecting only their Regional Offices or facilities within the Region.

SUBPART 17.72 - General

The following shall be included in all agreements:

(a) **Period of Agreement.** The term of the Agreement shall be identified. If the term cannot be specified, the period of agreement shall be expressed as "indefinite."

(b) **Liability.** The agreement cannot include any provision requiring BOP to indemnify any other party. Normally, the agreement will include a provision to clarify that each party is responsible for any liability arising from its own conduct.

(c) **Modification Procedures.** Modifications may be initiated by any party to the agreement with mutual concurrence of all parties in writing.

(d) **Termination Procedures.** Agreements may be terminated by any of the parties to the agreement with the written concurrence of the other parties. Agreements may also be terminated unilaterally by any of the parties with appropriate advance written notification of all other parties.

PART 19

SMALL BUSINESS PROGRAMS

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**SUBPART 19.8 - CONTRACTING WITH THE SMALL BUSINESS ADMINISTRATION
[THE 8(a) PROGRAM]**

- 19.800-70 General

PART 19. - SMALL BUSINESS PROGRAMS

SUBPART 19.7 - THE SMALL BUSINESS SUBCONTRACTING PROGRAM

19.704 - Subcontracting Plan Requirements

(a) **Subcontracting Report for Individual Contracts (SF-294)** (available on BOPDOCS): SF-294s shall be submitted semiannually (by October 20th and April 20th of each year) to AMS, Acquisitions Branch.

(b) **Summary Subcontract Report (SF-295)** (available on BOPDOCS): SF-295s shall be submitted annually (by October 20th or immediately after contract completion) to AMS, Acquisitions Branch.

Note: Each Request for Proposals (RFP) requiring the submission of SF-294s and SF-295s shall include a statement with the required submission dates as outlined in 19.704.

19.705-2 - Determining the Need for a Subcontracting Plan

A determination that a particular contract has no subcontracting possibilities must be made in writing and approved as follows:

Determination Made By:

Institution Contracting
Officers

Field Acquisition Office
and Central Office
Contracting Officers

Approval Required By:

Field Acquisition Office
Contracting Officer One level
above the Institution
Contracting Officer

One level above the
Contracting Officer

19.705-4 - Reviewing the Subcontracting Plan

(a) Contracting Officers shall ensure Subcontracting Plans are in compliance with established BOP Small Business Goals. If the contractor is unable to meet BOP's goals, the contract file shall be documented to reflect the basis for noncompliance and a description of actions taken by the Contracting Officer to increase these goals. Prior to incorporating any Subcontracting Plans into contracts, they must be submitted through the Chief of the Contracting Office to the Central Office BOP Small Business Representative for review and approval.

(b) Contracting Officers must perform semi-annual reviews of all Contractors' Subcontracting Plans to ensure good faith efforts were made to meet established goals. Contracting Officers must ensure contract files are adequately documented to reflect all review findings.

**SUBPART 19.8 - Contracting with the Small Business Administration
[The 8(a) Program]**

19.800-70 - General

When entering into any 8(a) contract using the expediting procedures allowed by SBA, the acquisition shall comply with the most current Partnership Agreement between SBA and DOJ authorizing these procedures. Information regarding the most current Partnership Agreement is available from AMS.

PART 22

APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

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PART 22. - APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

SUBPART 22.1 - BASIC LABOR POLICIES

22.101-3 - Reporting Labor Disputes

Contracting Officers shall immediately report through the Chief of the Contracting Office to the Chief, Acquisitions Branch any potential or actual labor disputes that may interfere with contract performance.

22.101-4 Removal of Items from Contractor's Facilities Affected by Work Stoppages

Prior to taking any actions to remove items from a contractor's facility, Contracting Officers shall contact the Chief, Acquisitions Branch for instructions.

22.103-5 - Contract Clauses

The clause at FAR 52.222-1, "Notice to the Government of Labor Disputes" shall be included in all construction contracts.

SUBPART 22.6 - WALSH-HEALEY PUBLIC CONTRACTS ACT

22.608 - Procedures (Breach of Stipulation)

Contracting Officers shall report violations of stipulations under the Act through the Chief of the Contracting Office to the Chief, Acquisitions Branch before taking FAR prescribed actions.

SUBPART 22.8 - EQUAL EMPLOYMENT OPPORTUNITY

22.803 - Responsibilities

Questions concerning the applicability of Executive Order (EO) 11246, "Nondiscrimination Under Federal Contracts" shall be referred to the Chief of the Contracting Office.

22.805 - Procedures

The Department of Labor (DOL) "Equal Opportunity is the Law" poster is available on the Internet at <http://www.dol.gov/esa/regs/compliance/posters/eeo.htm>. Also, copies may be obtained upon written request from:

Office of Federal Contract Compliance Programs
Department of Labor
Room C-3325
200 Constitution Ave. NW
Washington DC 20210

22.807 - Exemptions

Requests for exemptions to the requirements of EO 11246 shall be submitted through the Chief of the Contracting Office to the BOP Procurement Executive.

22.808 - Complaints

Contracting Officers shall immediately advise the Chief, Acquisitions Branch through the Chief of the Contracting Office, of any complaints prior to referral to the Office of Federal Contract Compliance Programs.

SUBPART 22.13 - SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS

22.1305 - Waivers

Requests for waivers shall be submitted through the Chief of the Contracting Office to the BOP Procurement Executive.

22.1308 - Complaint Procedures

Contracting Officers shall immediately advise the Chief, Acquisitions Branch through the Chief of the Contracting Office of any complaints prior to referral to DOL.

SUBPART 22.14 - EMPLOYMENT OF WORKERS WITH DISABILITIES

22.1403 - Waivers

Requests for waivers shall be forwarded to the BOP Procurement Executive through the Chief of the Contracting Office.

22.1406 - Complaint Procedures

Contracting Officers shall immediately advise the Chief, Acquisitions Branch through the Chief of the Contracting Office, of any complaints prior to referral to DOL.

PART 23

**ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY
TECHNOLOGIES, OCCUPATIONAL SAFETY, AND
DRUG-FREE WORKPLACE**

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23.404-70 Affirmative Procurement Program for Recycled Materials

**PART 23. - ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE
ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND
DRUG-FREE WORKPLACE**

**SUBPART 23.3 - HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL
SAFETY DATA**

23.302 - Policy

The following procedures shall be used for all acquisitions involving hazardous materials or disposal of hazardous materials:

(a) CCMs shall alert Contracting Officers that materials being requested or disposed of are considered hazardous materials by including the following statement on the face of the RP:

"The Contractor shall forward Material Safety Data Sheets (MSDSs) for all hazardous materials to the attention of the Safety Manager at the destination address indicated on the Order or Contract at least one day prior to delivery."

(b) If the RP contains a hazardous material notification, Contracting Officers shall take the following actions:

(1) For requirements in excess of the SAP, include the clause at FAR 52.223-3, "Hazardous Material Identification and Material Safety Data," in solicitations and resulting contracts. If the SF-1449 is used, the clause shall be included as an addenda to FAR 52.212-4.

(2) For orders less than or equal to the SAT, Contracting Officers shall include the hazardous material notification contained on the face of the RP in the resulting order.

(3) For orders or contracts involving the disposal of hazardous waste, CCMs shall prepare a Statement of Work that includes a detailed description of tasks to be performed and all related requirements listed in BOP's Occupational Safety and Environmental Health Manual.

SUBPART 23.4 - USE OF RECOVERED MATERIALS

23.403 - Policy

It is the policy of BOP that its contracting activities and contractors that procure on behalf of BOP, acquire Environmental Protection Agency (EPA) designated items in accordance with EPA's Comprehensive Procurement Guideline for Products Containing Recovered Materials (40 CFR, Part 247). The recommended minimum recovered materials content of EPA designated items is set forth in EPA's Recovered Materials Advisory Notices (RMANS) and in Executive Order 12873 as amended. These publications are available from AMS.

23.404 - Procedures

(a) The program office initiating the acquisition is responsible for determining if recovered materials should be included in the specification. Procurement offices are responsible for informing program offices of the requirement for writing specifications for designated items that include minimum content standards specified in the RMANS.

(b) If the program office chooses to procure designated items containing less than the minimum content standards, the program office must justify that decision in writing and include a copy of the signed justification with the procurement request package. FAR 23.404 (b) (3) sets forth the only acceptable justifications for acquiring EPA designated items which do not meet the minimum content standard. The contracting officer is the approving official for justifications made pursuant to FAR 23.404(b) (3). Contracting Officers are responsible for including a signed copy of the justification in the acquisition file and submitting a copy of the approved justification to the Bureau of Prisons Environmental Executive (BOPEE).

23.404-70 Affirmative Procurement Program for Recycled Materials

(a) **Recovered Materials Preference Program.** Preference will be given to procuring and using products containing recovered materials rather than products made with virgin materials when adequate competition exists, and when price, performance, and availability are equal.

(b) **Promotion Program.** The BOPEE has primary responsibility for actively promoting the acquisition of products containing recycled materials throughout the BOP. Technical and procurement personnel will cooperate with the BOPEE to actively promote BOPEE's affirmative Procurement Program.

(c) Procedures for vendor estimation, verification, and certification.

(1) **Estimation.** The contractor shall provide estimates of the total percentage(s) of recovered material for EPA designated items to be used in products or services provided.

(2) **Certification.** Contracting officers shall provide copies of all vendor and subcontractor certifications required by FAR 23.405(b) to the BOPEE.

(3) **Verification.** The BOPEE is responsible for periodically reviewing vendor certification documents and waivers as part of the annual review and monitoring process to determine if BOP is in compliance with EO 12873 and subsequent amendments.

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PART 24.- PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

SUBPART 24.2 - FREEDOM OF INFORMATION ACT (FOIA)

24.203 - Policy

All requests for FOIA related information shall be referred to:

Freedom of Information Act/Privacy Action Section
Office of General Counsel
Federal Bureau of Prisons
320 First Street NW, Room 841
Washington DC 20534

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PART 25. - FOREIGN ACQUISITION

SUBPART 25.1 - BUY AMERICAN ACT - SUPPLIES

25.105 - Determining Reasonableness of Cost

Requests for use of higher evaluation factors as prescribed in FAR Subpart 25.1 shall be submitted through the Chief of the Contracting Office to the Chief, Acquisitions Branch.

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BONDS AND INSURANCE

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SUBPART 28.3 - INSURANCE

- 28.307-2 Liability

PART 28. - BONDS AND INSURANCE

SUBPART 28.1 - BONDS AND OTHER FINANCIAL PROTECTIONS

28.101 - Bid Guarantees

(a) Requirements for bid guarantees for construction contracts are waived when performance and payment bonds are required under the following conditions:

(1) The construction contract has been set aside for the Small Business Administration's 8(a) Program on a sole-source basis or

(2) The Contracting Officer has determined a bid guarantee is not in the best interest of the Government.

(b) The solicitation file shall be documented, in writing, as to the basis for the Contracting Officer's determination.

28.105 - Other Types of Bonds

Requests for approval to use other types of bonds allowed by FAR Subpart 28.1 shall be forwarded through the Chief of the Contracting Office to the Chief, Acquisitions Branch.

28.106-2 - Substitution of Surety Bonds

Requests for approval to substitute a new surety bond for a bond previously approved shall be forwarded through the Chief of the Contracting Office to the Chief, Acquisitions Branch.

28.106-6 - Furnishing Information

The BOP Procurement Executive is the authority for taking actions on payment bonds prescribed by FAR Subpart 28.1.

SUBPART 28.2 - SURETIES AND OTHER SECURITY FOR BONDS

28.204-70 - Approval of Alternatives in Lieu of Corporate or Individual Sureties

When contractors elect to deposit any of the types of security listed in FAR Subpart 28.2 instead of furnishing corporate or individual sureties on payment and performance bonds, Contracting Officers shall notify, in writing, the Chief of the Contracting Office, describing fully the proposed security. No awards shall

be made until Contracting Officers have received approval from the Chief, Acquisitions Branch (or the Chief of the Contracting Office if under the SAT).

SUBPART 28.3 - INSURANCE

28.307-2 - Liability

Approval to require property damage liability insurance shall be submitted through the Chief of the Contracting Office to the Chief, Acquisitions Branch.

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PART 32. - CONTRACT FINANCING

SUBPART 32.1 - NON-COMMERCIAL ITEM PURCHASE FINANCING

32.102-70 - Payments Under Construction Contracts

(a) When a payment request (pencil draft) is received from the Contractor, the Contracting Officer must break-out and subtotal various areas by building or division. The Contracting Officer shall note who the reviewers were (Construction Management Firm, Electrical, Mechanical, etc.). When final payment request is submitted the Contracting Officer must review the draft payment to ensure any changes were incorporated into the final payment.

(b) The Contracting Officer must maintain the pencil draft of each pay application from the Contractor to include a memorandum to the file that it has been reviewed for accuracy, corrections, and reconcile with the final payment.

Note: Final payment shall be approved in accordance with the Facilities Operations Manual.

PART 33

PROTESTS, DISPUTES, AND APPEALS

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PART 33.- PROTESTS, DISPUTES, AND APPEALS

SUBPART 33.1 - PROTESTS

33.103-70 - Protests Filed with BOP

(a) Protestors have the option of protesting to the Contracting Officer or to the Agency Protest Official (APO). BOP's APO is the Chief, AMS, Acquisitions Branch.

(b) When a written pre-award protest is filed with only the BOP, Contracting Officers shall immediately notify the Chief of the Contracting Office who shall promptly notify the Chief, AMS. No awards shall be made without written approval from the BOP Procurement Executive, and such awards are otherwise consistent with the JAR.

(c) If protestors choose the APO to decide the protest, Contracting Officers must notify the Chief, AMS within one day and provide all materials within three days of filing the protest. A scheduling conference with the protestor will be held within five days after the protest is filed. This conference establishes deadlines for oral or written arguments, and other procedures necessary to resolve the protest.

(d) Contracting Officers and protestors should use alternative dispute resolution techniques to resolve concerns or protests.

(e) If the Contracting Officer decides the protest:

(1) The Contracting Officer shall immediately prepare a written draft of the proposed response letter to the protestor, which shall be forwarded within 14 calendar days through the Chief of the Contracting Office to the Chief, AMS for review.

(2) Upon review and approval of the Contracting Officer's proposed response letter by the Chief, AMS, the Contracting Officer shall notify the protestor of the decision. Notification shall be made within 35 calendar days by certified mail return receipt requested to show the date the response letter was delivered to the protestor.

33.104 - Protests to General Accounting Office

(a) General

(1) The General Accounting Office (GAO) will notify the DOJ by telephone within one working day of the filing of a GAO protest. Upon receipt of such notification, DOJ will promptly notify BOP of the protest.

(2) Contracting Officers shall notify the Chief of the Contracting Office and the Chief, AMS, immediately by telephone, and in writing, upon receipt of a protest notification.

(3) The Chief, AMS, will notify the BOP Procurement Executive and the Office of General Counsel.

(4) Contracting Officers shall prepare a draft copy of the agency report responding to the GAO protest and forward it through the Chief of the Contracting Office to the Chief, AMS, to be received at least 20 calendar days prior to the due date. The Chief, AMS, will forward a copy to the Office of General Counsel.

(5) With the exception of the agency response to GAO, all other documents submitted to GAO shall be copies and not the originals.

(b) **Protests Before Award.** When Contracting Officers receive notice of a GAO protest, the contract shall not be awarded unless authorized by the Director, written findings are made pursuant to FAR 33.104(b)(1), and BOP notifies GAO of the findings. When a protest against the making of an award is received and award shall be withheld pending disposition of the protest, Contracting Officers shall proceed under BPAP 33.103-70(b).

(c) **Protests After Award.** When Contracting Officers receive notice of a GAO protest after award, the procedures in FAR 33.104(c) shall be followed. The Director may authorize contract performance upon a written finding made pursuant to FAR 33.104(c)(2) and upon BOP's notification to GAO of the findings. When a decision is made to suspend performance or terminate the awarded contract, Contracting Officers shall contact the Chief, AMS, to request guidance in negotiating a mutual agreement on a no-cost basis.

(d) If the BOP will not comply with GAO's recommendation, the Contracting Officer responsible for the acquisition shall prepare a report for the Director's signature, to be filed with the Comptroller General within 60 calendar days of receipt of GAO's recommendation. The report shall explain the reasons why BOP will not follow GAO's recommendation. This report will be sent through the Regional Director to the Assistant Director for Administration, Attention: BOP Procurement Executive before subsequent forwarding to the Director.

(e) Before paying a recommended award of protest costs, BOP personnel should consult the Chief, AMS.

33.106 - Solicitation Provision and Contract Clause

Contracting Officers shall complete the clause at FAR 52.233-2, "Service of Protest," by inserting the following information in the space provided in paragraph (a):

"...of receipt from the Procurement Executive, Federal Bureau of Prisons, 320 First Street NW, Room 5006, Washington, DC 20534"

SUBPART 33.2 - DISPUTES AND APPEALS

33.211 - Contracting Officer's Decision

When a dispute with, or a claim by or against a contractor, cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, Contracting Officers shall:

- (a) Review the facts pertinent to the dispute or claim;
- (b) Immediately provide written notice of the dispute or claim to the Chief of the Contracting Office and the Chief, AMS, who will be responsible for notifying the BOP Procurement Executive.
- (c) Coordinate with the Chief of the Contracting Office and the Chief, AMS, all efforts to resolve the dispute or claim. The Chief, AMS, will be responsible for notifying the BOP Procurement Executive.
- (d) Prepare a proposed written final decision pursuant to FAR 33.211. A draft copy of the proposed decision shall be forwarded through the Chief of the Contracting Office to the Chief, AMS, where it shall be reviewed and subsequently forwarded to the Office of General Counsel for review and comment. Upon

approval, the decision shall be returned to the Chief of the Contracting Office and forwarded to the Contracting Officer for issuance.

33.212 - Contracting Officer's Duties Upon Appeal

If the Contracting Officer's decision under BPAP 33.211 is appealed to the Department of Transportation Board of Contract Appeals (DOTBCA), the Contracting Officer shall:

(a) Notify the Chief of the Contracting Office and the Chief, AMS, immediately by telephone, and in writing, upon receipt of the appeal notification. The Chief, AMS, will be responsible for notifying the BOP Procurement Executive.

(b) Within 15 calendar days after receipt of notice that an appeal has been docketed, assemble and transmit through the Chief of the Contracting Office to the Chief, AMS, an indexed appeal (Rule 4) file consisting of copies of all documents pertinent to the appeal, including:

- (1) the claim itself;
- (2) the Contracting Officer's final decision on the claim;
- (3) the contract, including pertinent specifications, modifications, plans and drawings;
- (4) all correspondence between the parties pertinent to the appeal, including the letters of claim in response to which the decision was issued;
- (5) transcripts of any testimony taken during the course of the proceedings and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with DOTBCA; and
- (6) any additional pertinent information.

(c) With the exception of the response to DOTBCA, submit copies (not the originals) of all other documents; and

(d) Provide data, documentation, information and support as may be required by the Chief of the Contracting Office to the Chief, AMS, and to the Office of General Counsel for use on a pending appeal from the Contracting Officer's decision.

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PART 36. - CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

SUBPART 36.1 - GENERAL

36.101 - Applicability

Construction and Architect-Engineer (A&E) contracts are subject to the requirements in other parts of this Program Statement and are to be followed when applicable.

36.103 - Methods of Contracting

(a) **Construction Contracts.** The offer due date for all construction contracts under SAP shall be sufficient to allow adequate time for interested offerors to review the requirements and submit an offer. However, the minimum offer due date shall be no less than 14 calendar days.

(b) **A&E Contracts.** A&E services shall be acquired in accordance with FAR 36.6. A&E acquisition authority shall not be delegated below the Field Acquisition Office or Construction Contracting Section, Property and Construction Branch level, unless specifically authorized in advance and in writing by the BOP Procurement Executive. The selection of firms for A&E contract negotiations shall be in accordance with the Facilities Operations Manual.

SUBPART 36.2 - SPECIAL ASPECTS OF CONTRACTING FOR CONSTRUCTION

36.201 - Evaluation of Contractor Performance

Contractor Performance Evaluation Reports (SF-1420, Performance Evaluation - Construction Contracts) shall be prepared in accordance with FAR Subpart 36.2. COTRs (usually referred to as a Project Representative or Construction Representative) shall complete and forward evaluation reports to the Regional Facilities Administrator (for Central Office the Project Administrator for the Design and Construction Branch). Regional Facilities Administrators or Project Administrators shall review the reports to ensure completeness and accuracy and return the reports to the Contracting Officer with comments. Contracting Officers shall assign the final rating and sign the report. If the Contracting Officer determines an unsatisfactory performance report is required, the procedures specified in FAR 36.201(a)(3) are to be followed. Evaluation reports shall be maintained in the file, and a copy submitted to the COTR and to the Chief of the Contracting Office. Reports are to be maintained for a minimum of three years after the date of the report.

36.202 - Specifications

Prior to issuing construction solicitations, Contracting Officers shall have written documentation certifying that all specifications and drawings have been approved by the Regional Facilities Administrator for institutions and Regional Offices or the Project Administrator, Design and Construction Branch for the Central Office. This certification shall be included in the pre-award file.

36.203 - Government Estimate of Construction Costs

(a) Program Offices shall provide Contracting Officers with Independent Government Estimates (IGEs) prepared in accordance with FAR Subpart 36.2.

(b) The IGE shall be treated as confidential and disclosed only to persons whose official duties require knowledge of the information. Before releasing the IGE, Contracting Officers shall consult with their immediate supervisors.

(c) Anyone having access to the IGE shall be considered a Procurement Official and shall be subject to the Procurement Integrity Certification.

36.206 - Liquidated Damages

(a) Before including liquidated damages in a construction contract, the amount must be justified, in writing, by the institution Facility Manager, Regional Facilities Administrator, or Central Office Project Manager. The final determination for the amount of liquidated damages is the Contracting Officer's responsibility.

(b) When the contract provides for liquidated damages and the contractor does not complete the work within the specified time (including any contract time extensions because of stop-work orders, modifications, etc.), the amount assessed for liquidated damages shall be deducted from the final payment and the contractor so advised in writing.

36.209 - Construction Contracts with Architect-Engineer Firms

Approval shall be obtained prior to awarding a construction contract to the firm that designed the project or its subsidiaries or affiliates. Requests for approval shall be submitted through the Chief of the Contracting Office to the Chief, Acquisitions Branch, or for new facility construction contracts to the Chief, Property and Construction Branch. This requirement is not applicable to contracts awarded under design-build procedures.

36.210 - Inspection of Site and Examination of Data

(a) In addition to the requirements of FAR Subpart 36.2, Contracting Officers shall include in solicitations/contracts the applicable security and investigative procedures (See Human Resource Management Manual and BPAP Subpart 37.1).

(b) Contracting Officers should hold pre-bid/proposal conferences to brief prospective offerors on complicated specifications, institution security requirements, and to allow an opportunity to provide data and to inspect the construction site (see FAR Subpart 14.2). Pre-bid/proposal conferences are not to be used as a means to substitute or amend defective or ambiguous specifications. If conferences result in the discovery of defective specifications, they must be corrected by an amendment to the solicitation. Because all interested parties may not attend pre-bid/proposal conferences, it is essential that conference minutes be recorded and posted to FedBizOpps. A cover letter/notice shall be used in posting the minutes in FedBizOpps and shall state that the minutes are provided for informational purposes only; are not intended to change any specifications, terms, or conditions of the solicitation; and any changes to the solicitation shall be issued in subsequent amendments.

36.212-70 - Pre-Construction Conference

Prior to the start of construction, Contracting Officers shall call a conference with the contractor, subcontractor(s), Warden, Controller/Business Administrator, Safety Manager, Facilities Administrator, Project Representative, A&E firm, Captain and other interested personnel to discuss the statutory labor standards, prevailing wage requirements, submission of the contractor's payrolls, subcontractor's responsibilities, institution work schedules, local policies, contraband, parking, storage of vehicles and equipment, etc.

Minutes of the conference shall be recorded, listing the names and titles of all attendees, and the subject matter of all items covered. The minutes shall be signed by the contractor and the Contracting Officer, and a signed copy placed in the contract file.

36.213-70 - Davis-Bacon Act Wage Determinations

(a) Construction solicitations expected to exceed \$2,000 shall include all applicable Davis-Bacon Act wage determinations. Wage determinations can be obtained on the Internet at www.gpo.gov/davisbacon. Wage determinations can also be obtained by submitting a SF-308 (Request for Determination and Response to Request) to the Wage and Hour Division, Attn: Branch of Construction Contract Wage Determinations, DOL. The SF-308 must be submitted to DOL at least 45 calendar days prior to issuing the solicitation or exercising an option to extend the term of the contract. When a general wage determination does not include the specific class of worker required by the contract, the Contracting Officer should issue a SF-308 in accordance with FAR 22.404-3. However, due to the urgency of some projects, it may be necessary to issue solicitations before wage determinations are obtained from DOL. In such instances, a notice shall be included in the solicitation that all applicable minimum wage rates shall be incorporated by an amendment to the solicitation.

(b) Program Offices shall provide the Chief of the Contracting Office with the type of construction and the county and state where work shall be performed. The Program Office shall select the job classifications required in performance of the work.

(c) The following procedures apply to **all** construction contracts using Davis-Bacon wage determinations:

(1) Contracting Officers shall ensure posters entitled "Equal Employment is the Law" (see BPAP Subpart 22.8) and a completely legible copy of the prevailing Wage Determination(s) are posted by the contractor in an area readily seen by workers.

(2) Prime contractors shall submit to Contracting Officers weekly payrolls on work performed under all construction contracts as required by DOL's Labor Standards for Contracts involving Construction.

(3) Throughout construction projects, Contracting Officers or authorized representatives shall interview randomly-selected employees of various classifications and trades currently employed on the project to assure compliance with

contract labor provisions. Data obtained in these interviews shall be used in examination of certified payrolls submitted by the contractor. A memorandum of the interviews showing project number, name, date, employer, employee, classification or trade, period of apprenticeship (if applicable), hourly rate of pay, and comments shall be attached to the applicable payroll. Interviews should not be held in the presence of the employer or the employer's representative. The purpose and need for the interview should be explained to the employee being interviewed.

(4) Projects of short duration (six months or less) shall be reviewed before the work is accepted, if feasible. In cases of contracts extending over long periods of time, employee interviews shall be conducted with such frequency as may be necessary to assure compliance with statutory labor standards, procedures, and prevailing wage requirements.

(d) **Chronological Record of Progress.** Institution Facility Managers or Project Representatives shall supervise operations and maintain a complete progress record for each construction project/contract. This progress record shall become a part of the official contract file. A record sheet shall be established to show the essential progress information in chronological order under the following: contract number, name and address of contractor, brief description of the project, contract price, date of contract, time required for completion, date contractor received notice to proceed, and dates and durations of stop-work orders, if any, issued by the Government. The record should be so complete that no question remains in the event the contractor claims an extension of contract time, or remission of liquidated damages, etc. Institution Facility Managers or Project Representatives shall monitor the contractor's progress, provide status reports with each pay application (or as required by the Contracting Officer), and submit reports to the Contracting Officer. Additionally, status reports shall be provided immediately whenever:

(1) The work is not proceeding on schedule. In such events, Contracting Officers shall put the contractor on notice, in writing, with copies furnished to the Chief of the Contracting Office, the Institution Facility Manager, the Regional Facilities Administrator, the surety, and the contract file;

(2) A contract modification may be required (e.g., change orders, time extension, stop-work order, etc.); or

(3) The contract work is not being accomplished according to specifications. In such events, Contracting Officers shall put contractors on notice, in writing, with copies furnished to

the Chief of the Contracting Office, the Institution Facility Manager, the Regional Facilities Administrator, the surety, and the contract file.

SUBPART 36.5 - CONTRACT CLAUSES

36.515-70 Schedules for Construction Contracts

The Contracting Officer must ensure and document the file that a realistic period of performance is incorporated in solicitations for construction contracts. In support of the Contracting Officer's determination, the Cost Center Manager (CCM) must provide the Contracting Officer with adequate supporting documentation. The CCM may utilize sources such as A/E or CMF to assist in evaluating the contract performance period. Documentation to reflect recommendation for changes and/or extensions and acceptance (rejection) of those recommendations should also be included in the preaward file.

SUBPART 36.6 - ARCHITECT-ENGINEER SERVICES

36.601-3 Applicable Contracting Procedures (Specifications)

A&E contract specifications shall comply with FAR Part 11 and shall promote full and open competition.

36.602-1 Selection Criteria

BOP shall evaluate each potential A&E Firm in accordance with the selection criteria outlined in FAR Subpart 36.6 and the Facilities Operation Manual.

36.602-2 - Evaluation Boards

Evaluation board members for A&E services shall be appointed by Regional Directors (for institutions and Regional Offices) or the Senior Deputy Assistant Director for Administration assigned responsibility for the Design and Construction Branch (for the Central Office). Members appointed shall collectively have the requisite experience and technical competence in architecture, engineering, construction, and related acquisition matters to enable effective evaluations. Evaluation boards shall consist of a minimum of three members, one being the Regional Facilities Administrator or designee (for institution or Regional Offices) or the Project Administrator, Design and Construction Branch (for the Central Office) who may serve as the Evaluation Board Chairperson.

36.604 - Performance Evaluations

(a) Contractor Performance Evaluation Reports (SF-1421, "Performance Evaluation - Architect & Engineering Contracts") shall be prepared in accordance with FAR Subpart 36.6. Performance evaluation reports shall be prepared for each A&E contract exceeding \$25,000 and for all contracts of \$25,000 or less when performance is unsatisfactory.

(b) COTRs shall provide performance information reports. COTRs shall forward reports to Regional Facilities Administrators (for institution and Regional Office requirements) or to Project Administrators (for Central Office requirements). These individuals will review the performance reports to ensure completeness and accuracy and will return the reports to the Contracting Officer with comments.

(c) Contracting Officers shall assign the final rating and sign the report. If Contracting Officers determine an unsatisfactory performance report is required, the procedures specified in FAR Subpart 36.2 shall be followed.

(d) Evaluation reports shall be maintained in the contract file and with the A&E's SF-254/255 (Architect-Engineer and Related Services Questionnaire). Copies of the reports shall be provided to the COTR, Institution Facility Manger, Regional Facilities Administrator, Chief, Design and Construction Branch, and to the Chief of the Contracting Office. The contract file copy shall be maintained for a minimum of three years after the report date. The report shall be prepared at the time of final acceptance of the work or at the time of contract termination.

36.608 - Liability for Government Costs Resulting from Design Errors or Deficiencies

Contracting Officers shall review and document, in the contract file, all technical recommendations on errors, omissions, and deficiencies. If the A&E firm is liable for Government costs resulting from errors or deficiencies, the procedures in FAR Subpart 36.6 shall be followed.

PART 37

SERVICE CONTRACTING

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PART 37. - SERVICE CONTRACTING

SUBPART 37.1 - SERVICE CONTRACTS - GENERAL

37.102 - Policy

(a) Requirements for personal services are generally satisfied by appointing individuals pursuant to Office of Personnel Management (OPM) regulations. OPM regulations shall not be circumvented by contracting for personal services. Contracts for professional nonpersonal services, properly written and administered, represent an approved method for accomplishing BOP programs and objectives.

(b) Because advertising in FedBizOpps for nonpersonal services contracts may not generate sufficient competition, particularly in small communities, Contracting Officers are encouraged to use local advertising media to further enhance competition, pursuant to FAR Subpart 5.1 and BPAP Subpart 5.5.

(c) CCMs or COTRs shall complete contractor evaluations pursuant to BPAP Subpart 42.15 (forms available on BOPDOCs).

37.103 - Contracting Officer Responsibility

(a) For services to be performed, Contracting Officers shall:

(1) Obtain from CCMs completed RPs addressing all elements listed in BPAP 37.103-70. CCMs shall ensure proposed contracts for services are proper;

(2) Ensure Statements of Work for all nonpersonal services contracts include a statement that the contract does not constitute an employer/employee relationship;

(3) Ensure the requirements of DOJ Order 2640.2E, Information Technology Security, are met for service contracts having access to Department of Justice, Information Technology systems (i.e., pharmacy system, SENTRY, etc.); and

(b) Security requirements, as outlined in the Human Resource Management Manual, apply to all services performed at BOP facilities, and certain other services performed outside institutions when covered under other Program Statements (e.g., Guard Service, Community Corrections Contracting (CCC), etc.). Contracting Officers will ensure prospective contractors agree to security investigative procedures by incorporating the following requirements into solicitations/bids/proposals:

- (1) National Crime Information Center (NCIC) check;
- (2) DOJ-99 (name check);
- (3) FD-258 (fingerprint check);
- (4) Law Enforcement Agency checks;
- (5) Vouchering of Employers;
- (6) Resume/Personal Qualifications;
- (7) OPM-329-A (Authority for Release of Information); and
- (8) National Agency Check and Inquiries (NACI) check (if applicable).

(c) Contracting Officers shall ensure all prospective contractors are advised during the solicitation or quotation phase that a urinalysis test is required (for detection of marijuana and other drug usage). If the proposed contract is with a company and the individual(s) assigned to perform the work test(s) positive, the individual(s) shall be excluded from performing the contract and the contractor shall provide acceptable replacement personnel subject to the same security requirements. If the proposed contract is with an individual, the contract award may not be made until a negative test is received.

(d) Prior to performance under contracts awarded to other than individuals, Contracting Officers shall obtain (from the Personnel Officer or the appropriate CCM) written assurance that investigative procedures have been completed pursuant to the current Human Resource Management Manual. For contracts with individuals this requirement must be completed prior to award. When a NACI check is required, the requirement must also be initiated, but not necessarily completed, prior to performance.

(e) All contracts for services performed at BOP facilities must contain the following statements:

(1) The service is a contractual arrangement and not a personnel appointment;

(2) Payment is based on an end product or the accomplishment of a specific result;

(3) The service does not constitute an employer/employee relationship; and

(4) The contractor will not be subject to Government supervision, except for security related matters. However, contractor performance shall be monitored.

(f) Contracting Officers shall ensure contract compliance, and may appoint COTRs pursuant to JAR Subpart 2801.70. The clause at JAR Subpart 2852.2 shall be used to establish COTR responsibility and authority. This clause may be included as an addenda to FAR 52.212-4 if used or so indicated on other prescribed forms.

37.103-70 - Cost Center Manager Responsibility

(a) CCMs shall:

(1) Conduct market research pursuant to FAR Part 10 for all acquisitions.

(2) Provide an estimate of the cost of services, which may, among other things, be based upon the prior year's experience (e.g., cost of operating the previous year plus any economic or requirements adjustments). For new requirements with no prior year's experience, CCMs shall estimate the cost based upon experience with established contractors, information obtained through market research, and an estimate of required work.

(3) Identify potential contract sources. Initial resources to consult regarding available sources are the Internet, local telephone directories, hospitals, universities, current contractors, etc.

(4) Submit to Contracting Officers RPs/RCAs (including a Determination of Need), within the acquisition lead times established in BPAP Subpart 7, addressing the following:

(i) Purpose of Contract;

(ii) Description of the services required/SOW. SOWs shall provide, at a minimum, specific descriptions of the services to be performed and delivery schedules. SOWs shall include requirements listed in relevant BOP Program Statements and other regulatory requirements. SOWs shall be neither so narrow as to unduly restrict competition or to restrict the contractor's efforts, nor so broad as to permit contractors to stray into peripheral areas in performing the required work; SOWs must include expected performance-based standards and incentives, if applicable;

(iii) Provide evaluation selection criteria, including Past Performance when appropriate;

(iv) Existing OPM positions which may be supplemented by this contract;

(v) Reasons why services cannot be accomplished by OPM positions already assigned;

(vi) Academic, experience, and/or special qualifications required;

(vii) Management, consultant, advisory, evaluative, or analytical services to be provided;

(viii) Reasons for determining that services to be provided are to be unsupervised and nonpersonal in nature;

(ix) CCM's determination that the proposed services are proper for a nonpersonal services contract using the definitions and guidelines in FAR Subpart 37.1.

(b) Proposed nonpersonal services contracts with individuals requiring more than 30 hours per week must be submitted to and approved by Regional Directors (for institutions and Regional Offices) or to respective Assistant Directors (for the Central Office).

(c) CCMs shall conduct appropriate vouchering and law enforcement checks and ensure appropriate fingerprinting and urinalysis testing is completed in accordance with the Human Resource Management Manual to include the items listed in BPAP 37.103(b) (1) through (8).

37.106 - Funding and Term of Service Contracts

Prior to funding any severable service contract actions under the authority of FAR 32.703-3(b) or 37.106(b), concurrence must be obtained from the Controller/Business Administrator and Regional Comptroller prior to submittal to the Chief, Budget Execution Branch, Central Office for approval. CCMs shall obtain all such approvals prior to forwarding to the Contracting Office.

37.112-70 - Government Use of Private Sector Temporaries

(a) "Temporary Private Sector Services" are defined as temporary help acquired from temporary help service firms for meeting short term temporary work needs (5 CFR Part 300).

(b) Temporary services may be contracted through the private sector to temporarily replace any service provided by an assigned Civil Service position. Positions classified as

managerial, supervisory, or consultants may not be filled by temporaries.

(c) **Criteria:**

(1) One or more of the following short-term situations must exist:

(i) Unforeseen personal need (including illness, parental or family responsibilities);

(ii) Mandatory jury duty;

(iii) Permanent change of duty for the benefit of the Government;

(iv) Work critical to the operation, which in the judgement of the agency, cannot be delayed; or

(v) The need cannot be met with current staff or "appointment" of temporary employees.

(2) The services are not:

(i) In lieu of regular recruitment and hiring procedures under Civil Service Law;

(ii) To displace Federal employees;

(iii) To supplement current staffing above authorized position guidelines; or

(iv) Creating an employer/employee relationship or appearance of such relationship.

(d) **Contract Period:**

(1) Agencies may use temporary help service firm(s) in single situations, as defined in 5 CFR 300.503, initially for no more than 120 workdays. Provided the situation continues to exist beyond the initial 120 workdays, the agency may extend its use of temporary help services up to the maximum limit of 240 workdays.

(2) Time limit on use of individual employees of a temporary help service firm:

(i) Individual employees of any temporary help firm may work for up to 120 workdays in a 24-month period. The 24-month period begins on the first day of assignment.

(ii) Agencies may make exceptions for individuals to work up to a maximum of 240 workdays only when the agency has determined that using the services of the same individual for the same situation will prevent significant delay.

(e) **Acceptable Service Provider:**

(1) A "Temporary Help Service Provider" is an entity that provides specific services for brief or intermittent periods by its employees. The "provider" shall be the employer legally responsible for recruiting, testing, hiring, training, assigning, paying (including benefits, leave, payroll deductions, taxes), disciplining, providing unemployment insurance, workers' compensation, liability insurance, and bonding.

(2) A "Temporary Help Service Provider" is not an individual person.

(f) Requests for approval for the initial 120 workday contract period and any extension periods (not to exceed an additional 120 workdays) shall be by memorandum and shall be submitted by Wardens to Regional Directors (for institution requirements); by Regional Program Offices to Regional Directors (for Regional Office requirements); or by Central Office Program Offices to the respective Assistant Director.

(g) CCMS shall submit to Contracting Officers RPs/RCAs addressing the following (Documentation required under BPAP Part 37.103-71 is not applicable):

- (1) Description of service required;
- (2) Vacant staff positions;
- (3) Number of work days required;
- (4) Number of hours per day, number of days per week;
- (5) Documentation of Market Research, to include estimated cost per hour/session/day and estimated cost of contract;
- (6) Reason for position vacancy;

- (7) Number of days position has been vacant;
- (8) Circumstances creating the critical need, and that the services cannot be accomplished by current staffing; and
- (9) Certification that no employer/employee relationship or appearance of such relationship will be created, and that the service will not be supervised by the Government except for technical instructions and security-related matters.
- (10) The Personnel Officer shall certify the services being acquired are not in lieu of regular recruitment and hiring procedures under Civil Service Laws and regulations, services will not displace Federal employees, services will not supplement current staffing above authorized position guidelines, and services are not classified as supervisory, managerial, or senior executive service positions.
- (h) CCMs shall provide written evaluations of contractor performance pursuant to BPAP Subpart 42.15.

SUBPART 37.2 - ADVISORY AND ASSISTANCE SERVICES

37.200-70 - Policy

Advisory and Assistance Services (or Consulting Services) shall be acquired in strict accordance with FAR Subpart 37.2. Advisory and Assistance Services shall be obtained from organizations and persons outside the Federal Government only when such services and/or special abilities are necessary and are not available from DOJ or other Federal agencies.

37.200-71 - Management Controls

(a) Before processing contract actions determined by Contracting Officers to be for Advisory and Assistance or Consulting Services, the Chief of the Contracting Office shall be contacted for instructions on how to proceed. Former Government or BOP employees shall not be given preference in Advisory and Assistance Services arrangements.

(b) The Director shall approve acquisitions for Advisory and Assistance contracts, regardless of value, in advance of solicitation issuance. All requests for approval must have the concurrence of the Warden and Regional Director (for institutions); Regional Program Office and Regional Directors (for Regional Offices); Central Office Program Office and the respective Assistant Director (for the Central Office).

(c) CCMS shall provide written evaluations of contractor performance pursuant to BPAP Subpart 42.15.

37.202 - BOP Exclusions

The following services are not considered to be Advisory and Assistance Services:

- (a) Community Corrections and Detention Contracts;
- (b) InterGovernmental and InterAgency Agreements;
- (c) Drug Testing (Inmate and Staff);
- (d) Human Immunodeficiency Virus (HIV) Testing;
- (e) Medical Service Contracts;
- (f) Guard Service Contracts;
- (g) Vending Machine Contracts; and
- (h) Educational and Vocational Services.

37.204-70 - Cost Center Manager Responsibilities

CCMS having requirements for Advisory and Assistance Services contracts shall submit the following to Contracting Officers:

- (a) Statement certifying the requirement is for Advisory and Assistance Services;
- (b) Complete SOW and evaluation criteria;
- (c) Justification for Other than Full and Open Competition (if required);
- (d) The name of a COTR; and
- (e) Written approval of the Director.

37.205 Contracting Officer Responsibilities

Contracting Officers (or Administrative Contracting Officers) shall ensure contract monitoring reports are received and reviewed for policy compliance pursuant to BPAP Subpart 42.15.

PART 39

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PART 39. - ACQUISITION OF INFORMATION TECHNOLOGY

SUBPART 39.1 GENERAL

39.101 - Policy

(a) Acquisitions for Information Technology (IT) resources shall be conducted in accordance with the policy and procedures in FAR Part 39; DOJ Orders 2640.2E (Information Technology Security), 2880.1a (Information Resources Management Program); and BOP Program Statements for Personal Computers, Personal Computers and Network Standards Manual, and Information Security Programs.

(b) DOJ's Chief Information Officer (DOJ CIO) is responsible for issuing IT management policies and procedures to supplement the FAR and the implementation of Executive Order 13011 (Federal Information Technology).

(c) The Deputy Assistant Director for Information, Policy and Public Affairs Division (IPPA), is the BOP CIO and is responsible for disseminating policies and procedures published by the DOJ CIO and establishing and assuring the use of an approved IT management process. Requests for IT policy deviations shall be submitted to the BOP CIO, who shall approve or obtain approval from DOJ CIO or other authorities, as appropriate.

39.101-70 - Policy - Delegations of Procurement Authority

(a) The DOJ CIO has delegated IT acquisition authority to the BOP via DOJ Order 2880.1a.

(b) The Office of Information Systems (OIS) is responsible for coordinating IT acquisition approvals. Questions and correspondence relating to IT acquisitions should be directed to the Chief, IT Administration, Planning and Development, OIS, Central Office.

(c) IT Management Approval Procedures:

(1) RPs for IT resources shall be approved by the local Computer Services Manager (CSM) prior to submission to the Contracting Officer.

(2) IT resources acquired using the purchase card shall be approved by the local CSM prior to placing the order.

(3) Acquisitions of \$25,000 or more require Central Office approval. Once the local CSM approves the RP, the RP with a transmittal memorandum addressed to the Deputy Assistant Director, IPPA, shall be prepared for the Chief Executive Officer's signature and forwarded to the Regional Director. The Regional Director or designee and the Regional Computer Services Administrator shall review and forward approved requests to OIS, Central Office. Additional documentation may be required depending on the amount (see OM 036-2002 and DOJ Order 2880.1a). Facsimile transmission may be used to facilitate the approval process.

(4) IT resource requirements listed in (c)(2) above shall not be split between multiple RPs to avoid required approval and competition requirements.

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PART 42.- CONTRACT ADMINISTRATION AND AUDIT SERVICES

SUBPART 42.2 CONTRACT ADMINISTRATION SERVICES

42.201-70 - Contract Administration Responsibilities

Upon appointment of a Contracting Officer's Technical Representative (COTR), the Administrative Contracting Officer (ACO) shall ensure receipt of written acknowledgment of the COTR appointment letter and include the signed letter in the contract file.

SUBPART 42.13 Suspension of Work, Stop-Work Orders, and Government Delay of Work

42.1303 - Stop-Work Orders

Written requests for approval to issue or cancel stop-work orders shall be fully documented and submitted through the Chief of the Contracting Office to the Chief, Acquisitions Branch for approval.

SUBPART 42.15 - CONTRACTOR PERFORMANCE INFORMATION

42.1502 Policy

(a) Performance reports will be issued for all contracts exceeding the SAT. These reports will be maintained in the contract file for reference by BOP and other federal agency Contracting Officers.

(b) Except as provided in BPAP 36.201-70 and the Community Corrections Manual for the Community Corrections Branch, CCMs or COTRs shall provide written evaluations of contractor performance to the Contracting Officer (evaluation forms available on-line from BOPDOCS), at the following intervals:

(1) Contractor Interim/Final Performance Reports (BP-S723.041) (available on BOPDOCS):

(i) Interim: Not less than annually (e.g., within 30 days of the base or option year contract completion or within 30 days or 50% contract completion for contracts that do not contain option years).

(ii) Final: Within 30 days of contract completion.

(2) Contractor Progress Reports (BP-S722.041) (available on BOPDOCS): Not less than quarterly but may be completed more frequently as determined by the Contracting Officer (e.g, monthly, with each pay application, etc.).

42.1503 Procedures

Disagreements between Contracting Officers and contractors regarding past performance evaluations shall be processed pursuant to FAR Subpart 42.15. When disagreements cannot be resolved by the Contracting Officer, the matter shall be referred to the Chief of the Contracting Office for resolution.

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PART 43. - CONTRACT MODIFICATIONS

SUBPART 43.1 - GENERAL

43.102 Policy

Whenever modifications are issued that delete or relax any contractual requirements (e.g., extension of delivery timeframes, deleting specifications, substitution of product/services, etc.), Contracting Officers shall determine whether or not the Government is entitled to consideration, and if so, the nature and extent of that consideration. Contracting Officers are cautioned that no officer or agent of the Government has the authority to give away the money or property of the United States either directly or by the release of vested contractual rights without adequate legal consideration.

SUBPART 43.2 - CHANGE ORDERS

43.201 - General

Contracting Officers shall issue bilateral modifications to the maximum extent practicable to effect any contract changes. Unilateral change orders shall be issued only as a last resort.

43.204-70 - Administration

The following procedures are required when documenting Change Orders/Supplemental Agreement modifications to contracts:

(a) Change Orders, Supplemental Agreements and Modifications will be issued using an SF-30. The SF-30 is the only authorized form available for issuing contract modifications, except that orders less than the SAT may be modified by using the order form (SF-1449 or OF-347) in lieu of an SF-30.

(b) If the Contracting Officer determines it is necessary to issue a Change Order and the final price of the work cannot be determined, a "Not to Exceed Price" and Definitization Schedule shall be incorporated into the Change Order. Modifications must either be definitized within the time limits specified or the file documented as to why the schedule was not met. If the schedule is not met, Contracting Officers shall receive documentation from the parties responsible to support the Contracting Officer's statement. This type of contract modification is to be used only if agreement cannot be reached at

the time of the execution of the modification. Availability of funds for the "Not to Exceed Price" must be certified for the modification.

(c) After issuing a Change Order, as described in (b) above, Contracting Officers shall attempt to negotiate a fixed price as soon as possible to determine the costs involved. Upon conclusion of successful negotiations, the Contracting Officer shall issue a bilateral modification to definitize the agreement.

(d) Should Contracting Officers be unable to negotiate an equitable adjustment to definitize a Change Order, a unilateral modification to add or deduct cost and/or time to the contract may be issued. Contracting Officers must determine the compensation to be fair and reasonable for the supplies received or services performed. Payments under such modifications exceeding 80% of the unilateral contract modification without a proper "Contractor's Statement of Release" must be approved by the Chief, Acquisitions Branch.

(e) All institution or Regional Office unilateral contract modifications must be approved by the next higher organization level. When submitting such modifications for approval, all pertinent documents shall be provided to facilitate the review.

(f) All contract modifications shall be numbered consecutively without regard to whether the modification is unilateral or bilateral.

PART 48

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Part 48. - VALUE ENGINEERING

SUBPART 48.1 - Policies and Procedures

48.103 - Processing Value Engineering Change Proposals

(a) If value engineering clauses are included in contracts, the Government may realize cost savings or improved performance, upon receipt and acceptance of a Value Engineering Change Proposal (VECP). A VECP requires a change to the contract and results in reducing the price, without impairing essential functions or characteristics of the contract.

(b) CCMs will review and recommend to Contracting Officers whether to accept or reject VECPs. CCMs will provide documentation to support their recommendations.

(c) Contracting Officers must accept or reject a VECP within 45 days from its receipt by the Government.

(d) If the VECP and the CCM's recommendation are acceptable to the Contracting Officer, a modification will be completed to accomplish the following:

- (1) Accept the VECP;
- (2) Reduce the contract price by the amount of the "instant contract savings;" and
- (3) Provide the contractor a share of the savings, in accordance with the method prescribed in FAR 48.104-1.

(e) The Contracting Officer shall seek the approval of the Chief of the Contracting Office prior to issuance of the modification.

PART 49

TERMINATION OF CONTRACTS

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PART 49. - TERMINATION OF CONTRACTS

SUBPART 49.1 - GENERAL PRINCIPLES

49.101-70 - Authorities and Responsibilities

(a) Only Contracting Officers may terminate BOP contracts. Ordinarily, contract terminations will be made as a last resort. Contracting Officers shall attempt to effectuate no-cost settlements if circumstances are appropriate.

(b) All contract terminations, whether for default or convenience, and all contract settlement agreements must receive prior written concurrence and approval as follows:

(1) The Chief of the Contracting Office may approve "No-Cost Terminations for Convenience" effected by a bilateral modification for acquisitions not exceeding the SAT.

(2) Contracting Officers must document fully all other requests to terminate or settle contracts. Requests shall include the solicitation and contract files and be submitted through the Chief of the Contracting Office to the BOP Procurement Executive for approval.

49.106-70 - Fraud or Other Criminal Conduct

Suspected fraud or other criminal conduct related to the settlement of terminated contracts will be reported through the Chief of the Contracting Office to the BOP Procurement Executive.