



DEPARTMENT OF THE AIR FORCE
WASHINGTON DC

Office of the Assistant Secretary

13 OCT 2000

MEMORANDUM FOR ALMAJCOM/FOA/DRU (CONTRACTING)

FROM: SAF/AQC
1060 Air Force Pentagon
Washington, DC 20330-1060

SUBJECT: Air Force Acquisition Circular (AFAC) 96-4 to Air Force Federal Acquisition
Regulation Supplement - 1996 Edition

AFAC 96-4 is issued effective 20 October 2000. This AFAC will be posted to the Hill Air Force Base FAR site (<http://farsite.hill.af.mil/>), and is also accessible in the Air Force Federal Acquisition Supplement Discussion Area via the Air Force Contracting (SAF/AQC) home page on the Internet at address: <http://www.safaq.hq.af.mil/contracting/affars/>.

We are no longer distributing a paper edition of AFFARS so the reference to "replacement pages" is for those offices that continue to print a paper copy. Text changes are indicated on the "replacement pages" by line bars on the right side of each changed page and the page heading changed to "AFAC 96-4 20 OCTOBER 2000." Note that we've replaced some pages that are not changed by AFAC 96-4 for printing purposes only.

Please submit AFFARS comments to Mr. David Powell, SAF/AQCP, (703) 588-7062, DSN 425-7062, or E-mail: david.powell@pentagon.af.mil.

A handwritten signature in black ink that reads "John L. Robuck".

JOHN L. ROBUCK
Deputy Chief, Contract Policy Division
Deputy Assistant Secretary (Contracting)
Assistant Secretary (Acquisition)

DEPARTMENT OF THE AIR FORCE
Headquarters US Air Force
Washington DC 20330

AFAC 96-4

October 20, 2000

AIR FORCE ACQUISITION CIRCULAR

This Air Force Acquisition Circular (AFAC) is issued pursuant to the authority of FAR 1.301 and amends the 1996 Edition of the AFFARS. Reproduction is authorized.

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ITEM SUMMARIES

Item I—AFMC Ratification (AFFARS Case 00-09)

AFFARS 5301.602-3 is revised to allow the AFMC Commander set the appropriate redelegation thresholds for ratifications involving Other Contracting and eliminate duplicative AFFARS coverage.

Item II—Improper Business Practices and Personal Conflicts of Interest (AFFARS Case 00-07)

AFFARS 5303.104 is revised to implement the procurement integrity provisions of the Office of Procurement Policy Act, as amended by Section 4304 of the 1996 National Defense Authorizations Act. FAC 90-45 revised the Federal Acquisition Regulation Section 3.104 and AFFARS 5303.104 is changed to conform to this revision.

Item III—Simplified Acquisition Procedures (AFFARS Case 00-05)

AFFARS 5313 is revised to align the paragraph numbering with the numbering in FAR and DFARS.

Editorial Revisions

- (1) AFFARS 5301.402 is revised to update the number of FAR/DFARS parts and subparts and DFARS number.
- (2) AFFARS 5301.602-2 is revised to delete the reference to a cancelled Air Force Instruction (AFI) number and replace it with the correct AFI number.
- (3) AFFARS 5301.603-2-90 (c) is revised to change the row letter to (d).
- (4) AFFARS Attachment 5306-1 *** is changed to update the number of organizations listed.
- (5) AFFARS 5333.104-90 (2)(iii)(D) is revised to update the addresses and phone numbers.
- (6) AFFARS 5337.102 is revised to delete the reference to a cancelled Air Force Manual number and replace it with the correct AFI number.
- (7) AFFARS 5346.710 is revised to delete reference to a reserved subsection.
- (8) AFFARS 5349.402-3-90 (c)(2)(iii) is revised to update the office codes.

REPLACEMENT PAGES

Remove the Following Pages

1-1 and 1-2
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EFFECTIVITY INSTRUCTIONS: This AFAC is effective October 20, 2000.

PART 5301—FEDERAL ACQUISITION REGULATIONS SYSTEM**SUBPART 5301.1—PURPOSE, AUTHORITY, ISSUANCE****5301.101 Purpose.**

The Air Force Federal Acquisition Regulation Supplement (AFFARS or AF FAR Supplement) establishes uniform policies and procedures for the Air Force implementing and supplementing the Federal Acquisition Regulation (FAR), the Department of Defense FAR Supplement (DFARS), and other DOD publications concerning contracting.

5301.104 Applicability.

The AFFARS applies to all Air Force acquisition of supplies and services which obligate appropriated funds.

SUBPART 5301.2—ADMINISTRATION**5301.201 Maintenance of the FAR.****5301.201-1 The two councils.**

Submit proposed revisions to the FAR, DFARS, or AFFARS through MAJCOMs to SAF/AQCP.

SUBPART 5301.3—AGENCY ACQUISITION REGULATIONS**5301.301 Policy.**

The AFFARS is prepared and maintained by the Chief, Contract Policy Division, Deputy Assistant Secretary (Contracting) (SAF/AQCP). MAJCOMs, FOAs, and DRUs identified in 5301.601-91 may issue FAR, DFARS, and AFFARS Supplements, if essential to their particular needs.

5301.303 Publication and codification

The Air Force has been assigned Chapter 53 of Title 48 Code of Federal Regulations (CFR). Supplements to FAR issued by Air Force activities shall insert the number 53 before the primary citation. If the primary citation is to a single-digit part number, a zero is also inserted.

5301.304 Agency control and compliance procedures.

(a) MAJCOM, FOA, and DRU Director of Contracting shall establish procedures to ensure that all FAR Supplements issued within their commands comply with the control and maintenance concepts in this subpart. Submit procurement policies, regulations, procedures, clauses, and forms that require approval by the Director, Defense Procurement to SAF/AQCP for processing. The request shall include a detailed justification using the format in DFARS 201.201-1. SAF/AQCP will staff each request through the Secretariat and arrange for publication in the Federal Register. The requesting activity will be responsible for evaluating public comments and preparing a final package for SAF/AQCP to submit to the Director of Defense Procurement.

(b) MAJCOMs, FOAs, and DRUs shall send two copies of their FAR Supplement and changes when they are issued to SAF/AQCP.

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SUBPART 5301.4—DEVIATIONS FROM THE FAR**5301.402 Policy.**

(3) Submit deviation requests as follows: (i) MAJCOMs, FOAs, and DRUs shall submit requests for class deviations and individual deviations from the six FAR/DFARS parts and subparts listed in DFARS 201.402 (1) to SAF/AQCP for processing to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition and Technology), USD(A&T)DP for approval. (ii) The Head of a Contracting Activity (HCA) and those designees identified in 5301.601-91 are authorized to approve individual deviations for Other Contracting (see 5302.101). In addition, the Assistant Secretary of the Air Force (Acquisition), ASAF(A), who is the HCA for PEO and DAC Programs, has delegated the authority to approve individual deviations for contracts for PEO and DAC Programs to the AFMC Director of Contracting. This authority may be exercised by the Deputy Director. In AFMC, individual deviation authority for PEO and DAC Programs and Other Contracting may be redelegated to the Senior Center Contracting Official.

SUBPART 5301.5—AGENCY AND PUBLIC PARTICIPATION**5301.501 Solicitation of agency and public views.****5301.501-2-90 Procedures for publicizing in the Federal Register.**

(a) Proposed Federal Register notices shall be typewritten and double-spaced (see 5301.303 for instructions on numbering supplemental material).

(b) Forward proposed Federal Register notices through the MAJCOM, FOA, or DRU Director of Contracting to SAF/AQCP.

SUBPART 5301.6—CAREER DEVELOPMENT, CONTRACTING AUTHORITY, AND RESPONSIBILITIES**5301.601 General.****5301.601-90 Agency head.**

As Agency Head, the Secretary of the Air Force establishes policies for, directs, and supervises the Department's activities with respect to contracting and related matters. The General Counsel, as the Secretary's legal advisor, is the final authority on all legal questions. By delegation of authority from the Secretary, established policies are implemented and other appropriate instructions are issued to lower echelons by the Assistant Secretary of the Air Force (Acquisition), ASAF(A), and the Deputy Assistant Secretary (Contracting), SAF/AQC.

5301.601-91 Establishment of heads of contracting activities.

(a) The Assistant Secretary of the Air Force (Acquisition), ASAF(A), is HCA for PEO and DAC Programs. The commanders (and when the commander is absent, the vice commanders) of the following organizations are designated HCAs for Other Contracting only (see 5302.101):

- (1) Air Combat Command;
- (2) Air Education and Training Command;
- (3) Air Mobility Command;
- (4) Air Force Materiel Command;
- (5) Air Force Space Command;
- (6) Pacific Air Forces; and
- (7) United States Air Forces in Europe.

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(3) *Contracting organizational relationships.* CCOs deployed with a unit will support that unit's contracting needs; however, the CCOs will be under the functional control of the receiving air component to the unified command. The HCA Designee will provide authority and direction to the deployed CCOs.

5301.601-94 Legal review.

(a) When there is doubt or controversy about the interpretation or application of contracting statutes, policies, directives, and regulations, contracting offices shall get legal advice. During all phases of major acquisitions, and particularly during the formative stages, legal advice should be sought to avoid or minimize legal problems. Each staff judge advocate is responsible for providing legal assistance and advice throughout the contracting process, but this can only be given to the extent that contracting personnel ask for it. The following are typical contracting situations in which legal assistance may be required:

(1) *Presolicitation.* Full and open versus other than full and open competition; required J&As; required Determination and Findings; selection of contract type; use of integrating contractor versus total system performance responsibility; availability of adequate data and data rights; delegations; unsolicited proposals; and drafting statements of work involving environmental services, particularly those requiring: asbestos removal, lead and lead-based paint abatement, polychlorinated biphenyls (PCBs) removal and/or disposal, underground storage tank removal/closure, and hazardous material disposal.

(2) *Solicitation and award.* Appropriate special clauses (e.g., warranties, options, milestones, incentives, indemnification, organizational conflicts of interest, consequential damages, savings provisions, patent and data rights, contract funding), provisions and clauses reflecting customary commercial practices, deviations, source selection criteria, determination of competitive range, clearances, alleged patent or copyright infringement, royalties, final proposal revision and closing negotiations, certified cost or pricing data, responsiveness, contractor responsibility, mistakes in bids, late bids and proposals, buy-ins, protests against award, bidders/offeror conferences and debriefings, and bonds and bailments.

(3) *Contract administration.* Allowable costs, suspensions/reductions of progress payments, and disallowances; advance agreements (see FAR 31.109); Cost Accounting Standards; defective performance (i.e., contractor or Government liability, latent defects, warranties, correction of deficiencies, excusable delays), defective pricing (10 U.S.C. 2306a); labor relations and statutes; prime and subcontractor claims; disputes and litigation; invention disclosure reports; information release (Freedom of Information Act); patent and data rights clause enforcement; Government-furnished property liability; conflicts of interest; debarments; suspensions; ratification; fraud; Public Law 85-804 claims; Congressional and GAO inquiries; contingent fee violations; amendment of delivery schedules; show cause, cure and delinquency notices; exercise of options; and compliance with contract provisions requiring adherence to one or more environmental laws.

(4) *Contract terminations and close-out.* Default notices, terminations for convenience, final contract release, and clearance of final patent and royalty reports.

(b) Commanders of MAJCOMs, FOAs, and DRUs shall issue procedures which specify the monetary thresholds for obtaining required legal review by the appropriate staff judge advocate on contractual documents issued by their activities for Other Contracting (see 5302.101). The procedures may identify any areas in which "legal problems and matters" require consultation, coordination, or review by the staff judge advocate office regardless of the dollar amount of the contract.

(c) For PEO and DAC Programs, legal review by the local staff judge advocate is required for:

(1) All contracting documents that are expected to result in an obligation to the Government or a change in contract value of \$500,000 or more. However, legal review of unilateral orders issued against indefinite-delivery contracts (FAR 16.5) is not required, unless such orders are \$5 million or greater.

(2) Other documents specifically designated in other parts in the FAR, DFARS, or AFFARS for legal review; and

(3) Documents below \$500,000 that the Senior Center Contracting Official and the local staff judge advocate agree should be reviewed.

(d) If agreed to by the Senior Center Contracting Official and the local staff judge advocate, for PEO and DAC Programs, legal review need not be obtained for funding documents in which changes are made to revise the obligated amount and there is no change in other terms or conditions of the contract nor type of funds being used.

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(e) The Senior Center Contracting Official and the local staff judge advocate shall consult to establish procedures for seeking and providing legal advice on other contracting matters pertaining to PEO and DAC Programs. The PEO, System Program Director (SPD), and either the System Support Manager (SSM) or Development Support Manager (DSM) shall be consulted when establishing procedures related to assigned programs. The local staff judge advocate shall consult with SAF/GCQ when the matter under review is likely to be brought to the attention of the PEO, CAE, or higher authority.

(f) When legal review is required, it shall be obtained before execution of the document and the record of review shall be made on AF Form 3059, Staff Judge Advocate Coordination Sheet Procurement Contract, and placed in the official contract file.

5301.602 Contracting officers.**5301.602-1 Authority.**

Contracting officers are authorized to enter into and execute contracts funded either partially or completely with nonappropriated funds. In addition, contracting officers shall provide technical guidance and assistance to nonappropriated fund custodians upon request.

5301.602-2 Responsibilities.

A contracting officer's representative (COR) is also referred to as Quality Assurance Evaluator (QAE), Quality Assurance Representative (QAR), Contracting Officer's Technical Representative (COTR), etc. AFI 63-124, Performance-Based Service Contracts addresses contracting and functional area personnel who are involved in all facets of service contracting, including Quality Assurance.

5301.602-3 Ratification of unauthorized commitments.

(b)(3)(i) The authority to ratify an unauthorized commitment involving a PEO or DAC Program is delegated by the ASAF(A) to the PEO or DAC. This authority is not redelegable.

(ii) The authority to ratify an unauthorized commitment involving Other Contracting (see 5302.101) of the organizations specified in DFARS Subpart 202.1 and 5301.601-91 (b) is delegated to the commander of these organizations, with authority to redelegate.

(iii) In the event that the ratification approval authority was a party to the unauthorized commitment action, the approval authority shall be one level above the ratification approval authority.

(iv) When an unauthorized commitment occurs within a tenant organization, including those activities listed in 5301.601-91 (b), the host command shall investigate, process, and, if appropriate, approve the ratification. The host command shall provide copies of the ratification to the tenant's parent organization.

(c)(7) The official delegated the authority to ratify unauthorized commitments shall establish ratification procedures.

5301.602-90 Organizational placement of contracting officers.

Commanders and others having administrative supervision over contracting officers shall bear in mind that acts exceeding the delegated powers of the contracting officer do not bind the Government and shall refrain from directing contracting officers to take action which might expose the contracting officer to serious consequences. The office of the contracting officer shall be placed at a level in the local organization which will protect it from intraorganizational pressure to perform improper acts or expose the contracting officer to personal risk and the Air Force to criticism.

5301.603 Selection, appointment, and termination of appointment.**5301.603-2 Selection.**

In addition to the requirements in the FAR, contracting officer appointments shall be limited to:

- (1) Commissioned officers who have been awarded Air Force Specialty Code (AFSC) 64PX;

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(2) AFSC 6C0X1 personnel possessing a contracting Level I or II certification in the Acquisition Professional Development Program (APDP); or

(3) Fully qualified civilians in the GS-1102 occupational series, possessing a Contracting Level I or II certification in the Acquisition Professional Development Program, who occupy a manning authorization listed under these specialty codes.

5301.603-2-90 Limited contracting officer authority.

Limited contracting officer authority may be granted for the following categories of personnel, including authority in contingency contracting situations (see table below).

(a) Military personnel in AFSCs 64PX and 6C0X1 and civilians in the GS-1102 occupational series who possess a minimum Contracting Level I certification may be granted limited contracting officer authority. (See row (a) in table below.)

(b) Contracting personnel who do not possess a Contracting Level I certification may be given a limited contracting officer warrant at the direction of the contracting squadron commander/base contracting officer. The warrant shall be limited to a dollar amount and method of award consistent with the training, contracting experience, and demonstrated business judgment of the individual. (See row (b) in table below.)

(c) When using other than micro-purchase techniques, noncontracting personnel, such as transportation personnel (limited to performance of contracting functions in accordance with DODD 4500.34R, AFR 75-17, and AFM 75-2), medical supply personnel, librarians, and chiefs of construction management may be granted limited contracting authority for transactions when the following conditions are present (see row (d) in table below):

(1) The personnel are in a middle to senior level position. Military personnel should be commissioned officers or non-commissioned officers E-6 and above and civilians should be GS-7 or above;

(2) The authority must contain a specific dollar limit per transaction and be limited to the method of award and to the commodity related to that specialty. For example, librarians should be authorized to buy books (commodity) from pre-priced blanket purchase agreements or the Federal Supply Schedule, but not construction materials, etc.;

(3) The personnel must have completed training appropriate to the type of the instrument and level of responsibility delegated. Waiver requests must be submitted in writing and approved by the Contracting Squadron Commander/Chief of Contracting or the MAJCOM/LGC/PKO.

(d) Personnel authorized to award micro-purchases must be appointed as specified in 5301.603-3 (b).

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| Contracting Personnel Category | Micro-purchases Authority | FSS GSA/VA DOs | BPA Calls | Open Mkt. ≤\$25K* | Open Mkt. >\$25K* | IDIQ DOs | BOA Orders | Provisioning in DFARS Subpart 217.76 |
|--|---------------------------|----------------|-------------------------------|-------------------|-------------------|--------------------------|------------|--------------------------------------|
| (a) With ≥ Level I Contracting Certification ** | X | X | X | X | X | X | X | X |
| (b) Without Level I Contracting Certification ** | X | X | X | X | | X (Prepriced) | | |
| (c) Contingency Contracting Officers Without Level I Contracting Certification | X | X | X | X | ** | ** | ** | |
| (d) Non-Contracting | X | X <\$25,000 | X (Prepriced) <\$25,000 | | | (Prepriced <\$25,000) | *** | |

NOTE: This table identifies maximum authority by type of award document. Warrant must specify dollar amounts and any limitations in specific categories.

* \$25,000 limitation established because of synopsis and DD 350 reporting requirements.

** ≤\$200, 000 contingency SAT.

*** Transportation personnel may issue orders against transportation BOAs.

5301.603-3 Appointment.

(a) Authority to appoint contracting officers is included in the authority of the HCA (see 5301.601-91) and the delegations of general contracting authority (see 5301.601-92 (a)). In order to provide a consistent system and delegations of authority to appoint contracting officers for PEO and DAC Programs, as well as Other Contracting (see 5302.101), the authority to appoint contracting officers is delegated to the MAJCOM, FOA, and DRU Directors of Contracting, with authority to redelegate to field activity Directors of Contracting.

(b) Contracting officer appointment authority for limited contracting officers may be delegated to the chief of each contracting office. The chiefs of contracting offices receiving such authority shall establish procedures for selection of qualified personnel, appointment, and termination of appointment. Contracting personnel must be appointed on a SF 1402 to award micro-purchases. Governmentwide purchase card holders must be appointed by a written delegation of contracting authority to award micro-purchases. In the Air Force Research Laboratory, authority may be redelegated to the first contracting official in the contract chain subordinate to the SCCO.

(c) The commander or deputy commander of a base, division, wing, and so forth, and, in the case of AFMC activities, the Director of Contracting (or equivalent) shall review and sign the request for designation of a contracting officer. However, if this individual is the appointing authority, the request shall be reviewed and signed by the officer (or civilian) immediately subordinate. Chief of the USAFE contracting centers shall sign such request for officers serving with the USAFE contracting centers. Appointing authorities for contracting officers have the authority to waive the qualification requirements stated in

PART 5303—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

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PART 5303—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**SUBPART 5303.1—SAFEGUARDS****5303.104-4 Statutory and related prohibitions, restrictions, and requirements.**

(c)(1) The Air Force General Counsel (SAF/GC) is the Air Force Designated Agency Ethics Official.

(c)(2)(ii) ASAF(A) is the authorizing agency official for Program Executive Officers (PEOs), Designated Acquisition Commanders (DACs), and members of the Secretariat and Air Staff. PEOs and DACs are HCA designees with authority to authorize the official to resume participation in a procurement for programs under their cognizance. For Other Contracting, the HCA is designated this authority. SAF/GC has authorized the Assistant General Counsel for Acquisition and the Judge Advocate General to advise and provide consultation to the Air Force officials having authorization authority to allow officials to resume participation in certain procurements.

5303.104-5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(b)(1) Each HCA or designee shall designate officials to assist individuals responsible for preparing material that may include source selection information.

(2) The Deputy Assistant Secretary (DAS) (Contracting), the Associate DAS (Contracting) (SAF/AQC); the division chiefs and deputy division chiefs of SAF/AQCX, AQCS, AQCO, and AQCP; and each HCA or designee identified in DFARS 202.101 and 5301.601-91 (b) may authorize persons or classes of persons access to contractor bid or proposal information, and source selection information.

(3) The following individual persons or classes of persons are authorized access to contractor bid or proposal information, and source selection information if necessary to perform their official duties:

- (i) Those persons, other than competing contractors, participating in a source selection subject to AFFARS Part 5315.3;
- (ii) Individuals within the Office of the Assistant Secretary of the Air Force for Acquisition (SAF/AQ); and
- (iii) Individuals within the Office of the General Counsel (SAF/GC).

5303.104-9 Contract clauses.

(c) If information received under the clause at FAR 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity, indicates that a price or fee adjustment may be appropriate, the contracting officer shall submit a report to the Assistant General Counsel for Contractor Responsibility (SAF/GCR) in accordance with 5303.203. The report shall contain the information listed in DFARS 209.406-3, as applicable.

5303.104-10 Violations or possible violations.

(a) PEOs and DACs are the designated authorities to review and take appropriate action on contracting officer reports concerning violations or possible violations related to programs under their cognizance. For Other Contracting, MAJCOMs shall designate an individual and establish procedures to review violations or possible violations reported by the contracting officers.

(b) The HCA or designee shall submit any agency head notifications required by FAR 3.104-10 (f) directly to ASAF(A) for submittal to SAF/OS.

(c) Upon completing the processing of any disclosure of violations or possible violations, the contracting officer shall notify SAF/GCR in writing of the actions taken by the HCA, PEO, or DAC.

PART 5303—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

SUBPART 5303.2—CONTRACTOR GRATUITIES TO GOVERNMENT PERSONNEL**5303.203 Reporting suspected violations of the Gratuities clause.**

(a) The contracting officer shall obtain assistance from the servicing staff judge advocate in preparing reports required by this section. In addition to the requirements in DFARS 209.406-3, the report shall also include:

- (1) An estimate of the amount of the gratuity allegedly given or offered to the Government officer or representative, and the cost incurred by the contractor in giving or offering such gratuity; and
- (2) An analysis by the staff judge advocate of the facts and evidence presented in the contracting officer's report along with a statement of legal sufficiency.

(b) The staff judge advocate for the cognizant contracting activity shall submit three copies of the report to SAF/GCR, 1740 Air Force Pentagon, Washington, DC 20330-1740. A copy of the report and recommendations shall be forwarded to the MAJCOM Judge Advocate and Chief of Contracting for review, comment, and recommendation. MAJCOM comments and recommendations shall be sent to SAF/GCR and arrive not later than 30 days after the date of the contracting officer's report. MAJCOM/JA shall be responsible for coordinating MAJCOM actions.

5303.204-90 Treatment of violations.

(a) SAF/GCR is the agency designee with authority to conduct hearings, and to make findings of fact with respect to:

- (1) Whether a gratuity was offered or given by a contractor or any agent or representative of such contractor to a Government officer or employee with a view towards securing a contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performance of the contract; and
- (2) Where appropriate, the amount of the costs incurred by the contractor in providing the gratuity.

(b) SAF/GCR is required to forward its findings and recommendations to the Assistant Secretary of the Air Force for Acquisition, who will take appropriate action after reviewing the findings and recommendations.

(c) The Office of the Judge Advocate General (HQ USAF/JA) will designate a JAG officer or attorney-advisor, who will be responsible for the presentation and management of the case for the Government in the event that SAF/GCR issues a notice of hearing to the contractor. To this end, the designated JAG officer or attorney-advisor will be responsible for the taking and defending of any dispositions, the presentation of testimony, evidence, and argument at the administrative hearing, the filing of any motions or other pleadings or documents for consideration by SAF/GCR or any other action necessary to represent the Government in the case.

(d) The contracting activity and the MAJCOM will provide witnesses and other support needed by the designated JAG officer or attorney-advisor presenting the Government's case.

SUBPART 5303.3—REPORTS OF SUSPECTED ANTITRUST VIOLATIONS**5303.301 General.**

(a) Air Force procedures for reporting possible violations of Federal criminal statutes relating to procurement, including reports of possible fraud, are prescribed in Subpart 5309.4.

(b) Submit reports of noncompetitive practices to SAF/AQCX for submission to the Secretary or process in accordance with Subpart 5309.4, as applicable.

PART 5306—COMPETITION REQUIREMENTS

ATTACHMENT 5306-1 APPROVAL REQUIREMENTS FOR JUSTIFICATION AND APPROVAL (J&A)APPROVAL LEVELS****

| <u>Threshold</u> | <u>PEO/DAC Program</u> | <u>AFMC Other Contracting</u> | <u>Other MAJCOMs Other Contracting</u> |
|---------------------|----------------------------|-----------------------------------|--|
| ≤ \$500K | CO | CO | CO |
| > \$500K to ≤ \$10M | PEO*/DAC* | Comp Adv | Comp Adv*** |
| > \$10M to ≤ \$50M | PEO**/DAC** | AFMC/CC** | PDASAF(A&M) |
| > \$50M | ASAF(A) | ASAF(A) | ASAF(A) |

* Delegable to “Procuring Activity’s” Competition Advocate (see note below)

** Delegable to an official meeting the criteria at FAR 6.304 (a)(3) (see note below)

*** Limited to less than \$5M for the last five organizations listed in AFFARS 5306.501. SAF/AQC approves J&As between \$5M and \$10M.

****The procuring activity competition advocate shall review/coordinate on all J&As \$500,000 and over.

Note: If a PEO does not meet the criteria of FAR 6.304 (a)(3) (general officer or civilian equivalent), justification approval authority is: (1) the Center competition advocate for efforts exceeding \$500,000 but equal to or less than \$10 million (non-delegable); (2) PDASAF(A&M) for efforts between \$10 million and \$50 million delegable to an individual meeting the FAR 6.304 (a)(3) criteria.

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PART 5313—SIMPLIFIED ACQUISITION PROCEDURES

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PART 5313— SIMPLIFIED ACQUISITION PROCEDURES

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PART 5313—SIMPLIFIED ACQUISITION PROCEDURES**SUBPART 5313.1—PROCEDURES****5313.101 General.**

(a)(3) Unless a specific surveillance program established under another regulation requires otherwise, the local contracting office shall conduct an annual inspection of decentralized purchasing operations that it has authorized pursuant to 5301.690. This inspection will evaluate the purchasing activities of individuals exercising decentralized purchasing authority. If a decentralized purchasing operation in an inspected functional area demonstrates a high level of proficiency and effectiveness, the contracting office may limit the scope of the inspection the subsequent year, provided that during the abbreviated inspection no indications of degradation in performance are discovered.

5313.106 Soliciting competition, evaluation of quotes or offers, and documentation.**5313.106-1 Soliciting competition.**

(b)(1) When the requiring activity specifies only one source is to be solicited and the estimated value of the purchase is between the micro-purchase threshold and the simplified acquisition threshold, the contracting officer shall obtain from the requiring activity a justification containing, as appropriate, the following information:

- (i) A brief nontechnical description of the supplies/services to be acquired;
- (ii) A clear, concise statement of the facts justifying the award of a sole source contract. For example:
 - (A) If the justification is urgency, then the time constraint and the reason why only one contractor can meet the requirement shall be explained; and/or
 - (B) If the justification is the unique capabilities possessed by only one contractor, then state the reasons why no other contractor has or can obtain these capabilities and why these capabilities are essential for contract performance;
- (iii) A statement that the proposed sole source is the only known source that can satisfy the Government's requirement. However, statements such as "No other sources are considered qualified" shall not be considered a basis for sole source justification; and
- (iv) A statement of actions to be taken by the requiring activity to preclude the necessity for future sole source acquisition of the same supplies/services (e.g., conducting a market survey to determine potential future sources).

A separate sole source justification is not required, provided screening has been accomplished and documented in accordance with the DOD Spare Parts Breakout Program (DFARS Appendix E). The contracting officer, and not the requiring activity, is the final authority for determining the adequacy of any sole source justification before contract placement.

5313.106-3 Award and documentation.

AF Form 3062, Abstract of Proposals/Quotations, may be used to record quotations.

SUBPART 5313.3—SIMPLIFIED ACQUISITION METHODS**5313.302 Purchase orders.****5313.302-2 Unpriced purchase orders.**

(a) The procedures in FAR 13.302-2 with respect to undefinitized purchase orders, also apply to undefinitized delivery orders placed against GSA contracts having time-and-materials or labor-hour type characteristics except that dollar limitations shall be in accordance with the GSA contract. However, this type of order shall be reported as a delivery order. See 5317.74 for policy and procedures pertaining to undefinitized contractual actions.

PART 5313—SIMPLIFIED ACQUISITION PROCEDURES

5313.302-3-90 Obtaining contractor acceptance and modifying purchase orders.

When the purchase order does not authorize any variation in quantity and there is a shortage on final shipment which will not impair the operation of the base, a formal modification to the purchase order is not required (AFR 177-102, paragraph 14-4).

5313.302-90 Delivery orders.

(a) The contracting officer has responsibility for scheduling deliveries under prepriced contract actions, when using the DD Form 1155 as a delivery order under indefinite-delivery contracts. However, to provide for efficient ordering of supplies and services, the contracting officer may issue blanket delivery orders that delegate the scheduling of deliveries to specific requiring activities. The blanket delivery order may not be issued for periods that exceed availability of funds.

(b) The contracting officer shall:

- (1) Identify to the contractor all persons who are authorized to schedule deliveries and the dollar limitation per call for each person; and
- (2) Ensure that the designated dollar limitations are not exceeded for calls or orders under these prepriced agreements.

5313.303 Blanket Purchase Agreements.**5313.303-1 General.**

(j)(1) *Description of agreement.* When the Blanket Purchase Agreement (BPA) is limited to specific items on a price list, include a statement that the supplier shall furnish firm price lists periodically as required by the contracting officer.

5313.303-5-90 Purchases under BPA.

(a) The accounting and finance offices (AFOs) must have evidence of an obligation, a valid receiving report, and a proper invoice before paying for purchases under BPAs.

(b) Evidence of obligation of computer generated requirements is provided by the automated system to the AFO. Evidence of obligation for medical supplies is similarly provided to the AFO in computer detail listings. Obligations under decentralized commissary prepriced BPAs are recorded at time of item receipt.

(c) For payment under services BPAs or other BPAs not covered by paragraph (2) above, the contracting office shall furnish the AFO written evidence of the actual obligation (call) using informal correspondence. The BPA register, or annotated DD Forms 250, 1348-1, or 1155 may be used. When calls are canceled for these BPAs, the contracting officer shall notify the AFO in writing.

(d) Contracting officers shall provide BPA registers to the AFO at the end of each monthly report processing cycle to aid in quarterly reconciliation of accounts. Registers shall contain data as requested by AFO, except that system developed registers shall not be altered to add additional data. BPA calls placed using the governmentwide purchase card shall not be included in the register sent to the AFO.

5313.303-5-91 Prepriced BPAs.

(a) The contracting officer may delegate authority to place calls against prepriced BPAs to requiring activities. Such activities are responsible to and shall follow directions from the contracting officer who authorized the placement of calls.

(b) The contracting officer shall establish firm unit prices or obtain price lists from each BPA holder. After determining that prices are fair and reasonable, the contracting officer shall date, sign, and mark the list "Approved. This list supersedes all prior lists effective this date." The contracting officer shall send copies to the BPA holder and each activity authorized to use the BPA. The contracting officer shall retain the list in the BPA file for at least six months after the final payment against it. Calls may only be placed against current approved price lists.

PART 5313—SIMPLIFIED ACQUISITION PROCEDURES

(c) Requiring activities shall not negotiate or solicit prices. Requests for items not on a price list shall be submitted to the contracting officer for separate contract action or addition to an existing price list. Requiring activities shall maintain records of calls to document expenditure of funds and to prepare acquisition reports. BPA holders shall refer any problems to the contracting officer for necessary action.

5313.305 Imprest fund and third party drafts.**5313.305-1 General.**

The contracting officer at the office responsible for contract support of the unit to which the imprest fund cashier is assigned shall exercise direction, control, and oversight of purchases using imprest funds. At isolated activities and deployed organizations, under emergency conditions, this responsibility may be delegated to the senior ranking officer for the isolated activity or deployed unit.

5313.305-2 Agency responsibilities.

(c)(1) The contracting office shall forward requests for appointment through the disbursing office to the installation commander for approval. The contracting officer shall ensure that imprest fund cashiers are given sufficient purchasing training to accomplish their duties.

5313.305-4 Procedures.**5313.305-4-90 C.O.D. orders.**

(a) C.O.D orders placed without soliciting quotations shall include the following:

- (1) An endorsement on the order stating, "Payment to be made from Imprest Fund.";
- (2) A statement that shipment can be made only if:
 - (i) The item strictly conforms to the purchase description;
 - (ii) The total price of the item does not exceed the ceiling price stated in the order; and
 - (iii) Delivery can be made C.O.D. within 60 days from the date of order;

and

(3) The order instructs the contractor to withhold shipment if all the foregoing conditions cannot be met and requests the contractor to advise of nonshipment and any counter offer concerning substitute item, price, or delivery date.

(b) For reporting purposes, only actual prices paid for the item shall be reported. When the order is placed, the ceiling price shall be entered by pencil on an appropriate control register. Contracting Offices preparing manual reports shall use the registers prescribed in AFM 70-333.

SUBPART 5313.90—OPERATIONAL CONTRACTING ADMINISTRATION OF SIMPLIFIED ACQUISITIONS**5313.9001 Follow-up.**

(a) For contracting offices using BCAS, AFM 70-332 prescribes the follow-up system applicable to requirements processed from automated customers. Activities requesting the supplies or services are responsible for notifying the contracting office when the supplies or services have not been received by 1300 hours of the sixth day following the scheduled delivery date.

(b) Upon notification of an apparently delinquent order, the contracting officer or a representative shall review the file and take positive follow-up action. Follow-up shall be done either verbally or by follow-up documents produced by the automated system. All follow-up action shall be documented in the order file.

(c) If after the follow-up action, the contractor fails to make delivery or cure the delinquency and has not justified the delay, the contracting officer shall take appropriate action to cancel the order if in the Government's best interests.

PART 5313— SIMPLIFIED ACQUISITION PROCEDURES

5313.9002 Reserved.**SUBPART 5313.91— SIMPLIFIED ACQUISITION PROCEDURES FOR MAINTENANCE AND CONSTRUCTION SERVICES****5313.9100 Scope of subpart.**

This subpart prescribes simplified acquisition procedures to be used in contracting for maintenance and construction services relating to inoperative equipment and facilities.

5313.9101 Procedures.

After selection of a source, the contracting officer shall issue an unpriced purchase order in accordance with FAR 13.302-2. The purchase order shall include:

- (1) A statement instructing the vendor to immediately contact the contracting officer if the cost exceeds the amount established by the purchase order; and
- (2) Instructions that each invoice shall contain an itemized list of all replacement parts, their cost, and the labor to repair and place the item in a serviceable condition.

5313.9102 Alternatives.

The contracting method described in this subpart does not preclude the use of other methods provided they have been used successfully in the past and the time expended in obtaining a teardown and quote price from a vendor generally did not exceed ten days from the date the vendor picked up the item.

PART 5333---PROTEST,DISPUTES, AND APPEALS

(C) Documents in the agency report being provided to the GAO that are known to be in the possession of the protester or an interested party (e.g., the solicitation) need not be reproduced and included in the agency report for the protester or interested party. The table of contents for the agency report shall indicate which documents are not being provided because the party already has a copy.

(D) SAF/AQCX and SAF/GCQ addresses for Express mail and overnight deliveries, telephone and FAX numbers are:

Department of the Air Force, Attn: SAF/AQCX, 1500 Wilson Blvd, Suite 700, Arlington, Va 22209
Telephone (703) 588-7018
FAX (703) 588-1060

Department of the Air Force, Office of the Assistant General Counsel for Acquisition (SAF/GCQ),
Room 4D980, 1740 Air Force Pentagon, Washington, DC 20330-1740
Telephone (703) 697-3900
FAX (703) 614-8846

(iv) *Contracting officer's statement of facts.*

(A) The contracting officer's statement of facts shall include a chronology of events and a discussion of all issues raised in the protest. The chronology of events will include the date and a brief description of significant events in the procurement. The discussion of allegations shall address all issues raised in the protest. Conclusions shall be supported by appropriate references to the FAR and supporting documents (by tab number) in the agency report.

(B) The contracting officer's statements of facts should be written so that it contains only releasable information. If there is any information that must be withheld from the protester or an interested party, it should be provided in a supplemental statement. If deletions are minimal, a redacted statement for the appropriate parties may be provided instead. The contracting officer's statement of facts should include information such as the following:

- (I) Type solicitation protested (i.e., IFB, RFP, etc.);
- (II) Solicitation number and date issued;
- (III) Description of goods or services being acquired;
- (IV) Name of contracting office;
- (V) Description of decision protested;
- (VI) Date bids or proposals originally due;
- (VII) Date final proposal revision requested;
- (VIII) Date final proposal revision received;
- (IX) Date of award;
- (X) Successful contractor, if known;
- (XI) Amount of contract, as awarded and with options;
- (XII) Amount protester bid for basic contract and options;
- (XIII) Specific language in solicitation to which exception is taken;
- (XIV) Abstract of relevant language from other documents referenced by protester or relied on by the Air Force;
- (XV) Verbal communications, if any, alleged by the protester or relied on by the Air Force, emphasizing any disputed verbal statements; and
- (XVI) Other significant facts alleged by the protester or relied on by the Air Force with a particular emphasis on disputed facts.

PART 5333—PROTESTS, DISPUTES, AND APPEALS

(v) *Memorandum of Law.*

(A) The staff judge advocate shall provide a memorandum of law in opposition to the protest, to be included as an advocacy document in the agency report. The memorandum should be prepared in anticipation of its release to the GAO and to interested parties to the protest. Any information that must be withheld from the protester or an interested party, should be included in a supplemental memorandum for the GAO. If deletions are minimal, a redacted memorandum for the appropriate parties may be provided instead. The memorandum of law shall:

(I) Include the pertinent facts;

(II) Identify the legal issues raised by the protest;

(III) State the legal rules enunciated by the GAO and the Courts when resolving the same or similar issues and analyze how those rules apply to the facts and issues of the protest; and

(IV) Briefly state the desired result.

(B) The statement of facts in the memorandum of law should tell the GAO what the procurement is all about, and how the protest relates in time to the actions of the buying activity and the offerors, as well as explain the agency position. The memorandum of law should, for the most part, read like a GAO decision and contain the necessary citations to protest decisions.

(C) If there is a reasonable possibility that the GAO may sustain the protest, the staff judge advocate shall prepare a legal opinion containing a candid, objective assessment of the merits of the protest. This opinion and any other written advice or comments by the staff judge advocate to the contracting officer about the protest shall not be made a part of the agency report but shall be forwarded with the report to SAF/AQCX. These documents will not be provided to the GAO or released outside of the Air Force without the consent of the staff judge advocate or higher authority.

(3) *Document requests.*

(i) A protester may request, in writing, concurrent with the filing of the protest, specific documents relevant to the protest, including documents not normally required to be included in the agency report.

(ii) Copies of all documents requested by the protester must be furnished to the GAO. Relevant, responsive documents should be integrated into the agency report. Irrelevant documents should be segregated, identified, and appended to the copy of the agency report to be provided to the GAO and SAF/AQCX.

(iii) The agency report shall clearly indicate whether documents responsive to a document request exist and, if so, which documents are responsive to which part of the request.

(iv) The protester may subsequently request additional documents if the existence or relevance of documents first becomes evident from the agency report, by filing a request with the GAO and the contracting agency within two calendar days of the receipt of the agency report. SAF/AQCX or SAF/GCQ must file the documents with the GAO within five calendar days, identifying any documents not furnished to the protester or interested party and stating the reasons for not furnishing them. These documents must be given to anyone granted access to them by a protective order. Therefore, the contracting officer shall provide all requested additional documents to SAF/AQCX within three calendar days of receipt of the protester's request.

(4) *Release of information.*(i) *General.*

(A) SAF/AQCX or SAF/GCQ submit agency reports to the GAO, the protester, and interested parties. Contracting activities shall not provide agency reports, or documents in agency reports, directly to the GAO, the protester, or interested parties, unless requested to do so by SAF/AQCX or SAF/GCQ. Contracting activities shall provide additional documents to SAF/AQCX or SAF/GCQ, upon request.

(B) The authority of the Freedom of Information Act (FOIA) does not apply when preparing agency reports for transmittal to the GAO and interested parties. However, the exemptions in FOIA may be used as a basis to recommend withholding or releasing documents or portions of documents. For documents in the agency report that may be non-releasable, in whole or in part, under the (FOIA), the contracting officer shall identify the specific parts of the

PART 5337—SERVICE CONTRACTING**SUBPART 5337.1—SERVICE CONTRACTS - GENERAL****5337.102 Policy.**

Air Force Instruction 63-124, Performance-Based Service Contracts, provides policy guidance for service contracts.

5337.103 Contracting officer responsibility.

(d) The contracting officer shall refer to DODI 1402.5, Criminal History Background Checks on Individuals in Child Care Services, which implements Public Law 101-647, Section 231, and Public Law 102-190, Section 1094, and which establishes policy, assigns responsibilities, and prescribes procedures for criminal history background checks for individuals involved in the provision of child care services in facilities operated by the Federal Government or managed under contract with the Federal Government.

5337.104 Personal services contracts.

(b)(i) For Other Contracting, the installation commander is authorized to execute the determination and findings at DFARS 237.104 (b)(i). For PEO and DAC programs, the cognizant PEO/DAC is authorized to execute this determination and findings.

5337.110 Solicitation provisions and contract clauses.

In solicitations and contracts for performance of commercial activities as defined in AFP 26-12, include the clause at 5352.237-9000, Control and Release of Inspector General Reports.

5337.190 Safety precautions for hazardous materials used in service contracts.

Personnel who develop statements of work or specifications for service contracts shall advise the contracting activity when specifications require contractors to deliver, use, store, or handle hazardous material at a Government activity. Upon notification, contracting officers shall comply with Subpart 5323.3.

SUBPART 5337.90—SERVICE CONTRACTS FOR AN END PRODUCT**5337.9001 Fiscal year obligations.**

A service contract for an end product (e.g., a report, a survey, or an audit) is an obligation of the fiscal year in which the contract is executed without regard to the date of contract completion, provided the contract is for a bona fide need of the fiscal year in which it is executed and subject to any limitations of applicable statutes.

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PART 5346—QUALITY ASSURANCE**SUBPART 5346.7—WARRANTIES****5346.702 General.***(c) Warranty cost benefits.*

(1) Contracting officers shall require contractors to propose and justify warranty costs on an over and above basis. Exclude any costs, such as quality assurance, sustaining engineering, and product support costs, that would have been incurred without the warranty. Contracting officers shall ask DCAA and the contract administration office to evaluate the contractor's proposed warranty costs and shall specifically address the warranty acquisition costs in the price negotiation memorandum.

(2) The contracting officer shall require the contractor to separately identify actual warranty costs in cost reporting, either as a stand-alone report or as part of another cost report.

5346.703 Criteria for use of warranties

(3) Weapon system warranties. Although weapon system warranties are no longer mandated by statute, the contracting officer shall examine the overall value and utility of warranties on major systems and pursue such warranties when appropriate and cost effective or when directed to do so by a Foreign Military Sales (FMS) customer. AFM 64-110, Manual for Weapon System Warranties, contains guidance for the establishment and administration of weapon system warranties.

5346.706 Warranty terms and conditions.

(b)(5) *Markings.* The contracting officer shall ensure that the warranty clause (see 5346.710) requires the contractor to mark warranted items to be conspicuous to a person removing the item from service. The marking shall specifically state the duration or conditions of the warranty. The marking shall state whether the warranty period is determined by a specific expiration date or number of days after shipping or is based on some other criteria, such as the number of landings, flight hours, or operating hours.

5346.708 Warranties of data.

When obtaining a warranty on technical data in an acquisition data package, the contracting officer shall ensure that:

(1) Contract specifications and requirements define what constitutes a complete, accurate, and adequate acquisition data package;

(2) The warranty period will cover the Government's intended first use of the package for a competitive procurement; and

(3) Extended contractor liability is obtained, when cost effective. See the alternate endings to the clause at DFARS 252.246-7001, Warranty of Data.

5346.710 Contract clauses.

The specific warranty clause included in a weapon system contract shall be consistent with the weapon system warranty plan (see AFM 64-110, Manual for Weapon System Warranties).

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5346.770 Reserved.

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- (iii) A statement of all deliveries and payments under the contract to date;
 - (iv) The method of selection of source used at the time of placing the contract and why the contractor was selected;
 - (v) The urgency of the current need for the supplies or services;
 - (vi) An estimate of the period of time required to obtain the supplies or services from other sources;
 - (vii) An estimate of the time necessary for delivery from the delinquent contractor;
 - (viii) Any damages, other than excess cost of reprocurement, which may result from the contractor's failure to perform. This includes the potential loss of guaranteed loans, unliquidated progress payments, and unliquidated advance payments; and
 - (ix) Any other facts which the PCO believes should be considered during the default investigation.
- (5) Before forwarding the request for default investigation, the PCO should consult with the local staff judge advocate and the using organization, if time permits. The PCO should promptly advise the TCO of any significant changes in the information in the AF Form 3056.
- (6) The PCO will notify the ACO promptly of any action taken in relation to default termination. Thereafter, the PCO will assist the TCO to the maximum extent possible.

(c) *Responsibilities of the TCO.*

(1) Before initiating a default termination, the TCO shall:

- (i) Conduct a thorough review of the official contract file, the AF Form 3056, Termination Authority, and its attachments, and all other relevant documents. If the default is being recommended as a result of poor performance or defective workmanship, the TCO should, if practical, visit the site of the work to observe the existing conditions and to aid in the formation of an independent opinion. Pictures should be taken in appropriate cases to provide visual evidence in support of the TCO's decision to default;
- (ii) Send the contractor a "show cause" notice, if appropriate (see FAR 49.607);
- (iii) If the facts support issuing a termination for default, prepare and forward the termination notice with the complete contract file to AFMC LO/JAB, 2240 B Street, Room C1, Wright-Patterson AFB, OH 45433-7112, (513) 255-6111 ext. 252, (513) 255-3204, DSN 785-6111 ext. 252, or DSN 785-3204, if required, in accordance with 5333.211;
- (iv) If the facts are insufficient to support a default termination, the TCO may negotiate a supplemental agreement with the contractor. If negotiation fails to provide a satisfactory solution, the TCO may terminate for default or for convenience, as appropriate, or, in the alternative, take actions as outlined in FAR 49.402-4; and
- (v) If time and resources permit, the TCO should provide informal advice to aid the PCO in possible default cases.

(2) Additional responsibilities of the TCO. Upon receipt of AF Form 3056, the TCO shall:

- (i) Assume full cognizance over the contract and advise the contractor of the transfer of cognizance. After referral to the TCO, the initiator of the AF Form 3056 will not take any action pertaining to the contract without obtaining prior approval from the TCO;
- (ii) Reestablish the delivery schedule, if it has been waived by the Government. Before reestablishing the delivery schedule, the TCO should consult with the initiator of the AF Form 3056 and with the ACO. The TCO may either retain cognizance over the contract until it is completed or terminated, or else transfer cognizance back to the ACO;
- (iii) Provide copies of each notice of default termination and of each assessment of excess costs to DFAS-CO/TFD, P.O. Box 182317, Columbus, OH 43218-2317 and AFMC LO/JAB; and
- (iv) If the contract is terminated for default, request the PCO to furnish detailed information relating to reprocurement of similar supplies or services and the total amount of any excess costs incurred by the Government as a result of the contractor's default. Based upon this information received from the PCO, the TCO will prepare findings to base a demand on the defaulted contractor, its sureties and guarantors in accordance with FAR 32.610. If the payment office has retained funds due the defaulted contractor for work performed under the contract, the TCO will direct the payment

PART 5349—TERMINATION OF CONTRACTS

office to apply these funds to amounts owed the Government and will issue a revised demand to reflect this application of funds.

(3) If the ASBCA sustains the contractor's appeal, and a motion for reconsideration is not made or is denied, the TCO will, upon receiving a copy of the ASBCA decision from AFCLC/JAB, issue a notice converting the termination to one for convenience. The TCO may either retain the case for settlement or forward it to the ACO. If transferring the case, the TCO will prepare and submit the DD Form 1594, Contract Completion Statement, to the PCO. If retaining the case, the TCO shall use termination for convenience procedures. The default docket file should be available to the TCO assigned to negotiate the settlement of the convenience termination.

(4) Default termination files will be closed when:

- (i) The decision of the ASBCA or court has become final;
- (ii) Assessments have been paid by the contractor or have been determined uncollectible by DFAS-CO-FDP; or
- (iii) When no assessment has been made and the time for the contractor to appeal has expired.

(5) Upon closing the termination file, the TCO will prepare the DD Form 1594, Contract Completion Statement, and send it to the PCO. The Remarks space of DD Form 1594 will contain the following statement:

“This contract was terminated for default of the contractor by notice dated [*insert date*]. Items 6a and 6b above are not applicable. This termination file was closed on [*insert date*].”

5349.402-6 Repurchase against contractor's account.

The contracting officer may not waive the defaulted contractor's liability for any additional costs to the Government of the subsequent reprocurement of supplies or services. For a contract containing two or more line items, the defaulted contractor is liable only for the net cost increase to the Government considering all items which were reprocured. Unreasonable delay in reprocurement, reprocurement on the basis of a specification which is materially changed, or reprocurement prior to the issuance of the default notice to the contractor may release a contractor from liability for additional costs.

SUBPART 5349.5—CONTRACT TERMINATION CLAUSES**5349.501-70 Special termination costs.**

Forward requests to include the clause at DFARS 252.249-7000, Special Termination Costs, to SAF/AQCS with sufficient justification to support a decision by the Assistant Secretary of the Air Force for Acquisition (ASAF(A)) (nondelegable). Requests must be submitted at least 60 calendar days in advance of intended use so Congressional notification can be accomplished as required by Senate Appropriations Committee Report 103-321. Secretarial approval is required for any increase in the Government's maximum liability under the clause. Include:

- (1) A detailed breakdown of applicable cost categories in the clause at DFARS 252.249-7000 (a)(1) through (5). Provide the reasons for the anticipated incurrence of each;
- (2) Information on the financial and program need for the clause including an assessment of the contractor's financial position and the impact of a failure to receive authority to use the clause; and
- (3) Clear evidence that only costs that arise directly from a termination would be compensated under the clause. Costs that would be incurred by the Government, regardless of whether a termination occurs, shall not be covered by a special termination cost clause.

SUBPART 5349.70—SPECIAL TERMINATION REQUIREMENTS**5349.7001 Congressional notification on significant contract terminations.****5349.7001-90 Air Force procedures.**

- (a) *Definition.*