Part 16 - Types of Contracts

16.000 Scope of part.

This part prescribes policies and procedures for selecting contract type(s) appropriate to the circumstances of the acquisition. Except for limited instructions regarding the placement of task and delivery orders, the entirety of this part applies to the pre-solicitation phase and is meant to guide in acquisition planning.

16.001 Definitions.

As used in this part-

Award-Fee Board means the team of individuals identified in the award-fee plan who have been designated to assist the Fee-Determining Official in making award-fee determinations.

Established price means a price that—

(1) Is an established catalog or market price for a commercial product sold in substantial quantities to the general public; and

(2) Is the net price after applying any standard trade discounts offered by the contractor.

Fee-Determining Official means the designated Agency official(s) who reviews the recommendations of the Award-Fee Board in determining the amount of award fee to be earned by the contractor for each evaluation period.

Rollover of unearned award fee means the process of transferring unearned award fee, which the contractor had an opportunity to earn, from one evaluation period to a subsequent evaluation period, thus allowing the contractor an additional opportunity to earn that previously unearned award fee.

Subpart 16.1 - Selecting Contract Types

16.101 Policies.

(a) Unless expressly prohibited by statute or this regulation, contract types that promote the best interests of the Government, but are not described in this regulation, are permitted for use in accordance with agency procedures (see 10 U.S.C. 3321(a) and 41 U.S.C. 3901). Ensure selection of contract type is consistent with the Guiding Principles for the System in 1.102.

(b) The cost-plus-a-percentage-of-cost system of contracting must not be used (see 10 U.S.C. 3322(a) and 41 U.S.C. 3905(a)). Prime contracts (including letter contracts) other than firm-fixed-price contracts must, by an appropriate clause, prohibit cost-plus-a-percentage-of-cost subcontracts (see clauses prescribed in part 44 for cost-reimbursement contracts and part 16 for fixed-price contracts).

16.102 Negotiating contract type.

(a) (1) Selecting the contract type is generally a matter for negotiation and requires the exercise of sound judgment. When selecting and negotiating the contract type, the contracting officer must consider contract terms, risks (e.g., technical, performance, delivery), and pricing.

(2) Contracting officers may instruct offerors in the solicitation to propose an alternative contract type within their proposals.

(b) A firm-fixed-price contract, which best uses the basic profit motive of business enterprise, must be used when the risk involved is minimal or can be predicted with an acceptable degree of certainty. However, when a reasonable basis for firm pricing does not exist, other contract types should be considered, and negotiations should be directed toward selecting a contract type (or combination of types) that will appropriately tie profit to contractor performance.

(c) In the course of an acquisition program, a series of contracts, or a single long-term contract, changing circumstances may necessitate different contract types than those used initially. Contracting officers should avoid extended use of a cost-reimbursement or time-and-materials contract after experience provides a basis for firmer pricing.

16.103 Documenting contract type.

(a) Except as identified in paragraph (b) of this section, document and explain in the acquisition plan, or in the contract file if a written acquisition plan is not required by agency procedures-

(1) Why the contract type selected must be used to meet the agency's needs.

(2) The Government’s risks and the burden to manage the contract type selected. As applicable, discuss –

(i) How the Government identified the risks (e.g., pre-award survey, or past performance information);

(ii) The nature of the risks (e.g., inadequate contractor’s accounting system, weaknesses in contractor's internal control, non-compliance with Cost Accounting Standards, or lack of or inadequate earned value management system); and

(iii) How the Government will manage and mitigate the risks.

(3) The Government resources necessary to properly plan for, award, and administer the contract type selected (e.g., resources needed and the additional risks to the Government if adequate resources are not provided).

(4) For other than a firm-fixed-price contract, at a minimum include–

(i) An analysis of why the use of other than a firm-fixed-price contract (e.g., cost reimbursement, time-and-materials, labor hour, innovative contract type) is appropriate;

(ii) Rationale that detail specific facts and circumstances (e.g., complexity of the requirements, uncertain work duration, contractor's technical capability and financial responsibility, or adequacy of the contractor's accounting system), and associated reasoning essential to support the contract type selection;

(iii) An assessment of whether Government resources are adequate to properly plan for, award, and administer other than firm-fixed-price contracts; and

(iv) A discussion of planned actions to minimize the use of other than firm-fixed-price contracts on future acquisitions for the same requirement and to transition to firm-fixed-price contracts to the maximum extent practicable.

(5) Why a level-of-effort, price redetermination, or fee provision was included.

(b) Documentation of contract type is not required for the following-

(1) Fixed-price acquisitions made under simplified acquisition procedures;

(2) Contracts on a firm-fixed-price basis other than those for major systems or research and development; and

(3) Awards on the set-aside portion of sealed bid partial set-asides for small business.

16.104 Solicitation provision.

The contracting officer may complete and insert the provision at 52.216-1, Type of Contract, in a solicitation. When the solicitation provides for the opportunity for an offeror to propose an alternative contract type, include the provision with its Alternate I.

Subpart 16.2 - Fixed-Price Contracts

16.201 General.

(a) Fixed-price types of contracts provide for a firm price or, in appropriate cases, an adjustable price. Fixed-price contracts with adjustable prices may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price may only be adjusted through contract clauses that provide for equitable adjustment or other revision of the contract price under stated circumstances.

(b) The contracting officer must use firm-fixed-price or fixed-price with economic price adjustment contracts when acquiring commercial products and commercial services, except as provided in 12.104(a).

(c) Time-and-materials contracts and labor-hour contracts are not fixed-price contracts.

16.202 Firm-fixed-price contracts.

16.202-1 Description.

A firm-fixed-price contract provides for a price that is not subject to any adjustment on the basis of the contractor's experience in performing the contract. The contracting officer may use a firm-fixed-price contract in conjunction with an award-fee incentive (see 16.402) and performance or delivery incentives (see 16.403 and 16.404) when the award fee or incentive is based solely on factors other than cost. The contract type remains firm-fixed-price when used with these incentives.

16.202-2 Application.

A firm-fixed-price contract is suitable for acquiring supplies or services on the basis of clearly defined functional or detailed specifications (see part 11) when the contracting officer can establish fair and reasonable prices at the outset.

16.203 Fixed-price contracts with economic price adjustment.

16.203-1 Description.

(a) A fixed-price contract with economic price adjustment provides for upward and downward revision of the stated contract price when specific events occur. Economic price adjustments are of three general types:

(1) Adjustments based on established prices. These price adjustments are based on increases or decreases from an agreed-upon level in published or established prices of specific items or the contract end items.

(2) Adjustments based on actual costs of labor or material. These price adjustments are based on increases or decreases in specified costs of labor or material that the contractor actually experiences during contract performance.

(3) Adjustments based on cost indexes of labor or material. These price adjustments are based on increases or decreases in labor or material cost standards or indexes that are specifically identified in the contract.

(b) The contracting officer may use a fixed-price contract with economic price adjustment in conjunction with an award-fee incentive (see 16.402) and performance or delivery incentives (see 16.403 and 16.404). This combination is appropriate when the award fee or incentive is based solely on factors other than cost. The contract type remains fixed-price with economic price adjustment when used with these incentives.

16.203-2 Application.

(a) A fixed-price contract with economic price adjustment may be used when-

(1) There is serious doubt concerning the stability of market or labor conditions that will exist during an extended period of contract performance; and

(2) Contingencies that would otherwise be included in the contract price can be identified and covered separately in the contract. Price adjustments based on established prices should normally be restricted to industry-wide contingencies. Price adjustments based on labor and material costs should be limited to contingencies beyond the contractor’s control. For use of economic price adjustment in sealed bid contracts, see part 14.

(b) When establishing the base level from which adjustments will be made, the contracting officer must ensure that contingency allowances are not duplicated by inclusion in both the base price and the adjustment requested by the contractor under economic price adjustment clause.

(c) In contracts that do not require submission of certified cost or pricing data, the contracting officer must obtain adequate data to establish the base level from which adjustment will be made and may require verification of data submitted.

16.203-3 Limitations.

A fixed-price contract with economic price adjustment may be used only if the contracting officer determines that it is necessary to protect the contractor and the Government against significant fluctuations in labor or material costs or to provide for contract price adjustment in the event of changes in the contractor's established prices.

16.203-4 Contract clauses.

(a) *Adjustment based on established prices-standard supplies*.

(1) The contracting officer must, when contracting by negotiation, insert the clause at 52.216-2, Economic Price Adjustment-Standard Supplies, or an agency-prescribed clause in solicitations and contracts when all of the following conditions apply:

(i) A fixed-price contract is contemplated.

(ii) The requirement is for standard supplies that have an established catalog or market price.

(iii) The contracting officer has made the determination specified in 16.203-3.

(2) The contracting officer may modify the clause by increasing the 10 percent limit on aggregate increases specified in 52.216-2(c)(1), upon approval by the chief of the contracting office.

(b) *Adjustment based on established prices-semistandard supplies*.

(1) The contracting officer must, when contracting by negotiation, insert the clause at 52.216-3, Economic Price Adjustment-Semistandard Supplies, or an agency-prescribed clause in solicitations and contracts when all of the following conditions apply:

(i) A fixed-price contract is contemplated.

(ii) The requirement is for semistandard supplies for which the prices can be reasonably related to the prices of nearly equivalent standard supplies that have an established catalog or market price.

(iii) The contracting officer has made the determination specified in 16.203-3.

(2) Before entering into the contract, the contracting officer and contractor must agree in writing on the identity of the standard supplies and the corresponding line items to which the clause applies.

(3) If the supplies are standard, except for preservation, packaging, and packing requirements, the clause prescribed in 16.203-4(a) must be used rather than this clause.

(4) The contracting officer may modify the clause by increasing the 10 percent limit on aggregate increases specified in 52.216-3(c)(1), upon approval by the chief of the contracting office.

(c) *Adjustments based on actual cost of labor or material*.

(1) The contracting officer must, when contracting by negotiation, insert a clause that is substantially the same as the clause at 52.216-4, Economic Price Adjustment -Labor and Material, or an agency-prescribed clause in solicitations and contracts when all of the following conditions apply:

(i) A fixed-price contract is contemplated.

(ii) There is no major element of design engineering or development work involved.

(iii) One or more identifiable labor or material cost factors are subject to change.

(iv) The contracting officer has made the determination specified in 16.203-3.

(2) The contracting officer must describe in detail in the contract Schedule-

(i) The types of labor and materials subject to adjustment under the clause;

(ii) The labor rates, including fringe benefits (if any) and unit prices of materials that may be increased or decreased; and

(iii) The quantities of the specified labor and materials allocable to each unit to be delivered under the contract.

(3) In negotiating adjustments under the clause, the contracting officer must-

(i) Consider work in process and materials on hand at the time of changes in labor rates, including fringe benefits (if any) or material prices;

(ii) Not include in adjustments any indirect cost (except fringe benefits as defined in 31.205-6(l) or profit; and

(iii) Consider only those fringe benefits specified in the contract Schedule.

(4) The contracting officer may modify the clause by increasing the 10 percent limit on aggregate increases specified in 52.216-4(c)(4), upon approval by the chief of the contracting office.

(d) *Adjustments based on cost indexes of labor or material*. The contracting officer should consider using an economic price adjustment clause based on cost indexes of labor or material under the circumstances and subject to approval as described in paragraphs(d)(1) and (d)(2) of this subsection.

(1) A clause providing adjustment based on cost indexes of labor or materials may be appropriate when-

(i) The contract involves an extended period of performance with significant costs to be incurred beyond 1 year after performance begins;

(ii) The contract amount subject to adjustment is substantial; and

(iii) The economic variables for labor and materials are too unstable to permit a reasonable division of risk between the Government and the contractor, without this type of clause.

(2) Any clause using this method must be prepared and approved under agency procedures.

16.204 Fixed-price contracts with prospective price redetermination.

16.204-1 Description.

A fixed-price contract with prospective price redetermination provides for-

(a) A firm-fixed-price for an initial period of contract deliveries or performance; and

(b) Prospective redetermination, at a stated time or times during performance, of the price for subsequent periods of performance.

16.204-2 Application.

A fixed-price contract with prospective price redetermination may be used in acquisitions of quantity production or services for which it is possible to negotiate a fair and reasonable firm-fixed-price for an initial period, but not for subsequent periods of contract performance.

(a) The initial period should be the longest period for which it is possible to negotiate a fair and reasonable firm-fixed-price. Each subsequent pricing period should be at least 12 months.

(b) The contract may provide for a ceiling price based on evaluation of the uncertainties involved in performance and their possible cost impact.

16.204-3 Limitations.

This contract type must not be used unless-

(a) Negotiations have established that using a firm-fixed-price or fixed-price incentive contract is not appropriate for the acquisition;

(b) The contractor’s accounting system is adequate for price redetermination;

(c) The prospective pricing periods can be made to conform with operation of the contractor’s accounting system; and

(d) There is reasonable assurance that price redetermination actions will take place promptly at the specified times.

16.204-4 Contract clause.

The contracting officer must, when contracting by negotiation, insert the clause at 52.216-5, Price Redetermination-Prospective, in solicitations and contracts when a fixed-price contract is contemplated and the conditions specified in 16.204-2 and 16.204-3 apply.

16.205 Fixed-ceiling-price contracts with retroactive price redetermination.

16.205-1 Description.

A fixed-ceiling-price contract with retroactive price redetermination provides for (a) a fixed ceiling price and (b) retroactive price redetermination within the ceiling after completion of the contract.

16.205-2 Application.

A fixed-ceiling-price contract with retroactive price redetermination is appropriate when it is established at the outset that a fair and reasonable firm-fixed-price cannot be negotiated, and that the amount involved and short performance period make the use of any other fixed-price contract type impracticable.

(a) A ceiling price must be negotiated for the contract at a level that reflects a reasonable sharing of risk by the contractor. The established ceiling price may be adjusted only if required by the operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.

(b) The contract should be awarded only after negotiation of a billing price that is as fair and reasonable as the circumstances permit.

16.205-3 Limitations.

This contract type may only be used when-

(a) The contract is for research and development and the estimated cost is at or below the simplified acquisition threshold (SAT);

(b) The contractor’s accounting system is adequate for price redetermination;

(c) There is reasonable assurance that the price redetermination will take place promptly at the specified time; and

(d) The head of the contracting activity (or a higher-level official, if required by agency procedures) approves its use in writing.

16.205-4 Contract clause.

The contracting officer must, when contracting by negotiation, insert the clause at 52.216-6, Price Redetermination-Retroactive, in solicitations and contracts when a fixed-price contract is contemplated and the conditions in 16.205-2 and 16.205-3 apply.

16.206 Firm-fixed-price, level-of-effort term contracts.

16.206-1 Description.

A firm-fixed-price, level-of-effort term contract requires (a) the contractor to provide a specified level of effort, over a stated period of time, on work that can be described only in general terms and (b) the Government to pay the contractor a fixed dollar amount.

16.206-2 Application.

A firm-fixed-price, level-of-effort term contract is suitable for investigation or study in a specific research and development area. The product of the contract is usually a report showing the results achieved through application of the required level of effort. However, payment is based on the effort expended rather than on the results achieved.

16.206-3 Limitations.

This contract type may be used only when-

(a) The work required cannot otherwise be clearly defined;

(b) The required level of effort is identified and agreed upon in advance; and

(c) There is reasonable assurance that the intended result cannot be achieved by expending less than the stipulated effort.

Subpart 16.3 - Cost-Reimbursement Contracts

16.301 General.

16.301-1 Description.

Cost-reimbursement contracts allow for the reimbursement of allowable incurred costs. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling value that the contractor may not exceed (except at its own risk) without the approval of the contracting officer.

16.301-2 Application.

(a) The contracting officer must use cost-reimbursement contracts only when-

(1) The requirements cannot be sufficiently defined to allow for a fixed-price type contract (see part 7); or

(2) Uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

(b) The contracting officer must document the reason for selecting the contract type in the written acquisition plan. The plan must be approved and signed at least one level above the contracting officer (see part 7 and 16.103).

16.301-3 Limitations.

(a) A cost-reimbursement contract may be used only when-

(1) A written acquisition plan has been approved;

(2) The contractor's accounting system can adequately segregate, accumulate and allocate costs specifically attributed to the contract or order during contract performance; and

(3) Before award of the contract or order, sufficient Government resources are available to award and manage a contract other than firm-fixed-priced (see part 7). This includes designating a contracting officer's representative to monitor contractor performance and cost controls (see part 1).

(b) The use of cost-reimbursement contracts is not allowed for the purchase of commercial products and commercial services (see parts 2 and 12).

16.302 Cost contracts.

A cost contract is a cost-reimbursement contract that does not include fee.

16.303 Cost-sharing contracts.

A cost-sharing contract is a cost-reimbursement contract that does not include fee, and the Government reimburses only a portion of the allowable costs. The contracting officer must state in the contract the agreed upon portion or percentage of allowable costs that will be reimbursed.

16.304 Cost-plus-fixed-fee contracts.

16.304-1 Description.

A cost-plus-fixed-fee contract is a cost-reimbursement contract that includes payment of an agreed upon fixed-fee. The fixed fee does not change with actual cost but may be adjusted as a result of changes in the work to be performed under the contract.

16.304-2 Limitations.

A cost-plus-fixed-fee contract must not be awarded unless the contracting officer complies with all limitations in part 15.

16.304-3 Completion and term forms.

A cost-plus-fixed-fee contract may take one of two basic forms-completion or term.

(a) The completion form describes the scope of work by stating a definite goal or target and specifying an end product. This form of contract normally requires the contractor to complete and deliver the specified end product (e.g., a final report of research accomplishing the goal or target) within the estimated cost, if possible, as a condition for payment of the entire fixed fee. However, if the work costs more than estimated, the Government may increase allowable costs to complete the work without increasing the fee.

(b) The term form describes the scope of work in general terms and requires the contractor to work at a specified level for a specific time period. The term form may not be used unless required by the contract to provide a specific level of effort within a definite time period. Under this form, if the performance is considered satisfactory by the Government, the fixed fee is payable at the end of the agreed upon period. Renewal for further periods of performance is a new acquisition that involves new cost and fee arrangements.

16.305 Contract clauses.

(a) (1) The contracting officer must insert the clause at 52.216-7, Allowable Cost and Payment, in solicitations and contracts when a cost-reimbursement contract or a time-and-materials contract (other than a contract for a commercial product or commercial service) is anticipated. If the contract is a time-and-materials contract, the clause at 52.216-7 applies in conjunction with the clause at 52.232-7 but only to the portion of the contract that provides for reimbursement of materials (as defined in the clause at 52.232-7) at actual cost. Further, the clause at 52.216-7 does not apply to labor-hour contracts.

(2) If the contract is a construction contract and contains the clause at 52.232-27, Prompt Payment for Construction Contracts, the contracting officer must use the clause at 52.216-7 with its Alternate I.

(3) If the contract is with an educational institution, the contracting officer must use the clause at 52.216-7 with its Alternate II.

(4) If the contract is with a State or local government, the contracting officer must use the clause at 52.216-7 with its Alternate III.

(5) If the contract is with a nonprofit organization other than an educational institution, a State or local government, or a nonprofit organization exempted under the OMB Uniform Guidance at 2 CFR part 200, appendix VIII, the contracting officer must use the clause at 52.216-7 with its Alternate IV.

(b) The contracting officer must insert the clause at 52.216-8, Fixed Fee, in solicitations and contracts when a cost-plus-fixed-fee contract (other than a construction contract) is anticipated.

(c) The contracting officer must insert the clause at 52.216-9, Fixed Fee-Construction, in solicitations and contracts when a cost-plus-fixed-fee construction contract is anticipated.

(d) The contracting officer must insert the clause at 52.216-10, Incentive Fee, in solicitations and contracts when a cost-plus-incentive-fee contract is anticipated.

(e) (1) The contracting officer must insert the clause at 52.216-11, Cost Contract-No Fee, in solicitations and contracts when a cost-reimbursement contract that provides no fee and is not a cost-sharing contract is anticipated. This clause may be modified by substituting $10,000 in lieu of $100,000 as the maximum reserve in paragraph (b) if the Contractor is a nonprofit organization.

(2) If a cost-reimbursement research and development contract with an educational institution or a nonprofit organization that provides no profit and is not a cost-sharing contract is anticipated, and if the contracting officer determines that withholding of a portion of allowable costs is not required, the contracting officer must use the clause with its Alternate I.

(f) (1) The contracting officer must insert the clause at 52.216-12, Cost-Sharing Contract-No Fee, in solicitations and contracts when a cost-sharing contract is anticipated. In solicitations and contracts when a cost-sharing contract is contemplated. This clause may be modified by substituting $10,000 in lieu of $100,000 as the maximum reserve in paragraph (b) if the contract is with a nonprofit organization.

(2) If a cost-sharing research and development contract with an educational institution or a nonprofit organization is anticipated, and if the contracting officer determines that withholding of a portion of allowable costs is not required, the contracting officer must use the clause with its Alternate I.

(g) The contracting officer must insert the clause at 52.216-15, Predetermined Indirect Cost Rates, in solicitations and contracts when a cost-reimbursement research and development contract with an educational institution (see part 42) is anticipated and predetermined indirect cost rates are to be used.

Subpart 16.4 - Incentive Contracts

16.401 General.

16.401-1 Description.

(a) Incentive contracts are designed to obtain specific acquisition objectives by-

(1) Establishing realistic and achievable targets that are clearly communicated to the contractor; and

(2) Including appropriate incentive arrangements designed to-

(i) Motivate contractor efforts that might not otherwise be emphasized and

(ii) Discourage contractor inefficiency and waste.

(b) When predetermined, formula-type incentives on technical performance or delivery are included, profit or fee increases are only earned when performance exceeds the targets. Decreases apply when contractors fail to meet these targets. These incentive increases or decreases relate only to performance targets, not minimum performance requirements.

(c) The two basic categories of incentive contracts are fixed-price incentive contracts (see 16.402-3 and 16.404) and cost-reimbursement incentive contracts (see 16.402-4 and 16.405).

16.401-2 Limitations.

A determination and findings, signed by the head of the contracting activity, must be completed for all incentive- and award-fee contracts justifying that the use of this type of contract is in the best interest of the Government. This determination must be documented in the contract file. The determination for award-fee contracts must address all of the suitability items in 16.402-1.

16.401-3 Incentive- and award-fee data collection and analysis.

Each agency must collect relevant data on award fee and incentive fees paid to contractors and include performance measures to evaluate such data on a regular basis to determine effectiveness of award and incentive fees as a tool for improving contractor performance and achieving desired program outcomes. This information should be considered as part of the acquisition planning process (see part 7) in determining the appropriate type of contract to be used for future acquisitions.

16.401-4 Incentive- and award-fee best practices.

Each agency head must provide processes for sharing proven incentive strategies for the acquisition of different types of products and services among contracting and program management officials.

16.402 Award-fee.

16.402-1 Application.

An award-fee contract is suitable for use when-

(a) The work to be performed is too complex or uncertain to set predetermined objective incentive targets applicable to cost, schedule, and technical performance;

(b) The likelihood of meeting acquisition objectives will be increased by using a contract that effectively motivates the contractor toward exceptional performance and provides the Government with the flexibility to evaluate both actual performance and the circumstances under which work was achieved; and

(c) Any additional administrative effort and cost required to monitor and evaluate performance are justified by the expected benefits as documented by a risk and cost benefit analysis to be included in the determination and findings referenced in 16.401-2.

16.402-2 Limitations.

(a) An award-fee contract must not be awarded unless an award-fee plan is completed in accordance with the requirements in paragraph (c) of this subsection.

(b) *Award-fee amount*. The amount of award fee earned must be in line with the contractor’s overall cost, schedule, and technical performance as measured against contract requirements in accordance with the criteria stated in the award-fee plan. Award fee must not be earned if the contractor’s overall cost, schedule, and technical performance in the aggregate is below satisfactory. The basis for all award-fee determinations must be documented in the contract file to include, at a minimum, a determination that overall cost, schedule and technical performance in the aggregate is or is not at a satisfactory level. This determination and the approach for determining the award fee are unilateral decisions made solely at the discretion of the Government.

(c) *Award-fee plan*. All contracts providing for award fees must be supported by an award-fee plan that sets up the process for evaluating award fee and an Award-Fee Board for completing the award-fee evaluation. Award-fee plans must-

(1) Be approved by the Fee-Determining Official unless otherwise authorized by agency procedures;

(2) Identify the award-fee evaluation criteria and how they are connected to acquisition objectives which must be defined in terms of contract cost, schedule, and technical performance. Criteria should motivate the contractor to enhance performance in the areas rated, but not at the expense of at least minimum acceptable performance in all other areas;

(3) Describe how the contractor's performance will be evaluated against the award-fee evaluation criteria;

(4) Use the adjectival rating and associated description as well as the award-fee pool earned percentages shown below in Table 16-1. Contracting officers may supplement the adjectival rating description. The approach used to determine the adjectival rating must be documented in the award-fee plan;

TABLE 16-1

Award-Fee Adjectival Rating	**Award-Fee Pool Available To Be Earned**	**Description**
Excellent	91%-100%	Contractor has exceeded almost all of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and evaluated against the criteria in the award-fee plan for the award-fee evaluation period.
Very Good	76%-90%	Contractor has exceeded many of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and evaluated against the criteria in the award-fee plan for the award-fee evaluation period.

Good	51%-75%	Contractor has exceeded some of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and evaluated against the criteria in the award-fee plan for the award-fee evaluation period.
Satisfactory	No Greater Than 50%	Contractor has met overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and evaluated against the criteria in the award-fee plan for the award-fee evaluation period.
Unsatisfactory	0%	Contractor has failed to meet overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and evaluated against the criteria in the award-fee plan for the award-fee evaluation period.

(5) Earning any award fee when a contractor's overall cost, schedule, and technical performance in the aggregate is below satisfactory is not allowed;

(6) Provide for evaluation period(s) to be conducted at stated intervals during the contract period of performance so that the contractor will periodically be informed of the quality of its performance and the areas in which improvement is expected (e.g., six months, nine months, twelve months, or at specific milestones); and

(7) Define the total award-fee pool amount and how this amount is allocated each evaluation period.

(d) *Rollover of unearned award fee*. The use of rollover of unearned award fee is prohibited.

16.402-3 Fixed-price contracts with award fees.

Award-fee provisions may be used in fixed-price contracts when the Government wishes to motivate a contractor and other incentives cannot be used because contractor performance cannot be measured objectively. Such contracts must establish a fixed-price (including normal profit) for the work, which will be paid for satisfactory contract performance. Any award fee earned will be paid in addition to that fixed-price. See 16.402-1 and 16.402-2 for the requirements on using this contract type.

16.402-4 Cost-plus-award-fee contracts.

A cost-plus-award-fee contract is a cost-reimbursement contract that provides a fee consisting of (1) a base amount fixed at inception of the contract, if applicable and at the discretion of the contracting officer, and (2) an award fee that the contractor may earn in whole or in part to provide motivation for excellence in the areas of cost, schedule, and technical performance. See 16.301, 16.402-1, and 16.402-2 for the requirements relative to utilizing this contract type.

16.403 Application of predetermined, formula-type incentives.

16.403-1 Cost incentives.

(a) Cost incentives take the form of a profit or fee adjustment formula and are intended to motivate the contractor to effectively manage costs. No incentive contract may provide for other incentives without also providing a cost incentive (or constraint).

(b) Except for award-fee contracts (see 16.402), cost incentive contracts include a target cost, a target profit or fee, and a profit or fee adjustment formula that (within the constraints of a price ceiling or minimum and maximum fee) provides that-

(1) If actual costs equal the target cost, the contractor will earn the target profit or fee;

(2) If actual costs exceed the target cost, the contractor's earned profit or fee will be lower than the target profit or fee; and

(3) If actual costs are below the target cost, the contractor's earned profit or fee will be higher than the target profit or fee.

16.403-2 Performance incentives.

(a) Performance incentives may be considered in connection with specific product characteristics (e.g., a missile range, an aircraft speed, an engine thrust, or a vehicle maneuverability) or other specific areas of the contractor's performance. Incentives should be linked to the contractor's profit or fee based on how their actual performance compares to the set targets.

(b) To the maximum extent practicable, positive and negative performance incentives for objectively measured tasks should be considered when the quality of performance is critical, and incentives are likely to motivate the contractor.

16.403-3 Delivery incentives.

(a) Delivery incentives should be considered when improvement from a required delivery schedule is important to the Government.

(b) Delivery incentives should include a reward-penalty structure in the event of Government-caused delays or other delays beyond the control, and without the fault or negligence, of the contractor or subcontractor.

16.403-4 Structuring multiple-incentive contracts.

A properly structured multiple-incentive arrangement should-

(a) Motivate the contractor to work towards outstanding results in all incentive areas; and

(b) Encourage trade-offs between incentive areas to align with the Government’s goals. Due to the connection of cost, technical performance, and delivery goals, a contract that focuses on only one of the goals may jeopardize control over the others. All multiple-incentive contracts must include a cost incentive (or constraint) that prevents rewarding a contractor for greater technical performance or delivery results when the cost of those results outweighs their value to the Government.

16.404 Fixed-price incentive contracts.

(a) *Description*. A fixed-price incentive contract is a fixed-price contract that uses an established formula to adjust profit upward or downward and establishes the final contract price. Two forms of fixed-price incentive contracts, firm target and successive targets, are further described in 16.404-1 and 16.404-2.

(b) *Application*. A fixed-price incentive contract is appropriate when-

(1) A firm-fixed-price contract is not suitable;

(2) The contractor’s acceptance of a degree of cost responsibility will provide a positive profit incentive to control costs and increase performance; and

(3) If the contract also includes technical, performance or delivery incentives, the technical/performance/delivery incentives should provide opportunities for the incentives to improve the contractor’s management of the work.

(c) *Billing prices*. In fixed-price incentive contracts, interim billing prices are established for payment. Billing prices may be adjusted, within the ceiling limit, when requested by either party to the contract, when it becomes apparent that final price will be substantially different from the target price.

16.404-1 Fixed-price incentive (firm target) contracts.

(a) *Description*. A fixed-price incentive (firm target) contract specifies a target cost, a target profit, a price ceiling (but not a profit ceiling or floor), and a formula for profit adjustments. When the final cost is less than the target cost, application of the formula results in a final profit greater than the target profit; conversely, when final cost is more than target cost, application of the formula results in a final profit less than the target profit, or even a net loss. If the final negotiated cost exceeds the price ceiling, the contractor absorbs the difference as a loss.

(b) *Limitations*. This contract type may be used only when-

(1) The contractor’s accounting system is adequate for providing data to support negotiation of final cost and incentive price revision; and

(2) Adequate cost or pricing information for establishing reasonable firm targets is available at the time of initial contract negotiation.

(c) *Contract schedule*. The contracting officer must specify in the contract schedule the target cost, target profit, and target price for each item subject to incentive price revision.

16.404-2 Fixed-price incentive (successive targets) contracts.

(a) *Description*. A fixed-price incentive (successive targets) contract specifies the following elements, all of which are negotiated at the outset:

(1) An initial target cost.

(2) An initial target profit.

(3) An initial profit adjustment formula to calculate the firm target profit, including a ceiling and floor for the firm target profit.

(4) The production point at which the firm target cost and firm target profit will be negotiated.

(5) A ceiling price.

(b) *Limitations*. This contract type may be used only when-

(1) The contractor's accounting system is adequate for providing data for negotiating firm targets and a realistic profit adjustment formula, as well as later negotiation of final costs; and

(2) Cost or pricing information adequate for establishing a reasonable firm target cost is expected to be available early on in contract performance.

(c) *Contract schedule*. The contracting officer must specify in the contract schedule the initial target cost, initial target profit, and initial target price for each item subject to incentive price revision.

16.405 Cost-plus-incentive-fee contracts.

The cost-plus-incentive-fee contract is a cost-reimbursement contract that adjusts the initially negotiated fee based on a formula comparing total allowable costs to total target costs. This contract type includes a target cost, target fee, minimum and maximum fees, and a fee adjustment formula. After contract performance, the contractor's fee is determined using the specified fee formula. The formula allows for fee increases above the target fee when total allowable costs are less than target costs, and fee decreases below the target fee when total allowable costs exceed target costs, creating an incentive for effective contract management. When total allowable costs fall outside the range of the fee formula, the contractor receives total allowable costs plus either the minimum or maximum fee.

16.406 Contract clauses.

(a) Insert the clause at 52.216-16, Incentive Price Revision-Firm Target, in solicitations and contracts when a fixed-price incentive (firm target) contract is contemplated. If the contract calls for supplies or services to be ordered under a provisioning document or Government option and the prices are to be subject to the incentive price revision under the clause, the contracting officer must use the clause with its *Alternate I*.

(b) Insert the clause at 52.216-17, Incentive Price Revision-Successive Targets, in solicitations and contracts when a fixed-price incentive (successive targets) contract is contemplated. If the contract calls for supplies or services to be ordered under a provisioning document or Government option and the prices are to be subject to incentive price revision under the clause, the contracting officer must use the clause with its *Alternate I*.

(c) The clause at 52.216-10, Incentive Fee, is prescribed in 16.305(d) for insertion in solicitations and contracts when a cost-plus-incentive-fee contract is contemplated.

(d) Insert an appropriate award-fee clause in solicitations and contracts when an award-fee contract is contemplated, provided that the clause-

(1) Is prescribed by or approved under agency acquisition regulations;

(2) Is compatible with the clause at 52.216-7, Allowable Cost and Payment; and

(3) Expressly provides that the award amount and the award-fee determination methodology are unilateral decisions made solely at the discretion of the Government.

Subpart 16.5 - Indefinite-Delivery Contracts

16.500 Scope.

(a) This subpart prescribes policies and procedures for making awards of indefinite-delivery contracts and subsequent orders and establishes a preference for making multiple awards of indefinite-quantity contracts.

(b) This subpart does not limit the use of other than competitive procedures authorized by part 6.

(c) See part 19 for procedures to set aside part or parts of multiple-award contracts for small businesses and to reserve one or more awards for small business on multiple-award contracts.

(d) The statutory multiple award preference (see 10 U.S.C. 3403 and 41 U.S.C. 4103) implemented by this subpart does not apply to architect-engineer contracts subject to the procedures in part 36. However, agencies are not precluded from making multiple awards for architect-engineer services using the procedures in this subpart, provided the selection of contractors and placement of orders are consistent with part 36.

(e) This subpart does not limit the authority of the General Services Administration (GSA) to enter into schedule, multiple-award, or task or delivery order contracts under any other provision of law. Therefore, GSA regulations and the coverage for the Federal Supply Schedule program take precedence over this subpart.

16.501 General.

16.501-1 Definitions.

As used in this subpart-

Delivery-order contract means a contract for property [supplies] that does not procure or specify a firm quantity of property (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of supplies during the period of the contract.

Task-order contract means a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

16.501-2 Policies.

(a) There are three types of indefinite-delivery contracts: definite-quantity contracts, requirements contracts, and indefinite-quantity contracts. The appropriate type of indefinite-delivery contract may be used to acquire supplies and/or services when the exact times and/or exact quantities of future deliveries are not known at the time of contract award. Pursuant to 10 U.S.C. 3401 and 41 U.S.C. 4101, requirements contracts and indefinite-quantity contracts are also known as delivery-order contracts or task-order contracts.

(b) (1) Indefinite-delivery contracts may provide for any appropriate cost or pricing arrangement under part 16. Cost or pricing arrangements that provide for an estimated quantity of supplies or services (e.g., estimated number of labor hours) must comply with the appropriate procedures of this subpart.

(2) In accordance with 10 U.S.C. 3206(c), for DoD, NASA, and the Coast Guard—

(i) The contracting officer may choose not to include price or cost as an evaluation factor for award when a solicitation—

(A) Has an estimated value above the simplified acquisition threshold;

(B) Will result in multiple-award contracts that are for the same or similar services; and

(C) States that the Government intends to make an award to each and all qualifying offerors.

(ii) If the contracting officer chooses not to include price or cost as an evaluation factor for the contract award, in accordance with paragraph (b)(2)(i), the contracting officer shall consider price or cost as one of the factors in the selection decision for each order placed under the contract.

(iii) The exception in paragraph (b)(2)(i) of this subsection shall not apply to solicitations for multiple-award contracts that provide for sole source orders pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(c) Task order and delivery order contracts (requirements contracts and indefinite-quantity contracts) have an ordering period in which orders may be placed. Individual task and delivery orders have a period of performance effective for that specific task or delivery order's scope of work. The effective period of a task or delivery order contract includes the ordering period of the base contract and any period of performance of task orders beyond the end of the ordering period.

(1) *Limitation on ordering period*. In accordance with 10 U.S.C. 3403, for the DoD, NASA, and the Coast Guard, the head of an agency entering into a task or delivery order contract may provide for the contract to cover any period up to five years and may extend the contract period for one or more successive periods pursuant to an option provided in the contract or a modification of the contract. The total contract period as extended may not exceed 10 years unless such head of an agency determines in writing that exceptional circumstances necessitate a longer contract period.

(2) *Limitation on ordering period for task-order contracts for advisory and assistance services*.

(i) In accordance with 10 U.S.C. 3405, except as provided for in paragraphs (c)(2)(ii) and (iii) of this subsection, the ordering period of a task-order contract for advisory and assistance services, including all periods of extensions of the contract under options, modifications or otherwise, may not exceed 5 years.

(ii) The 5-year limitation does not apply when—

(A) A longer ordering period is specifically authorized by statute; or

(B) The contract is for an acquisition of supplies or services that includes the acquisition of advisory and assistance services and the contracting officer, or other official designated by the head of the agency, determines that the advisory and assistance services are incidental and not a significant component of the contract.

(iii) The contracting officer may extend the contract on a sole-source basis for a period not exceeding 6 months if the contracting officer, or other official designated by the head of the agency, determines that—

(A) The award of a follow-on contract is delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

(B) The extension is necessary to ensure continuity of services, pending the award of, and commencement of performance under, the follow-on contract.

16.502 Definite-quantity contracts.

16.502-1 Description.

A definite-quantity contract provides for delivery of a definite (fixed) quantity of specific supplies or services for a fixed period, with deliveries or performance to be scheduled at designated locations upon order. The delivery schedule and/or location may be flexible or set, but the total number of items or services to be delivered under the contract will not change.

16.502-2 Application.

A definite-quantity contract may be used when it can be determined in advance that-

(a) The exact quantity of supplies or services required during the contract period is known at the time of award; and

(b) The supplies or services are regularly available or will be available after a short lead time.

16.503 Requirements contracts.

16.503-1 Description.

A requirements contract provides for filling all actual purchase requirements of designated Government activities for supplies or services during a specified ordering period exclusively from one contractor, with deliveries or performance to be scheduled by placing orders with the contractor.

16.503-2 Application.

A requirements contract may be appropriate for acquiring any supplies or services when the Government anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that designated Government activities will need during a definite period.

16.503-3 Limitations.

(a) No requirements contract in an amount estimated to exceed $150 million (including all options) may be awarded to a single source unless a determination is executed in accordance with 16.504-3(a)(4).

(b) *Limitations on use of requirements contracts for advisory and assistance services*.

(1) Except as provided in paragraph (b)(2), no solicitation for a requirements contract for advisory and assistance services in excess of three years and $20 million (including all options) may be issued unless the contracting officer or other official designated by the head of the agency determines in writing that the services required are so unique or highly specialized that it is not practicable to make multiple awards using the procedures in 16.504-3.

(2) The limitation in paragraph (b)(1) of this subsection does not apply to a contract for the acquisition of supplies or services that includes acquisition of advisory and assistance services if the head of the executive agency entering into the contract determines that, under the contract, advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

16.503-4 Required content.

(a) Requirements contracts obligate the seller to supply all the buyer's actual needs, and the buyer to purchase all their requirements from that specific seller, within stated limits of the contract. The contract must state, if feasible, the maximum limit of the contractor’s obligation to deliver and the Government’s obligation to order. The contract may also set minimum and/or maximum limits on the quantities the Government may order under each individual order or over a specified period of time.

(b) The solicitation and resulting contract must state a realistic estimated total quantity. This estimated total quantity is not a representation to an offeror or contractor that the estimate is guaranteed quantity, or that conditions affecting requirements will stay the same. The contracting officer should base the estimate on the most current information available, and may calculate the estimate based on records of previous requirements and consumption, or by other means.

(c) When a requirements contract is used to acquire work (e.g., repair, modification, or overhaul) on existing items of Government property, the contracting officer must specify in the Schedule that failure of the Government to furnish such items in the amounts or quantities described in the Schedule as "estimated" or "maximum" will not entitle the contractor to any equitable adjustment in price under the Government Property clause of the contract.

16.504 Indefinite-quantity contracts.

16.504-1 Description.

(a) An indefinite-quantity contract provides for an indefinite quantity, within stated limits, of supplies or services during an ordering period. The Government places orders for individual requirements. Quantity limits may be stated as number of units or as dollar values.

(b) The contract must require the Government to order and the contractor to furnish at least a stated minimum quantity of supplies or services. To ensure that the contract is binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the amount that the Government is fairly certain to order.

(c) In addition, if ordered, the contractor must furnish any additional quantities, not to exceed the stated maximum. The contracting officer should establish a reasonable maximum quantity based on market research, trends on recent contracts for similar supplies or services, survey of potential users, or any other rational basis.

(d) The contract may also specify maximum or minimum quantities that the Government may order under each task or delivery order and the maximum that it may order during a specific period of time.

16.504-2 Application.

The contracting officer may use an indefinite-quantity contract when the Government knows what kind of supplies or services it needs and a certain minimum amount that will be needed, but does not know exactly how much will be needed or when during the effective period. The contracting officer should use an indefinite-quantity contract only when the government expects to have ongoing, repeated needs for the supplies or services.

16.504-3 Multiple award preference.

(a) (1) Except for indefinite-quantity contracts for advisory and assistance services as provided in paragraph (b) of this subsection, the contracting officer must, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to more than one source.

(2) The contracting officer must document the decision whether to make multiple awards in the acquisition plan or contract file. Reasons for deciding that multiple awards are not in the best interests of the Government include, but are not limited to-

(i) Only one contractor is capable of providing performance at the level of quality required because the supplies or services are unique or highly specialized;

(ii) Based on the contracting officer's knowledge of the market, more favorable terms and conditions, including pricing, will be provided if a single award is made;

(iii) The expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards;

(iv) The projected orders are so integrally related that only a single contractor can reasonably perform the work;

(v) The total estimated value of the contract is at or below the SAT.

(3) The contracting officer may determine that a class of acquisitions is not appropriate for multiple awards.

(4) (i) No task or delivery order contract in an amount estimated to exceed $150 million (including all options) may be awarded to a single source unless the head of the agency determines in writing that-

(A) The task or delivery orders expected under the contract are so integrally related that only a single source can reasonably perform the work;

(B) The contract provides only for firm-fixed-price (see 16.202) task or delivery orders for-

(1) Products for which unit prices are established in the contract; or

(2) Services for which prices are established in the contract for the specific tasks to be performed;

(C) Only one source is qualified and capable of performing the work at a reasonable price to the Government; or

(D) It is necessary in the public interest to award the contract to a single source due to exceptional circumstances.

(ii) The head of the agency must notify Congress within 30 days after any determination under paragraph (c)(4)(i)(D) of this section.

(iii) The requirement for a determination for a single-award contract greater than $150 million-

(A) Is in addition to any applicable requirements of part 6; and

(B) Is not applicable for architect-engineer services awarded pursuant to part 36.

(b) *Preference for multiple awards for advisory and assistance services*.

(1) In accordance with 10 U.S.C. 3405 and 41 U.S.C. 4105, except as provided in paragraph (b)(2) of this subsection, if an indefinite-quantity contract for advisory and assistance services is estimated to exceed 3 years and $20 million (including all options), the solicitation must provide for multiple awards unless-

(i) The contracting officer or other official designated by the head of the agency determines in writing-

(A) It is not practicable to award more than one contract because the services required are unique or highly specialized or the tasks are so integrally related; or

(B) After the evaluation of offers, that only one offeror is capable of providing the services required at the level of quality required; or

(ii) Only one offer is received.

(2) The requirements of paragraph (b)(1) of this subsection do not apply to a contract for the acquisition of supplies or services that includes acquisition of advisory and

assistance services if the head of an agency entering into such contract determines in writing during acquisition planning that, under the contract, advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

16.504-4 On-ramps and off-ramps.

To maintain a current, competitive, and innovative pool of vendors on a multiple-award contract, the solicitation and contract may provide for-

(a) Adding new contractor (on-ramp) and increasing the maximum quantity during open seasons; and

(b) Removing a contractor (off-ramp) for underperforming, failure to actively participate in order competitions, or if requested by the awardee.

16.504-5 Required content.

An indefinite-quantity solicitation and contract must-

(a) Specify the ordering period of the contract, including the number of options and the period for which the Government may extend the contract ordering period under each option;

(b) Specify the total minimum and maximum quantity of supplies or services the Government will acquire under the contract;

(c) Specify the last date that a contractor will be required to make deliveries under orders issued during the ordering period (see 52.216-22(d));

(d) Include a statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purpose of the supplies or services the Government will acquire under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer;

(e) State any uniform ordering procedures that the Government will use in issuing all orders, including the ordering media; otherwise, the ordering procedures are at the discretion of the ordering contracting officer;

(f) Specify the activities authorized to issue orders;

(g) Include authorization for placing oral orders, if appropriate, provided that the Government has established procedures for obligating funds and that oral orders are confirmed in writing; and

(h) When multiple awards are anticipated-

(1) Specify any fair opportunity procedures and selection criteria that must apply to all competed orders; otherwise, the procedures and selection criteria are at the discretion of the ordering contracting officer (see 16.507);

(2) Specify whether one or more blanket purchase agreements (BPAs) may be established under the contract according to 16.507-2(c)(3). Existing contracts may be modified to allow BPAs;

(3) If the ordering period exceeds five years, provide for on-ramps according to paragraph (e), unless the contracting officer documents that on-ramps are not in the best interests of the Government.

16.505 Solicitation provisions and contract clauses.

(a) Insert the clause at 52.216-18, Ordering, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

(b) Insert a clause substantially the same as the clause at 52.216-19, Order Limitations, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

(c) Insert the clause at 52.216-20, Definite Quantity, in solicitations and contracts when a definite-quantity contract is contemplated.

(d) (1) Insert the clause at 52.216-21, Requirements, in solicitations and contracts when a requirements contract is contemplated.

(2) If the contract is for nonpersonal services and related supplies and covers estimated requirements that exceed a specific Government activity's internal capability to produce or perform, use the clause with its *Alternate I*.

(3) If the contract includes subsistence for both Government use and resale in the same Schedule, and similar products may be acquired on a brand-name basis, use the clause with its Alternate II (but see paragraph (d)(5) of this section).

(4) If the contract involves a partial small business set-aside, use the clause with its Alternate III (but see paragraph (d)(5) of this section).

(5) If the contract-

(i) Includes subsistence for Government use and resale in the same schedule and similar products may be acquired on a brand-name basis; and

(ii) Involves a partial small business set-aside, use the clause with its *Alternate IV*.

(e) Insert the clause at 52.216-22, Indefinite Quantity, in solicitations and contracts when an indefinite-quantity contract is contemplated.

(1) If off-ramping is contemplated and the agency desires a unilateral cancellation executable by either party, the contracting officer may include the clause with a paragraph substantially the same as its Alternate I. The contracting officer may vary the 30-day period in which the cancellation becomes effective from as few as 15 days to as many as 90 days.

(2) If off-ramping is contemplated and the agency wishes to retain discretion to disapprove contractor-requested off-ramps, the contracting officer may include the clause with a paragraph substantially the same as its Alternate II. The contracting officer may vary the 30-day period in which the cancellation becomes effective from as few as 15 days to as many as 90 days.

(f) Insert the provision at 52.216-27, Single or Multiple Awards, in solicitations for indefinite-quantity contracts that may result in multiple contract awards. Modify the provision to specify the estimated number of awards. Do not use this provision for advisory and assistance services contracts that exceed 3 years and $20 million (including all options).

(g) Insert the provision at 52.216-28, Multiple Awards for Advisory and Assistance Services, in solicitations for task-order contracts for advisory and assistance services that exceed 3 years and $20 million (including all options), unless a determination has been made under 16.504-3(b)(1)(i). Modify the provision to specify the estimated number of awards.

(h) See 10.001(d) for insertion of the clause at 52.210-1, Market Research, when the contract is over $7.5 million for the procurement of items other than commercial products or commercial services.

(i) See 7.107-4 for use of 52.207-6, Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangement or Joint Ventures (Multiple-Award Contracts) in solicitations for multiple-award contracts above the substantial bundling threshold of the agency.

(j) Insert the clause at 52.216-32, Task-Order and Delivery-Order Ombudsman, in solicitations and contracts when a multiple-award task or delivery order contract is contemplated. Use the clause with its Alternate I when the contract will be available for use by multiple agencies (e.g., Governmentwide acquisition contracts or multi-agency contracts). When placing orders under the multiple-award contract available for use by multiple agencies, the ordering activity's contracting officer must complete paragraph (d)(2) and include Alternate I in the notice of intent to place an order, and in the resulting order.

16.506 Postaward procedures for placement of task and delivery orders.

(a) Orders must be within the scope, issued within the specified ordering period, and be within the maximum value of the contract.

(b) All orders placed under a task or delivery order contract must contain the following information:

(1) Date of order.

(2) Contract number and order number.

(3) For supplies and services, line-item number, subline item number (if applicable), description, quantity, and unit price or estimated cost and fee (as applicable). The corresponding line-item number and subline item number from the base contract must also be included.

(4) Delivery or performance schedule.

(5) Statement of work that clearly specifies all tasks to be performed or property supplies to be delivered under the order. Performance-based acquisition methods must be used to the maximum extent practicable, if the order is for services.

(6) Place of delivery or performance (including consignee).

(7) Any packaging, packing, and shipping instructions.

(8) Accounting and appropriation data.

(9) Method of payment and payment office, if not specified in the contract (see part 32).

(10) North American Industry Classification System code (see part 19).

(c) Orders placed under a task-order contract or delivery-order contract awarded by another agency (i.e., a Governmentwide acquisition contract, or multi-agency contract)—

(1) Are not exempt from the development of acquisition plans (see part 7), and an information technology acquisition strategy (see part 39);

(2) May not be used to circumvent conditions and limitations imposed on the use of funds (e.g., 31 U.S.C. 1501(a)(1)); and

(3) Must comply with all FAR requirements for a consolidated or bundled contract when the order meets the definition at 2.101 of "consolidation" or "bundling".

(d) In accordance with section 1427(b) of Public Law 108-136 (40 U.S.C. 1103 note), orders placed under multi-agency contracts for services that substantially or to a dominant extent specify performance of architect-engineer services, as defined in 2.101, must-

(1) Be awarded using the procedures at part 36.

(2) Require the direct supervision of a professional architect or engineer licensed, registered, or certified in the State, possession, Federal District, or outlying area in which the services are to be performed.

(e) When using the Governmentwide commercial purchase card as a method of payment, orders at or below the micro-purchase threshold are exempt from verification in the System for Award Management as to whether the contractor has a delinquent debt subject to collection under the Treasury Offset Program.

(f) If the contract did not establish the price for the supply or service, the contracting officer must establish prices for each order using the policies and methods in subpart 15.4.

(g) For additional requirements for cost-reimbursement orders, see subpart 16.3.

(h) For additional requirements for time-and-materials or labor-hour orders, see subpart 16.6.

(i) The contracting officer should rely on the small business representations at the contract level (but see part 19 for order rerepresentations).

16.507 Additional ordering procedures for multiple-award contracts.

16.507-1 Placement of orders valued at or below the micro-purchase threshold.

Each order valued at or below the micro-purchase threshold may be placed with any multiple-award contractor that can meet the agency's needs. Although not required to solicit from a specific number of contractors, ordering activities should attempt to distribute orders among multiple-award contractors.

16.507-2 Fair opportunity procedures.

(a) *Fair opportunity*.

(1) The contracting officer must provide each awardee a fair opportunity to be considered for each order or BPA valued above the micro-purchase threshold according to paragraph (c) and 16.507-3 through 16.507-5, unless a sole source order or BPA is justified and approved according to 16.507-6.

(2) The contracting officer has broad discretion to develop appropriate order placement procedures. To maximize efficiency, ordering activities are encouraged to use innovative approaches when placing orders and establishing BPAs commensurate with the risk and complexity of the requirement. To solicit orders against indefinite-quantity contracts, issue a task order solicitation (e.g., request for quotation, request for proposal, or request for task plan). Learn more about innovative approaches in the Periodic Table of Acquisition Innovations at https://acquisitiongateway.gov/periodic-table.

(3) The contracting officer should keep submission requirements to a minimum. The ordering process is not subject to the competition requirements in part 6 or the policies in subpart 15.3 or part 14. The contracting officer may use streamlined procedures, including oral presentations. The contracting officer is not required to have evaluation plans, score offeror responses, or establish a competitive range before communicating with interested parties or soliciting revised responses to the solicitation.

(b) *Task-order and delivery-order ombudsman*. The head of the agency must designate a task-order and delivery-order ombudsman. The ombudsman must review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures in the contract. The ombudsman must be a senior agency official who is independent of the contracting officer and may be the agency's advocate for competition.

(c) *Procedures*.

(1) *Requirements*. The contracting officer must-

(i) Not use any method (such as allocation or designation of any preferred awardee) that would not result in fair consideration being given to all awardees prior to placing each order;

(ii) Tailor the procedures to the risk and complexity of each acquisition;

(iii) Include the procedures in the solicitation and the contract;

(iv) Consider price or cost under each order as one of the factors in the selection decision;

(v) Except for DoD, document in the contract file a justification for use of the lowest price technically acceptable source selection process, including an explanation that the criteria at 15.101-2(c)(1)-(5) are met, when using the lowest price technically acceptable source selection process; and

(vi) Except for DoD, avoid using the lowest price technically acceptable source selection process to acquire certain supplies and services in accordance with 15.101-2(d).

(2) *Considerations*. The contracting officer should consider the following when developing the placement procedures:

(i) Past performance on earlier orders under the contract, including quality, timeliness and cost control. When past performance under the multiple-award contract is available and sufficient, it is unnecessary to consider past performance under other efforts.

(ii) Potential impact on other orders placed with the contractor.

(iii) Minimum order requirements.

(iv) The amount of time contractors need to make informed business decisions on whether to respond to potential orders.

(v) Whether contractors could be encouraged to respond to potential orders by outreach efforts to promote exchanges of information, such as—

(A) Seeking comments from two or more contractors on draft statements of work;

(B) Using a multiphase approach when effort required to respond to a potential order may be resource intensive (e.g., requirements are complex or need continued development), where all contractors are initially considered on price considerations (e.g., rough estimates), and other considerations as appropriate (e.g., proposed conceptual approach, past performance). The contractors most likely to submit the highest value solutions are then selected for one-on-one sessions with the Government to increase their understanding of the requirements, provide suggestions for refining requirements, and discuss risk reduction measures.

(3) *Blanket purchase agreements*. If authorized in the multiple-award contract according to 16.504(f)(8), the contracting officer may establish one or more blanket purchase agreements (BPAs) to fill repetitive needs for supplies or services (see 12.201-1(e)(3) and part 13). Establish BPAs using the fair opportunity procedures at 16.507-3 through 16.507-5, based on the total estimated value of the BPA. BPAs must include—

(i) Sufficient detail about the need, such as scope of work or objectives;

(ii) An ordering period, inclusive of any options or award terms;

(iii) Ordering activity requirements (e.g., invoicing, delivery, and discounts/other concessions) that are not otherwise included in the master multiple-award contract;

(iv) Ordering procedures that—

(A) Identify the customers/individuals authorized to place orders and any limitations surrounding the placement of orders;

(B) Ensure that for each order BPA recipients are provided the fair opportunity procedures in 16.507-3 through 16.507-5, based on the total estimated value of the order.

(v) If the ordering period of the BPA exceeds five years, on-ramps according to 16.504-4, unless the contracting officer documents that on-ramps are not in the best interest of the Government.

16.507-3 Orders valued above the micro purchase threshold but not above the SAT.

(a) The contracting officer must fairly consider all contractors offering the supplies or services. If information available to the contracting officer allows each contractor to be fairly considered, the contracting officer may place an order without further soliciting contractors, or by soliciting fewer than all contractors.

(b) Document the file to the extent necessary to support the award decision, such as demonstrating that each contractor was fairly considered.

16.507-4 Orders valued above the SAT but not above $7.5 million.

(a) Provide a fair notice of the intent to place an order to all contractors offering the products or services by issuing-

(1) A solicitation including a description of the work to be performed and the basis on which selection will be made; or

(2) A notice of intent to place an order that requires contractors to respond in order to receive the solicitation or be considered for the order.

(b) Document the file to the extent necessary to support the award decision, such as demonstrating that each quotation, offer, proposal, or other response to a notice was fairly considered.

16.507-5 Orders valued above $7.5 million.

(a) *Procedures***.** Provide a fair notice of the intent to place an order to all contractors offering the products or services according to 16.507-4. A fair notice must—

(1) Include a clear statement of the agency's requirements;

(2) Allow for a reasonable response period; and

(3) Disclose the significant factors and subfactors, as applicable, including cost or price, that the agency expects to consider in evaluating quotations, offers, or other responses to notices, and their relative importance;

(b) *Documentation*. Document the file to the extent necessary to support the award decision, such as demonstrating—

(1) That each quotation, offer, or other response to a notice was fairly considered; and

(2) When award is made on a best value basis, the relative importance of quality and price or cost factors.

(c) *Postaward notices and debriefings*. Provide postaward notifications and debriefings according to part 15. A summary of the debriefing must be included in the task or delivery order file.

16.507-6 Exceptions to fair opportunity.

(a) *Procedures*. Orders placed and BPAs established against multiple-award contracts are exempt from the competition requirements in part 6. However, the contracting officer must justify placing an order valued above the micro-purchase threshold (MPT) on a sole source basis in accordance with this subsection.

(b) *Exceptions*. The exceptions permitting an order or a BPA valued above the MPT to be placed on a sole source basis are:

(1) The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays.

(2) Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized.

(3) The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.

(4) It is necessary to place an order to satisfy a minimum guarantee.

(5) For orders exceeding the SAT, a statute expressly authorizes or requires that the purchase be made from a specified source.

(6) For DoD, NASA, and the Coast Guard, the order satisfies one of the exceptions permitting the use of other than full and open competition listed in part 6.103 (10 U.S.C. 3406(c)(5)). The public interest exception must not be used unless Congress is notified in accordance with 10 U.S.C. 3204(a)(7).

(c) *Small business considerations*. Part 19 and Public Law 111-240 (15 U.S.C. 644(r)) provide authority for setting aside orders and placing orders under reserves, which are not subject to the justification, approval, and posting requirements in paragraphs (d)-(f).

(d) *Justification*. The justification for an exception to fair opportunity must be in writing as specified in paragraphs (d)(1)-(3).

(1) *Orders valued above the micro-purchase threshold but not above the SAT*. The contracting officer must document the basis for using an exception to the fair opportunity process. If the contracting officer uses the logical follow-on exception, the rationale must describe why the relationship between the initial order and the follow-on is logical (e.g., in terms of scope, period of performance, or value).

(2) *Orders valued above the SAT*. As a minimum, each justification must include the following information:

(i) Identification of the agency and the contracting activity, and specific identification of the document as a "Justification for an Exception to Fair Opportunity."

(ii) Nature and/or description of the action being approved.

(iii) A description of the supplies or services required to meet the agency's needs (including the estimated value).

(iv) Identification of the exception to fair opportunity (see paragraph (b)) and the supporting rationale, including a demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the exception cited. If the contracting officer uses the logical follow-on exception, the rationale must describe why the relationship between the initial order and the follow-on is logical (e.g., in terms of scope, period of performance, or value).

(v) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.

(vi) Any other facts supporting the justification.

(vii) A statement of the actions, if any, the agency may take to remove or overcome any barriers that led to the exception to fair opportunity before any subsequent acquisition for the supplies or services is made.

(viii) The contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

(ix) Evidence that any supporting data that is the responsibility of technical or requirements personnel (e.g., verifying the Government's minimum needs or requirements or other rationale for an exception to fair opportunity) and which form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.

(x) A written determination by the approving official that one of the circumstances in paragraphs (b)(1) through (6) applies to the order.

(e) *Approval*.

(1) For proposed orders valued above the SAT, but not valued above $900,000, the ordering activity contracting officer's certification that the justification is accurate and complete to the best of the ordering activity contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures.

(2) For a proposed order valued above $900,000, but not above $20 million, the justification must be approved by the advocate for competition of the activity placing the order, or by an official named in paragraph (e)(3) or (4). This authority is not delegable.

(3) For a proposed order valued above $20 million, but not above $90 million (or, for DoD, NASA, and the Coast Guard, not above $150 million, the justification must be approved by—

(i) The head of the procuring activity placing the order;

(ii) A designee who—

(A) If a member of the armed forces, is a general or flag officer;

(B) If a civilian, is serving in a position in a grade above GS-15 under the General Schedule (or in a comparable or higher position under another schedule); or

(iii) An official named in paragraph (e)(4) of this subsection.

(4) For a proposed order valued above $90 million (or, for DoD, NASA, and the Coast Guard, above $150 million), the justification must be approved by the senior procurement executive of the agency placing the order. This authority is not delegable, except in the case of the Under Secretary of Defense for Acquisition and Sustainment, acting as the senior procurement executive for the Department of Defense.

(f) *Posting*.

(1) Except as provided in paragraph (f)(4), within 14 days after placing an order or establishing a BPA valued above the SAT on a sole source basis according to paragraph (b), the contracting officer must—

(i) Publish a notice to the GPE; and

(ii) Post the justification required by paragraph (d)(2) for a minimum of 30 days)-

(A) At the GPE https://www.sam.gov ; and

(B) On the Web site of the agency, which may provide access to the justifications by linking to the GPE.

(2) In the case of an order permitted under paragraph (b)(1), the justification must be posted within 30 days after award of the order.

(3) Contracting officers must carefully screen all justifications for contractor proprietary data and remove all such data, and such references and citations as are necessary to protect the proprietary data, before posting the justification. Contracting officers must also be guided by the exemptions to disclosure of information contained in the Freedom of Information Act (5 U.S.C. 552) and the prohibitions against disclosure in part 24 in determining whether other data should be removed. Although the submitter notice process set out in Executive Order 12600 "Predisclosure Notification Procedures for Confidential Commercial Information" does not apply, if the justification appears to contain proprietary data, the contracting officer should provide the contractor that submitted the information an opportunity to review the justification for proprietary data before posting the justification, redacted as necessary. This process must not prevent or delay posting the justification in accordance with the timeframes required in paragraphs (f)(1)-(2).

(4) The posting requirement does not apply when disclosure would compromise the national security (e.g., would result in disclosure of classified information) or create other security risks.

16.507-7 Items peculiar to one manufacturer.

(a) The contracting officer must justify restricting consideration to an item peculiar to one manufacturer (e.g., a particular brand-name, product, or a feature of a product that is peculiar to one manufacturer). A brand-name item, even if available on more than one contract, is an item peculiar to one manufacturer. Brand-name specifications must not be used unless the particular brand-name, product, or feature is essential to the Government's requirements and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency's needs.

(b) Brand-name requirements must be justified and approved when the requirement is determined, using the format(s) and requirements from 16.507-6(d)-(e)), modified to show the brand-name justification, unless—

(1) A justification covering the requirements in the order was previously approved for the contract in accordance with 6.302-1(c); or

(2) The base contract is a single-award contract.

(c) (1) For an order in excess of $40,000, the contracting officer must—

(i) Post the justification and supporting documentation on the agency website used (if any) to solicit offers for orders under the contract; or

(ii) Provide the justification and supporting documentation along with the solicitation to all contract awardees.

(2) The justification for brand-name requirements may apply to the portion of the acquisition requiring the brand-name item. If the justification is to cover only the portion of the acquisition which is brand-name, then it should so state; the approval level requirements will then only apply to that portion.

(3) The requirements in paragraph (c)(1) this subsection do not apply when disclosure would compromise the national security (e.g., would result in disclosure of classified information) or create other security risks.

(d) The justification is subject to the screening requirement in 16.507-6(f)(3).

16.508 Protests of orders.

(a) No protest under part 33 is authorized in connection with the issuance or proposed issuance of an order under a task-order contract or delivery-order contract, except—

(1) A protest on the grounds that the order increases the scope, period, or maximum value of the contract; or

(2) (i) For agencies other than DoD, NASA, and the Coast Guard, a protest of an order valued in excess of $10 million (41 U.S.C. 4106(f)); or

(ii) For DoD, NASA, or the Coast Guard, a protest of an order valued in excess of $35 million (10 U.S.C. 3406(f)).

(b) Protests of orders in excess of the thresholds stated in paragraph (a)(2) of this section may only be filed with the Government Accountability Office, in accordance with the procedures at 33.105.

(c) For protests of small business size status for set-aside orders, see part 19.

Subpart 16.6 - Time-and-Materials, Labor-Hour, and Letter Contracts

16.600 Scope.

Time-and-materials contracts and labor-hour contracts are not fixed-price contracts.

16.601 Time-and-materials contracts.

Definitions for the purposes of Time-and-Materials Contracts.

Direct materials means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

Hourly rate means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are-

(1) Performed by the contractor;

(2) Performed by the subcontractors; or

(3) Transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.

Materials means-

(1) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the contractor under a common control;

(2) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;

(3) Other direct costs (e.g., incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.); and

(4) Applicable indirect costs.

16.601-1 Description.

A time-and-materials contract provides for acquiring supplies or services on the basis of-

(a) Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and

(b) Actual cost for materials (except as provided for in part 31).

16.601-2 Application.

A time-and-materials contract may be used only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.

(a) *Government surveillance*. A time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, appropriate Government surveillance of contractor performance is required to give reasonable assurance that efficient methods and effective cost controls are being used.

(b) *Fixed hourly rates*.

(1) The contract must specify separate fixed hourly rates that include wages, overhead, general and administrative expenses, and profit for each category of labor.

(2) For acquisitions of other than commercial products or commercial services awarded without adequate price competition (see part 15), the contract must specify separate fixed hourly rates that include wages, overhead, general and administrative expenses, and profit for each category of labor to be performed by-

(i) The contractor;

(ii) Each subcontractor; and

(iii) Each division, subsidiary, or affiliate of the contractor under a common control.

(3) For contract actions that are not awarded using competitive procedures, unless exempt under paragraph (c)(2)(iv), the fixed hourly rates for services transferred between divisions, subsidiaries, or affiliates of the contractor under a common control-

(i) Must not include profit for the transferring organization; but

(ii) May include profit for the prime contractor.

(4) For contract actions that are not awarded using competitive procedures, the fixed hourly rates for services that meet the definition of “commercial service” that are transferred between divisions, subsidiaries, or affiliates of the contractor under a common control may be the established catalog or market rate when-

(i) It is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary or affiliate of the contractor under a common control; and

(ii) The contracting officer has not determined the price to be unreasonable.

(c) *Material handling costs*. When included as part of material costs, material handling costs must include only costs clearly excluded from the labor-hour rate. Material handling costs may include all appropriate indirect costs allocated to direct materials in accordance with the contractor's usual accounting procedures consistent with part 31.

16.601-3 Limitations.

A time-and-materials contract or order may be used only if-

(a) The contracting officer prepares a determination and findings that no other contract type is suitable. The determination and findings must be-

(1) Signed by the contracting officer prior to the execution of the base period or any option periods of the contracts; and

(2) Approved by the head of the contracting activity prior to the execution of the base period when the base period plus any option periods exceeds three years; and

(b) The contract or order includes a ceiling price that the contractor exceeds at its own risk. See part 12 for further limitations on use of time-and-materials or labor-hour contracts for acquisition of commercial products and commercial services.

16.601-4 Solicitation provisions.

(a) The contracting officer must insert the provision at 52.216-29, Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition With Adequate Price Competition, in solicitations contemplating use of a time-and-materials or labor-hour type of contract for the acquisition of other than commercial products or commercial services, if the price is expected to be based on adequate price competition. If authorized by agency procedures, the contracting officer may amend the provision to make mandatory one of the three approaches in paragraph (c) of the provision, and/or to require the identification of all subcontractors, divisions, subsidiaries, or affiliates included in a blended labor rate.

(b) The contracting officer must insert the provision at 52.216-30, Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition Without Adequate Price Competition, in solicitations for the acquisition of other than commercial products or commercial services contemplating use of a time-and-materials or labor-hour type of contract if the price is not expected to be based on adequate price competition.

(c) The contracting officer must insert the provision at 52.216-31, Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Acquisition, in solicitations contemplating use of a commercial time-and-materials or labor-hour contract.

16.601-5 Postaward requirements.

Prior to an increase in the ceiling price of a time-and-materials or labor-hour contract or order, the contracting officer must-

(a) Conduct an analysis of pricing and other relevant factors to determine if the action is in the best interest of the Government;

(b) Document the decision in the contract or order file; and

(c) When making a change that modifies the general scope of-

(1) A contract, follow the procedures at part 6;

(2) An order issued under the Federal Supply Schedules, follow the procedures at part 8; or

(3) An order issued under multiple award task and delivery order contracts, follow the procedures at 16.507-6.

16.602 Labor-hour contracts.

Description. A labor-hour contract is a variation of the time-and-materials contract, differing only in that materials are not supplied by the contractor. See part 12, 16.601-2, and 16.601-3 for application and limitations for time-and-materials contracts that also apply to labor-hour contracts.

16.603 Letter contracts.

16.603-1 Description.

A letter contract is a written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services.

16.603-2 Application.

(a) A letter contract may be used when (1) the Government's interests demand that the contractor be given a binding commitment so that work can start immediately and (2) negotiating a definitive contract is not possible in sufficient time to meet the requirement. However, a letter contract should be as complete and definite as feasible under the circumstances.

(b) When a letter contract award is based on price competition, the contracting officer must include an overall price ceiling in the letter contract.

(c) Each letter contract must, as required by the clause at 52.216-25, Contract Definitization, contain a negotiated definitization schedule including (1) dates for submission of the contractor's price proposal, required certified cost or pricing data and data other than certified cost or pricing data; and, if required, make-or-buy and subcontracting plans, (2) a date for the start of negotiations, and (3) a target date for definitization, which must be the earliest practicable date for definitization. The schedule will provide for definitization of the contract within 180 days after the date of the letter contract or before completion of 40 percent of the work to be performed, whichever occurs first. However, the contracting officer may, in extreme cases and according to agency procedures, authorize an additional period. If, after exhausting all reasonable efforts, the contracting officer and the contractor cannot negotiate a definitive contract because of failure to reach agreement as to price or fee, the clause at 52.216-25 requires the contractor to proceed with the work and provides that the contracting officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with subpart 15.4 and part 31, subject to appeal as provided in the Disputes clause.

(d) The maximum liability of the Government inserted in the clause at 52.216-24, Limitation of Government Liability, must be the estimated amount necessary to cover the contractor's requirements for funds before definitization. However, it must not exceed 50 percent of the estimated cost of the definitive contract unless approved in advance by the official that authorized the letter contract.

(e) The contracting officer must assign a priority rating to the letter contract if it is appropriate under part 11.

16.603-3 Limitations.

A letter contract may be used only after the head of the contracting activity or a designee determines in writing that no other contract is suitable. Letter contracts must not-

(a) Commit the Government to a definitive contract in excess of the funds available at the time the letter contract is executed;

(b) Be entered into without competition when competition is required by part 6; or

(c) Be amended to satisfy a new requirement unless that requirement is inseparable from the existing letter contract. Any such amendment is subject to the same requirements and limitations as a new letter contract.

16.603-4 Contract clauses.

(a) The contracting officer must include in each letter contract the clauses required by this regulation for the type of definitive contract contemplated and any additional clauses known to be appropriate for it.

(b) In addition, the contracting officer must insert the following clauses in solicitations and contracts when a letter contract is contemplated:

(1) The clause at 52.216-23, Execution and Commencement of Work, except that this clause may be omitted from letter contracts awarded on SF 26;

(2) The clause at 52.216-24, Limitation of Government Liability, with dollar amounts completed in a manner consistent with 16.603-2(d); and

(3) The clause at 52.216-25, Contract Definitization, with its paragraph (b) completed in a manner consistent with 16.603-2(c). If at the time of entering into the letter contract, the contracting officer knows that the definitive contract will be based on adequate price competition or will otherwise meet the criteria of part 15 for not requiring submission of certified cost or pricing data, the words "and certified cost or pricing data in accordance with FAR 15.408, Table 15-1 supporting its proposal" may be deleted from

paragraph (a) of the clause. If the letter contract is being awarded on the basis of price competition, the contracting officer must use the clause with its *Alternate I*.

(c) The contracting officer must also insert the clause at 52.216-26, Payments of Allowable Costs Before Definitization, in solicitations and contracts if a cost-reimbursement definitive contract is contemplated, unless the acquisition involves conversion, alteration, or repair of ships.

Subpart 16.7 - Agreements

16.701 Scope.

This subpart prescribes policies and procedures for establishing and using basic agreements and basic ordering agreements. (See part 12 for additional coverage of BPAs and see part 35 for additional coverage of basic agreements with educational institutions and nonprofit organizations.)

16.702 Basic agreements.

16.702-1 Description.

(a) A basic agreement is a written instrument of understanding, negotiated between an agency or contracting activity and a contractor, that-

(1) Contains contract clauses applying to future contracts between the parties during its term; and

(2) Contemplates separate future contracts that will incorporate by reference or attachment the required and applicable clauses agreed upon in the basic agreement.

(b) A basic agreement is not a contract.

16.702-2 Application.

A basic agreement should be used when a substantial number of separate contracts may be awarded to a contractor during a particular period and significant recurring negotiating problems have been experienced with the contractor. Basic agreements may be used with negotiated fixed-price or cost-reimbursement contracts.

(a) Basic agreements must contain-

(1) Clauses required for negotiated contracts by statute, executive order, and this regulation; and

(2) Other clauses prescribed in this regulation or agency acquisition regulations that the parties agree to include in each contract as applicable.

(b) Each basic agreement must provide for discontinuing its future applicability upon 30 days' written notice by either party.

(c) Each basic agreement must be reviewed annually before the anniversary of its effective date and revised as necessary to conform to the requirements of this regulation. Basic agreements may need to be revised due to mandatory statutory requirements. A basic agreement may be changed only by modifying the agreement itself and not by a contract incorporating the agreement.

(d) Discontinuing or modifying a basic agreement must not affect any prior contract incorporating the basic agreement.

(e) Contracting officers of one agency should obtain and use existing basic agreements of another agency to the maximum practical extent.

16.702-3 Limitations.

(a) A basic agreement must not-

(1) Cite appropriations or obligate funds;

(2) State or imply any agreement by the Government to place future contracts or orders with the contractor; or

(3) Be used in any manner to restrict competition.

(b) *Contracts incorporating basic agreements*.

(1) Each contract incorporating a basic agreement must include a scope of work and price, delivery, and other appropriate terms that apply to the particular contract. The basic agreement must be incorporated into the contract by specific reference (including reference to each amendment) or by attachment.

(2) The contracting officer must include clauses pertaining to subjects not covered by the basic agreement, but applicable to the contract being negotiated, in the same manner as if there were no basic agreement.

(3) When new work is added to an existing contract, the modification must incorporate the most recent basic agreement. These terms will apply only to work added by the modification. This is not required if the contract or modification already includes all

clauses required by statute, executive order, and this regulation as of the date of the modification. If it is in the Government's interest and the contractor agrees, the modification may incorporate the most recent basic agreement for application to the entire contract as of the date of the modification.

16.703 Basic ordering agreements.

16.703-1 Description.

(a) A basic ordering agreement is a written instrument of understanding, negotiated between an agency, contracting activity, or contracting office and a contractor, that contains-

(1) Terms and clauses applying to future contracts (orders) between the parties during its term;

(2) A description, as specific as practicable, of supplies or services to be provided, and

(3) Methods for pricing, issuing, and delivering future orders under the basic ordering agreement.

(b) A basic ordering agreement is not a contract.

16.703-2 Application.

A basic ordering agreement is used to expedite contracting for supplies or services when specific items, quantities, and prices are uncertain at the time the agreement is executed, but a substantial number of requirements for the type of supplies or services covered by the agreement are anticipated to be purchased from the contractor. These procedures, when applied appropriately, can result in benefits and cost savings by reducing administrative lead-time, inventory investment, and inventory obsolescence due to design changes.

16.703-3 Limitations.

(a) A basic ordering agreement must not state or imply any agreement by the Government to place future contracts or orders with the contractor or be used in any manner to restrict competition.

(b) Each basic ordering agreement must-

(1) Describe the method for determining prices to be paid to the contractor for the supplies or services;

(2) Include delivery terms and conditions or specify how they will be determined;

(3) List one or more Government activities authorized to issue orders under the agreement;

(4) Specify the point at which each order becomes a binding contract (e.g., issuance of the order, acceptance of the order in a specified manner, or failure to reject the order within a specified number of days);

(5) Provide that failure to reach agreement on price for any order issued before its price is established (see paragraph (d)(3) of this subsection) is a dispute under the Disputes clause included in the basic ordering agreement; and

(6) If fast payment procedures will apply to orders, include the special data required at part 32.

(c) Basic ordering agreements may need to be revised due to mandatory statutory requirements. A basic ordering agreement must be changed only by modifying the agreement itself and not by individual orders issued under it. Modifying a basic ordering agreement must not retroactively affect orders previously issued under it.

(d) A contracting officer representing any Government activity listed in a basic ordering agreement may issue orders for required supplies or services covered by that agreement.

(1) Before issuing an order under a basic ordering agreement, the contracting officer must-

(i) Obtain competition in accordance with part 6;

(ii) If the order is being placed after competition, ensure that use of the basic ordering agreement is not prejudicial to other offerors; and

(iii) Sign or obtain any applicable justifications and approvals, and any determination and findings, and comply with other requirements in accordance with part 1, as if the order were a contract awarded independently of a basic ordering agreement.

(2) Contracting officers must-

(i) Issue orders under basic ordering agreements on Optional Form (OF) 347, Order for Supplies or Services, or on any other appropriate contractual instrument;

(ii) Incorporate by reference the provisions of the basic ordering agreement;

(iii) If applicable, cite the authority under part 6 in each order; and

(iv) Comply with part 5's publicizing and response time requirements when part 5 also requires a synopsis.

(3) The contracting officer must neither make any final commitment nor authorize the contractor to begin work on an order under a basic ordering agreement until prices have been established, unless the order establishes a ceiling price limiting the Government's obligation and either-

(i) The basic ordering agreement provides adequate procedures for timely pricing of the order early in its performance period; or

(ii) The need for the supplies or services is compelling and unusually urgent (i.e., when the Government would be seriously injured, financially or otherwise, if the requirement is not met sooner than would be possible if prices were established before the work began). The contracting officer must proceed with pricing as soon as practical. An entire order must never be priced retroactively.

Part 52 - Solicitation Provisions and Contract Clauses

52.216 [Reserved]

52.216-1 Type of Contract.

As prescribed in 16.104, complete and insert the following provision:

TYPE OF CONTRACT (DEVIATION DEC 2025)

The Government contemplates award of a _____________ *[Contracting Officer insert specific type of contract]* contract resulting from this solicitation.

(End of provision)

Alternate I (DEVIATION DEC 2025). As prescribed in 16.104, Include the following as paragraph (a) of the basic provision:

Offerors may propose an alternative contract type.

52.216-2 Economic Price Adjustment-Standard Supplies.

As prescribed in 16.203-4(a), insert the following clause:

ECONOMIC PRICE ADJUSTMENT-STANDARD SUPPLIES (NOV 2021)

(a) The Contractor warrants that the unit price stated in the Schedule for ____________ [*offeror insert Schedule line item number*] is not in excess of the Contractor's applicable established price in effect on the contract date for like quantities of the same item. The term "unit price" excludes any part of the price directly resulting from requirements for preservation, packaging, or packing beyond standard commercial practice. The term "established price" means a price that-

(1) Is an established catalog or market price for a commercial product sold in substantial quantities to the general public; and

(2) Is the net price after applying any standard trade discounts offered by the Contractor.

(b) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any applicable established price. Each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased. The decrease shall apply to those items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly.

(c) If the Contractor's applicable established price is increased after the contract date, the corresponding contract unit price shall be increased, upon the Contractor's written request to the Contracting Officer, by the same percentage that the established price is increased, and the contract shall be modified accordingly, subject to the following limitations:

(1) The aggregate of the increases in any contract unit price under this clause shall not exceed 10 percent of the original contract unit price.

(2) The increased contract unit price shall be effective-

(i) On the effective date of the increase in the applicable established price if the Contracting Officer receives the Contractor's written request within 10 days thereafter; or

(ii) If the written request is received later, on the date the Contracting Officer receives the request.

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price,

unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause.

(4) No modification increasing a contract unit price shall be executed under this paragraph (c) until the Contracting Officer verifies the increase in the applicable established price.

(5) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase.

(d) During the time allowed for the cancellation provided for in paragraph (c)(5) of this clause, and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the contract delivery schedule, and the Government shall pay for such deliveries at the contract unit price, increased to the extent provided by paragraph (c) of this clause.

(End of clause)

52.216-3 Economic Price Adjustment-Semistandard Supplies.

As prescribed in 16.203-4(b), insert the following clause:

ECONOMIC PRICE ADJUSTMENT-SEMISTANDARD SUPPLIES (NOV 2021)

(a) The Contractor warrants that the supplies identified as line items ____________ [*offeror insert Schedule line item number*] in the Schedule are, except for modifications required by the contract specifications, supplies for which it has an established price. The term "established price" means a price that (1)is an established catalog or market price for a commercial product sold in substantial quantities to the general public, and (2)is the net price after applying any standard trade discounts offered by the Contractor. The Contractor further warrants that, as of the date of this contract, any difference between the unit prices stated in the contract for these line items and the Contractor's established prices for like quantities of the nearest commercial equivalents are due to compliance with contract specifications and with any contract requirements for preservation, packaging, and packing beyond standard commercial practice.

(b) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any applicable established price. Each corresponding contract unit price (exclusive of any part of the unit price that reflects modifications resulting from compliance with specifications or with requirements for preservation, packaging, and packing beyond standard commercial practice) shall be decreased by the same percentage that the established price is decreased. The decrease shall apply to those items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly.

(c) If the Contractor's applicable established price is increased after the contract date, the corresponding contract unit price (exclusive of any part of the unit price resulting from compliance with specifications or with requirements for preservation, packaging, and packing beyond standard commercial practice) shall be increased, upon the Contractor's written request to the Contracting Officer, by the same percentage that the established price is increased, and the contract shall be modified accordingly, subject to the following limitations:

(1) The aggregate of the increases in any contract unit price under this clause shall not exceed 10 percent of the original contract unit price.

(2) The increased contract unit price shall be effective-

(i) On the effective date of the increase in the applicable established price if the Contracting Officer receives the Contractor's written request within 10 days thereafter; or

(ii) If the written request is received later, on the date the Contracting Officer receives the request.

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause.

(4) No modification increasing a contract unit price shall be executed under this paragraph (c) until the Contracting Officer verifies the increase in the applicable established price.

(5) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase.

(d) During the time allowed for the cancellation provided for in paragraph (c)(5) of this clause, and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the contract delivery schedule, and the Government shall pay for such deliveries at the contract unit price, increased to the extent provided by paragraph (c) of this clause.

(End of clause)

52.216-4 Economic Price Adjustment-Labor and Material.

As prescribed in 16.203-4(c), insert the following clause:

ECONOMIC PRICE ADJUSTMENT-LABOR AND MATERIAL (JAN 2017)

(a) The Contractor shall notify the Contracting Officer if, at any time during contract performance, the rate of pay for labor (including fringe benefits) or the unit prices for material shown in the Schedule either increase or decrease. The Contractor shall furnish this notice within 60 days after the increase or decrease, or within any additional period that the Contracting Officer may approve in writing, but not later than the date of final payment under this contract. The notice shall include the Contractor's proposal for an adjustment in the contract unit prices to be negotiated under paragraph (b) of this clause, and shall include, in the form required by the Contracting Officer, supporting data explaining the cause, effective date, and amount of the increase or decrease and the amount of the Contractor's adjustment proposal.

(b) Promptly after the Contracting Officer receives the notice and data under paragraph (a) of this clause, the Contracting Officer and the Contractor shall negotiate a price adjustment in the contract unit prices and its effective date. However, the Contracting Officer may postpone the negotiations until an accumulation of increases and decreases in the labor rates (including fringe benefits) and unit prices of material shown in the Schedule results in an adjustment allowable under paragraph (c)(3) of this clause. The Contracting Officer shall modify this contract (1)to include the price adjustment and its effective date and (2)to revise the labor rates (including fringe benefits) or unit prices of material as shown in the Schedule to reflect the increases or decreases resulting from the adjustment. The Contractor shall continue performance pending agreement on, or determination of, any adjustment and its effective date.

(c) Any price adjustment under this clause is subject to the following limitations:

(1) Any adjustment shall be limited to the effect on unit prices of the increases or decreases in the rates of pay for labor (including fringe benefits) or unit prices for material shown in the Schedule. There shall be no adjustment for-

(i) Supplies or services for which the production cost is not affected by such changes;

(ii) Changes in rates or unit prices other than those shown in the Schedule; or

(iii) Changes in the quantities of labor or material used from those shown in the Schedule for each item.

(2) No upward adjustment shall apply to supplies or services that are required to be delivered or performed before the effective date of the adjustment, unless the Contractor's failure to deliver or perform according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of the Default clause.

(3) There shall be no adjustment for any change in rates of pay for labor (including fringe benefits) or unit prices for material which would not result in a net change of at least 3 percent of the then-current total contract price. This limitation shall not apply, however, if, after final delivery of all line items, either party requests an adjustment under paragraph (b) of this clause.

(4) The aggregate of the increases in any contract unit price made under this clause shall not exceed 10 percent of the original unit price. There is no percentage limitation on the amount of decreases that may be made under this clause.

(d) The Contracting Officer may examine the Contractor's books, records, and other supporting data relevant to the cost of labor (including fringe benefits) and material during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified in subpart 4.7 of the Federal Acquisition Regulation (FAR), whichever is earlier.

(End of clause)

52.216-5 Price Redetermination-Prospective.

As prescribed in 16.205-4 , insert the following clause:

PRICE REDETERMINATION-PROSPECTIVE (JAN 2022)

(a) *General*. The unit prices and the total price stated in this contract shall be periodically redetermined in accordance with this clause, except that-

(1) The prices for supplies delivered and services performed before the first effective date of price redetermination (see paragraph (c) of this clause) shall remain fixed; and

(2) In no event shall the total amount paid under this contract exceed any ceiling price included in the contract.

(b) *Definition*. "Costs," as used in this clause, means allowable costs in accordance with part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) *Price redetermination periods*. For the purpose of price redetermination, performance of this contract is divided into successive periods. The first period shall extend from the date of the contract to ________, (see Note(1)) and the second and each succeeding period shall extend for ________ *[insert appropriate number]* months from the end of the last preceding period, except that the parties may agree to vary the length of the final period. The first day of the second and each succeeding period shall be the effective date of price redetermination for that period.

(d) Data submission.

(1) Not more than _______ nor less than ______ (see Note (2)) days before the end of each redetermination period, except the last, the Contractor shall submit-

(i) Proposed prices for supplies that may be delivered or services that may be performed in the next succeeding period, and-

(A) An estimate and breakdown of the costs of these supplies or services in the format of Table 15-1, FAR 15.408, or in any other form on which the parties may agree;

(B) Sufficient data to support the accuracy and reliability of this estimate; and

(C) An explanation of the differences between this estimate and the original (or last preceding) estimate for the same supplies or services; and

(ii) A statement of all costs incurred in performing this contract through the end of the _______________ month (see Note (3)) before the submission of proposed prices in the format of Table 15-1, FAR 15.408 (or in any other form on which the parties may agree), with sufficient supporting data to disclose unit costs and cost trends for-

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

(2) The Contractor shall also submit, to the extent that it becomes available before negotiations on redetermined prices are concluded-

(i) Supplemental statements of costs incurred after the date stated in subdivision (d)(1)(ii) of this section for-

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); and

(ii) Any other relevant data that the Contracting Officer may reasonably require.

(3) If the Contractor fails to submit the data required by paragraphs (d)(1) and (2) of this section, within the time specified, the Contracting Officer may suspend payments under this contract until the data are furnished. If it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(e) *Price redetermination*. Upon the Contracting Officer's receipt of the data required by paragraph (d) of this section, the Contracting Officer and the Contractor shall promptly negotiate to redetermine fair and reasonable prices for supplies that may be delivered or services that may be performed in the period following the effective date of price redetermination.

(f) *Contract modifications*. Each negotiated redetermination of prices shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer, stating the redetermined prices that apply during the redetermination period.

(g) *Adjusting billing prices*. Pending execution of the contract modification (see paragraph (f) of this section), the Contractor shall submit invoices or vouchers in accordance with the billing prices stated in this contract. If at any time it appears that the then-current billing prices will be substantially greater than the estimated final prices, or if the Contractor submits data showing that the redetermined price will be substantially greater than the current billing prices, the parties shall negotiate an appropriate decrease or increase in billing prices. Any billing price adjustment shall be reflected in a contract modification and shall not affect the redetermination of prices under this clause. After the contract modification for price redetermination is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed-upon prices, and any requested additional payments, refunds, or credits shall be made promptly.

(h) *Quarterly limitation on payments statement*. This paragraph (h) applies only during periods for which firm prices have not been established.

(1) Within 45 days after the end of the quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing-

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (h)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) The statement required by paragraph (h)(1) of this section need not be submitted for any quarter for which either no costs are to be reported under subdivision (h)(1)(ii) of this section, or revised billing prices have been established in accordance with paragraph (g) of this section, and do not exceed the existing contract price, the Contractor's price-redetermination proposal, or a price based on the most recent quarterly statement, whichever is least.

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (h)(1)(iv) of this section exceeds the sum due the Contractor, as computed in accordance with subdivisions (h)(1)(i), (ii), and (iii) of this section, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of previous refunds or credits affected under this clause. If any portion of the

excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account, consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions in refunds.

(4) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(i) *Subcontracts*. No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost- basis.

(j) *Disagreements*. If the Contractor and the Contracting Officer fail to agree upon redetermined prices for any price redetermination period within 60 days (or within such other period as the parties agree) after the date on which the data required by paragraph (d) of this section are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause. For the purpose of paragraphs (f), (g), and (h) of this section, and pending final settlement of the disagreement on appeal, by failure to appeal, or by agreement, this decision shall be treated as an executed contract modification. Pending final settlement, price redetermination for subsequent periods, if any, shall continue to be negotiated as provided in this clause.

(k) *Termination*. If this contract is terminated, prices shall continue to be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies and services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

Notes:

(1) Express in terms of units delivered, or as a date; but in either case the period should end on the last day of a month.

(2) Insert the number of days chosen so that the Contractor's submission will be late enough to reflect recent cost experience (taking into account the Contractor's accounting system), but early enough to permit review, audit (if necessary), and negotiation before the start of the prospective period.

(3) Insert "first," except that "second" may be inserted if necessary to achieve compatibility with the Contractor's accounting system.

(End of clause)

52.216-6 Price Redetermination-Retroactive.

As prescribed in 16.206-4 , insert the following clause:

PRICE REDETERMINATION-RETROACTIVE (JAN 2022)

(a) *General*. The unit price and the total price stated in this contract shall be redetermined in accordance with this clause, but in no event shall the total amount paid under this contract exceed __________ *[insert dollar amount of ceiling price]*.

(b) *Definition*. "Costs," as used in this clause, means allowable costs in accordance with part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) Data submission.

(1) Within______ *[Contracting Officer insert number of days]* days after delivery of all supplies to be delivered and completion of all services to be performed under this contract, the Contractor shall submit-

(i) Proposed prices;

(ii) A statement in the format of Table 15-1, FAR 15.408, or in any other form on which the parties may agree, of all costs incurred in performing the contract; and

(iii) Any other relevant data that the Contracting Officer may reasonably require.

(2) If the Contractor fails to submit the data required by paragraph (c)(1) of this section within the time specified, the Contracting Officer may suspend payments under this contract until the data are furnished. If it is later determined that the Government has overpaid the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) *Price determination*. Upon the Contracting Officer's receipt of the data required by paragraph (c) of this section, the Contracting Officer and the Contractor shall promptly negotiate to redetermine fair and reasonable prices for supplies delivered and services performed by the Contractor under this contract.

(e) *Contract modification*. The negotiated redetermination of price shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer.

(f) *Adjusting billing prices*. Pending execution of the contract modification (see paragraph (e) of this section), the Contractor shall submit invoices or vouchers in accordance with billing prices stated in this contract. If at any time it appears that the then-current billing prices will be substantially greater than the estimated final prices, or if the Contractor submits data showing that the redetermined prices will be substantially greater than the current billing prices, the parties shall negotiate an appropriate decrease or increase in billing prices. Any billing price adjustment shall be reflected in a contract modification and shall not affect the redetermination of prices under this clause. After the contract modification for price redetermination is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed-upon prices, and any resulting additional payments, refunds, or credits shall be made promptly.

(g) *Quarterly limitation on payments statement*. This paragraph (g) shall apply until final price redetermination under this contract has been completed.

(1) Within 45 days after the end of the quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor), a statement, cumulative from the beginning of the contract, showing-

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (g)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (g)(1)(iv) of this section exceeds the sum due the Contractor, as computed in accordance with subdivisions (g)(1)(i), (ii), and (iii) of this section, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account, consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reduction in refunds.

(3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(h) *Subcontracts*. No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

(i) *Disagreements*. If the Contractor and the Contracting Officer fail to agree upon redetermined prices within 60 days (or within such other period as the parties agree) after the date on which the data required by paragraph (c) of this section are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause. For the purpose of paragraphs (e), (f), and (g) of this section, and pending final settlement of the disagreement on appeal, by failure to appeal, or by agreement, this decision shall be treated as an executed contract modification.

(j) *Termination*. If this contract is terminated before price redetermination, prices shall be established in accordance with this clause for completed supplies and services not terminated. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(End of clause)

52.216-7 Allowable Cost and Payment.

As prescribed in 16.305(a), insert the following clause:

ALLOWABLE COST AND PAYMENT (DEVIATION DEC 2025)

(a) Invoicing.

(1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) subpart 31.2 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(2) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.232-25.

(3) The designated payment office will make interim payments for contract financing on the _________ *[Contracting Officer insert day as prescribed by agency head; if not prescribed, insert "30th"]* day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(b) Reimbursing costs.

(1) For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only—

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for-

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made–

(*1*) In accordance with the terms and conditions of a subcontract or invoice; and

(*2*) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

(B) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

(F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to subcontractors.

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless-

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's indirect costs for payment purposes).

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.

(c) *Small business concerns*. A small business concern may receive more frequent payments than every 2 weeks.

(d) Final indirect cost rates.

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2) (i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(iii) An adequate indirect cost rate proposal shall include the following data unless otherwise specified by the cognizant Federal agency official:

(A) Summary of all claimed indirect expense rates, including pool, base, and calculated indirect rate.

(B) *General and Administrative expenses (final indirect cost pool)*. Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts).

(C) *Overhead expenses (final indirect cost pool)*. Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) for each final indirect cost pool.

(D) *Occupancy expenses (intermediate indirect cost pool)*. Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) and expense reallocation to final indirect cost pools.

(E) Claimed allocation bases, by element of cost, used to distribute indirect costs.

(F) Facilities capital cost of money factors computation.

(G) Reconciliation of books of account (*i.e.*, General Ledger) and claimed direct costs by major cost element.

(H) Schedule of direct costs by contract and subcontract and indirect expense applied at claimed rates, as well as a subsidiary schedule of Government participation percentages in each of the allocation base amounts.

(I) Schedule of cumulative direct and indirect costs claimed and billed by contract and subcontract.

(J) *Subcontract information*. Listing of subcontracts awarded to companies for which the contractor is the prime or upper-tier contractor (include prime and subcontract numbers; subcontract value and award type; amount claimed during the fiscal year; and the subcontractor name, address, and point of contact information).

(K) Summary of each time-and-materials and labor-hour contract information, including labor categories, labor rates, hours, and amounts; direct materials; other direct costs; and, indirect expense applied at claimed rates.

(L) Reconciliation of total payroll per IRS form 941 to total labor costs distribution.

(M) Listing of decisions/agreements/approvals and description of accounting/organizational changes.

(N) Certificate of final indirect costs (see 52.242-4, Certification of Final Indirect Costs).

(O) Contract closing information for contracts physically completed in this fiscal year (include contract number, period of performance, contract ceiling amounts, contract fee computations, level of effort, and indicate if the contract is ready to close).

(iv) The following supplemental information is not required to determine if a proposal is adequate, but may be required during the audit process:

(A) Comparative analysis of indirect expense pools detailed by account to prior fiscal year and budgetary data.

(B) General organizational information and limitation on allowability of compensation for certain contractor personnel. See 31.205-6(p). Additional salary reference information is available at https://www.whitehouse.gov/wp-content/uploads/2017/11/ContractorCompensationCapContractsAwardedBeforeJune24.pdf and https://www.whitehouse.gov/wp-content/uploads/2017/11/ContractorCompensationCapContractsAwardedafterJune24.pdf.

(C) Identification of prime contracts under which the contractor performs as a subcontractor.

(D) Description of accounting system (excludes contractors required to submit a CAS Disclosure Statement or contractors where the description of the accounting system has not changed from the previous year's submission).

(E) Procedures for identifying and excluding unallowable costs from the costs claimed and billed (excludes contractors where the procedures have not changed from the previous year's submission).

(F) Certified financial statements and other financial data (*e.g.*, trial balance, compilation, review, *etc.*).

(G) Management letter from outside CPAs concerning any internal control weaknesses.

(H) Actions that have been and/or will be implemented to correct the weaknesses described in the management letter from subparagraph (G) of this section.

(I) List of all internal audit reports issued since the last disclosure of internal audit reports to the Government.

(J) Annual internal audit plan of scheduled audits to be performed in the fiscal year when the final indirect cost rate submission is made.

(K) Federal and State income tax returns.

(L) Securities and Exchange Commission 10-K annual report.

(M) Minutes from board of directors meetings.

(N) Listing of delay claims and termination claims submitted which contain costs relating to the subject fiscal year.

(O) Contract briefings, which generally include a synopsis of all pertinent contract provisions, such as: contract type, contract amount, product or service(s) to be provided, contract performance period, rate ceilings, advance approval requirements, pre-contract cost allowability limitations, and billing limitations.

(v) The Contractor shall update the billings on all contracts to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (d)(2)(iii)(I) of this section, within 60 days after settlement of final indirect cost rates.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically

complete contract, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates. The completion invoice or voucher shall include settled subcontract amounts and rates. The prime contractor is responsible for settling subcontractor amounts and rates included in the completion invoice or voucher and providing status of subcontractor audits to the contracting officer upon request.

(6) (i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may-

(A) Determine the amounts due to the Contractor under the contract; and

(B) Record this determination in a unilateral modification to the contract.

(ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.

(e) *Billing rates*. Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates-

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) *Quick-closeout procedures*. Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(g) *Audit*. At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be-

(1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or

(2) Adjusted for prior overpayments or underpayments.

(h) Final payment.

(1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(5) of this clause, and upon the Contractor's compliance

with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver-

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except-

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

(End of clause)

Alternate I (FEB 1997). As prescribed in 16.307(a)(2), substitute the following paragraph (b)(1)(iii) for paragraph (b)(1)(iii) of the basic clause:

(iii) The amount of progress and other payments to the Contractor's subcontractors that either have been paid, or that the Contractor is required to pay pursuant to the clause of this contract entitled "Prompt Payment for Construction Contracts." Payments shall be made by cash, check, or other form of payment to the Contractor's subcontractors under similar cost standards.

Alternate II (AUG 2012). As prescribed in 16.307(a)(3), substitute the following paragraph (a)(1) for paragraph (a)(1) of the basic clause:

(a) (1) The Government will make payments to the Contractor when requested as work progresses, but not more often than once every two weeks, in amounts determined to be allowable by the Contracting Officer in accordance with subpart 31.3 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

Alternate III (AUG 2012). As prescribed in 16.307(a)(4), substitute the following paragraph (a)(1) for paragraph (a)(1) of the basic clause:

(a) (1) The Government will make payments to the Contractor when requested as work progresses, but not more often than once every two weeks, in amounts determined to be allowable by the Contracting Officer in accordance with subpart 31.6 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

Alternate IV (AUG 2012). As prescribed in 16.307(a)(5), substitute the following paragraph (a)(1) for paragraph (a)(1) of the basic clause:

(a) (1) The Government will make payments to the Contractor when requested as work progresses, but not more often than once every two weeks, in amounts determined to be allowable by the Contracting Officer in accordance with subpart 31.7 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

52.216-8 Fixed Fee.

As prescribed in 16.307(b), insert the following clause:

FIXED FEE (JUN 2011)

(a) The Government shall pay the Contractor for performing this contract the fixed fee specified in the Schedule.

(b) Payment of the fixed fee shall be made as specified in the Schedule; provided that the Contracting Officer withholds a reserve not to exceed 15 percent of the total fixed fee or $100,000, whichever is less, to protect the Government's interest. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of an adequate certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

(End of clause)

52.216-9 Fixed Fee-Construction.

As prescribed in 16.307(c), insert the following clause:

FIXED FEE-CONSTRUCTION (JUN 2011)

(a) The Government shall pay to the Contractor for performing this contract the fixed fee specified in the Schedule.

(b) Payment of the fixed fee shall be made in installments based upon the percentage of completion of the work as determined from estimates submitted to and approved by the Contracting Officer, but subject to the withholding provisions of paragraph (c) of this section.

(c) The Contracting Officer shall withhold a reserve not to exceed 15 percent of the total fixed fee or $100,000, whichever is less, to protect the Government's interest. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of an adequate certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

(End of clause)

52.216-10 Incentive Fee.

As prescribed in 16.307(d), insert the following clause:

INCENTIVE FEE (JUN 2011)

(a) *General*. The Government shall pay the Contractor for performing this contract a fee determined as provided in this contract.

(b) *Target cost and target fee*. The target cost and target fee specified in the Schedule are subject to adjustment if the contract is modified in accordance with paragraph (d) of this clause.

(1) "Target cost," as used in this contract, means the estimated cost of this contract as initially negotiated, adjusted in accordance with paragraph (d) of this clause.

(2) "Target fee," as used in this contract, means the fee initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph (d) of this clause.

(c) Withholding of payment.

(1) Normally, the Government shall pay the fee to the Contractor as specified in the Schedule. However, when the Contracting Officer considers that performance or cost indicates that the Contractor will not achieve target, the Government shall pay on the basis of an appropriate lesser fee. When the Contractor demonstrates that performance or cost clearly indicates that the Contractor will earn a fee significantly above the target fee, the Government may, at the sole discretion of the Contracting Officer, pay on the basis of an appropriate higher fee.

(2) Payment of the incentive fee shall be made as specified in the Schedule; provided that the Contracting Officer withholds a reserve not to exceed 15 percent of the total incentive fee or $100,000, whichever is less, to protect the Government's interest. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of an adequate certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other

contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

(d) *Equitable adjustments*. When the work under this contract is increased or decreased by a modification to this contract or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, shall be stated in a supplemental agreement to this contract.

(e) Fee payable.

(1) The fee payable under this contract shall be the target fee increased by _____ *[Contracting Officer insert Contractor's participation]* cents for every dollar that the total allowable cost is less than the target cost or decreased by ______ *[Contracting Officer insert Contractor's participation]* cents for every dollar that the total allowable cost exceeds the target cost. In no event shall the fee be greater than ____________ *[Contracting Officer insert percentage]* percent or less than _________________ *[Contracting Officer insert percentage]* percent of the target cost.

(2) The fee shall be subject to adjustment, to the extent provided in paragraph (d) of this clause, and within the minimum and maximum fee limitations in paragraph (e)(1) of this clause, when the total allowable cost is increased or decreased as a consequence of-

(i) Payments made under assignments; or

(ii) Claims excepted from the release as required by paragraph (h)(2) of the Allowable Cost and Payment clause.

(3) If this contract is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The termination shall be accomplished in accordance with other applicable clauses of this contract.

(4) For the purpose of fee adjustment, "total allowable cost" shall not include allowable costs arising out of-

(i) Any of the causes covered by the Excusable Delays clause to the extent that they are beyond the control and without the fault or negligence of the Contractor or any subcontractor;

(ii) The taking effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the Contractor's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;

(iii) Any direct cost attributed to the Contractor's involvement in litigation as required by the Contracting Officer pursuant to a clause of this contract, including furnishing evidence and information requested pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;

(iv) The purchase and maintenance of additional insurance not in the target cost and required by the Contracting Officer, or claims for reimbursement for liabilities to third persons pursuant to the Insurance Liability to Third Persons clause;

(v) Any claim, loss, or damage resulting from a risk for which the Contractor has been relieved of liability by the Government Property clause; or

(vi) Any claim, loss, or damage resulting from a risk defined in the contract as unusually hazardous or as a nuclear risk and against which the Government has expressly agreed to indemnify the Contractor.

(5) All other allowable costs are included in "total allowable cost" for fee adjustment in accordance with this paragraph (e), unless otherwise specifically provided in this contract.

(f) *Contract modification*. The total allowable cost and the adjusted fee determined as provided in this clause shall be evidenced by a modification to this contract signed by the Contractor and Contracting Officer.

(g) *Inconsistencies*. In the event of any language inconsistencies between this clause and provisioning documents or Government options under this contract, compensation for spare parts or other supplies and services ordered under such documents shall be determined in accordance with this clause.

(End of clause)

52.216-11 Cost Contract-No Fee.

As prescribed in 16.307(e), insert the clause in solicitations and contracts when a cost-reimbursement contract is contemplated that provides no fee and is not a cost-sharing contract.

This clause may be modified by substituting "$10,000" in lieu of "$100,000" as the maximum reserve in paragraph (b) if the Contractor is a nonprofit organization.

COST CONTRACT-NO FEE (APR 1984)

(a) The Government shall not pay the Contractor a fee for performing this contract.

(b) After payment of 80 percent of the total estimated cost shown in the Schedule, the Contracting Officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government’s interest. This reserve shall not exceed onepercent of the total estimated cost shown in the Schedule or $100,000, whichever is less.

(End of clause)

Alternate I (APR 1984). In a contract for research and development with an educational institution or a nonprofit organization, for which the Contracting Officer has determined that withholding of a portion of allowable costs is not required, delete paragraph (b) of the basic clause.

52.216-12 Cost-Sharing Contract-No Fee.

As prescribed in 16.307(f), insert the following clause in solicitations and contracts when a cost-sharing contract is contemplated. This clause may be modified by substituting "$10,000" in lieu of "$100,000" as the maximum reserve in paragraph (b) if the contract is with a nonprofit organization.

COST SHARING CONTRACT-NO FEE (APR 1984)

(a) The Government shall not pay to the Contractor a fee for performing this contract.

(b) After paying 80 percent of the Government’s share of the total estimated cost of performance shown in the Schedule, the Contracting Officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government’s interest. This reserve shall not exceed onepercent of the Government’s share of the total estimated cost shown in the Schedule or $100,000, whichever is less.

(End of clause)

Alternate I (APR 1984). In a contract for research and development with an educational institution, for which the contracting officer has determined that withholding of a portion of allowable cost is not required, delete paragraph (b) of the basic clause.

52.216-13 [Reserved]

52.216-14 [Reserved]

52.216-15 Predetermined Indirect Cost Rates.

As prescribed in 16.307(g), insert the following clause:

PREDETERMINED INDIRECT COST RATES (APR 1998)

(a) Notwithstanding the Allowable Cost and Payment clause of this contract, the allowable indirect costs under this contract shall be obtained by applying predetermined indirect cost rates to bases agreed upon by the parties, as specified below.

(b) (1) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(2) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with FAR subpart 31.3 in effect on the date of this contract.

(d) Predetermined rate agreements in effect on the date of this contract shall be incorporated into the contract Schedule. The Contracting Officer (or cognizant Federal agency official) and Contractor shall negotiate rates for subsequent periods and execute a written indirect cost rate agreement setting forth the results. The agreement shall specify (1) the agreed-upon predetermined indirect cost rates, (2) the bases to which the rates apply, (3) the period for which the rates apply, and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs. The indirect cost rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The agreement is incorporated into this contract upon execution.

(e) Pending establishment of predetermined indirect cost rates for any fiscal year (or other period agreed to by the parties), the Contractor shall be reimbursed either at the rates fixed for the previous fiscal year (or other period) or at billing rates acceptable to the Contracting Officer (or cognizant Federal agency official), subject to appropriate adjustment when the final rates for that period are established.

(f) Any failure by the parties to agree on any predetermined indirect cost rates under this clause shall not be considered a dispute within the meaning of the Disputes clause. If for any fiscal year (or other period specified in the Schedule) the parties fail to agree to predetermined indirect cost rates, the allowable indirect costs shall be obtained by applying final indirect cost rates established in accordance with the Allowable Cost and Payment clause.

(g) Allowable indirect costs for the period from the beginning of performance until the end of the Contractor's fiscal year (or other period specified in the Schedule) shall be obtained using the predetermined indirect cost rates and the bases shown in the Schedule.

(End of clause)

52.216-16 Incentive Price Revision-Firm Target.

As prescribed in 16.406(a), insert the following clause:

INCENTIVE PRICE REVISION-FIRM TARGET (JAN 2022)

(a) *General*. The supplies or services identified in the Schedule as Items _______ *[Contracting Officer insert Schedule line item numbers]* are subject to price revision in accordance with this clause; provided, that in no event shall the total final price of these items exceed the ceiling price of ________ dollars ($_____). Any supplies or services that are to be (1) ordered separately under, or otherwise added to, this

contract and (2) subject to price revision in accordance with the terms of this clause shall be identified as such in a modification to this contract.

(b) *Definition*. "Costs," as used in this clause, means allowable costs in accordance with part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) Data submission.

(1) Within _________________ *[Contracting Officer insert number of days]* days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services specified by item number in paragraph (a) of this clause, the Contractor shall submit in the format of Table 15-1, FAR 15.408, or in any other form on which the parties agree-

(i) A detailed statement of all costs incurred up to the end of that month in performing all work under the items;

(ii) An estimate of costs of further performance, if any, that may be necessary to complete performance of all work under the items;

(iii) A list of all residual inventory and an estimate of its value; and

(iv) Any other relevant data that the Contracting Officer may reasonably require.

(2) If the Contractor fails to submit the data required by paragraph (c)(1) of this clause within the time specified and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) *Price revision*. Upon the Contracting Officer's receipt of the data required by paragraph (c) of this clause, the Contracting Officer and the Contractor shall promptly establish the total final price of the items specified in (a) of this clause by applying to final negotiated cost an adjustment for profit or loss, as follows:

(1) On the basis of the information required by paragraph (c) of this clause, together with any other pertinent information, the parties shall negotiate the total final cost incurred or to be incurred for supplies delivered (or services performed) and accepted by the Government and which are subject to price revision under this clause.

(2) The total final price shall be established by applying to the total final negotiated cost an adjustment for profit or loss, as follows:

(i) If the total final negotiated cost is equal to the total target cost, the adjustment is the total target profit.

(ii) If the total final negotiated cost is greater than the total target cost, the adjustment is the total target profit, less ______ *[Contracting Officer insert percent]* percent of the amount by which the total final negotiated cost exceeds the total target cost.

(iii) If the final negotiated cost is less than the total target cost, the adjustment is the total target profit plus _____ *[Contracting Officer insert* *percent]* percent of the amount by which the total final negotiated cost is less than the total target cost.

(e) *Contract modification*. The total final price of the items specified in paragraph (a) of this clause shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer. This price shall not be subject to revision, notwithstanding any changes in the cost of performing the contract, except to the extent that-

(1) The parties may agree in writing, before the determination of total final price, to exclude specific elements of cost from this price and to a procedure for subsequent disposition of those elements; and

(2) Adjustments or credits are explicitly permitted or required by this or any other clause in this contract.

(f) Adjusting billing prices.

(1) Pending execution of the contract modification (see paragraph (e) of this clause), the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the target prices shown in this contract.

(2) If at any time it appears from information provided by the contractor under paragraph (g)(2) of this clause that the then-current billing prices will be substantially greater than the estimated final prices, the parties shall negotiate a reduction in the billing prices. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target prices and the ceiling price, upon the Contractor’s submission of factual data showing that final cost under this contract will be substantially greater than the target cost.

(3) Any billing price adjustment shall be reflected in a contract modification and shall not affect the determination of the total final price under paragraph (d) of this clause. After the contract modification establishing the total final price is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price, and any resulting additional payments, refunds, or credits shall be made promptly.

(g) *Quarterly limitation on payments statement*. This paragraph (g) shall apply until final price revision under this contract has been completed.

(1) Within 45 days after the end of each quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing-

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total target profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (g)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established-increased or decreased in accordance with paragraph (d)(2) of this clause, when the amount stated under subdivision (g)(1)(ii) of this clause differs from the aggregate target costs of the supplies or services; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (g)(1)(iv) of this clause exceeds the sum due the Contractor, as computed in accordance with subdivisions (g)(1)(i), (ii), and (iii) of this clause, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions in refunds.

(3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(h) *Subcontracts*. No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

(i) *Disagreements*. If the Contractor and the Contracting Officer fail to agree upon the total final price within 60 days (or within such other period as the Contracting Officer may specify) after the date on which the data required by paragraph (c) of this clause are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause.

(j) *Termination*. If this contract is terminated before the total final price is established, prices of supplies or services subject to price revision shall be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies and services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(k) *Equitable adjustment under other clauses*. If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit, or both. If the adjustment is made after the total final price is established, only the total final price shall be adjusted.

(l) *Exclusion from target price and total final price*. If any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, then neither any target price nor the total final price includes or will include any amount for that purpose.

(m) *Separate reimbursement*. If any clause of this contract expressly provides that the cost of performance of an obligation shall be at Government expense, that expense shall not be included in any target price or in the total final price, but shall be reimbursed separately.

(n) *Taxes*. As used in the Federal, State, and Local Taxes clause or in any other clause that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term "contract price" includes the total target price or, if it has been established, the total final price. When any of these clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, the increase or decrease shall be made in the total target price or, if it has been established, in the total final price, so that it will not affect the Contractor's profit or loss on this contract.

(End of clause)

Alternate I (APR 1984). As prescribed in 16.406 (a), add the following paragraph (o) to the basic clause:

(o) *Provisioning and options*. Parts, other supplies, or services that are to be furnished under this contract on the basis of a provisioning document or Government option shall be subject to price revision in accordance with this clause. Any prices established for these parts, other supplies, or services under a provisioning document or Government option shall be treated as target prices. Target cost and profit covering these parts, other supplies, or services may be established separately, in the aggregate, or in any combination, as the parties may agree.

52.216-17 Incentive Price Revision-Successive Targets.

As prescribed in 16.406(b), insert the following clause:

INCENTIVE PRICE REVISION-SUCCESSIVE TARGETS (JAN 2022)

(a) *General*. The supplies or services identified in the Schedule as Items _________ *[Contracting Officer insert line item numbers]* are subject to price revision in accordance with this clause; provided, that in no event shall the total final price of these items exceed the ceiling price of dollars ($_________________). The prices of these items shown in the Schedule are the initial target prices, which include an initial target profit of __________ *[Contracting Officer insert percent]* percent of the initial target cost. Any supplies or services that are to be-

(1) Ordered separately under, or otherwise added to, this contract; and

(2) Subject to price revision in accordance with this clause shall be identified as such in a modification to this contract.

(b) *Definition*. "Costs," as used in this clause, means allowable costs in accordance with part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) Submitting data for establishing the firm fixed price or a final profit adjustment formula.

(1) Within __________ *[Contracting Officer insert number of days]* days after the end of the month in which the Contractor has completed __________ (see Note 1), the Contractor shall submit the following data:

(i) A proposed firm fixed price or total firm target price for supplies delivered and to be delivered and services performed and to be performed.

(ii) A detailed statement of all costs incurred in the performance of this contract through the end of the month specified above, in the format of Table 15-1, FAR 15.408 (or in any other form on which the parties may agree), with sufficient supporting data to disclose unit costs and cost trends for-

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

(iii) An estimate of costs of all supplies delivered and to be delivered and all services performed and to be performed under this contract, using the statement of costs incurred plus an estimate of costs to complete performance, in the format of Table 15-1, FAR 15.408 (or in any other form on which the parties may agree), together with-

(A) Sufficient data to support the accuracy and reliability of the estimate; and

(B) An explanation of the differences between this estimate and the original estimate used to establish the initial target prices.

(2) The Contractor shall also submit, to the extent that it becomes available before negotiations establishing the total firm price are concluded-

(i) Supplemental statements of costs incurred after the end of the month specified in paragraph (1) of this section for-

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); and

(ii) Any other relevant data that the Contracting Officer may reasonably require.

(3) If the Contractor fails to submit the data required by paragraphs (c)(1) and (2) of this section within the time specified and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the

amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) *Establishing firm fixed price or final profit adjustment formula*. Upon the Contracting Officer's receipt of the data required by paragraph (c) of this section, the Contracting Officer and the Contractor shall promptly establish either a firm fixed price or a profit adjustment formula for determining final profit, as follows:

(1) The parties shall negotiate a total firm target cost, based upon the data submitted under paragraph (c) of this section.

(2) If the total firm target cost is more than the total initial target cost, the total initial target profit shall be decreased. If the total firm target cost is less than the total initial target cost, the total initial target profit shall be increased. The initial target profit shall be increased or decreased by _____ percent (see Note 2) of the difference between the total initial target cost and the total firm target cost. The resulting amount shall be the total firm target profit; *provided*, that in no event shall the total firm target profit be less than ___________ percent or more than ___________ percent [*Contracting Officer insert percents*] of the total initial cost.

(3) If the total firm target cost plus the total firm target profit represent a reasonable price for performing that part of the contract subject to price revision under this clause, the parties may agree on a firm fixed price, which shall be evidenced by a contract modification signed by the Contractor and the Contracting Officer.

(4) Failure of the parties to agree to a firm fixed price shall not constitute a dispute under the Disputes clause. If agreement is not reached, or if establishment of a firm fixed price is inappropriate, the Contractor and the Contracting Officer shall establish a profit adjustment formula under which the total final price shall be established by applying to the total final negotiated cost an adjustment for profit or loss, determined as follows:

(i) If the total final negotiated cost is equal to the total firm target cost, the adjustment is the total firm target profit.

(ii) If the total final negotiated cost is greater than the total firm target cost, the adjustment is the total firm target profit, less ___________ percent of the amount by which the total final negotiated cost exceeds the total firm target cost.

(iii) If the total final negotiated cost is less than the total firm target cost, the adjustment is the total firm target profit, plus __________ percent of the amount by which the total final negotiated cost is less than the total firm target cost.

(iv) The total firm target cost, total firm target profit, and the profit adjustment formula for determining final profit shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer.

(e) *Submitting data for final price revision*. Unless a firm fixed price has been established in accordance with paragraph (d) of this section within ____________ *[Contracting Officer insert number of days]* days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services specified by item number in paragraph (a) of this section, the Contractor shall submit in the format of Table 15-1, FAR 15.408 (or in any other form on which the parties agree)-

(1) A detailed statement of all costs incurred up to the end of that month in performing all work under the items;

(2) An estimate of costs of further performance, if any, that may be necessary to complete performance of all work under the items;

(3) A list of all residual inventory and an estimate of its value; and

(4) Any other relevant data that the Contracting Officer may reasonably require.

(f) *Final price revision*. Unless a firm fixed price has been agreed to in accordance with paragraph (d) of this section, the Contractor and the Contracting Officer shall, promptly after submission of the data required by paragraph (e) of this section, establish the total final price, as follows:

(1) On the basis of the information required by paragraph (e) of this section, together with any other pertinent information, the parties shall negotiate the total final cost incurred or to be incurred for the supplies delivered (or services performed) and accepted by the Government and which are subject to price revision under this clause.

(2) The total final price shall be established by applying to the total final negotiated cost an adjustment for final profit or loss determined as agreed upon under paragraph (d)(4) of this section.

(g) *Contract modification*. The total final price of the items specified in paragraph (a) of this section shall be evidenced by a modification to this contract, signed by the Contractor and the

Contracting Officer. This price shall not be subject to revision, notwithstanding any changes in the cost of performing the contract, except to the extent that-

(1) The parties may agree in writing, before the determination of total final price, to exclude specific elements of cost from this price and to a procedure for subsequent disposition of these elements; and

(2) Adjustments or credits are explicitly permitted or required by this or any other clause in this contract.

(h) Adjustment of billing prices.

(1) Pending execution of the contract modification (see paragraph (e) of this section), the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the initial target prices shown in this contract until firm target prices are established under paragraph (d) of this section. When established, the firm target prices shall be used as the billing prices.

(2) If at any time it appears from information provided by the contractor under paragraph (i)(1) of this section that the then-current billing prices will be substantially greater than the estimated final prices, the parties shall negotiate a reduction in the billing prices. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target prices and the ceiling price, upon the Contractor's submission of factual data showing that the final cost under this contract will be substantially greater than the target cost.

(3) Any adjustment of billing prices shall be reflected in a contract modification and shall not affect the determination of any price under paragraph (d) or (f) of this section. After the contract modification establishing the total final price is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price, and any resulting additional payments, refunds, or credits shall be made promptly.

(i) *Quarterly limitation on payments statement*. This paragraph (i) shall apply until a firm fixed price or a total final price is established under paragraph (d)(3) or (f)(2).

(1) Within 45 days after the end of each quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the

cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing-

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total cost (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (i)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established-increased or decreased in accordance with paragraph (d)(4) of this section when the amount stated under subdivision (ii) of this section, differs from the aggregate firm target costs of the supplies or services; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (i)(1)(iv) of this section exceeds the sum due the Contractor, as computed in accordance with subdivisions (i)(1)(i), (ii), and (iii) of this section, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions in refunds.

(3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the

excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(j) *Subcontracts*. No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

(k) *Disagreements*. If the Contractor and the Contracting Officer fail to agree upon (1)a total firm target cost and a final profit adjustment formula or (2)a total final price, within 60 days (or within such other period as the Contracting Officer may specify) after the date on which the data required in paragraphs (c) and (e) of this section are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause.

(l) *Termination*. If this contract is terminated before the total final price is established, prices of supplies or services subject to price revision shall be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies or services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(m) *Equitable adjustments under other clauses*. If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit, or both. If the adjustment is made after the total final price is established, only the total final price shall be adjusted.

(n) *Exclusion from target price and total final price*. If any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, then neither any target price nor the total final price includes or will include any amount for that purpose.

(o) *Separate reimbursement*. If any clause of this contract expressly provides that the cost of performance of an obligation shall be at Government expense, that expense shall not be included in any target price or in the total final price, but shall be reimbursed separately.

(p) *Taxes*. As used in the Federal, State, and Local Taxes clause or in any other clause that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term "contract price" includes the total target price or, if it has been established, the total final price. When any of these clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, the increase or decrease shall be made in the total target price or, if it has been established, in the total final price, so that it will not affect the Contractor’s profit or loss on this contract.

Notes:

(1) The degree of completion may be based on a percentage of contract performance or any other reasonable basis.

(2) The language may be changed to describe a negotiated adjustment pattern under which the extent of adjustment is not the same for all levels of cost variation.

(End of clause)

Alternate I (APR 1984). As prescribed in 16.406 (b), add the following paragraph (q) to the basic clause:

(q) *Provisioning and options*. Parts, other supplies, or services that are to be furnished under this contract on the basis of a provisioning document or Government option shall be subject to price revision in accordance with this clause. Any prices established for these parts, other supplies, or services under a provisioning document or Government option shall be treated as initial target prices, or target prices as agreed upon and stipulated in the pricing document supporting the provisioning or added items. Initial or firm target costs and profits and final prices covering these parts, other supplies, or services may be established separately, in the aggregate, or in any combination, as the parties may agree.

52.216-18 Ordering.

As prescribed in 16.506(a), insert the following clause:

ORDERING (AUG 2020)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from __________ through ____________ *[insert dates]*.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) A delivery order or task order is considered "issued" when—

(1) If sent by mail (includes transmittal by U.S. mail or private delivery service), the Government deposits the order in the mail;

(2) If sent by fax, the Government transmits the order to the Contractor's fax number; or

(3) If sent electronically, the Government either—

(i) Posts a copy of the delivery order or task order to a Government document access system, and notice is sent to the Contractor; or

(ii) Distributes the delivery order or task order via email to the Contractor's email address.

(d) Orders may be issued by methods other than those enumerated in this clause only if authorized in the contract.

(End of clause)

52.216-19 Order Limitations.

As prescribed in 16.506(b), insert a clause substantially the same as follows:

ORDER LIMITATIONS (OCT 1995)

(a) *Minimum order*. When the Government requires supplies or services covered by this contract in an amount of less than ____________ *[insert dollar figure or quantity]*, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) *Maximum order*. The Contractor is not obligated to honor-

(1) Any order for a single item in excess of ____________ *[insert dollar figure or quantity]*;

(2) Any order for a combination of items in excess of _____________ *[insert dollar figure or quantity]*; or

(3) A series of orders from the same ordering office within ____________ days that together call for quantities exceeding the limitation in paragraph (b)(1) or (2) of this section.

(c) If this is a requirements contract (*i.e.,* includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within _____ days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

52.216-20 Definite Quantity.

As prescribed in 16.506(c), insert the following clause:

DEFINITE QUANTITY (OCT 1995)

(a) This is a definite-quantity, indefinite-delivery contract for the supplies or services specified, and effective for the period stated, in the Schedule.

(b) The Government shall order the quantity of supplies or services specified in the Schedule, and the Contractor shall furnish them when ordered. Delivery or performance shall be at locations designated in orders issued in accordance with the Ordering clause and the Schedule.

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after _______________ *[insert date]*.

(End of clause)

52.216-21 Requirements.

As prescribed in 16.505(d), insert the following clause:

REQUIREMENTS (DEVIATION DEC 2025)

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; *provided*, that the Contractor shall not be required to make any deliveries under this contract after ________________ *[insert date]*.

Alternate I (Apr1984). If the requirements contract is for nonpersonal services and related supplies and covers estimated requirements that exceed a specific Government activity's internal capability to produce or perform, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The estimated quantities are not the total requirements of the Government activity specified in the Schedule, but are estimates of requirements in excess of the quantities that the activity may itself furnish within its own capabilities. Except as this contract otherwise provides, the Government shall order from the Contractor all of that activity's requirements for supplies and services specified in the Schedule that exceed the quantities that the activity may itself furnish within its own capabilities.

Alternate II (APR 1984). If the requirements contract includes subsistence for both Government use and resale in the same Schedule, and similar products may be acquired on a brand-name basis, add the following paragraph (g) to the basic clause:

(g) The requirements referred to in this contract are for items to be manufactured according to Government specifications. Notwithstanding anything to the contrary stated in the contract, the Government may acquire similar products by brand name from other sources for resale.

Alternate III (OCT 1995). If the requirements contract involves a partial small business set-aside, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The Government's requirements for each item or sub-item of supplies or services described in the Schedule are being purchased through one non-set-aside contract and one set-aside contract. Therefore, the Government shall order from each Contractor approximately one-half of the total supplies or services specified in the Schedule that are required to be purchased by the specified Government activity or activities. The Government may choose between the set-aside Contractor and the non-set-aside Contractor in placing any particular order. However, the Government shall allocate successive orders, in accordance with its delivery requirements, to maintain as close a ratio as is reasonably practicable between the total quantities ordered from the two Contractors.

Alternate IV (OCT 1995). If the contract includes subsistence for both Government use and resale in the same Schedule and similar products may be acquired on a brand-name basis and the contract also involves a partial small business set-aside, substitute the following paragraph (c) for paragraph (c) of the basic clause and add the following paragraph (g) to the basic clause:

(c) The Government's requirements for each item or sub-item of supplies or services described in the Schedule are being purchased through one non-set-aside contract and one set-aside contract. Therefore, the Government shall order from each Contractor approximately one-half of the total supplies or services specified in the Schedule that are required to be purchased by the specified Government activity or activities. The Government may choose between the set-aside Contractor and the non-set-aside Contractor in placing any particular order. However, the Government shall allocate successive orders, in accordance with its delivery requirements, to maintain as close a ratio as is reasonably practicable between the total quantities ordered from the two Contractors.

(g) The requirements referred to in this contract are for items to be manufactured according to the Government specifications. Notwithstanding anything to the contrary stated in the contract, the Government may acquire similar products by brand name from other sources for resale.

52.216-22 Indefinite Quantity.

As prescribed in 16.505(e), insert the following clause:

INDEFINITE QUANTITY (DEVIATION DEC 2025)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor’s and Government’s rights and obligations with respect to that order to the same extent as if the order were completed during the contract’s effective period; *provided*, that the Contractor shall not be required to make any deliveries under this contract after _______________ *[insert date]*.

(End of clause)

Alternate I (DEVIATION DEC 2025). As prescribed in 16.505(e)(1), add a paragraph (e) substantially the same as the following to the basic clause:

(e) Either party may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 calendar days after the other party receives the notice of cancellation. If either party makes such notification, no further orders may be issued against the contract, but orders already awarded will be completed unless a termination action is taken against the order. If the Contractor elects to cancel this contract, the Government will not reimburse the minimum guarantee.

Alternate II (DEVIATION DEC 2025). As prescribed in 16.505(e)(2), add paragraphs (e) and (f) substantially the same as the following to the basic clause:

(e) The Government may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 calendar days after the contractor receives the notice of cancellation. No further orders may be issued against the contract, but orders already awarded will be completed unless a termination action is taken against the order.

(f) The Contractor may request to cancel this contract by submitting a written cancellation request to the contracting officer. The cancellation will take effect 30 calendar days after the Government receives the cancellation request, unless the contracting officer informs the contractor, before cancellation is effective, that cancellation is not approved. A contractor who requests cancellation is not eligible for the minimum guarantee. If cancelled, no further orders may be issued against the contract, but orders already awarded will be completed unless a termination action is taken against the order.

52.216-23 Execution and Commencement of Work.

As prescribed in 16.603-4(b)(1), insert the following clause in solicitations and contracts when a letter contract is contemplated, except that it may be omitted from letter contracts awarded on SF 26 :

EXECUTION AND COMMENCEMENT OF WORK (APR 1984)

The Contractor shall indicate acceptance of this letter contract by signing three copies of the contract and returning them to the Contracting Officer not later than ______________ *[insert date]*. Upon acceptance by both parties, the Contractor shall proceed with performance of the work, including purchase of necessary materials.

(End of clause)

52.216-24 Limitation of Government Liability.

As prescribed in 16.603-4(b)(2), insert the following clause in solicitations and contracts when a letter contract is contemplated:

LIMITATION OF GOVERNMENT LIABILITY (APR 1984)

(a) In performing this contract, the Contractor is not authorized to make expenditures or incur obligations exceeding __________ dollars.

(b) The maximum amount for which the Government shall be liable if this contract is terminated is ___________ dollars.

(End of clause)

52.216-25 Contract Definitization.

As prescribed in 16.603-4(b)(3), insert the following clause:

CONTRACT DEFINITIZATION (OCT 2010)

(a) A ______________ *[insert specific type of contract]* definitive contract is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the letter contract, (2) all clauses required by law on the date of execution of the definitive contract, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a ______ *[insert specific type of proposal (e.g., fixed-price or cost-and-fee)]* proposal, including data other than certified cost or pricing data, and certified cost or pricing data, in accordance with FAR 15.408, Table 15-1, supporting its proposal.

(b) The schedule for definitizing this contract is *[insert target date for definitization of the contract and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of make-or-buy and subcontracting plans and certified cost or pricing data]:*

____

____

(c) If agreement on a definitive contract to supersede this letter contract is not reached by the target date in paragraph (b) of this section, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with subpart 15.4 and part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.

(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by-

(i) All clauses required by the FAR on the date of execution of this letter contract for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);

(ii) All clauses required by law as of the date of the Contracting Officer's determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with paragraph (c)(1) of this section, all clauses, terms, and conditions included in this letter contract shall continue in effect, except those that by their nature apply only to a letter contract.

(End of clause)

Alternate I (APR 1984). In letter contracts awarded on the basis of price competition, add the following paragraph (d) to the basic clause:

(d) The definitive contract resulting from this letter contract will include a negotiated _____________ *[insert "price ceiling" or "firm fixed price"]* in no event to exceed ___________________ *[insert the proposed price upon which the award was based]*.

52.216-26 Payments of Allowable Costs Before Definitization.

As prescribed in 16.603-4(c), insert the following clause:

PAYMENTS OF ALLOWABLE COSTS BEFORE DEFINITIZATION (DEC 2002)

(a) *Reimbursement rate*. Pending the placing of the definitive contract referred to in this letter contract, the Government will promptly reimburse the Contractor for all allowable costs under this contract at the following rates:

(1) One hundred percent of approved costs representing financing payments to subcontractors under fixed-price subcontracts, provided that the Government's payments to the Contractor will not exceed 80 percent of the allowable costs of those subcontractors.

(2) One hundred percent of approved costs representing cost-reimbursement subcontracts; *provided*, that the Government's payments to the Contractor shall not exceed 85 percent of the allowable costs of those subcontractors.

(3) Eighty-five percent of all other approved costs.

(b) *Limitation of reimbursement*. To determine the amounts payable to the Contractor under this letter contract, the Contracting Officer shall determine allowable costs in accordance with the applicable cost principles in part 31 of the Federal Acquisition Regulation (FAR). The total reimbursement made under this paragraph shall not exceed 85 percent of the maximum amount of the Government's liability, as stated in this contract.

(c) *Invoicing*. Payments shall be made promptly to the Contractor when requested as work progresses, but (except for small business concerns) not more often than every 2 weeks, in amounts approved by the Contracting Officer. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost incurred by the Contractor in the performance of this contract.

(d) *Allowable costs*. For the purpose of determining allowable costs, the term "costs" includes-

(1) Those recorded costs that result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(2) When the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for-

(i) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made-

(A) In accordance with the terms and conditions of a subcontract or invoice; and

(B) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

(ii) Materials issued from the Contractor's stores inventory and placed in the production process for use on the contract;

(iii) Direct labor;

(iv) Direct travel;

(v) Other direct in-house costs; and

(vi) Properly allocable and allowable indirect costs as shown on the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(3) The amount of financing payments that the Contractor has paid by cash, check, or other forms of payment to subcontractors.

(e) *Small business concerns*. A small business concern may receive more frequent payments than every 2 weeks.

(f) *Audit*. At any time before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of costs audited. Any payment may be-

(1) Reduced by any amounts found by the Contracting Officer not to constitute allowable costs; or

(2) Adjusted for overpayments or underpayments made on preceding invoices or vouchers.

(End of clause)

52.216-27 Single or Multiple Awards.

As prescribed in 16.506(f), insert the following provision:

SINGLE OR MULTIPLE AWARDS (OCT 1995)

The Government may elect to award a single delivery order contract or task order contract or to award multiple delivery order contracts or task order contracts for the same or similar supplies or services to two or more sources under this solicitation.

(End of provision)

52.216-28 Multiple Awards for Advisory and Assistance Services.

As prescribed in 16.506(g), insert the following provision:

MULTIPLE AWARDS FOR ADVISORY AND ASSISTANCE SERVICES (OCT 1995)

The Government intends to award multiple contracts for the same or similar advisory and assistance services to two or more sources under this solicitation unless the Government determines, after evaluation of offers, that only one offeror is capable of providing the services at the level of quality required.

(End of provision)

52.216-29 Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition With Adequate Price Competition.

As prescribed in 16.601(f)(1), insert the following provision:

TIME-AND-MATERIALS/LABOR-HOUR PROPOSAL REQUIREMENTS—OTHER THAN COMMERCIAL ACQUISITION WITH ADEQUATE PRICE COMPETITION (NOV 2021)

(a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.

(b) The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by-

(1) The offeror;

(2) Subcontractors; and/or

(3) Divisions, subsidiaries, or affiliates of the offeror under a common control;

(c) The offeror must establish fixed hourly rates using-

(1) Separate rates for each category of labor to be performed by each subcontractor and for each category of labor to be performed by the offeror, and for each category of labor to be transferred between divisions, subsidiaries, or affiliates of the offeror under a common control;

(2) Blended rates for each category of labor to be performed by the offeror, including labor transferred between divisions, subsidiaries, or affiliates of the offeror under a common control, and all subcontractors; or

(3) Any combination of separate and blended rates for each category of labor to be performed by the offeror, affiliates of the offeror under a common control, and subcontractors.

(End of provision)

52.216-30 Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition Without Adequate Price Competition.

As prescribed in 16.601(f)(2), insert the following provision:

TIME-AND-MATERIALS/LABOR-HOUR PROPOSAL REQUIREMENTS—OTHER THAN COMMERCIAL ACQUISITION WITHOUT ADEQUATE PRICE COMPETITION (NOV 2021)

(a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.

(b) The offeror must specify separate fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit for each category of labor to be performed by-

(1) The offeror;

(2) Each subcontractor; and

(3) Each division, subsidiary, or affiliate of the offeror under a common control.

(c) Unless exempt under paragraph (d) of this provision, the fixed hourly rates for services transferred between divisions, subsidiaries, or affiliates of the offeror under a common control-

(1) Shall not include profit for the transferring organization; but

(2) May include profit for the prime Contractor.

(d) The fixed hourly rates for services that meet the definition of “commercial service” at Federal Acquisition Regulation 2.101 that are transferred between divisions, subsidiaries, or affiliates of the offeror under a common control may be the established catalog or market rate when it is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the offeror or any division, subsidiary or affiliate of the offeror under a common control.

(End of provision)

52.216-31 Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Acquisition.

As prescribed in 16.601(f)(3), insert the following provision:

TIME-AND-MATERIALS/LABOR-HOUR PROPOSAL REQUIREMENTS—COMMERCIAL ACQUISITION (NOV 2021)

(a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.

(b) The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by-

(1) The offeror;

(2) Subcontractors; and/or

(3) Divisions, subsidiaries, or affiliates of the offeror under a common control.

(End of provision)

52.216-32 Task-Order and Delivery-Order Ombudsman.

As prescribed in 16.506(j), insert the following clause:

TASK-ORDER AND DELIVERY-ORDER OMBUDSMAN (SEPT 2019)

(a) In accordance with 41 U.S.C. 4106(g), the Agency has designated the following task-order and delivery-order Ombudsman for this contract. The Ombudsman must review complaints from the Contractor concerning all task-order and delivery-order actions for this contract and ensure the Contractor is afforded a fair opportunity for consideration in the award of orders, consistent with the procedures in the contract. ____________ *[Contracting Officer to insert name, address, telephone number, and email address for the Agency Ombudsman or provide the URL address where this information may be found.]*

(b) Consulting an ombudsman does not alter or postpone the timeline for any other process (e.g., protests).

(c) Before consulting with the Ombudsman, the Contractor is encouraged to first address complaints with the Contracting Officer for resolution. When requested by the Contractor, the Ombudsman may keep the identity of the concerned party or entity confidential, unless prohibited by law or agency procedure.

(End of clause)

Alternate I (SEPT 2019). As prescribed in 16.506 (j), add the following paragraph (d) to the basic clause.

(d) Contracts used by multiple agencies.

(1) This is a contract that is used by multiple agencies. Complaints from Contractors concerning orders placed under contracts used by multiple agencies are

primarily reviewed by the task-order and delivery-order Ombudsman for the ordering activity.

(2) The ordering activity has designated the following task-order and delivery-order Ombudsman for this order: ____________ *[The ordering activity's contracting officer to insert the name, address, telephone number, and email address for the ordering activity's Ombudsman or provide the URL address where this information may be found.]*

(3) Before consulting with the task-order and delivery-order Ombudsman for the ordering activity, the Contractor is encouraged to first address complaints with the ordering activity's Contracting Officer for resolution. When requested by the Contractor, the task-order and delivery-order Ombudsman for the ordering activity may keep the identity of the concerned party or entity confidential, unless prohibited by law or agency procedure.