

## PART 16

### TYPES OF CONTRACTS

#### 16.1 Fixed-Price Contracts

**Who** CS

**What** Approval requirements for adjustments

**When** Prior to release of solicitation and/or contract award

**Discussion:** The HCO must approve use of any clause developed that will include adjustments based on cost indexes of labor or material.

**References:** FAR Subpart 16.203-4

#### 16.2 Indefinite-Delivery Contracts

**Who** CS

**What** Guidance on Indefinite Delivery type contracts

**When** Prior to release of solicitation and/or contract award

**Discussion:**

- (a) *Requirements-Type Contracts.* When awarding the contract, do not fund the contract. Only DOs or TOs issued against the contract should be funded.
- (b) *Indefinite-Quantity Contracts.* When making the award (including multiple awards), the minimum quantity specified in the contract must be funded. When exercising an option, any guaranteed minimum quantity in the option modification must be funded. Subsequent DOs or TOs should obligate no additional funds until the initial funding/quantity has been depleted. For additional orders above the minimum quantity, issue a TO or DO as appropriate, obligating current funds available at the time you issue each TO or DO. Do not modify the contract to provide additional funds. See FAR 16.505(a)(4) regarding ordering and FAR Part 43 regarding modifications.

Include the following information about the Ombudsman in solicitation(s) and contract(s) for an indefinite quantity if you may make/made multiple awards:

Team Lead, Performance Assessment & Improvement Team, CAPPS  
U. S. Department of Commerce  
Office of Acquisition Management  
1401 Constitution Avenue, N. W.  
Washington, DC 20230  
202-482-3780

Ordering. Optional Form 347 (OF 347), Order for Supplies or Services, shall be used to

issue TOs and DOs. Do not use the Standard Form 30, Amendment of Solicitation/Modification of Contract See FAR Part 43.000(a). See FAR section 43.301, and subsection 53.216-1 regarding the use o forms.

Record-keeping. Keep track of DOs or TOs in the contract file. This will help assure that you meet the Government’s obligation under the contract.

The Team Leader, Performance Assessment and Improvement Team, DOC OAMFA, performs the duties of the “task order and delivery order ombudsman” as specified in FAR 16.505(b)(5).

**References:** FAR Subparts 16, 43 and 53.

### 16.3 Letter Contracts

**Who** CS

**What** Guidance on Letter Contracts

**When** Prior to release of solicitation and/or award of contract

**Discussion:**

- (a) HCO approval must be obtained before authorizing any additional period for definitizing a contract.
- (b) *Approval of Letter Contracts.* The “head of the contracting activity or a designee,” as used in the FAR at 16.603-3, means the HCO. Acting for the head of the contracting activity (HCA), the HCO is the approving official who determines in writing that no other contract than the letter contract is suitable. However, if the HCO signs the letter contract as the contracting officer, the HCA is the approving official.
- (c) *Information to be Furnished When Requesting Authority to Issue A Letter Contract.* Include the following information in any memorandum requesting approval to issue a letter contract:
  - Name and address of contractor.
  - Location where contract will be performed.
  - Contract number, including modification number if appropriate.
  - Brief description of work and services.
  - Performance or delivery schedule.
  - Amount of letter contract.
  - Estimated total amount of definitized contract.
  - Type of definitive contract (e.g., fixed price or cost reimbursement).
  - Statement of the necessity and advantage to the Government of using the letter contract.

- Statement of the percentage of the estimated cost that the obligation of funds represents. Where the obligation represents 50 percent or more of the proposed estimated cost of the acquisition, include a justification for that obligation indicating the basis and necessity for the obligation (e.g., the contractor requires a large initial outlay of funds for major subcontract awards or an extensive purchase of materials to meet an urgent delivery requirement). Assure that the documentation demonstrates that the amount to be obligated is reasonable for the specified work.
  - Schedule for definitization of the letter contract. If more than 180 days, give a justification.
  - Statement of any substantive matters that need to be resolved.
- (d) *Approval for Modifications to Letter Contracts.* Process requests for authority to issue letter contract modifications in the same manner as requests for authority to issue letter contracts. Include the following:
- Contractor's name and address.
  - Description of work and services.
  - Approval date of original request and approving official's name and title.
  - Letter contract number and date issued.
  - Justification as to why you can't definitize the letter contract at this time.
  - Justification as to why you must increase the level of funding.
  - Justification as to why the schedule for definitization exceeds 180 days, if applicable.
  - Statement of percentages of the estimated cost that the obligation of funds represents. This is if the funding of the letter contract will exceed 50 percent of the estimated cost of the acquisition.

**References:** FAR Subpart 16.603

## PART 17

### SPECIAL CONTRACTING METHODS

#### 17.1 Options

**Who** CS, with input from the COR

**What** Guidance on the use, evaluation and exercise of options

**When** Prior to solicitation and during performance of contract

**Discussion:**

- (a) *Solicitations.* HCO approval (unless the HCO is also the CO; in which case, the approving official would be the SBPO) approval must be obtained for inclusion of option quantities for additional supplies greater than 50 percent of the initial quantity of a contract line item.
- (b) *Contracts.* HCO approval must be obtained for certain contract actions including basic and option periods, exceeding five years. See FAR 17.204(e). Include the following in the request to exceed five years:
  - The positive and negative aspects of negotiating a contract for more than five years;
  - The restrictions on competition;
  - The risk of nonperformance;
  - Any cost or price risk; and
  - The continuity of operations.
- (c) *Evaluation.* The CO may determine that evaluating option quantities in offers is not in the best interests of the Government. Requests for approval of the determination shall be submitted to the HCO (unless the HCO is also the CO; in which case, the approving official would be the SBPO).
- (d) *Exercise of Options.* The written notice to exercise an option should include:
  - The notice date;
  - The contract number;
  - The authorizing contract option clause;
  - The period of performance;
  - A statement that the preliminary notice does not commit the government to the extension; and
  - The CO's signature.

When considering whether to exercise the option or not, include the following:

- Is the contractor in compliance with the VETS-100 reporting requirements? See FAR 22.1302(b).
- If applicable, are the terms of the contract in compliance with the Service Contract Act requirements at FAR 22.1007 (e.g., is there a current wage determination

- applicable to the option period).
- Is the contractor performance information required by FAR 42.15 complete and satisfactory?
  - What market research was done to substantiate that exercising the option is still the “best deal” for the government, including addressing any inquires or offers from other sources for providing the product or service required under the option?

Documentation. The determination required by FAR 17.207(f) shall be Prepared in accordance with Exhibit 1 to this Part, sample Memorandum to the File. This document becomes a permanent part of the award file.

Use a Standard Form 30 (SF30), “Amendment of Solicitation/Modification of Contract.” Cite the option clause in the contract in Block 13, item “D.”

Operation and maintenance or continuing services contracts. An option for services that cross fiscal years may be exercised as long as performance begins in the fiscal year in which funds are obligated (See FAR 37.106(b). If funds are not available, you can exercise an option for the full term, subject to the availability of funds, as long as the contract includes the appropriate clause, either FAR clause 52.232-18, “Availability of Funds,” or FAR 52.232-19, “Availability of Funds for the Next Fiscal Year.”

**References:** FAR Subpart 17.2

## **17.2 Interagency Acquisitions Under the Economy Act**

**Who** COR, CO

**What** Approval required for Economy Act D&Fs for Interagency and Other Special Agreements (IOSA)

**When** Prior to execution of an IOSA

**Discussion:** The D&F must be prepared by the COR and submitted to the cognizant CO for approval. A copy of each D&F approved shall be provided to the Director, AGO.

**References:** FAR Subpart 17.5; DOC Interim Handbook on IOSAs; NOAA IOSA User Manual

**Exhibit:**

**1** - Memorandum to the File

### Memorandum to the File

Subject: Determination to Exercise Option for **<insert as applicable: extension of contract term, increased quantities, conversion from lease to purchase, etc.>**

The following represents the basis for my determination to exercise an option for **<insert as applicable: extension of contract term, increased quantities, conversion from lease to purchase, etc.>** under Contract No. **<Insert contract number>** in accordance with FAR 17.207.

The terms of the option, along with **<option prices or a method of price calculation>**, are clearly specified in **<insert section/paragraph number applicable to the option provision>** of the contract **<if the option provision extends the period of performance continue with:>** and the same option also extends the period of performance of the contract for an additional **<insert the additional term in months, or years, as applicable.>**

### Background

NOAA has a requirement for **<discuss the prior and current, or continuing, need for this requirement which results in the present action.>**

This requirement is already provided for by the terms of an option to Contract No. **<insert contract number>** which was originally awarded on **<insert date of award>** to the contractor, **<insert contractor's name>** of **<insert contractor's address.>** The basic contract and option years **<Insert an explanation of how the option prices were evaluated. Discuss how the basic contract and all options, or all maximum quantities available over the life of the contract were evaluated before award in accordance with the requirements of FAR Part 6. Also reference FAR 17.207(f).>**

**<Discuss applicable items in FAR 17.207(c), (d), and (e). Provide detail that supports:**

- *The need for continuity of operations;*
- *The costs to the Agency if the option is not exercised;*
- *The reasonableness of the option pricing (based on current market research and addressing any offers received from any other vendors for the option quantity/period); and*
- *The statements in the following Determination>*

### Determination

Based on the above and other information available to me, I have determined the following:

1. **<Sufficient funds are available> or <the option is exercised subject to the availability of funds. If subject to the availability of funds, indicate whether FAR 52.232-18 or 52.232-19 is applicable.>**
2. In accordance with FAR 17.207(a) and **<insert the applicable section of the contract>** written notice has been provided to the contractor by **<insert either the date of the letter providing preliminary notice of the Government’s intention to exercise the option; or, a statement that the contract modification represents the written notice provided to the contractor.>**
3. The requirements covered by the option fulfill an existing need of the Government.
4. The exercise of this option is most advantageous to the Government in terms of price because: **<insert a statement as to why exercising the option is the most advantageous means of fulfilling the Government needs in terms of price. This reason must be supported by facts in “Background.” Refer to FAR 17.207(d).>**
5. The exercise of this option is most advantageous to the Government in terms of other factors because: **<Insert a statement as to why exercising the option is advantageous to the Government in terms of other factors, such as continuity of operations, etc. Support this statement in the background.” Refer to FAR 17.207(e).>**
6. The option **<state whether or not the option was synopsisized. If not synopsisized, cite the specific exception allowed by FAR 5.202.>**
7. Exercise of this option is in accordance with the terms of FAR 17.207 and FAR Part 6.
8. **<If applicable, state that the contractor is in compliance with the VETS-100 reporting requirements. See FAR 22.1302(b).>**
9. **<If applicable, state that you are in compliance with the Service Contract Act requirements at FAR 22.1007.>**
10. The contractor performance information required by FAR 42.15 is complete.

\_\_\_\_\_   
Date

\_\_\_\_\_  
Signature of Contracting Officer  
Typed Name of Contracting Officer

**PART 18**

**[RESERVED]**



## PART 19

### SMALL BUSINESS PROGRAMS

#### 19.1 Policies

**Who** CS, COR

**What** Policies related to small business programs

**When** Acquisition planning phase

**Discussion:**

- (a) *General Policy.* Along with the regular duties of their position, an individual in each Regional Acquisition Division (RAD) shall be designated and act as the Small and Disadvantaged Business Utilization Specialist (SADBUS) for his or her RAD.
  - (1) The individual designated as the SADBUS for CRAD shall act as the SADBUS for the acquisition office at the National Data Buoy Center.
  - (2) The individual designated as the SADBUS for WRAD shall act as the SADBUS for the acquisition office in Hawaii.

The NOAA SADBUS is organizationally under the Director, Acquisition and Grants Office and is located in the Director's office in Silver Spring, MD.

Per FAR Subpart 19.201(c)(7) and DOO 15-9, the Director, DOC Office of Small and Disadvantaged Business Utilization, exercises counterpart clearance on the hiring and promotion of all Small Business Technical Advisors (SBTAs aka SADBUS) and provides technical evaluations of the work of the SBTAs to line supervisors that will be incorporated in the SBTAs' annual performance appraisals.

- (b) *SADBUS Review of Agency Acquisition Requirements.* See Exhibit 1 to this Part for a matrix of Approval Levels for Small Business Set-Aside Reviews.

Headquarters.

- (1) Acquisitions between \$2,500 and \$100,000.
  - (i) It is NOAA policy that each acquisition of supplies or services in excess of \$2,500 and not exceeding \$100,000 be reserved exclusively for small businesses (see FAR 19.502-2 for exceptions). There will be no SADBUS pre-award review of these acquisitions. However, whenever the CO is recommending that the acquisition should not be set-aside for small business, the CO shall obtain the SADBUS' approval/concurrence via the CD-570, Small Business Set-Aside Review form and include that approval/clearance in the award file.
  - (ii) If the CO determines there are no small business concerns that are capable of providing the supply or service based on the results of market research (see FAR Subpart 10), then the CO must complete a CD-570, Small Business et-Aside Review form, and submit to the SADBUS for approval, along with a copy of the

CD-435 and supporting documentation, i.e., statement of work, source list, etc. The SADBUS will provide a decision on the set-aside based on the information submitted. Differences shall be elevated to the Director, AGO.

(2) Requirements exceeding \$100,000.

- (i) The SADBUS will conduct a pre-Solicitation review of all requirements exceeding \$100,000 to determine if the Acquisition should be set aside for small business or awarded under the 8(a) Program. COs should coordinate efforts with the SADBUS during the acquisition planning and market research steps. Early decisions on the appropriateness of setting aside a particular planned requirement will help to streamline the process upon receipt of the CD-435 in the acquisition office. As well, if the acquisition involves bundling, the SADBUS will assist in identifying alternative strategies to reduce or minimize bundling and notify OSDBU. If the SADBUS concurs in the non-set aside, the CD-570 must be routed to the OSDBU and the Small Business Administration (SBA) Procurement Center Representative (PCR) for approval.
- (ii) The CO must complete the Small business Set-Aside Review Form and forward the form to the SADBUS, along with the CD-435 and supporting documentation. Within 4 days, the SADBUS will check the records, complete and sign the form, and return the form to the CS. If the requirement is not restricted to small business, then the CD-570 (and attachments) must be routed to OSDBU for review and approval. Attachments include SOW, acquisition strategy, market survey results, etc. OSDBU submits the CD-570 package to the SBA PCR for approval. Per FAR 19.202-1(e)(1), the package must be submitted to the PCR 30 days prior to issuance of the solicitation. Every effort will be made to return the PCR's decision sooner than 30 days.

In the absence of the SADBUS, the Director, AGO and each Headquarters' HCO have approval authority to sign the small business review form, who will submit to OSDBU for approval.

See reverse side of CD-570 for exceptions.

Regional Acquisition Divisions. The RAD SADBUS must complete a CD-570 consistent with the direction above for Headquarters. The RAD HCOs have approval authority to sign the CD-570 in the absence of the designated SADBUS. For any decision not to set aside an acquisition, the RAD SADBUS must submit the CD-570 with complete documentation to OSDBU for their consideration and coordination with the SBA PCR.

**References:** FAR Subpart 19.2; DOO 15-9, Procurement Memo 2003-04

## **19.2 Set-Asides for Small Business**

**Who** CS and CO

**What** Guidance on rejecting SADBUS recommendations or withdrawing/modifying small business set-asides and reporting requirements

**When** During the acquisition planning phase

**Discussion:**

- (a) *Rejecting SADBUS Recommendations.* If the CO rejects the SADBUS' recommendation for a set-aside, the SADBUS may appeal, in writing, to the HCA. The SADBUS must provide the HCA with all the pertinent information concerning the disagreement. The HCA must then respond in writing within 7 business days. The HCA's decision is final and not appealable. Attach the HCA's decision to the documentation and place it in the contract file. If the action is over \$100,000 and not restricted, the CO must seek OSDBU and SBA PCR approval via the CD-570. If the HCA's decision is to proceed unrestricted, then include documentation of the HCA's decision as part of the CD-570 package to assist OSDBU and SBA PCR in the approval process. If the OSDBU director disagrees with the HCA's decision, the CO can appeal to the DOC CFO/ASA. If the SBA PCR disagrees with the CO, the PCR may appeal to the HCA. If the HCA agrees with the CO, the SBA may appeal the matter to the Secretary of Commerce. The time schedule for such appeals is included in FAR Subpart 19.505.
- (b) *Withdrawing or Modifying Small Business Set-Asides.* The CO must notify the SADBUS regarding all set-aside withdrawals. The CO must also notify the OSDBU of the intent to withdraw or modify a small business set-aside by generating a new or modified CD-570 with justification. The CO shall request that the SADBUS notify the HCA of the withdrawal. The CO shall refer any disagreement between the SADBUS and the CO regarding the withdrawal to the HCA for resolution. If the HCA agrees with the CO to proceed unrestricted, then the CO must submit CD-570 with supporting documentation to OSDBU via the SADBUS for approval.

**References:** FAR Subpart 19.5

### **19.3 Certificates of Competency and Determinations of Responsibility**

**Who** CO

**What** Referral of vendors to SBA for a Certificate of Competency and Determination of Responsibility

**When** Prior to award

**Discussion:** The CO must coordinate with the SADBUS and OSDBU before referring the matter to SBA. The CO must copy OSDBU on any correspondence with SBA because SBA will be communicating with OSDBU.

The CO must request that the SABUS and OSDBU assist in resolving any differences.

**References:** FAR Subpart 19.6

### **19.4 The Small Business Subcontracting Program**

**Who** CO

**What** Policies regarding Small Business Subcontracting Plans

**When** All phases of the acquisition

**Discussion:**

- (a) *Determining the Need for a Subcontracting Plan.* If the CO determines that there are no subcontracting possibilities, the CO must make the appropriate notation on the CD-570, Small Business Set-Aside Review form and attach documentation to support such determination. The CD-570 must receive SADBUS, OSDBU and SBA PCR approval.

For negotiated acquisitions, when making an award without discussions, the CO shall require a subcontracting plan only from the apparent successful offeror. When conducting discussions, the CO shall require a plan from all offerors in the competitive range.

In sealed bidding, the CO shall require that the bidder selected for award submit a subcontracting plan.

- (b) *Preparing the Solicitation.*

- (1) Before or at the same time the solicitation expected to exceed \$500,000 (\$1,000,000 for construction) is issued, the CO shall send an informational copy to the SADBUS. The SADBUS will review the solicitation and forward to OSDBU with comments (normally within two working days of receipt). OSDBU will review and provide comments to SADBUS (normally within five working days).

- (2) Whenever you use Clause FAR 52.219-9, Small Business Subcontracting Plan, in a solicitation for a negotiated or sealed bid acquisition, you must also include the Model Subcontracting Plan Outline available in MS Word or PDF format at <http://www.osec.doc.gov/osdbu/Subcontracting.htm> . This helps the offeror or bidder to address the required elements when preparing its subcontracting plan. The solicitation and resultant contract should specifically state the small business subcontracting goals for each category of small business and the goals should be based on total contract dollars instead of subcontract dollars. The CO shall also establish a separate evaluation factor with significant weight for the extent to which offerors attained their subcontracting goals on previous contracts

- (c) *Reviewing the Subcontracting Plan.* Upon receipt, the CO shall forward the subcontracting plan (and proposed contract and a synopsis of how the subcontracting plan was negotiated) to the SADBUS for review. The SADBUS will forward the subcontracting plan and proposed contract to OSDBU within two working days with comments as to acceptability. OSDBU will review and provide comments to SADBUS within five working days.

If the CO determines that the subcontracting plan submitted reflects the best effort by the offeror or bidder but the SADBUS disagrees with the CO's determination, the HCA will make a final determination. Include the HCA's decision when submitting the subcontracting plan and proposed contract to OSDBU for review. If OSDBU disagrees with the HCA, the OSDBU can appeal to the HCA. If the HCA does not agree with the

OSDBU, the decision can be appealed first to the DOC Procurement Executive and then, if there is still disagreement, to the CFO/ASA.

(d) *SADBUS' Reporting Responsibility.* (1) The designated RAD SADBUS' are responsible for summarizing and reporting to the NOAA SADBUS on a monthly basis, all prime contracts \$500,000 and over (\$1 million for construction) using the following reporting format:

- Name of the program office;
- Number and dollar amount of contracts requiring subcontracting plans;
- Number of contracts with subcontracting plans;
- Number of contracts without subcontracting plans;
- Small business, veteran-owned small business, service-disabled veteran-owned, HUBZone small business, small disadvantaged business, and women-owned small business subcontracting goals; and
- Statements citing reasons why small business, veteran-owned small business, service-disabled veteran-owned, HUBZone small business, small disadvantaged business, and women-owned small business subcontracting plans were not included in the contracts.

These reports are to be submitted, electronically, to the NOAA SADBUS by the 10<sup>th</sup> of the month following the month being reported (e.g., by June 10 for the month of May).

The NOAA SADBUS is responsible for summarizing (NOAA-wide) and reporting to the Director, AGO, on a quarterly basis, all prime contracts \$500,000 and over (\$1 million for construction) using the same reporting format as specified above. These reports are to be submitted, in hard copy and electronically, to the Director, AGO by the 15<sup>th</sup> of the month following the end of the quarter being reported (e.g., by July 15 for the quarter ending June 30).

The NOAA SADBUS is responsible for coordinating and compiling the fiscal year report for NOAA. The SADBUS submits NOAA's fiscal year report to OSDBU by October 30 of each year.

**References:** FAR Subpart 19.7; 13 CFR 125.2; DOO 15-9

## **19.5 Responsibilities of the Cognizant Administrative Contracting Officer**

**Who** CO

**What** Designation of individual responsible for administering the small business aspects of a contract

**When** During performance of the contract

**Discussion:** At NOAA, the awarding CO fulfills the role of the administrative contracting officer.

- (a) The SF-294 shall be used to monitor the contractor's progress in achieving the small business, veteran-owned small business, service-disabled veteran-owned, HUBZone small business, small disadvantaged business, and women-owned small business subcontracting goals.
- (b) When the contract is physically complete, the CO shall prepare a memorandum for inclusion in the contract file indicating whether or not the contractor complied with the subcontracting plan and the contract's subcontracting provisions.
- (c) The CO shall send a copy of the memorandum pertaining to either situation to the NOAA SADBUS.
- (d) The CO shall send a copy of the SF-294 and SF-295 to the cognizant SADBUS for reporting purposes.

**References:** FAR Subpart 19.7

## **19.6 Contracting with the Small Business Administration (The 8(a) Program)**

**Who** CS, with input from the COR

**What** Acquisitions under the 8(a) set aside program

**When** Throughout the acquisition process

**Discussion:**

- (a) *General.* As part of acquisition planning, the CO should review the historical aspects of the acquisition to determine if an 8(a) participant is currently performing the requirement and if the requirement remains suitable for the 8(a) Business Development Program. If an 8(a) firm is currently performing the requirement, the CO shall proceed with Subpart 19.8, Contracting with the Small Business Administration (8(a) contracting procedures), unless SBA has consented to release the requirement from the 8(a) Business Development Program. If an 8(a) firm is not currently performing the requirement, the CO should consider Subparts 19.8 (8(a) Business Development), 19.13 (HUBZone small business), or 19.14 (service-disabled veteran-owned small business) prior to the consideration of Subpart 19.5 (small business).
- (b) *DOC/SBA Partnership Agreement.* DOC has a Partnership Agreement (PA) with the SBA. Under the PA, SBA has delegated its authority to contract directly with program participants under Section 8(a) of the Small Business Act to DOC COs. CO's may, therefore, award a contract directly to an 8(a) concern on either a sole source or competitive basis.

NOTE: Add language similar to the following in every contract stating that: "Even though SBA may not be identified in Section XXXX of the contract, it is the prime contractor."

SBA reserves the right to withdraw any delegation issued as a result of the PA. Any such withdrawal, however, will have no effect on contracts awarded under the PA.

The PA's provisions supersede the FAR where mentioned. A copy of the PA is on the AGO's Homepage on the Internet. To download the file, select DOC/SBA Partnership Agreement.

- (c) *Agency Offering*. The CO shall submit an offering letter to SBA for sole source procurements. If the CO is nominating an 8(a) firm, then the offering letter shall be submitted to the SBA district office responsible for servicing that firm. If the CO is submitting an open offering letter for a sole source requirement, then the letter shall be sent to the SBA district office that services the geographic area where the contracting activity is located. An offering letter is not required for acquisitions under the SAT.

The CO shall submit an offering letter for competitive 8(a) procurements to the SBA district office that services the geographical area where the contracting activity is located, except that offering letters for construction work will be sent to the SBA district office located in the geographical area where the work will be performed.

When applicable, the notification must identify that the offering is in accordance with the PA.

You can find the addresses of SBA offices on the Internet at <http://www.sba.gov/services/>.

Limit contents of the offering letter to the eligibility of the recommended 8(a) concern. The CO should ensure that FAR Subpart 19.804-2 is followed when preparing offer letters.

- (d) *SBA Acceptance*. SBA will issue an acceptance letter or notification of rejection within five working days of receipt of an offering letter for competitive and sole source acquisitions above the SAT. Absent a notification of rejection within five working days of receipt of the offer, acceptance may be assumed on the 6<sup>th</sup> working day.

For requirements under the SAT, SBA will review the eligibility of the 8(a) participant within two working days after receipt of a copy of the signed purchase order (contract). Absent receipt of a negative determination within two working days, the 8(a) contractor is authorized to begin performance.

SBA Acceptance under the PA for Acquisitions Exceeding the SAT. SBA may request, and the CO may grant, an extension beyond the five working day limit.

The CO should request that SBA fax or e-mail the acceptance letter to the CO.

- (e) *Competitive 8(a)*. Where an acquisition exceeds the competitive threshold, the SBA may accept the requirement for a sole source 8(a) award if SBA accepts the requirement on behalf of a concern owned by an Indian tribe or an Alaska Native Corporation.

The CO may conduct 8(a) acquisitions using SAP (see FAR part 13).

In sealed bid acquisitions, SBA will issue an eligibility determination for the concern with the lowest bid within two days of receipt of the CO's request. If the CO does not

receive a negative eligibility determination within that time frame, the CO can award the contract on the third working day.

In negotiated acquisitions, SBA will issue an eligibility determination within two working days of the CO's request for all firms in the competitive range if the CO will hold discussions. If the CO does not receive a negative eligibility determination within that time frame, the CO can award the contract on the third working day.

SBA will issue an eligibility determination within two working days of the CO's request for all firms with a realistic chance for award if the CO will not hold discussions. If the CO does not receive a negative determination within that time frame, the CO may award the contract on the third working day.

For an acquisition that does not exceed the SAT, SBA will not issue an eligibility determination until after award. The CO must send a copy of the signed contract to SBA. SBA will respond within two working days. If the CO has not received a negative determination within that time frame, the CO may authorize the contractor to begin performance on the third day.

- (f) *Sole Source.* The 8(a) concern is responsible for negotiating with NOAA within the time established by the CO. If the 8(a) concern does not negotiate within the established time frame and NOAA cannot allow additional time, the CO may, after notification to and approval by SADBUS, OSDDBU and SBA, proceed with the acquisition from another source(s).

DOC is delegated the authority to negotiate directly with the 8(a) concern. SBA may participate in negotiations if the 8(a) concern requests it.

- (g) *Preparing the Contracts.*

- (1) *Sole Source.* For acquisitions that exceed the SAT, CO's may use an SF-33 or, for commercial items, an SF-1449. Identify the NOAA office in the "Issued by" block of the award document. List the 8(a) concern's name and address as the contractor. Identify in the award document the cognizant SBA district office for the 8(a) concern.

NOTE: The contract must specify that SBA is the prime contractor, even though award is made directly to the 8(a) concern.

For awards over \$2,500 that do not exceed the SAT, use the simplified acquisition procedures (SAP) of FAR part 13 to issue contracts to 8(a) concerns. The following applies to such acquisitions:

- The Central Contractor Registration (CCR) database must be used to establish that the selected 8(a) concern is a current program participant. Access CCR at <http://www.ccr.gov>
- An offering letter does not need to be submitted to SBA. Nor is an acceptance letter from SBA required.



- Once the CO has identified an 8(a) concern, establish the terms and conditions, including price, with the selected 8(a) concern. Next the CO shall prepare and issue a contract in accordance with FAR part 13.
- The CO shall issue the contract directly to the 8(a) concern. This does not necessarily mean that the concern is eligible for an 8(a) award.
- SBA has two working days from receipt of the award document to advise the SADBUS of the 8(a)'s eligibility. To accommodate this, the CO shall make sure that there is adequate time between the date of award and the date when contract performance begins.
- The CO shall send a copy of the contract to the SADBUS and the SBA District Office that serves the 8(a) concern within five working days after award. RAD COs do not need to send copies of contracts to AGO.

For awards exceeding the SAT, the CO shall prepare the contract in accordance with the normal procedures, given the contract type and dollar amount that are used for a similar, non-8(a) acquisition. The CO shall send a copy of the contract to the SADBUS and the SBA district Office within 15 calendar days of the date of award.

- (2) Competitive. The CO shall prepare competitive contracts for 8(a) concerns in accordance with the same procedures as 8(a) sole source contracts.

The CO shall follow the process for obtaining signatures as specified above.

The CO shall ensure that SBA approves all proposed joint ventures involving 8(a) concerns before award of the contract.

- (h) *Contract Administration.* The CO shall notify the SADBUS, OSDBU and SBA before you begin action to terminate, either in whole or in part, an 8(a) contract.

The CO shall coordinate with SBA before processing any novation agreement. Only SBA can approve a novation agreement.

**References:** FAR Subpart 19.8

**PART 20**  
**[RESERVED]**

**PART 21**

**[RESERVED]**

## PART 22

### APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

#### 22.1 Basic Labor Policies

**Who** CS

**What** Handling issues regarding labor laws

**When** Anytime throughout the acquisition process

**Discussion:**

- (a) *General.* Contact DOC OGC CLD at 202-482-1122 or fax at 202-482-5858 if assistance is needed with handling labor relations matters.
- (b) *Reporting Labor Disputes.* Request assistance from the DOC OGC. Route the request through the cognizant HCO.
- (c) *Removal of Items from Contractors' Facilities Affected by Work Stoppages.* Have items removed from contractors' facilities only after obtaining the approval of the person one organizational level above the COR, the COR, the DOC OGC, the cognizant HCA and the HCA.

When requesting approval to remove items from a contractor's facility, a memorandum shall be prepared that addresses the considerations contained at FAR 22.101-4(a).

- (d) *Approval of Overtime.* Use of overtime as prescribed in FAR 22.103-4(a), (b), (e), and (f) may be approved by the cognizant CO.

**References:** FAR Subpart 22.1

#### 22.2 Contract Work Hours and Safety Standards Act

**Who** CS

**What** Application of provisions of Contract Work Hours and Safety Standards Act

**When** During contract performance

**Discussion:** *Liquidated Damages and Overtime Pay.* A memorandum supporting the decision as outlined in FAR 22.302(c)(1), (2) or (3) shall be prepared by the CS and submitted through the HCO to the SBPO.

The Office of Finance (OF) will disburse any remaining assessments.

**References:** FAR Subpart 22.3

### 22.3 Labor Standards for Contracts Involving Construction

**Who** CS

**What** Application of labor standards to contracts involving construction

**When** Throughout the life of the contract

**Discussion:**

- (a) *Modifications of Wage Determinations.* The CS shall prepare a memorandum requesting concurrence with the extension as outlined in FAR 22.404-6(b)(6) and must be approved by the CO.
- (b) *Posting Wage Determinations and Notice.* Department of Labor (DOL) Form WH-1321, Notice to Employees Working on Federal and Federally Financed Construction Projects can be obtained from DOL's website using "Quick Finder" at <http://www.dol.gov/esa/whd>.
- (c) *Wages, Fringe Benefits and Overtime.* The CS shall submit questions related to wages, fringe benefits and overtime for final determination to the DOL after consultation with DOC OGC and concurrence by the appropriate HCO.
- (d) *Investigations.* The CS shall forward a report of any violations, including findings and supporting evidence as outlined in FAR 22.406-8(d)(1) to the HCO.
- (e) *Withholding From or Suspension of Contract Payments.* The CS shall coordinate with OF personnel the disposal of funds withheld or collected for liquidated damages. (Refer to FAR subpart 32.6, Contract Debts, for information on the collection of contract debts.)

**References:** FAR Subpart 22.4

### 22.4 Walsh-Healey Public Contracts Act

**Who** CS

**What** Application of the Walsh-Healey Public Contracts Act

**When** Throughout the life of the contract

**Discussion:**

- (a) *Regulatory exemptions.* The CS shall prepare a memorandum requesting concurrence with the extension as outlined in FAR 22.604-2(b)(1) through the HCO and the SBPO to the DOC PE.
- (b) *Post-award activities.* The CS shall furnish DOL publication WH-1313, Notice to Employees Working on Government Contracts to the contractor. This publication can be obtained from DOL's website using "Quick Finder" at <http://www.dol.gov/esa/whd>.

The CS shall notify DOL, through the SBPO, of any violation under the Act.

**References:** FAR Subpart 22.6

## 22.5 Equal Employment Opportunity

**Who** CS

**What** Processes for applying Equal Employment Opportunity to federal contracts

**When** Throughout the acquisition process

**Discussion:**

- (a) *Construction.* The CS shall include clause FAR 52.222-23 if the acquisition is a construction project with a value that exceeds \$10,000. Use 8% as the goal for women. The goal for minority participation changes based on locality. The current goals are listed in 45 FR 65979, Exhibit B-80, dated October 3, 1980.
- (b) *Procedures.* Usually requests for a preaward EEO clearance will be sent by e-mail or a fax. A copy should not be sent by regular mail if the request has been submitted by e-mail or fax.

The CS shall send a preaward clearance request to the OFCCP office (below) serving the area in which the contract work is to be performed. If the place of performance is outside the U.S., send the request to OFCCP in accordance with FAR 22.805(a) (3).

If possible, the CS should submit requests sent by regular mail to the OFCCP regional office at least 30 days before the proposed award date and should include a self-addressed label. Requests that are sent by fax or e-mail should allow up to 20 days.

**SEE <http://www.dol.gov/esa/contacts/ofccp/> FOR OFFICES & CONTACT NUMBERS**

- (c) *Distribution.* The CS shall make distribution for preaward clearance requests and construction contract award notifications as follows:
  - Original to the appropriate OFCCP regional office;
  - One copy to the cognizant SADBUS; and
  - One copy for the contract file.
- (d) *Furnishing posters.* Additional copies of the poster “Equal Employment Opportunity Is the Law” can be obtained from DOL’s internet site at <http://www.dol.gov/esa/regs/compliance/posters/eo.htm>. From that site, go to “Posters.” As an alternate source, contractors may contact the local DOL OFCCP office listed above or DOL at:

U. S. Department of Labor  
Employment Standards Administration  
Office of Federal Contract Compliance  
200 Constitution Avenue, N.W.  
Washington, DC 20210

- (e) *Exemptions.* To request an exemption under FAR 22.807(b)(5) of this section, the CS shall submit through the SBPO a detailed justification for omitting all or part of the requirements of EO 11246.

**References:** FAR Subpart 22.8

**22.6 Service Contract Act of 1965, as Amended**

**Who** CS

**What** Application of the provisions of the Service Contract Act

**When** Throughout the acquisition process and post-award

**Discussion:**

- (a) *Wage Determinations Based on Collective Bargaining Agreements.* The Predecessor contractor's Collective Bargaining Agreement (CBA) is only applicable to the base contract period of the successor contract. It does not apply to any option period(s). If a successor contract is terminated for default during the base contract period, the predecessor's CBA would remain applicable to the reprocurement for the full term of its basic contract period, even if it extends beyond the basic contract period of the defaulted contract.
- (b) *Preparation of Notice (SF 98/98A).* The DOL website provides a means to request and receive any wage determination electronically. In many cases, the requested wage category can be referenced and the appropriate wage determination displayed immediately. The website for these requests is <http://www.dol-esa.gov/sf98>.

The DOL website can be used to submit an SF98 for any type of wage determination including a CBA. However, the system does not allow for submission of the actual CBA. Upon receipt of the SF98, DOL will send an e-mail message requiring the forwarding of either an electronic copy of the CBA or hard copy of the CBA along with a hard copy of the electronic SF98 via mail.

- (c) *Requests for Status or Expediting of Response.* For submissions using the DOL website in which an immediate response is not received, the CS can contact Wage and Hour Division personnel at DOL to determine when the wage determination or revision can be expected to be received.

The Wage and Hour Division can be contacted at 202-219-7096.

- (d) *Handling Acquisitions where award is delayed over 60 days.* If a delay in excess of 60 days in the award of an acquisition is experienced, the CS shall check to see if the wage determination issued under the initial submission is still current. If it is not current, the CS shall obtain an updated wage determination.
- (e) *Notification to Contractors and Employees.* DOL Publication WH-1313, Notice to Employees Working on Government Contracts can be obtained from DOL's website using "Quick Finder" at <http://www.dol.gov/esa/whd>
- (f) *Additional Classes of Service Employees.* If the performance of the contract will require the utilization of personnel that are not clearly covered by an existing wage rate, the Contractor must undertake to have those positions "conformed". The contractor must:
  - Establish a reasonable relationship or skill comparison between any non-WD employee(s) and one that is identified on the wage determination;
  - Give this to the CO before the unlisted employees can begin work; and
  - Submit the information to the CO on Standard Form (SF) 1444, "Request for Authorization of Additional Classification and Rate."

Upon receiving the form, the CO should review the proposed classification and rate. The CO should submit the request to DOL with his/her recommendation.

The FAR is of limited help as to how to develop this comparison. The need for a viable method of comparison is really important if the comparison is between dissimilar job classifications, such as between a plumber and a carpenter.

NOAA policy recommends that you give the contractor the following procedure for establishing this comparison. It uses five general scoring categories and addresses the “point scheme” concept briefly alluded to in FAR 52.222-41(c)(2)(iv)(A). The categories follow:

- MENTAL REQUIREMENTS; (intellect, education, work know-how)
- PHYSICAL REQUIREMENTS; (sedentary, standing, lifting)
- SKILLS; (sensory, mental versus manual, experience)
- RESPONSIBILITY; and
- WORKING CONDITIONS (hazardous equipment, dust, smoke).

Assign each category a score from 1 through 10, with 10 being the most difficult. Tell the contractor to develop a means of comparison by scoring the job category listed in the DOL WD that most approximates the non-rated job in question. The total score of the wage-rated job category should equate to the salary level assigned to it in the wage determination. The contractor will then score and total each individual non-rated job category using these criteria. Next, the contractor will assign a wage rate for these job categories using the scores obtained from the rated job as a baseline. The contractor then must give you the results for submission to the DOL.

The above procedure gives a useful method for conforming non-wage rated job categories. Tailor the scoring categories to fit the specific needs of each acquisition, as needed.



SAMPLE

Breakdown for Typing/Transcriber Position:  
(10 most difficult; 1 least difficult)

1.	Mental Requirements: (intellect, education, work knowledge)	7
2.	Physical Requirements: (sedentary, standing, lifting, etc.)	3
3.	Skills: (sensory, mental vs. manual, experience)	7
4.	Responsibility	7
5.	Working Conditions: (hazards, dust, smoke)	<u>1</u>
		25

Breakdown for Checker/Transcript Assembler:

1.	Mental Requirements	5
2.	Physical Requirements	2
3.	Skills:	2
4.	Responsibility	6
5.	Working Conditions	<u>1</u>
		16

Breakdown for Messenger:

1.	Mental Requirements	2
2.	Physical Requirements	2
3.	Skills	4
4.	Responsibility	4
5.	Working Conditions	<u>1</u>
		13

Breakdown for Proofreader/Auditor:

1.	Mental Requirements	7
2.	Physical Requirements	3
3.	Skills	7
4.	Responsibility	7
5.	Working Conditions	<u>1</u>
		25

Average typist types 10 to 12 pages per hour, at \$.61 per page, or \$6.10 to \$7.32 per hour.

If 25 = \$6.71, then each point = \$.2684

If Typist/Transcriber job is equivalent to \$6.10 per hour, then Checker/Transcript Assembler job would be \$4.29 per hours, then Messenger would be \$3.48 per hour; and Proofreader/Auditor would be \$6.71 per hour.

**References:** FAR Subpart 22.10

## **22.7 Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans**

**Who** CS

**What** Applying provisions to contracts

**When** Throughout the acquisition process and contract performance period

**Discussion:**

- (a) *Policy.* The CS shall document that the contractor is in compliance with the VETS 100 reporting requirement either in the Summary of Award, or in the Responsibility Determination.
- (b) *Waivers.* The CS shall forward any request for waiver, prepared in accordance with FAR 22.1305(a) or (b) through the SBPO to the DOC PE.
- (c) *Complaint Procedures.* The CS shall forward, through the SBPO, any complaints received about the administration of the Act.

**References:** FAR Subpart 22.13

## **22.8 Employment of Workers with Disabilities**

**Who** CS

**What** Applying provisions to contracts

**When** Throughout the acquisition process and contract performance period

**Discussion:**

- (a) *Waivers.* The CS shall forward via memorandum including documentation as outlined in FAR 22.1403(a) or (b)(1) any waiver request through the SBPO to the DOC PE.
- (b) *Complaint Procedures.* The CS shall forward, through the SBPO, any complaints received about the administration of the Act.

**References:** FAR Subpart 22.14

## **22.9 Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor**

**Who** CS

**What** Application to federal contracts

**When** Throughout the life of the acquisition

**Discussion:** The CS shall refer the matter to the DOC Office of the Inspector General.

**References:** FAR Subpart 22.15

**PART 23**

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

**(This section is left open pending publication  
of new guidance from DOC)**

## **PART 24**

### **PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**

#### **24.0 Scope of Part**

This part also prescribes policies and procedures to protect personal and organizational confidential information that is accessible to Agency contractors but which is not necessarily covered by the Privacy Act (PA) (link: <http://www.epic.org/privacy/laws/privacyact.html>).

#### **24.1 General**

The PA tends to restrict access to information; the Freedom of Information Act (FOIA) tends to promote its release. Therefore, the Acts should be read together in cases of potential conflict. The majority of the courts have empowered agencies to deny access to records sought under FOIA if exempted from release under the PA.

#### **24.2 Protection of Individual Privacy**

##### **(a) Definitions**

“Confidential information” means information or data of a personal nature about an individual, such as name, home address, and social security number, or proprietary information or data submitted by or pertaining to an institution or organization, such as employee pay scales and indirect cost rates.

##### **(b) General**

- (1) Section 1106 of the Social Security Act (42 U.S.C. 1306) prescribes criminal penalties for violating DOC/NOAA and Federal disclosure rules and regulations regarding tax return and any other information in NOAA’s possession. Contractors and their employees, as well as any subcontractors and their employees, may be subject to the same penalties in violation of these rules and regulations during contract performance.
- (2) As explained in FAR 24.102(a), the PA applies to a contract only when it is for the design, development, or operation of a system of records on individuals, as defined in FAR 24.101. At NOAA, contracts for such purposes are relatively infrequent; consequently, the PA clauses (see FAR 24.104) have not often applied. Much more prevalent are contracts that allow contractor access to confidential information, a much broader term as defined in NAHB 24.101.

- (3) Systems of records protected by the PA contain confidential information.

#### **24.3 Freedom of Information Act**

**Who** CS and CO

**What** Applying FOIA provisions to request for information in possession of the CO

**When** Throughout the contracting process

**Discussion:**

- (a) *Policy.* The policies in this subpart apply to all NOAA contracting offices.
- (b) *Exemptions.* The FOIA lists nine exemptions under which NOAA may justify withholding information requested by an outside source. Of these, only four involve contracting. See Exhibit 1 – FOIA Supplemental Guidance and Background Information – Exemptions 3, 4, 5, and 6; Exhibit 2 – Authority to Release Certain Records Outside the Freedom of Information Act; and Exhibit 3 – The Freedom of Information (FOIA) Checklist.
- (c) *Approvals.* NAO 205-14 identifies those agency officials with the authority to deny (withhold) some or all of the information sought by a requestor. If it is believed that the Agency should not furnish some requested information, recommend the denial to the appropriate agency official.
- (d) *General Instructions.* Requests for information under the FOIA must be in writing. Refer oral requestors to the NOAA FOIA Officer.

You must respond within 20 working days from the date the request was received.

Some information is considered public and you can release it without a FOIA request. See Exhibit 2.

(e) *Procedures.*

(1) Requests.

- (a) The FOIA Coordinator in the office of the Director, AGO, will prepare a “Freedom of Information Request Tracking Form,” complete Page 1 of that form, and assign the request to the CO or other AGO employee. If someone sends a request directly to another individual within any of the NOAA acquisition offices, it should be faxed to the FOIA Coordinator.
- (b) When it is unclear what the requestor wants, or if the request seems too broad, ask for clarification. Cancel and return the request if a workable answer is not provided by the requestor within five days.
- (c) Consider negotiating with the requestor to reduce the scope of the request or to determine if the information can be provided as a non-FOIA response.
- (d) Make a reasonable effort to obtain the information. The Government is not required, however, to prepare custom reports if they take an extended time- period to prepare. If the decision is made that the request is unreasonable, reject it and document the file. This is not a denial. Rather, inform the requestor that the information cannot be reasonably or realistically obtained.

- (e) If the requestor is asking for something that no longer exists, respond accordingly. This is not a denial.

(2) Processing.

- (a) If it is not possible to meet the 20-day deadline, ask the requester for an extension of no more than 10 days.
- (b) Use the “Authority to Release Certain Records Outside the Freedom of Information Act” (Exhibit B) and the “Freedom of Information Act Checklist” (Exhibit 3) to help decide what information may be released.
- (c) The submitter of the information should be asked if there is reason to withhold it. Under exemption 4, NOAA policy stipulates the submitter must be asked what material he or she wants to withhold.

(3) Response.

- (a) Authority to withhold any requested information rests solely with the agency officials designated in NAO 205-14. Those preparing responses to FOIA requests have authority only to fully release requested information when the submitter agrees. If withholding is recommended, or if it is believed that release is allowable but the submitter wants the information withheld, forward your recommendation and response to the appropriate agency official for final decision.
- (b) Determine the dollar amount to charge the requestor according to NAO 205-14.
- (c) Fill out the CD-244, FOIA Information and Action Record, according to the directions on the form.
- (d) The response should be assembled as follows:
  - (1) Tracking form;
  - (2) FOIA request;
  - (3) Relevant notes and correspondence;
  - (4) Notification letter to the submitter;
  - (5) Response from the submitter;
  - (6) Letter releasing information (if all requested information can be released); and
  - (7) Information recommended for withholding or release. When withholding is recommended, prepare one copy highlighted with the portions to be withheld, with a second copy unmarked.
- (e) Forward the response package to your team leader/division director for signature and release to the FOIA Coordinator or the requestor. Provide a copy of the letter and the

original, completed Tracking Form and Freedom of Information Request Total Time and Cost Tally Sheet to the FOIA Officer.

(4) Appeals. When NOAA withholds information, the requestor can appeal the decision. Should an appeal be received from the requestor, contact the FOIA Officer for instructions

(5) Receipt of Checks from Requestors for Payment of Documentation Provided. Provide the check made payable to the U. S. Treasury to the FOIA Officer. Send the check (with a note indicating what it is for) to:

National Oceanic and Atmospheric Administration  
Contract Specialist

(6) Fiscal Year Report to Congress on Freedom of Information Act Activities. The AGO FOIA Coordinator will prepare the report in response to instructions received from the FOIA Office in its end of the fiscal year request.

**References:** FAR Subpart 24; NAO 205-14

**Exhibits:**

- 1 FOIA Supplemental Guidance and Background Information – Exemptions 3, 4, 5 and 6
- 2 Authority to Release Certain Records Outside the Freedom of Information Act
- 3 The Freedom of Information Act (FOIA) Checklist



## **FOIA Supplemental Guidance and Background Information Exemptions 3, 4, 5, and 6**

The FOIA includes four exemptions that may apply to contracting as possible justification for withholding information. They are:

Exemption 3: When authorized by statute.

Exemption 4: The information contains trade secrets or sensitive commercial or financial information.

Exemption 5: The information is part of deliberations that come before a decision is reached.

Exemption 6: The information is personal or private.

### **EXEMPTION 3**

- This exemption allows for withholding information that is based on a specific statute that may exist at a given time. Currently two statutes, 41 United States Code (U.S.C.) 253(b)(m) and 42 U.S.C. 405(r), apply to acquisitions. They are both discussed in Attachment 3 under “Contractor Proposal (Technical, Business, Management, Price or Cost)” and “Death Information,” respectively.
- There is no need to request that the submitter provide his or her rationale to withhold or permission to release if the statute states that the information is exempt from disclosure. If you receive a request that comes under an exemption 3 statute, be sure to cite the statute in your recommendation. Forward your response to the appropriate agency official for final decision.

### **EXEMPTION 4**

- **Dual Protection:** You can use Exemption 4 to protect the interests of the Government and the submitter. The Government can invoke Exemption 4 if disclosure of information would impair the Government’s ability to obtain information in the future. The submitter can claim that trade secrets would be disclosed if its commercial information were released. Trade secrets consist of specific product design and manufacturing information but not general information such as physical or performance characteristics.
- **Information Voluntarily Provided by the Submitter to the Government:** Such information is categorically protected from disclosure if it is not customarily disclosed by the submitter to the public. Examples: Providing information that is not specifically

required in response to a solicitation from the Government; corporate economic data; and General & Administrative Expense (G&A) ceiling rates (unless the Government requests them).

- **Information Required/Compelled From the Submitter by the Government:** Submission of this information to the Government is the cost of doing business with the Government. Consequently, it does not enjoy the same level of protection as voluntarily submitted information. Example: G&A actual rates.
- **Reverse Engineering:** The submitter can potentially make the case that disclosure of information would permit a competitor to reverse back through the engineering and design process and learn the unique manufacturing techniques or proprietary information.

### **EXEMPTION 5**

The key evaluation here is whether or not an agency is in a pre-decisional or post-decisional situation. Broadly stated, pre-decisional Government information is developed as part of the deliberation process that an agency undertakes on its way toward making a decision. Pre-decisional documents associated with this process are usually not released. To do so could give the public a distorted or even false impression of what the agency is ultimately planning and cause foreseeable harm to the agency's image or decision-making capacity. However, once a decision is reached, the pre-decisional document often loses its protection and is releasable.

- In some cases, a pre-decisional document can remain so even after a decision is made. In acquisitions, there are a number of pre-decisional documents that generally are not released even in the post-decisional (award) environment. They include:
  - Audit reports: Release may reveal a contractor's sensitive financial and management practice.
  - Pre-negotiation plan: Release may disclose AGO's negotiation techniques.
  - Summary of award: Release would reveal AGO's sensitive strategy and evaluation practices.
- Pre-decisional documents can be protected even if they originate in another agency.
- **Factual Versus Deliberative (Pre-decisional) Documents:** Factual documents are usually releasable. However if facts are so embedded in a pre-decisional document that they cannot be extracted without destroying the coherence of the document, then the entire document can be withheld.

### **EXEMPTION 6**

Exemption 6 deals with the issue of personal and private information. Below are key factors to consider when evaluating requests for information that fall under this exemption.

- Would release be a clear invasion of someone’s personal privacy? If so, withhold the information.
- The exemption must apply to a specific individual or individuals.
- Public interest is critical. If there is none, then there is no need to release personal information.
- The requestor’s identify has no bearing on the decision to release or withhold.
- **Prior public knowledge of personal/private information is not a factor.** The fact that a few people may know this information does not justify release.
- **Public Versus Private Balancing Act:** A question to ask is “What is more important, the benefit to the public or the harm to the individual if disclosure of personal/private information is made?” The threat to privacy must simply outweigh the public’s need to know. In general, privacy usually trumps the public need.
- **Information Typically Withheld by the Courts:**
  - Name of company employee
  - Marital status
  - Date of birth
  - Citizenship data
  - Religious affiliation
  - Social security number
  - Financial status
- **Information Typically Released by the Courts (provided the name(s) is withheld):**
  - Qualifications
  - Achievements
  - Education

**Authority to Release Certain Records  
Outside the Freedom of Information Act (FOIA)**

Requests for the information below generally need not be processed under the FOIA. They can be received orally or in writing and responded to the same way, depending on the complexity of the subject matter.

**However, should any of the instruments requested below incorporate information that may be withheld under a FOIA exemption, treat the request as a FOIA action.**

All NOAA contracting offices have authority to release the following information directly to requestors without securing prior approval:

**Contracts/Purchase Orders**

- Name of contractor, date, and dollar amount of contract;
- Purchase order – name of contractor, award date, line items purchased, price per item, total dollar amount, and delivery date;
- Solicitation Mailing List;
- Bidders Abstract (or similar document showing the same information ) – Invitation for Bids (IFBs) only;
- Identity of a specific FOIA requestor;
- NOAA Forecast of Opportunities for Small Businesses – Contracts over \$25,000;
- List of 8(a) firms, contract number(s), name, expiration date of the contract, and
- Copy of a request for proposal.

**Grants**

- Name of grantee, date, subject matter and amount of grant;
- Face sheet of funded grant application;
- Final report of grantee; and

- Final report of audits, surveys, review or evaluations of grantee performance conducted or caused to be conducted by NOAA.

### **Administrative Areas**

A list of names, office addresses, and telephone numbers of Government employees working in NOAA (includes a list of purchase cardholders – but see the entry under “Names, Addresses, and Telephone Numbers of Purchase Cardholders” in Attachment 3).

**THE FREEDOM OF INFORMATION ACT (FOIA) CHECKLIST – INTRODUCTION**

You will notice a historical reference under each item. This indicates that the document has a sufficient history so that you can usually make an informed judgment whether information should be released or withheld.

The HCOs are delegated the authority to release contractual documents absent an exemption against such release. They do not have the authority to withhold information. Therefore, whenever a request is for documents and you recommend that some or all of the requested information be withheld, the documents must be forwarded to the FOI Officer for final decision with your recommendation. Also, where you recommend releasing information that the submitter wants withheld, the final decision rests with the FOI Officer.

**IMPORTANT NOTES**

- **WHENEVER REQUESTED INFORMATION MAY BE A CANDIDATE FOR NONDISCLOSURE, YOU SHOULD ASK THE SUBMITTER TO PROVIDE HIS/HER RECOMMENDATION CONCERNING RELEASE. UNDER EXEMPTION 4, YOU MUST ASK FOR THE SUBMITTER'S RECOMMENDATION.**
  
- **WHENEVER YOU OR THE SUBMITTER RECOMMEND WITHHOLDING INFORMATION, THE RECOMMENDATION MUST BE DOCUMENTED WITH CLEAR, AND CONVINCING RATIONALE.**

# THE FREEDOM OF INFORMATION CHECKLIST

## AGENCY ACQUISITION PLANNING DOCUMENT

**HISTORY:** Generally not released.

**EXEMPTION:** 5

**BACKGROUND/RATIONALE:** Formulation of the document and input phase should be considered pre-decisional. Release would create potential for public misconception.

## AUDIT REPORTS AND SURVEYS BY NOAA

**HISTORY:** Not released.

**EXEMPTION:** 5

## CONTRACT PRICES RESULTING FROM A REQUEST FOR PROPOSAL

**HISTORY:** Release is conditional (See the Policy Discussion, below).

**EXEMPTION:** 4

**HISTORY/RATIONALE:** After award, the contract prices may be releasable (Also see “Unfunded Options” below). However, the prices may be withheld if the submitter (contractor) can provide clear, convincing rationale that release would reveal the submitter’s confidential technical or business information or cause it competitive harm. Concerning unsuccessful offers, the courts have determined that these prices are not releasable. (Also, see “REQUEST FOR A LIST OF FIRMS THAT RESPONDED TO AN RFQ, RFP, OR IFB” below, for related guidance.)

**POLICY NOTES:** Generally, the courts have asserted that routine unit prices can be released unless there is a need to protect business sensitive information.

Simple unit prices can be released in accordance with FAR 15.506. However, complex price matrices (consisting of price elements, pricing components and cost breakdowns) may be withheld as “confidential commercial information.” Price matrices are much like the cost breakdowns that the FAR maintains are not releasable.

Unit prices can be released when the submitter has previously disclosed them publicly and/or agrees to their release.

**IMPORTANT:** Be as sure as possible. Give the submitter the opportunity to opine concerning your intent to disclose unit prices. If you cannot agree or you both agree to withhold, then forward the FOIA package to the appropriate agency official, for final resolution.

**CONTRACTOR PROPOSAL (TECHNICAL, BUSINESS, MANAGEMENT, PRICE OR COST)**

**HISTORY:** 41 U.S.C. 253(b)(m) states that certain types of proposals are categorically not released (see Background/Rationale, below).

**EXEMPTION:** 3

**BACKGROUND/RATIONALE:** An unsuccessful proposal submitted in response to a solicitation for a competitive acquisition is not releasable. The proposal of a successful offeror is not to be released unless it is made an actual part of the contract or specifically referenced in the contract with the statement (incorporated by reference.” Also, see FAR 24.202(a).

**FEE (COST TYPE CONTRACTS)**

**HISTORY:** Generally not released.

**EXEMPTION:** 4

**BACKGROUND/RATIONALE:** Don’t release before award. It may be withheld after award only with clear and convincing rationale.

**NAMES OF EVALUATION TEAM MEMBERS**

**HISTORY:** Not released.

**EXEMPTION:** 5

**BACKGROUND/RATIONALE:** Release may subject the individuals to outside inquiries to such a degree that it compromises the authority and control of the contracting officer.

**NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF PURCHASE CARDHOLDERS**

**HISTORY:** Released in almost all cases.

**EXEMPTION:** N/A

**BACKGROUND/RATIONALE:** The Office of Personnel Management has determined that this is public information.

**NAMES OF GOVERNMENT EMPLOYEES (I.E., CONTRACTING OFFICERS, CONTRACTING OFFICER REPRESENTATIVES)**

**HISTORY:** Released in almost all cases.

**EXEMPTION:** N/A

**BACKGROUND/RATIONALE:** The Office of Personnel Management has determined that this is public information.

**PRE-NEGOTIATION PLAN**



**HISTORY:** Not released.

**EXEMPTION:** 5

**BACKGROUND/RATIONALE:** Release would reveal the Government's acquisition strategy.

### **PRICES RESULTING FROM A REQUEST FOR QUOTATION**

**HISTORY:** The same rules apply as in "CONTRACT PRICES RESULTING FROM A REQUEST FOR PROPOSAL," above.

**EXEMPTION:** 4

### **PROTESTS – RELEASE OF ACQUISITION INFORMATION UNDER PROTEST**

**HISTORY:** Generally not released.

**EXEMPTION:** 5

**BACKGROUND/RATIONALE:** Do not leave the request open/in process while it is being protested. Information that is under protest should be viewed as pre-decisional in nature. It should not be disclosed while it is under protest/litigation. Recommend non-disclosure for this reason and submit the proposed response to the FOI Officer for final decision.

### **PROVISIONAL RATES, CHARGES/COSTS, AND FEES**

**HISTORY:** Generally not released before award.

**EXEMPTION:** 4

**BACKGROUND/RATIONALE:** Don't release before award. Information may be withheld after award only with clear, convincing rationale.

### **PURCHASE CARD CONTRACTOR'S REPORTS AND COMPANY INFORMATION**

**HISTORY:** Not released.

**EXEMPTION:** 4

**BACKGROUND/RATIONALE:** Reports and information cannot be released without the express written permission of the purchase card contractor.

### **REQUEST FOR A LIST OF FIRMS THAT RESPONDED TO AN RFQ, RFP, OR IFB**

**HISTORY:** Generally not released before bid opening and award.

**EXEMPTION:** 6

**BACKGROUND/RATIONALE:** This is a pre-decisional document. Don't release the names of any companies before award of an RFP or a bid opening.

### **RESUMES**

**HISTORY:** Generally not released.

**EXEMPTION:** 6

**BACKGROUND/RATIONALE:** Names, home addresses, home telephone numbers, social security numbers, memberships in organizations, religious affiliation, places of education, general qualifications, and experience descriptions should not be disclosed.

### **SUBCONTRACTING PLAN**

**HISTORY:** Generally not released.

**EXEMPTION:** 4

**BACKGROUND/RATIONALE:** Release could reveal the prime contractor's subcontracting strategy.

### **SUMMARY OF AWARD**

**HISTORY:** Not released.

**EXEMPTION:** 5

**BACKGROUND/RATIONALE:** Release would compromise the Government's most sensitive strategy and evaluation information. For all practical purposes, this document is never released.

### **SUMMARY OF NEGOTIATIONS**

**HISTORY:** Generally not released.

**EXEMPTION:** 5

**BACKGROUND/RATIONALE:** Only the "Source Selection Decision" memorandum is releasable.

### **UNFUNDED OPTIONS**

**HISTORY:** Release with the submitter's approval.

**EXEMPTION:** 4

**BACKGROUND/RATIONALE:** Withhold if the submitter provides convincing rationale that release would cause it business harm. In this case, you may support the submitter by indicating that release would also harm the Government and the reason(s) why, if such is the case.

## PART 25

### FOREIGN ACQUISITION

#### 25.1 Buy American Act Supplies

**Who** CS and CO

**What** Exceptions to the Buy American Act

**When** Throughout the acquisition process

**Discussion** If it is believed the nonavailability of an article is likely to affect future acquisitions and could be added to the list of nonavailable articles in FAR 25.104(a), send a copy of the determination and supporting documentation to the Director, AGO for routing to the Civilian Agency Acquisition Council (CAAC).

Send a copy of supporting documentation required by Subpart 25.104 of the FAR to the Director, AGO for routing to the CAAC for the possible removal of an article from the list of nonavailable articles in FAR 25.104(a).

**References:** FAR Subpart 25.1

## **PART 26**

### **OTHER SOCIOECONOMIC PROGRAMS**

#### **26.1 Indian Incentive Program**

**Who** CS

**What** Making awards under the Indian Incentive Program

**When** Prior to award (preferably to be discussed with the COR during the planning process.

**Discussion** Request that the COR give you additional funding for the incentive payment of 5 percent of the amount paid to the subcontractor. The subcontractor must be either an Indian organization or an Indian-owned economic enterprise.

There is no special funding source. Advise the COR that funds should cite the same appropriation and accounting data as the prime contract.

**References:** FAR Subpart 26.103

**PART 27**  
**PATENTS, DATA AND COPYRIGHTS**  
**[RESERVED]**

## PART 28

### BONDS AND INSURANCE

#### 28.1 Bonds and Other Financial Protections

**Who** CS and CO

**What** Determining requirement for and amount of bonds

**When** During Acquisition planning phase; prior to solicitation

**Discussion**

- (a) *Amount Required. Performance bonds.* A lesser amount is recommended when the risk of nonperformance is low and you cannot justify the additional cost to the Government.  
*Payment bonds.* A lesser amount is recommended when the risk of nonperformance is low and you cannot justify the additional cost to the Government.
- (b) *Performance Bonds.* Requiring performance bonds is discouraged when the risk of nonperformance is low and the additional cost to the Government cannot be justified.
- (c) *Payment Bonds.* Requiring payment bonds is discouraged when the risk of nonperformance is low and the additional cost to the Government cannot be justified.

**References:** FAR Subpart 28.102

#### 28.2 Sureties and Other Securities for Bonds

**Who** CS

**What** Handling concerns with action of individual sureties

**When** Anytime throughout the acquisition process

**Discussion** Refer any evidence of possible criminal or fraudulent activities by an individual surety to the Office of the Inspector General.

**References:** FAR Subpart 28.203

#### 28.3 Insurance

**Who** CS

**What** Approval of Group Insurance Plans

**When** Prior to beginning contract performance

**Discussion** *Prior approval requirement.* The contractor must submit the plan to the CO for approval.

**References:** FAR Subpart 28.3

## PART 29

**TAXES**

**[RESERVED]**

**PART 30**

**COST ACCOUNTING STANDARDS ADMINISTRATION**

**[RESERVED]**



## PART 31

### CONTRACT COST PRINCIPLES AND PROCEDURES

#### 31.1 Contracts with Commercial Organizations

**Who** CS

**What** Benchmark compensation amounts

**When** During contract performance

**Discussion** *Limitation on allowability of compensation for certain contractor personnel.* Use the benchmark compensation amounts for contract costs incurred as follows:

- \$353,010 for contract costs incurred after January 1, 2000.
- \$374,228 for contract costs incurred after January 1, 2001.
- \$387,783 for contract costs incurred after January 1, 2002. Use this benchmark compensation amount for contractor fiscal year 2002.
- \$405,273 for contract costs incurred after January 1, 2003. Use this benchmark compensation amount for contractor fiscal year 2003, and subsequent contractor fiscal years, unless and until revised by the Office of Federal Procurement Policy (OFPP).

**References:** FAR Subpart 31.205-6

## PART 32

### CONTRACT FINANCING

#### 32.0 Definitions

“Interest Rate” as used in this Part, except at FAR 32.205(c)(4) and 32.407(a)(1)), means the interest rate established by the Secretary of the Treasury for use under the *Prompt Payment Act*, the *Contract Dispute Act*, and for *Facilities Capital Cost of Money*. Go to the Department of Treasury’s website at <http://www.fms.treas.gov/prompt/rates.html> to find the applicable rate.

#### 32.1 Reduction or Suspension of Contract Payments Upon Finding of Fraud

**Who** CS and COR

**What** Processing reductions or suspensions of contract payments upon findings of fraud

**When** During contract performance

**Discussion**

- (a) *General*. The CFO/ASA is the only individual with the authority in NOAA/DOC with the authority to make the determinations authorized under this section. The “Remedy Coordination Official” is the Director, AGO.
- (b) *Responsibilities*. Report suspected fraud related to advance, partial, or progress payments to the agency’s remedy coordination official.

**References:** FAR Subpart 32

#### 32.2 Non-Commercial Item Purchase Financing

**Who** CS

**What** Establishing progress payments

**When** Prior to solicitation

**Discussion**

- (a) *Contract Financing Methods*. Follow the guidance at FAR Subpart 32.102(e) (2) for progress payments based on a percentage or stage of completion.
- (b) *Contract Clauses*. Payment due dates must be based on the FAR procedure governing the type of contract and financing arrangement. You may modify the clauses at FAR 32.111(a) – (d) to clarify the payment due dates, and the process for submitting invoices and financing requests.

**References:** FAR Subpart 32.1

### **32.3 Commercial Item Purchase Financing**

**Who** CS

**What** Procedures for Offeror-Proposed Commercial Contract Financing

**When** Prior to Award

**Discussion** Go to the Office of Management and Budget (OMB) Circular webpage at <http://www.whitehouse.gov/omb/circulars/index.html> to obtain the latest issuance of Appendix C of OMB Circular A-94, “Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs.”

**References:** FAR Subpart 32.205

### **32.4 Advance Payments for Non-Commercial Items**

**Who** CS

**What** Approval authority for advance payments

**When** Prior to advance payments

**Discussion** The SBPO must approve the recommendations and determinations for advance payments. (See FAR 32.409 and FAR 32.410).

The SBPO is the approving authority or authorized official for the documents required at FAR 32.409 and FAR 32.410. The CO submits these documents to the SBPO in accordance with FAR 32.402(c)(1)(iii).

**References:** FAR Subparts 32.402, 32.409, 32.410

### **32.5 Progress Payments Based on Costs**

**Who** CS

**What** Contract Finance Office clearance

**When** Prior to payment

**Discussion** Obtain the SBPO’s approval before taking any of the actions at FAR 32.502-2(a) thru (c).

**References:** FAR 32.502-2(a) – (c)

## 32.6 Contract Debts

**Who** CS, CO, Finance Office

**What** Debt management under contracts

**When** During performance of the contract

### Discussion

- (a) *Definition.* “Responsible official,” as used in this part generally means the CO. However, see FAR 32.605, Responsibilities and Cooperation Among Government officials.
- (b) *Responsibilities and Cooperation Among Government Officials.* The Office of Finance (OF) serves as the Agency’s focal point for administrative debt management, ensuring the billing and collection of administrative receivables. Coordinate any debt collection action, following the policies and procedures in this subpart, with OF.

**References:** FAR Subpart 32.605

## 32.7 Contract Funding

**Who** CS and COR

**What** Determining availability of funding

**When** Prior to Award

### Discussion

- (a) *Verifying funds are available.* Make sure that the requesting office has certified that funds are available before processing any AR received. A list of the individuals authorized to certify funding availability are included in Exhibit 1. If you receive a hard (paper) copy AR, make sure it is signed by the appropriate funds certifying official for the program area providing the funding for the acquisition or, in the case of ARs received for the next fiscal year, cites “Subject to the Availability of Funds.”
- (b) *Contracts Conditioned Upon Availability of Funds.*
  - (1) Fiscal Year Contracts. You may initiate a contract action properly chargeable to funds of the new fiscal year during a continuing resolution (CR). Anytime there is a CR, the NOAA Chief Financial Officer, in conjunction with OF, Office of Budget, and AGO issues operating policies and procedures for funding awards during a CR. AGO’s management staff will provide this guidance to all acquisition personnel.
  - (2) Acceptance of supplies or services. The written notice to the contractor that funds are available must be in the form of a modification to the award.

**References:** FAR Subpart 32.7

## 32.8 Assignment of Claims

**Who** CS

**What** Prohibiting Assignment of Claims

**When** Prior to Award or during contract performance

**Discussion** You may prohibit assignment of claims if you determine the prohibition to be in the Government's interest. Document this determination in a note to the contract file.

**References:** FAR Subpart 32.8

### **32.9 Prompt Payment**

**Who** CS, Office of Finance

**What** Payment Documentation and Process

**When** During contract performance

**Discussion** OF makes payments based on what is authorized in the award document, and in accordance with FAR Subparts 32.905 and 32.906.

**References:** FAR Subparts 32.905 and 32.906

### **32.10 Performance-Based Payments**

**Who** CS and COR

**What** Making performance-based payments

**When** During contract performance

**Discussion** It is NOAA's policy to make performance-based payments in accordance with the guidance at FAR 32.007, Contract financing payments

**References:** FAR Subpart 32

**Exhibit 1** – Individual's with Funds Certifying Authority



## PART 33

### PROTESTS, DISPUTES, AND APPEALS

#### 33.1 Protests

**Who** CS and CO

**What** General protest policies

**When** Pre- or Post-Award

**Discussion**

- (a) Policies and procedures under this subpart apply to all NOAA contracting personnel. Work with the Protest Control Officer (PCO) and the DOC OGC CLD attorney to resolve protests.

- (1) The AGO's Policy Coordinator serves as the liaison/point of contact for protests filed with the General Accounting Office (GAO) and the agency. The AGO Policy Coordinator acts as NOAA's PCO. The PCO can also act as an independent reviewer as allowed in FAR 33.103(d)(4). The PCO's mailing address and contact numbers are:

National Oceanic and Atmospheric Administration  
Acquisition and Grants Office  
1305 East West Highway, Suite 6300  
Silver Spring, MD 20910

Phone Number: (301) 713-0325  
FAX: (301) 713-1974

- (2) Coordinate all protests with DOC OGC CLD, the cognizant legal counsel for contractual issues. The mailing address and contact numbers are:

U. S. Department of Commerce  
Office of General Counsel  
Contract Law Division, Room 5893  
Herbert C. Hoover Building  
14<sup>th</sup> Street and Constitution Avenue, N. W.  
Washington, DC 20230  
Attn: Mark Langstein, Esquire  
FAX 202-482-5858

**References:** FAR 33.1

#### 33.2 Protests to the Agency

**Who** CS and CO

**What** Agency-level protest procedures

**When** Pre- and Post-award

**Discussion** FAR 33.103(d)(4) allows interested parties to request an independent review of their protest. In the solicitation, state how and who will conduct the independent review. Generally, the solicitation will identify the PCO as the independent reviewer and that the review will be performed after the CO's review.

Coordinate all protests received before award, even those that appear to be groundless, with the PCO and DOC OGC CLD. The DOC OGC CLD attorney will work with the cognizant Contract Specialist/CO and COR and offer advice as to the appropriate action. Before responding to the protester, obtain the concurrence of the PCO and DOC OGC CLD. In accordance with FAR 33.103(f)(1), the cognizant HCO unless the HCO is the CO, in which case the SBPO can make this determination, is authorized to make the determination to award a contract, in spite of the protest, after obtaining the concurrence of the PCO and DOC OGC CLD.

Coordinate all protests received after award, even those which appear to be groundless, with the PCO and DOC OGC CLD. The DOC OGC CLD attorney will work with the cognizant Contract Specialist/CO and COR and offer advice as to the appropriate action. Before responding to the protester, obtain the concurrence of the PCO and DOC OGC CLD. In accordance with FAR 33.103(f)(3), the cognizant HCO unless the HCO is the CO, in which case the SBPO can make this determination, is authorized to make the determination to award a contract, in spite of the protest, after obtaining the concurrence of the PCO and DOC OGC CLD.

**References:** FAR 33.103

### **33.3 Protests to GAO**

**Who** CS and CO

**What** GAO protest procedures

**When** Pre- and Post-Award

#### **Discussion**

(a) *General procedures.*

- (1) The PCO will notify the Director, AGO, when a protest has been filed with GAO. The PCO will also provide the case Number (B-number), the name of the protester, the solicitation number, the date and time the protest was received from the protester, the agency report due date, and GAO decision date to DOC OGC CLD and the cognizant CS/CO. The PCO will ensure that DOC OGC CLD and the cognizant CS/CO have a copy of all documents.
- (2) The CO shall make the necessary notifications reference in FAR 33.104(a)(2). The CO shall provide copies of the comments of interested parties responding to the notification to the PCO and to DOC OGC CLD.



- (3) (i) Process protests filed with GAO, through the PCO. These protests require coordination with the PCO, the DOC, OGC CLD and the cognizant CO.
  - (ii) The cognizant Contract Specialist, with the assistance of the COR, must assemble the protest file.
  - (iii) The cognizant CS must obtain PCO and DOC OGC CLD guidance in determining which documents to release or withhold from the protestor.
  - (iv) Working with the DOC OGC CLD attorney, the cognizant CS prepares the statement in accordance with FAR 33.104(a)(if)(B), for inclusion in the agency report to GAO. DOC OGC CLD will prepare the complete agency report and submit it to GAO.
  - (4) (i) Send out other copies of the agency report as specified in FAR 33.104(a)(4)(i).
  - (ii) (A) and (B) DOC OGC CLD will provide the additional documentation covered in FAR 33.104(a)(4)(ii) (A) and (B).
- (b) *Protests before award.*

- (1) To make an award in spite of a protest, the cognizant CS shall prepare a finding using the criteria in FAR 33.104(b)(1). Forward it for PCO concurrence, along with a written request for HCA approval to make the award. Furnish a copy concurrently to DOC OGC CLD.
  - (2) If the HCA approves the request to make an award, DOC OGC CLD will notify GAO of the findings.
- (c) *Protests after award.* If it is believed performance should be allowed to continue in spite of the protest, the cognizant CS prepares a finding, and forwards it for PCO concurrence, along with a written request for HCA approval. Furnish a copy concurrently to the DOC OGC CLD. If the HCA approves continued performance, DOC OGC CLD will notify GAO of the findings.
- (d) *Notice to GAO.* With input and review by DOC OGC CLD, the cognizant CS prepares the report required by FAR 33.104(g) for the HCA's signature. Forward the report to GAO.

**References:** FAR Subpart 33.104

### **33.4 Disputes and Appeals**

**Who** CS and CO

**What** Agency dispute/appeals procedures

**When** During contract performance

**Discussion**

- (a) *Applicability.* The agency head has designated the General Services Board of Contract Appeals (GSBCA) as the authorized "Board" to hear and determine disputes for DOC.
- (b) *Suspected Fraudulent Claims.* Submit any suspected contractor's fraudulent claim(s) to the Office of the Inspector General for investigation.
- (c) *CO's Authority.* Refer a proposed final decision to DOC OGC CLD for advice as to the legal sufficiency and format before sending the final decision to the contractor. Provide

DOC OGC CLD with the pertinent documents, with the submission of each proposed final decision.

(d) *CO's Decision.* When using the paragraph in FAR 33.211(a)(4)(v), substitute the words "General Services" for each mention of the term "agency."

(e) *CO's Duties Upon Appeal.*

- (1) GSBCA's rules or by the rules established by the United States (U.S.) Court of Federal Claims, as appropriate, govern appeals.
- (2) DOC OGC CLD is designated as the Government Trial Attorney (GTA) to represent the Government in the defense of appeals before GSBCA. The GTA transmits the GSBCA decision to the cognizant CS for compliance. The CS and COR must work with the GTA to achieve a satisfactory resolution of the appeal.
- (3) If an appeal is filed with the GSBCA, the cognizant CS must assemble a file within 30 days of receipt of an appeal or advise that an appeal has been filed, that consists of all documents pertinent to the appeal, including:
  - (i) The decision and findings of fact from which the appeal is taken;
  - (ii) The contract, including specifications and pertinent modifications, plans and drawings;
  - (iii) All correspondence between the parties pertinent to the appeal, including the letter or letters of claims in response to which the decision was issued;
  - (iv) Transcripts of any testimony taken during the course of proceedings, and Affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and
  - (v) Any additional pertinent information.

The cognizant CS furnishes the appeal file to the GTA for review and approval. After approval, prepare four copies of the file. This includes one each for the GSBCA, the appellant, the GTA, and the contracting office.

- (4) After the filing of an appeal, the cognizant CS and COR shall render whatever assistance the GTA requests. When an appeal is set for hearing, acting with the guidance of the GTA arrange the attendance of Government witnesses and specified physical and documentary evidence at both the pre- hearing conference and the hearing.
- (5)
  - (i) The CO may withdraw or modify your final decision at any time during the appeal period. If this is done, forward the recommended correction or amendment to DOC GOC CLD with any supplemental documentation to the contract file that supports the recommended action.
  - (ii) If a contractor elects to accept fully the decision from which the appeal was taken, or any modification to it, and gives written notification of acceptance to the GTA or the concerned CO, the GTA will notify the GSBCA of the disposition of the dispute.
- (6) If the contractor has appealed to the U. S. Court of Federal Claims, the U.S. Department of Justice will represent the Agency. However, coordination of all actions through DOC OGC CLD must continue.

- (f) *Obligation to Continue Performance.* Generally the Disputes clause at FAR 52.233-1 with Alternate I should be used. However, the HCO can grant approval if it is determined that the Government's interest would be better served by paragraph (i) in Alternate I.

**References:** FAR Subpart 33.2

**PART 34**  
**MAJOR SYSTEM ACQUISITION**  
**[RESERVED]**

**PART 35**  
**RESEARCH AND DEVELOPMENT CONTRACTING**  
**[RESERVED]**

## PART 36

### CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

#### 36.0 Scope of Subpart

Requirements officials are reminded of the requirements of NAO 217.104, Approval of New Building Construction Projects. Prior to beginning any new building construction projects, this NAO should be reviewed and process for obtaining required approvals be taken into consideration when developing the project schedule.

#### 36.1 Definitions

“Agency head or other designated selection authority” is the Deputy Under Secretary for Oceans and Atmosphere.

#### 36.2 Special Aspects of Contracting for Construction

**Who** CS and COR

**What** Agency policy for construction contracts

**When** Pre-solicitation and post-award

##### Discussion

- (a) *Evaluation of Contractor Performance.* The COR fulfills the role of the evaluating official and prepares performance evaluation reports at the time of final acceptance, at the time of contract termination, and whenever the CO requests them. Distribute and maintain the performance reports in accordance with NAHB 42.4.
- (b) *Government Estimate of Construction Costs.* You may not disclose the overall amount of the Government’s estimate to anyone other than Government personnel whose official duties require knowledge of the estimate, unless the HCO approves this disclosure.
- (c) *Presolicitation Notices.* Submit your request for a waiver of the presolicitation notice required at FAR 36.213-2(a) to your HCO.

**References:** FAR Subpart 36.2 and NAO 217.104

#### 36.3 Architect-Engineer Services

**Who** CS and CO

**What** Policies and procedures applicable to the acquisition of architect-engineer services

**When** Pre- and post-award

##### Discussion

- (a) *Mapping services.* Mapping services are required to be acquired utilizing A-E contracting processes.
- (b) *Conflicts of interest.* After the closing date of the synopsis, but before the first active

involvement of the preselection board and the evaluation board, have the board members sign a Combined Certification of Qualifications/Confidentiality/Conflict of Interest form.

- (c) *Evaluation Boards.* The Chief Administrative Officer establishes the evaluation board for acquisitions up to \$100,000. The Deputy Under Secretary for Oceans and Atmosphere establishes the preselection board for acquisitions exceeding \$100,000. For non-NOAA clients, the equivalent positions in the client organization shall fulfill these roles.
- (d) *Evaluation Board Functions.*

(1) *Preselection board.*

- (i) A preselection board is normally used in acquisitions where the estimated cost exceeds \$100,000. A preselection board may also be used when a large quantity of responses to the synopsis is received and an in-depth study of each by the evaluation board would cause undue delays. Each member of the pre-selection board reviews the Standard Form 254 (SF 254), "Architect-Engineer and Related Services Questionnaire," and the SF 255, "Architect-Engineer and Related Services Questionnaire for Specific Project" submitted in response to the synopsis and eliminates those offerors that do not meet mandatory technical requirements. The remaining offerors are further reviewed and ranked based on their technical and professional expertise as it relates to the Government's requirement. The preselection board does not hold discussions with offerors.
- (ii) The Chairperson of the preselection board prepares a report which lists a minimum of three, and generally no more than five, of the highest evaluated (ranked) offerors from all responses received and submits the report through the CO to the evaluation board for further consideration. The report will reflect the preliminary rankings of all offerors and includes a copy of each rating sheet and any reservations, qualifications, or areas to be addressed that might bear upon the selection of offerors for interviews. The written report must list the reason(s) why certain offerors failed to qualify for further consideration.
- (iii) The pre-selection board report must be signed by each board member and permanently recorded in the contract file.

(2) *Evaluation Board.*

- (i) The evaluation board conducts interviews with at least the three highest rated offerors. In the interview, which is usually limited to a maximum of two hours per offeror, the offeror presents its capabilities and qualifications for the project, proposed organizational structure, design approach, and related experience. The board may use a question-and-answer period to consider additional information.
- (ii) After each interview is completed, each board member independently evaluates the offeror in accordance with the published selection criteria and the results of the interview. Using rating sheets approved by the CO, the board tabulates the results of the evaluations and ranks the offerors in order of preference. The board Chairperson then prepares a selection report, recommending, in order of preference, at least three offerors that are considered most highly qualified to

perform the required services. This report must be signed by each voting member of the board and contain the information required by FAR 36.602-3(d) and in (A) – (C) below.

(A) Summary sheet showing the individual member scores, ranking and rating factors.

(B) SF 254s and 255s, plus any essential brochures or other materials or information obtained, for each offeror; and

(C) Government estimate of the total amount of A&E fee. This includes the cost breakdown of all contributing factors (labor, materials, overhead, subcontracting and travel).

- (f) *Performance Evaluation.* The COR fulfills the role of the evaluating official and prepares performance evaluation reports at the time of final acceptance of the A&E contract work or after contract termination. In addition to the reports in this subparagraph, reports may be prepared as allowed in FAR 36.604(a)(2) and (3). Prepare a paper copy of the SF 1421. File one copy in the contract file and provide one copy to the contractor.
- (g) *Government Cost Estimate for Architect-Engineer Work.* The overall amount of the Government's estimate may not be disclosed to anyone other than Government personnel whose official duties require knowledge of the estimate, unless the HCO approves this disclosure.
- (h) *Design within Funding Limitations.* The HCO is the approving official who determines that cost limitations are secondary to performance considerations and additional project funding can be expected as specified in FAR 36.609-1(c)(1).

**References** FAR Subpart 36.6



**PART 37**  
**SERVICE CONTRACTING**  
**[RESERVED]**

**PART 38**  
**FEDERAL SUPPLY SCHEDULE CONTRACTING**  
**[RESERVED]**

## PART 39

### ACQUISITION OF INFORMATION TECHNOLOGY

#### 39.1 Definitions

“Requiring Official,” as used in this subpart, means the requestor cited on the CD-435, Purchase Requisition (PR).

#### 39.2 Applicability

**Who** CS and COR

**What** Agency IT Acquisition policies related to Sec. 508

**When** Throughout the acquisition process

#### Discussion

- (a) For NOAA specific information and links to additional Section 508 information go to NOAA’s Section 508 Advisory Council’s website at <http://www.cio.noaa.gov/itmanagement/508home.htm>. This site has samples of requirement documents and standards checklists that may be used in Solicitations as appropriate.
- (b) The requirements at FAR 39.203(b)(2) for exception determinations and Providing information to requiring and ordering officials also apply to Blanket Purchase Agreements (BPAs).
- (c) The requiring official must use the Non-Availability Certification form located on NOAA’s web site to document the non-availability as required by FAR 39.203(c)(2). The Approving Official who signed the PR must approve the Non-Availability Certification. The form is available at <http://www.ofa.noaa.gov~amd/>. Provide a copy of the Non-Availability Certification to AGO’s Policy Coordinator.
- (d) *Exceptions.* The requiring official’s Deputy Assistant Administrator (DAA) or equivalent, and the agency’s Chief Information Officer must approve the requiring official’s Undue Burden Exception documentation. The requiring official must use the Undue Burden form located on NOAA’s web site to document an Undue Burden as required by FAR 39.204(e)(2). The form is available at <http://www.ofa.noaa.gov~amd/>. Provide a copy of the Undue Burden determination to AGO’s Policy Coordinator.

**References:** FAR Subpart 39.2

**PART 40**

**[RESERVED]**

**PART 41**  
**ACQUISITION OF UTILITY SERVICES**  
**[RESERVED]**

## PART 42

### CONTRACT ADMINISTRATION AND AUDIT SERVICES

#### 42.1 Contract Audit Services

**Who** CS

**What** Procedures for requesting audit services

**When** Pre- and post-award

**Discussion** The CS should submit a request for audit service to the AGO Cost Analyst.

**References:** FAR Subpart 42.1

#### 42.2 Disallowance of Costs

**Who** CS and CO

**What** Procedures for handling vouchers

**When** During contract performance

**Discussion** *Contracting Officer receipt of vouchers.* See NAO 203-31 for procedures.

**References:** FAR Subpart 42.8, NAO 203-31

#### 42.3 Traffic and Transportation Management

**Who** CS

**What** Shipping documents covering F.O.B. Origin Shipments

**When** During contract performance

**Discussion** The CS should obtain a Government Bill of Lading (GBL) from the Freight Rate Specialist. See FAR Subpart 47.105(a). In order for the Freight Rate Specialist to issue a GBL, the CS must complete a "Government Bill of Lading Request" form (see Exhibit 1).

**References:** FAR Subpart 47.1

#### 42.4 Contractor Performance Information

**Who** CS

**What** Procedures for utilizing past performance as an evaluation factor

**When** Pre-award and post-award

**Discussion**

- (a) *General.* Contractors may not be given "downgraded" past performance evaluations for availing themselves of their rights by filing protests and/or claims or for deciding not to

use Alternate Dispute Resolution (ADR), nor should they be given more “positive” past performance evaluations for refraining from filing protests and/or claims or for agreeing to use ADR.

- (b) *Policy.* The term “each contract over \$100,000” includes not only contracts but also all delivery or task orders.
- (c) *Procedures.* An interim evaluation for an ongoing contract should be prepared to coincide with exercising an option, incremental funding, or at some other interval consistent with the contract effort. An evaluation must be prepared once every 12 months at a minimum.

The final evaluation must be prepared as soon as practicable after completion of the contract, but not later than 30 days after the completion date.

**References:** FAR Subpart 42.15

## **42.5 Contract Monitoring**

**Who** CS and COR

**What** Procedures for monitoring contract performance

**When** Post-award

### **Discussion**

- (a) *Purpose.* Contract monitoring is an essential element of contract administration and the acquisition process. This subpart describes NOAA’s procedures for contract monitoring, performed jointly by the COR and CO. They are meant to ensure that the required monitoring is performed, timely remedial action is taken when necessary, and a determination is made that contract objectives have been met.
- (b) *Contract Monitoring Responsibilities.* The written contract stipulates the mutual obligations of the Government and the contractor. Unless authorized, in writing, by the CO, no one may direct or request the contractor to assume any obligation or take any actions not specifically required by the contract. Only the CO may impose a requirement that will result in a change to the contract. All contract changes must be confirmed in writing.

Immediately upon award, the contractor must be informed by letter of the authorities and responsibilities of the Government personnel with whom the contractor will be dealing.

The CO must depend on the COR for assistance and advice in monitoring the contractor’s performance, and in other areas of postaward administration. The cognizant CS should ensure that the CORs and their alternates/assistants understand their responsibilities and perform their duties.

The COR’s responsibilities can be time-consuming, depending on a variety of factors including complexity of the requirement, dollar value, contract type, and contractor’s performance.

The COR is responsible for identifying to the OSY, Contractor employees working on-site, reporting contractor employees no longer working on-site (includes collecting badges and turning them into OSY).

**References:** FAR Subpart 42

#### **42.6 Contract Administration - Designation of COR and Alternate/Assistant COR or Point of Contact**

**Who** CO

**What** Process for designating CORs/Alternate/Assistant CORs/POCs

**When** Upon award

##### **Discussion**

- (a) COR's may be designated to perform certain functions during the term of the contract. Three important COR duties are:
  - (1) monitoring the contractor's technical progress;
  - (2) submitting periodic reports to the contract specialist; and
  - (3) submitting an assessment report to the contract specialist within 30 days prior to the exercising of an option or providing incremental funding or 30 days following completion of the contract requirements. Any individual designated as a COR or Assistant/Alternate COR must meet the COR training requirements set forth in CAM 1301.67.
- (b) In determining if designation of a COR is appropriate, the CS consider the three important COR duties listed in paragraph (a) above. If one or more of these duties is required, a separate designation memorandum to the individual selected to serve as the COR and/or as the Alternate/Assistant COR will be prepared by the CS. If the COR or alternate/assistant COR needs to be changed during the life of the contract, the CS will prepare and send a new designation memorandum to the individual selected to serve as the replacement COR and/or as the replacement Alternate/Assistant COR.

Prior to preparing any designation memorandum, the contract specialist should make sure the proposed COR/Alternate/Assistant COR has signed a conflict of interest certification. This certification should be provided by the COR or Alternate/Assistant COR prior to the evaluation process; however, if there was no evaluation or there is a change in COR/Alternate/Assistant COR, the CS must have the signed conflict of interest certification. Exhibit 2 is a sample of a post-award conflict of interest certification.

- (c) A copy of each designation memorandum must be included in the official contract file.
- (d) The sample memoranda (see AGO Website, <http://www.ofa.noaa.gov~amd>) may be used to comply with this section. They should be modified or tailored to fit the particular contract/situation and to specify whether an individual is being appointed as a COR, an ACOR, or a P/CO.



**References:** FAR Subpart 42

**Government Bill of Lading Request**

TO: (Freight Rate Specialist)

DATE:

FROM:

The following information is applicable to this request for a Government Bill of Lading (GBL):

1. Requisition Number:

2. ACCS Code:

Object Class:

3. Purchase/Delivery Order/Contract Number:

4. Company Name/Address/Contact Person/Telephone Number:

5. F.O.B. Point:

6. Delivery Address:

7. Item/Quantity:

8. Weight:

9. Inside delivery required:  Yes  No

Will be packaged as follows:

**Conflict of Interest Certification**

In order that I may participate as a Contracting Officer Representative (COR) for contract No. \_\_\_\_\_ awarded to \_\_\_\_\_, I have signed and dated this form where indicated. My signature is confirmation that the Certification Statement is accurate and true. If such certification cannot be made, I am prohibited from being the COR on this contract.

In addition, I have read and understand the requirements for procurement integrity, standards of conduct, and rules for safeguarding and disclosing information as follows:

- FAR, Part 3, Improper Business Practices and Personal Conflicts of Interest
- Standards of Ethical Conduct for Employees of the Executive Branch, subparts
  - Conflicting Financial Interests
  - Impartiality in Performing Official Duties
  - Seeking Other Employment
  - Misuse of Position

I certify that I do not have any personal, financial or other interest in, or relationship to, the contractor. I also certify that I am not biased for or against the contractor for any other reason.

\_\_\_\_\_  
Signature/Date

## **PART 43**

### **CONTRACT MODIFICATIONS**

#### **43.1 Change Orders**

**Who** CS

**What** Inclusion of contract clause

**When** Prior to solicitation

**Discussion** Obtain HCO approval as required by FAR 43.205(c) when varying the 30-day period in FAR clause 52.243-3.

**References:** FAR Subpart 43.205(c)

#### **43.2 Documentation of Contract Modifications**

**Who** CS/CO

**What** Preparation of Business Case Memorandum/Summary of Negotiations

**When** Prior to award of modifications

**Discussion** The Business Case Memorandum/Summary of Negotiations is mandatory documentation for any unilateral or negotiated change to the contract. See NOAA Acquisition Handbook part 15.4.

**PART 44**  
**SUBCONTRACTING POLICIES AND PROCEDURES**  
**[RESERVED]**

## PART 45

### GOVERNMENT PROPERTY

#### 45.1 Definitions

“Property Administrator” is the Regional Property Manager in Headquarters or the RADs.

“NOAA Property Management Officer” (PMO) means the head of the NOAA Personal Property Office. The PMO is responsible for all NOAA property management programs and is the liaison with other agencies in property management policy. The PMO appoints the Property Administrator.

#### 45.2 Providing Government Property to Contractors

**Who** CS, CO, COR

**What** Procedures for providing government property to contractors

**When** Throughout the performance of the contract

##### **Discussion**

- (a) Whenever providing government-owned property to a Contractor or authorizing a contractor to acquire property under a contract, comply with the provisions of the NOAA Personal Property Handbook.
- (b) The CS must coordinate GFP with the Property Administrator, and the COR.
- (c) The CS and COR should consider the following before providing GFP or allowing a contractor to acquire such property at Government expense:
  - (1) Is there any practicable or economical alternative; e.g., acquisition from other sources, utilization of subcontractors, rental of property, or modification of program project requirements?
  - (2) Will the Government receive adequate consideration for providing the property?
  - (3) Will furnishing Government property result in substantially lower cost to the Government for the items produced or services rendered when all costs involved (e.g., transportation, installation, modification, and maintenance) are compared with the cost to the Government of the contractor’s use of privately-owned property?

**References:** FAR Subpart 45.3, NOAA Personal Property Handbook

### **45.3 Contractor Use and Rental of Government Property**

**Who** CS, CO, COR

**What** Providing GFP under contracts with foreign governments or international organizations

**When** Throughout the life of the contract

**Discussion** The CS should coordinate the request with the COR and contact the Property Administrator for agency procedures for providing government property under contracts with foreign governments or international organizations.

**References:** FAR Subpart 45.4 and NOAA Personal Property Handbook

### **45.4 Management of Government Property in the Possession of Contractors**

**Who** CS, CO, COR

**What** Contract administration duties related to managing government property in the possession of contractors

**When** Throughout the life of the contract

**Discussion**

- (a) The CS and COR should direct the contractor's attention to FAR subpart 45.5 for the management of Government property in the possession of contractors. Specifically, FAR Subparts 45.505-1 and 45.505-5 detail records to be maintained by the Contractor. Contractors should be told that the terms of the contract and the requirements at FAR subpart 45.5 are the contractor's guides for the control of Government property. Issues not covered by the FAR or the contract should be resolved with the assistance of the Property Administrator and the COR. Refer to the NOAA Personal Property Handbook at [http://www.pps.noaa.gov/New\\_menu/ppmanualmain.htm](http://www.pps.noaa.gov/New_menu/ppmanualmain.htm) for additional guidance.
- (b) *Identification.* The CS should direct the Contractor to identify property in accordance with the terms of the contract and the requirements at FAR section 45.506, which addresses the need to identify the property and report the assigned identification number.

**References:** FAR Subpart 45.5 and NOAA Personal Property Handbook

### **45.5 Reporting, Redistribution, and Disposal of Contractor Inventory**

**Who** CS and COR

**What** Guidance on reporting, redistribution and disposal of contractor inventory

**When** Throughout the life of the contract

**Discussion**

- (a) *Scope.* The contractor should be advised by the CS that the terms of the contract and the requirements at FAR subpart 45.6 govern the reporting, redistribution and disposal of contractor inventory. Issues not covered by the contract or the FAR should be resolved with the assistance of the Property Administrator and the COR.
- (b) *Definitions.* "Plant Clearance Officer" as referenced in FAR Subpart 45.601 means the

Property Administrator as defined in 45.101.

- (c) *Contractor Inventory in Foreign Countries.* The CS and COR must contact the Property Administrator for rules concerning sale or disposal of contractor inventory located in foreign countries.
- (d) *Property Disposal Determinations.* The CS prepares and the NOAA PMO reviews the property disposal determination in FAR section 45.613. The CO makes the final determination.

**References:** FAR Subpart 45.6 and the NOAA Personal Property Handbook

#### **45.6 Acquisitions Impacting NOAA Office Space, Environment or Energy**

**Who** CS and COR

**What** Procedures for providing contractor space in NOAA facilities

**When** During acquisition planning and throughout the life of the contract

**Discussion**

- (a) *Policy.* The CS and COR must coordinate the need for on-site contractor space with the cognizant Facilities Management office. This should include a review of the Acquisition Request.
- (b) *Procedures.* The CS shall use acquisition planning sessions to inform the COR of the need for Facilities Management coordination in any instance where the acquisition may have an impact on space, environment or energy. The milestone plan negotiated for the acquisition should reflect the required reviews or coordination.

It is the COR's responsibility to ensure that Acquisition Requests reflect the input and concurrence of the Facilities Management office for any acquisition that may impact NOAA space, environment or energy. The Acquisition Request or its supporting documents must record this coordination/concurrence.

**References:**



## PART 46

### QUALITY ASSURANCE

#### 46.1 Contract Clauses

**Who** CS

**What** Required approval for using FAR Clause 52.246-16, Responsibility for Supplies

**When** When developing solicitation and/or contract document

**Discussion** The contract specialist must obtain HCO approval as required by FAR 46.316 when including the Responsibility for Supplies clause in a contract when the contract amount is not expected to exceed the simplified acquisition threshold.

**References:** FAR Subpart 46.3

#### 46.2 Warranties

**Who** CS in consultation with the COR

**What** Guidance on including warranty provisions in NOAA contracts

**When** During the acquisition planning and solicitation/contract development phase

**Discussion**

- (a) *Criteria for use of Warranties.* Warranties should be obtained only when they are cost beneficial. To determine whether use of a warranty is cost beneficial, an analysis shall be performed to compare the benefits to be derived from the warranty with its acquisition and administration costs. The analysis should examine the procurement's life cycle costs, both with and without a warranty. Where possible, a comparison should be made with the costs of obtaining and enforcing warranties for similar supplies or services. If a warranty is determined to be appropriate, the contract file shall be documented with the reason for inclusion of a warranty and identify the specific parts, subassemblies, systems or contract line item(s) on which a warranty should apply and shall address why a warranty is appropriate under the criteria set forth in FAR 46.703.
- (b) *Authority for use of Warranties.* The contract specialist must obtain HCO approval as required by FAR 46.704 when recommending use of a warranty clause.
- (c) *Limitations.* The contract specialist must obtain HCO approval as required by FAR 46.705(a) when recommending use of a warranty clause in a cost-reimbursement contract.
- (d) *Warranties of Data.* The contract specialist must obtain HCO approval as required by FAR 46.708 when recommending use of a warranty clause.

**References:** FAR Subpart 46.7

## **PART 47**

### **TRANSPORTATION**

#### **47.0 Definitions**

“Transportation Officer” is organizationally located in the Logistics Office. The transportation officer (TO) has delegated to the freight rate specialist the authority to perform all duties assigned in the FAR for those portions of contracts that involve transportation of supplies.

#### **47.1 General**

The TO’s and the freight specialist’s address and phone numbers are: *(to be determined)*

**PART 48**  
**VALUE ENGINEERING**  
**[RESERVED]**

## **PART 49**

### **TERMINATION OF CONTRACTS**

#### **49.1 General Principles**

**Who** CS, CO, COR

**What** Reporting fraud or other criminal conduct in relationship to an acquisition termination

**When** At any time during the process of terminating a contract

**Discussion** Report suspected fraud or criminal conduct related to the settlement of a terminated contract to the Office of the Inspector General for investigation.

**References:** FAR Subpart 49.1

**PART 50**  
**EXTRAORDINARY CONTRACTUAL ACTIONS**  
**[RESERVED]**

## PART 51

### USE OF GOVERNMENT SOURCES BY CONTRACTORS

#### 51.1 Contractor Use of Government Supply Sources

**Who** CS with input from COR

**What** Availability of Government travel and transportation discounted rates to Government contractors

**When** Throughout the life of the contract

**Discussion** Cost-reimbursable contractors may be eligible for certain discounts that are available to Government employees. The travel and transportation costs must be related to official Government business.

- (a) *Contract air passenger transportation practices.* Contractors cannot use the General Services Administration's city pair fare rates.
- (b) *Discount rail services.* Rail services (such as AMTRAK) may offer discounted fares to eligible contractors. This requires a contractor-issued letter of identification. See the sample letter in Exhibit 1.
- (c) *Discount hotel/motel practices.* Lodging providers may offer discounted fares to eligible contractors. This requires a contractor-issued letter of identification. See sample letter in Exhibit 1.
- (d) *Department of Defense (DOD) car rental practices.* Car rental companies may offer the DOD-negotiated discount rates to contractors. This is at the vendor's option and requires a Government authorized letter of identification (prepared by the CS; signed by the CO). See sample letter in Exhibit 1.

**References:** FAR Subpart 51.101

#### 51.2 Authorization to use Government Supply Sources

**Who** CS with input from COR

**What** Providing authorization for Contractor use of government supply sources

**When** Throughout the life of the contract

**Discussion** If it is decided to authorize a contractor to use certain Government supply sources, the CS must obtain a FEDSTRIP activity address code.

Use the sample "Agency Letter of Identification" in Exhibit 1 to introduce NOAA cost-reimbursable contractors to lodging providers, rail services (such as AMTRAK), and car rental agencies.

**References:** FAR Subpart 51.102

EXHIBIT 1

Sample Agency Letter of Identification

(Date)

Official travel of Cost-Reimbursable Contractor

To Whom It May Concern:

Re: Contract Number \_\_\_\_\_

(Traveler's name), the bearer of this letter, is an employee of (contractor name). (Contractor name) is under contract to the National Oceanic and Atmospheric Administration under cost-reimbursable contract (contract number). During the performance period of the contract through (contract end date) the employee will be performing reimbursable travel in performance of the contract. I authorize the employee to receive any discount lodging, rail services, and car rental rates that you give to United States Government employees.

(Contracting Officer's signature,  
title and telephone number)

**PART 52**  
**SOLICITATION PROVISIONS AND CONTRACT CLAUSES**  
**[RESERVED]**



**PART 53**  
**FORMS**  
**[RESERVED]**

## PART 70

### NOAA-SPECIFIC ACQUISITION GUIDANCE

#### 70.1 Contractor Access to NOAA IT Systems

**Who** CS, CO and COR

**What** Guidance on providing contractor employees with access to NOAA IT Systems

**When** Throughout the life of the contract

#### **Discussion**

- (a) Whenever a contractual agreement (including purchase/delivery/task orders, orders against Blanket Purchase or Ordering Agreements and contracts) requires Contractor personnel to access NOAA's computer systems (includes PC, network, mainframe, firewall, router, telephone and other miscellaneous utility systems, regardless of platform), there are specific responsibilities of the Contractor and the COR associated with that access.
- (b) It is the responsibility of the designated COR to determine the need for contractor personnel to access NOAA's computer systems. Access is made available by the COR requesting accounts and system access for contractor employees assigned to their contracts from the appropriate system administrator. Further, it is the responsibility of the COR to subsequently notify the appropriate system administrator when such access is no longer required by that Contractor or that Contractor's employees.
- (c) *Contractor Identification* – Include the following provision in any order or contract which will require contractor communications (oral, written, electronic) with Government personnel:

#### Contractor Identification

During performance of this contract, it is anticipated that Contractor employees will have the opportunity to interact with Government personnel. This interaction can take the form of written or electronic communications or through formal or informal discussions or meetings. Accordingly, the following identification procedures shall be adhered to:

#### (1) Electronic Communications

- (i) Any contractor employee included in NOAA's locator shall be identified by both their name and the Contractor's name. Example:  
[Jane.Smith.ABC.Company@noaa.gov](mailto:Jane.Smith.ABC.Company@noaa.gov)
- (ii) Any contractor employee submitting any type of electronic correspondence to any NOAA employee shall clearly identify themselves as a contractor employee at the start of the communication. Example: The first line of an e-mail message (not generated through NOAA's locator or using a NOAA e-mail address) shall read as follows: "This message is from Jane Smith with ABC Company, Contract No. XXXXXXXXXXXX".

- (2) Written Communications. Any written correspondence from a contractor or any contractor employee shall be printed on company/organization letterhead or otherwise clearly identify the sender as an employee of whatever company or organization they are representing and shall identify the contract number on which they are performing.
- (3) Oral Communications. Contractors and/or contractor employees shall clearly identify themselves as such in any verbal communications, whether informal discussion or formal meeting.

**References:**

**70.2 Identification of Contractor Employees**

**Who** CS, CO and COR

**What** Requirements for identification of contractor employees

**When** Throughout the life of the contract

**Discussion**

- (a) As it has become more and more prevalent to utilize contractor's to perform as partners in assisting the agency to achieve its mission, it is critical that steps be taken to ensure the proper identification of Contractor employees in all correspondence and in face-to-face contacts.
- (b) Whenever a contractor and its employees have access to NOAA's computer systems, it is essential that such employees be identified as contractor employees to prevent the inadvertent provision of confidential or business sensitive materials to those employees. Accordingly, all NOAA contractual agreements (contracts, purchase/delivery/task orders, and orders against Blanket Purchase or Ordering Agreements) shall specify the identification requirements for electronic and written correspondence and discussion and meeting participation.
- (c) COs shall include the provision at NAHB 70.4(b) in all contractual documents (as defined in NAHB 70.2(b)) requiring contractor communications (in any form) with Government personnel.

**References:**

**70.3 Contractor Provided Terms and Conditions**

**Who** CS, CO and COR

**What** Determining acceptability of contractor-provided terms and conditions

**When** Prior and subsequent to contract award

**Discussion**

- (a) It is not uncommon for vendors to provide specific or their own standard terms and conditions in conjunction with an offer/bid/proposal or to request the separate execution of a commitment document. This is frequently seen with acquisitions for space rental

(e.g., hotel accommodations, conferences, etc.), subscriptions, licenses, memberships, and lease or maintenance agreements. It should be noted that these examples are not intended to be all-inclusive.

(b) Examples:

- (1) Subscriptions, licenses, memberships, lease and maintenance agreements frequently include “automatic renewal” provisions. These provisions are unacceptable to the Government as they may place the agency in a position of anti-deficiency and require the Government to pay for products/services it does not require.
- (2) Agreements for occupation of a block of hotel rooms may include penalty payments if the entire block is not booked or for requirements of automatic extension if specific notification of vacancy is not provided. These provisions, as well, can place the agency in a position of being anti- deficient.
- (3) Agreements for conference space may include provisions for payment of “other” charges such as utilities, set-up, materials, damages, etc. that will be determined by the contractor at the conclusion of the conference. These can amount to unauthorized commitments and/or place the agency in a position of anti-deficiency.

(c) These separate agreements shall not be executed by either the requesting official, the CO, or any other NOAA employee without first:

- (1) a thorough review of all language included in the separate agreement;
- (2) comparison of these terms and conditions to the terms and conditions included in the official contract document;
- (3) review of the terms and conditions of the official contract document and the separate agreement by the OGC; and
- (4) resolution of any objectionable or contradictory terms and conditions consistent with guidance provided by OGC.

(d) It should be noted that the “Order of Precedence” provisions incorporated in Government contracts does not always protect against conflicts or additional terms and conditions provided by a vendor and execution of the contractor’s agreement can bind the Government to those terms and conditions.

**References:**

**70.4 Contractual Provisions**

**Who** CS

**What** NOAA-specific contract provisions

**When** During solicitation development

**Discussion** *Contractor Access to Systems* – Include the following provision in any order (in the description or as an addendum incorporated into the order) or contract (in Section C) which will require contractor employee access to NOAA systems:

Termination of Access to Systems

The Contractor shall provide immediate (within 12 hours) notification to the designated Contracting Officer Representative (COR) of the need to cancel access to NOAA systems for any of its employees. The need to cancel access may arise in (but is not limited to) any of the following:

- Removal from performance on the specific contract;
- Suspension or termination of the employee's position with the contractor;
- Extended absence from performance on the contract (either detail or extended leave);
- Completion of the contractual requirements;
- When contractual responsibilities no longer require systems access; or
- When there are integrity or performance issues that make systems access inappropriate.

Immediately, but within 12 hours of receipt of such notification, the COR shall request access termination through the appropriate system administrator.

**References:**